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TRIBAL CONSULTATION, IN RE: Draft NACSA Guidance,
Background Checks for Foster Care Placements under
NACSA.

The following is a transcription of
the above-referenced TRIBAL CONSULTATION, taken by
Joan M. Anderson, Certified Shorthand Reporter,
taken at 2400 Mystic Lake Boulevard, Prior Lake,
Minnesota, commencing at 9:15 a.m., February 27,
2018.

PANEL:

Louise Reyes, Rocky Mountain region

Marjorie Eagleman, Regional Social worker, Western
region

Valerie Vasquez-Braun

Evangeline Campbell
Chief of Washington DC Human Services

Miles Janssen, Officer of the Solicitor

Elizabeth Appel, Office of Regulatory Affairs and
Collaborative Action

1 P R O C E E D I N G S

2 (Whereupon, the TRIBAL CONSULTATION was
3 commenced as follows:)

4
5 TIM LEPOINT: Good morning. I'm Tim
6 LePoint, acting regional director out of the
7 Midwest Region, and it's my pleasure to open up
8 the meeting this morning. And I know we went
9 around, we asked where everybody is from, but is
10 there anybody from Great Plains? I guess not.

11 My normal job is as the Regional
12 Director of Great Plains, in Aberdeen, South
13 Dakota. Again, it's my honor to be here and open
14 up this meeting and to talk about the background
15 checks that are required now under the Native
16 American Children's Safety Act.

17 I know it's a pretty heavy topic, and
18 hopefully we get some good discussion this
19 morning. We're here to take some comments and
20 hopefully be able to make a difference. With
21 that, I think we're going to open up with a
22 prayer.

23 (OFF THE RECORD)

24 TIM LEPOINT: Thank you very much.
25 With that, I think I'll turn it over to Liz Appel

1 as the officer of the assistant secretary.

2 LIZ APPEL: Good morning, everybody.

3 My name is Liz Appel. I am with the Office of
4 Regulatory Affairs and Collaborative Action, and I
5 report to the Assistant Secretary For Indian
6 Affairs. Why don't we start by doing a round of
7 introductions up here. So I'll pass it to Miles.

8 MILES JANSSEN: Good morning, my name
9 is Miles Janssen. I'm an attorney in the Office
10 of the Solicitor based out of Washington DC.

11 EVANGELINE CAMPBELL: Hi, good
12 morning. My name is Evangeline Campbell, or Angie
13 Campbell. And I serve as Chief for the Human
14 Services program out of Washington, DC. I'm also
15 a member of the American Indian Tribal Court. I
16 thank you all for coming here. I really
17 appreciate your attendance.

18 VALERIA VASQUEZ-BRAUN: Hi, good
19 morning. My name is Valeria Vasquez-Braun, the
20 regional social worker for the Midwest Region,
21 serving the tax-payer in Michigan, Wisconsin,
22 Minnesota and Iowa. Thank you for coming.

23 MARJORIE EAGLEMAN: Good morning. My
24 name is Marj Eagleman. I'm the regional social
25 worker at the Western Region office in Phoenix.

1 I'm glad to be here and see all of you.

2 LOUISE REYES: Good morning. I'm
3 Louise Reyes from the Rocky Mountain region. And
4 it's good to see you all here. I wish we had more
5 presentation of more folks representing us, but we
6 have Corbin, so I'm sure he will speak up.

7 LIZ APPEL: Thank you. And we also
8 have the Office of the Assistant Secretary, Kyle
9 Scherer here, representing the Office of the
10 Secretary. And we also have a court reporter
11 here, so when you provide your comments, if you
12 wouldn't mind introducing yourself and where
13 you're from so that the court reporter can
14 accurately capture your comment, that would be
15 great.

16 So just to start out with what we're
17 going to be discussing today; we're going to
18 provide you an overview of the Native American
19 Children's Safety Act and what its three main
20 requirements are. I'm going to have Miles from
21 the Solicitor's Office do that, since those are
22 the statutory legal parameters that we're working
23 under.

24 And then the bulk of the consultation
25 today will be on the draft NACSA guidance. So

1 that was included in the packet with the Dear
2 Tribal Leader letter, and that guidance addresses
3 background checks for foster care placements under
4 the Act. So we're going to talk about what the
5 options are and what the recommendations are for
6 getting background checks done, and the
7 applicability to emergency placement and
8 self-reporting by foster care placement, and then
9 finally how to certify compliance with the act.

10 So I'm going to start by turning it
11 over to Miles to talk about the statutory
12 requirements.

13 MILES JANSSEN: Thanks, Liz. So the
14 Native American Children's Safety Act, it was
15 signed into law in June of 2016 by President
16 Obama, and it was originally a bill that was
17 sponsored by Senator Hoven from North Dakota, and
18 it was in response to some of the issues at Spirit
19 Lake dealing with foster care issues there. So
20 Senator Hoven proposed this bill. And what it
21 does is it amends the Indian Child Protection and
22 Family Violence Prevention Act, which originally
23 that act required background checks of employees
24 that are federal, or tribal employees, that have
25 regular contact with children. And for tribes,

1 the tribe receives ISDA funds, and the tribe
2 employee would be working with children. We're
3 supposed to have some people join by phone, so
4 we'll take a break real quick.

5 LIZ APPEL: I apologize for that. We
6 are going to be having some folks from FBI on the
7 line. FBI was instrumental in helping to draft
8 this guidance. So please hold.

9 (OFF THE RECORD).

10 SPEAKER: Hi, this is Chris Chaney
11 from the FBI Office of the General Council.

12 LIZ APPEL: Anyone else on the line?
13 Okay, thank you.

14 So the first person was Marsha Good
15 from the Office of Tribal Justice, and we have
16 Chris Chaney from the Office of General Counsel.

17 So we have started the consultation.
18 We've had our blessing and opening. So Miles is
19 now describing the requirements of the Act, so
20 I'll turn it back over to Miles.

21 MILES JANSSEN: So as I mentioned, so
22 what the Native American Children's Safety Act
23 amends is the Indian Child Protection and Family
24 Violence Prevention Act. So what NACSA does is it
25 extends the requirements of background checks to

1 foster care placements by tribal social services
2 agencies that have been ordered by tribal courts.

3 So previously, before, although there
4 were requirements for employees to get background
5 checks, there was kind of a loophole there, a gap
6 in coverage, and this bill kind of seeks to amend
7 that gap.

8 So the provision is added to the Act,
9 it's 3207, Character Investigations. And that's
10 where you'll find the new law. And then also, so
11 for foster care placement, previously background
12 checks were authorized by many states for
13 non-tribal foster care placements as well as
14 tribal foster care placements under Title IV-E.

15 So like I said before, there was a
16 little bit of gap in coverage, and this bill seeks
17 to cover that.

18 So the first definition is foster
19 care placement, which is any action removing an
20 Indian child from a parent or Indian custodian.
21 And what the act does is it uses the same
22 definition of foster care placement that's found
23 in ICWA. So the action can either be for a
24 temporary placement in a foster home or
25 institution or the home of a guardian, and it's

1 when the parent or the custodian cannot have the
2 child returned on demand, and the parental rights
3 have not been terminated, or the parental rights
4 have been terminated, but the child's not been
5 permanently placed. The draft states that foster
6 care placements include placements with relatives,
7 the child or parent, or in a residential group
8 home or family home setting.

9 The next definition is Indian Child.
10 What the act does is it incorporates the
11 definition of "Indian Child" that's found in ICWA.
12 So if a child is a member of a federally
13 recognized tribe, or if the child is eligible for
14 membership in a federally recognized tribe and
15 whose parent is a member of a federally recognized
16 tribe, that child would be covered under the act.

17 What is a tribal social services?
18 That would be the agency of an Indian tribe that
19 has the primary responsibility for carrying out
20 foster care licensing or approval for the tribe.

21 I also believe we're considering the
22 BIA. If the BIA provides direct service for
23 foster care services, then yeah, it would be
24 considered to be included under this as well.

25 And the BIA being included wasn't

1 specifically stated in the law, but in looking at
2 the tribe to determine the act's coverage, it was
3 a policy cut that was made in order to kind of
4 maximize the coverage. So that could be an area
5 worth discussing if people have comments on that
6 today.

7 Finally, a covered individual. So
8 the term "covered individual" is important because
9 these are the people whose backgrounds have to be
10 checked. So it's any individual 18 years of age
11 or older, but it also could be an individual that
12 the tribe or social service agency determined is
13 subject to a criminal records check. So really,
14 the baseline is anyone 18 or above, but if the
15 tribe feels like everyone in the house should have
16 a background check, then that could also be a
17 covered individual as well.

18 And finally, an overview of the act's
19 three main requirements. First, the tribal social
20 services agency has to conduct a background check
21 on foster care placements ordered in tribal court
22 proceedings for Indian children. So that's kind
23 of self-explanatory. If the tribal court orders
24 foster care placement, covered individuals have to
25 have a background check.

1 Also, the act requires tribes to
2 establish standards for foster care placements.
3 It includes procedures for conducting background
4 checks. And the act kind of lays out what some of
5 those standards have to be, which include a
6 criminal record check based on fingerprints; a
7 check of any abuse registries maintained by the
8 tribe; a check of sex offender databases, and then
9 there's one more. And abuse and neglect
10 registries maintained by the state.

11 And then also, the requirement
12 emphasizes the importance of tribes creating and
13 implementing foster home licensing standards or
14 updating tribal codes and licensing standards to
15 insure the safety of children.

16 Finally, the act's requirements
17 require tribes to establish procedures for
18 periodically re-certifying foster homes and
19 institutions based upon tribal licensing
20 standards.

21 LIZ APPEL: The act requires the
22 Department of the Interior to issue -- develop
23 this guidance that we're consulting on today, and
24 issue the guidance by June 3rd, 2018. So the
25 guidance that you have is just in draft, and we're

1 going to be taking the comments that we receive
2 today, and that we received last week in
3 Albuquerque and next week on our teleconference,
4 as well as all the written comments that we
5 receive, and refine it and hopefully improve the
6 guidance so that it is as user-friendly and useful
7 to tribes as possible.

8 So the draft that you're looking at
9 today, BIA developed with a lot of input from the
10 experts at Department of Justice and FBI, some of
11 whom are on the phone, and the Department of
12 Health and Human Services. And ultimately, after
13 we finalize the guidance after this consultation
14 process, we'll be making the guidance available on
15 the BIA website, and BIA, Angie's office, will
16 then go out and provide training for tribes on how
17 to conduct the background checks.

18 So the primary goal of this guidance
19 is to help tribes meet the act's requirements.
20 And specific goals of the guidance; a lot of the
21 guidance pulls in the requirements that are stated
22 in the act and the statute, but the draft guidance
23 also provides a lot of recommendations, including
24 recommendations on procedures that tribal social
25 services agencies can use to conduct background

1 checks to cover individuals who reside in foster
2 care homes or are employed at foster care
3 institutions, and it's up to the tribes whether
4 they choose to incorporate those recommendations
5 into their tribal placement standards.

6 The guidance also provides
7 recommendations on self-reporting requirements
8 that tribes can have for foster care homes and
9 institutions. So if a covered individual no
10 longer meets the requirements established for the
11 background checks, they can self-report, and
12 procedures that tribes could recommend for foster
13 care homes and institutions to certify that they
14 were in compliance with the NACSA.

15 NACSA, the act, does not authorize
16 background checks for emergency foster care
17 placement, but the guidance provides some
18 promising practices that tribes already use for
19 emergency foster care placement procedures, and
20 that will hopefully help make sure that children
21 are placed in safe homes, in those instances where
22 there is an emergency placement required.

23 So next, it requires tribal social
24 services to complete a criminal records check of
25 each covered individual, adults age 18 or older in

1 a foster care home or institution, and then
2 conclude whether the covered individual meets the
3 tribe's standards of placement, and that's what
4 NACSA requires the tribe to establish.

5 So the covered individual has to meet
6 the standard of placement before the tribe can
7 approve the foster care placement of an Indian
8 child or issue a foster care license to an
9 institution.

10 Next, it requires the tribes'
11 standards of placement to require tribal social
12 services to perform criminal records checks,
13 including fingerprint-based checks of national
14 crime information databases. And Miles touched on
15 this earlier. Also check abuse registries that
16 are maintained by the tribe, and abuse and neglect
17 registries maintained by the state.

18 So there's multiple states,
19 potentially, that the tribe has to look at; the
20 state in which the covered individual currently
21 resides, and then any other state in which the
22 covered individual has resided in the preceding
23 five years.

24 Tribes can include additional
25 requirements in their standards, so any

1 requirements that are more stringent than what
2 NACSA requires, if the tribe determines those
3 additional requirements to be necessary and
4 permissible within its authority. And examples
5 include creating voluntary agreements with state
6 entities to help facilitate the sharing of
7 information for performing the background checks.
8 And then the draft guidance includes additional
9 examples of what a tribe can include in its
10 standards.

11 So when the tribe is conducting
12 background checks, what it should be looking for
13 is really established by the act, and its draft
14 guidance clarifies that "Tribal social services
15 agencies may not approve a foster care placement
16 with a covered individual who's been found by
17 federal, state or tribal court to have a felony
18 conviction for a crime." And there's basically
19 two categories: A crime that has been committed
20 at any time, if that crime is a child abuse or
21 neglect, spousal abuse, a crime against children,
22 including child pornography. A crime including
23 violence, including rape, sexual assault or
24 homicide, and then if a crime for a physical
25 assault, battery or drug-related offense was

1 committed within the past five years and there's a
2 felony conviction, that's the other category of
3 what to look for.

4 There's no single system that
5 captures all the information required for
6 conducting background checks, so the draft
7 guidance recommends that tribes look at several
8 different sources. And I'll just list the
9 sources, and then I'm going to pass it over to --
10 back to Miles to go into more details.

11 The draft guidance recommends that
12 tribes conduct fingerprint-based searches of
13 National Crime Information Database, which is the
14 FBI's Next Generation identification system, NGI.
15 And also conduct a check of the national sex
16 offender public website, and then check state
17 registries for child abuse and neglect. And
18 remember, we're looking at states in which the
19 covered individual currently resides or has
20 resided in the past five years. And a check of
21 tribal registries and records.

22 MILES JANSSEN: So as Liz mentioned,
23 the first place where you would want to look would
24 be to conduct a fingerprint check of the National
25 Crime Information Databases. As Liz mentioned,

1 the NGI system includes fingerprints, and then the
2 corresponding criminal history record information.
3 It's in the Interstate Identification Index
4 System, or the "Triple I" system, which is the
5 national index of criminal history throughout the
6 United States that's maintained by the FBI.

7 So what the Triple I system does is
8 it ties computerized criminal history records in
9 files of the FBI in centralized files that are
10 maintained by each state into kind of a national
11 system. And so, included in that are the criminal
12 history records and arrests and court data that
13 are voluntarily submitted by states, tribes and
14 federal agencies.

15 So the one limitation there is that
16 information in that system is only information
17 that has been provided, and so there's a chance
18 that all the information might not be in that
19 system, which is why other checks would have to be
20 done.

21 But if the search reveals an arrest,
22 but it just says an arrest, it doesn't say how the
23 case was disposed of or adjudicated, the tribe
24 should contact the state's central record
25 repository or even the federal or the tribal

1 agency that contribute that information to try to
2 figure out, okay, there was an arrest that
3 happened now, what happened eventually to this
4 case; was it dismissed, was it prosecuted, etc.

5 So in order to conduct a
6 fingerprint-based check of that system, tribes
7 have a couple of difference options to access that
8 information. One option is working with the
9 state, the state's criminal history record
10 repository. And that information is listed in the
11 guidance, and it involves an agreement between the
12 tribe and the states to conduct those checks.

13 The DOJ Tribal Access Program, or the
14 TAP program, is another option for tribes to get
15 background checks. Or a tribe could go through an
16 FBI approved channel, which is kind of a private
17 company that has an agreement with the FBI to
18 conduct these fingerprint-based background checks.

19 Or, a tribe can work directly with
20 the FBI to submit hard copies of fingerprints, and
21 they will get that information directly back from
22 the FBI.

23 One of the issues with working
24 directly with the FBI is that since it's based on
25 hard copies, it's not electronic, there's a little

1 bit of a delay. So each of these options, there
2 are pros and cons for tribes. Tribes will have to
3 kind of weigh and determine what works best for
4 the tribes. And information is included in the
5 guidance to kind of explain how to access each of
6 of these systems.

7 So the second check that should be
8 done would be a check with the National Sex
9 Offender Public Website. What that does is it
10 links public sex offender registries and
11 notification systems, participating states,
12 territories and tribes, into one national search
13 site. So the website is listed there as
14 www.nsopw.gov. And the tribe can use that
15 information to conduct a nationwide search as well
16 as local searches within a geographic radius.

17 And also, you can sign up to be
18 notified of changes to sex offender register
19 information in their area. Do you have a question
20 in the back?

21 MAXIE ROCKYMORE: I haven't read this
22 in a while. So are federal funds being provided
23 under NACSA for tribes who run these background
24 checks? When they run the checks, are funds
25 allocated to tribes who run those background

1 checks?

2 MILES JANSSEN: Can you identify your
3 name and where you're from?

4 MAXIE ROCKYMORE: My name is Maxie
5 Rockymore. I'm the manager of foster care in
6 Title IV-E for the State of Minnesota, with the
7 Minnesota Department of Human Resources.

8 EVANGELINE CAMPBELL: Miss
9 Rockymore, good morning and thank you for that
10 question. Actually, if you would be so kind to
11 hold off your question until the formal comment
12 session. We're going to have almost two hours of
13 that, and you can provide a response. We're going
14 to go ahead and do the overview, and then we'll
15 take the public comment.

16 MAXIE ROCKYMORE: Okay.

17 MS. CAMPBELL: Thank you.

18 MILES JANSSEN: So a check of the sex
19 offender public website allows the tribe to search
20 for that information. The limitation is the
21 available search for material limited to, again,
22 only what the individual jurisdictions may
23 provide. So again, it's not a guarantee that all
24 the information a tribe would need would be in
25 that website, but it's another important website

1 to check.

2 Currently there's -- this is not in
3 the guidance, but it's per DOJ. The National Sex
4 Offender Registry, which is a subset of NCIC is
5 run by the FBI, and it's a law enforcement-only
6 database. And the tribe might be able to get
7 access to the National Sex Offender Registry
8 through a variety of different ways; either
9 through a state or through a county or through
10 BIA, or through the TAP program, and that would --
11 again, a check with the National Sex Offender
12 Registry would be a little more comprehensive
13 compared to the National Sex Offender Public
14 Website. So again, it's kind of covering all the
15 bases here.

16 Third place would be a check of the
17 state registries for child abuse and neglect. So
18 every state has procedures for keeping records of
19 child abuse and neglect, and most states have a
20 central registry for that information. The
21 information varies by state, but usually includes
22 the nature of the harm to the child, the names of
23 the alleged perpetrators and the investigation
24 findings.

25 Many tribes kind of restrict -- or

1 maybe states, I should say -- restrict access to
2 those records, and so tribes would have to contact
3 the state agency; for example, Child Protective
4 Services or the Department of Children and Family
5 or the Department of Human Services to get access
6 to that information. But it's an important
7 database to check.

8 And then finally, there should be a
9 check with tribal registries and records. So any
10 kind of criminal history records that the tribe
11 maintains, tribes should reach out and check those
12 records. Again, access to the records of other
13 tribes might be restricted, and so in that case, a
14 tribe would want to contact the tribal court or
15 other law enforcement. Or some tribes maintain
16 websites that have that information. The tribe
17 should check those websites as well.

18 And then finally, the Native American
19 Children Safety Act requirements, and there's also
20 the Title IV-E requirements. There's some overlap
21 between the requirements of NACSA and Title IV-E.
22 Tribes that might be receiving funding both
23 through Title IV-E would have to comply with both,
24 and what we've done in guidance is kind of created
25 a chart that lists the requirements for both the

1 act and for Title IV-E and made the recommendation
2 of which guidance to follow. And generally it
3 would be a more stringent requirement that the
4 tribe should follow as a way to conduct a
5 background check.

6 EVANGELINE CAMPBELL: Okay. Now I'm
7 going to go ahead and finish up the consultation
8 to review the emergency placement visions, and
9 then also some other compliance and best
10 practices. I also want, before we go forward, Mr.
11 LePoint had asked, is there any representation
12 from the Great Plains region, and in fact, we did
13 have the vice-president from the Oglala Sioux
14 Tribe, President Black, join us this morning.
15 Thank you for coming. I appreciate that.

16 Emergency placements, although not
17 covered under the act itself, the Native American
18 Children's Safety Act, all of us who have served
19 or worked within social service programs know that
20 at times it is necessary for us to have children
21 placed in emergency situations. And so therefore,
22 the act does cover situations in which we've
23 identified best practices.

24 I think it's also important to know,
25 in addition to working with the Department of

1 Health and Human Services and the Department of
2 Justice, the Bureau of Indian Affairs Human
3 Services often has relied on the regional social
4 workers that are here today, as well as the BIA
5 agencies. We spoke to more than 26 tribal
6 programs that are throughout the United States to
7 try to get a good depiction of what placement for
8 foster care children will look like in the Indian
9 community. So I think it's important to note that
10 as well.

11 And what we found in surveying the
12 tribes is that a lot of the best practices that I
13 will cover in a couple of minutes, and some of the
14 requirements that we're reviewing today, are
15 already being done in Indian country. So that is
16 -- so we base the practice off of some of the
17 findings that we did have moving forward.

18 As I indicated, although the act does
19 not necessarily cover emergency placement, there
20 are best practices. For example, just for the
21 record, emergency placement, for example -- excuse
22 me, emergency shelters. We also have Purpose Code
23 X, emergency shelters are used in various
24 situations. For example, when we did the
25 surveying, we noted that the Colorado River tribe

1 in Arizona actually insures that all of their
2 staff are cleared before they're placed.

3 Similarly, we also assessed and
4 worked with the Fort Peck community. We actually
5 worked and conducted a survey for them and
6 similarly, they also too ensure that all of their
7 staff has in fact received these background
8 checks.

9 At Spirit Lake, for example, another
10 good example where the provisions of this act are
11 based, what we found is that there are a lot of
12 practices in place. Spirit Lake, for example, is
13 a BIA program in which they do provide direct
14 services and oversight for the child protection
15 services there in that community, and thus, this
16 provision is applicable.

17 Project Code X is another example
18 that is actually an Act. The BIA implemented the
19 Purpose Code X back in 2015, and what it allows
20 tribes to do is actually access fingerprints
21 quicker. Normally the hard copy that goes into
22 the FBI normally takes a couple of days -- you
23 have to submit it within 15 days -- but through
24 Purpose Code X it actually allows a tribe to
25 actually obtain the fingerprint checks within

1 24 hours in most instances.

2 And although a lot of tribes don't
3 necessarily use Purpose Code X, it is a resource
4 that is available. It is a best practice we try
5 to consider. If tribes are interested in
6 obtaining additional information on Purpose Code
7 X, we can work with you, and I think we, the
8 Bureau of Indian Affairs, myself, I'll make myself
9 available, pass out cards. We can put you in
10 contact with the appropriate person at the Bureau
11 of Indian Affairs Office of Justice Services to
12 insure that you get the information that you need.

13 I think it's important to know that
14 although the Purpose Code X would provide faster
15 fingerprint check for placement of an Indian
16 child, the requirement to submit the hard copies
17 is still a component. It is required for tribes
18 to do that.

19 Also, too, what we found as a best
20 practice -- and it is included as a guidance for
21 some provisions for you to consider -- the act
22 itself requires self-reporting. That isn't to be
23 found, that that normally occurs. You know,
24 communities are small. Half of the work that we
25 do is by word of mouth. So the guidance does

1 cover that. If there is a change in any of the
2 placements or the homes or institutions, it is the
3 expectation of this act, as well as the Bureau of
4 Indian Affairs, is for any changes.

5 So for example, if there is a foster
6 care placement, and the uncle moves into the home,
7 and the uncle, for example, has a criminal
8 background that's not as promising, maybe has a
9 drug felony charge, it is under this act required
10 for that worker to report that individual.

11 And I'm emphasizing that because
12 having the dynamics of a family within Indian
13 communities happens frequently. It's not uncommon
14 for an aunty or an uncle to live with -- from home
15 to home, or move in and then go ahead and move
16 out. But each time there is a change in that home
17 situation, it is the expectation of this act that
18 it be reported.

19 Also, the act does require that the
20 BIA will certify compliance. I am going to
21 certify, meaning that we will have the
22 responsibility to work with the tribes to insure
23 that this act is being implemented. We're looking
24 at -- currently working with the Office of
25 Self-Governance as well as the Office of Indian

1 Self-Determination, and find the means by which we
2 could get these provisions within the tribes'
3 contracts or compact.

4 Again, we will work very closely with
5 the regional offices who already do conduct their
6 annual overviews. I was sharing with someone
7 earlier that I also go out and do joint reviews
8 with the regions, and we look forward to finding
9 ways where we can insure compliancy. Because I
10 believe, as the chief of this program, that it's
11 one instance to require compliance, and then it's
12 another to insure that we go out and insure that
13 the provisions are implementing the community.
14 Not just for the purpose of saying we're going to
15 check the box, but to insure that those children
16 are safe.

17 When I talk about compliance, that's
18 what we look for, is to insure not only that
19 they're safe, but there will be communities that
20 will be found to be (inaudible), that there are
21 best practices that I hope we would be able to
22 identify perhaps in some of the communities here,
23 or also the practices that are being implemented
24 that perhaps the Bureau of Indian Affairs can
25 utilize and share with other communities. I think

1 that's a key element when it comes to certifying
2 compliance.

3 And again, I mean, I could talk on
4 and on about the promising practices that we
5 experienced throughout this venture here. The
6 guidance itself is just a draft guidance. We're
7 here today -- and I'm here as the chief, as well
8 as my colleagues -- is to hopefully get some
9 positive comments and suggestions for these
10 guidance. Because the guidance themselves, I
11 believe, are only as good as they are put forth to
12 the community.

13 We are also going to turn the
14 presentation over to Liz shortly. I didn't go
15 through every single specific portion of the
16 slides. We often read that. I wanted to make
17 sure in the interest of time, because we did start
18 later, to have enough time for your comments so we
19 could have a dialogue.

20 Again, we look forward to some
21 suggestive comments and solutions. We welcome
22 them and look forward to them.

23 LIZ APPEL: Thank you, Angie. So we
24 do have a deadline that's coming up for any
25 written comments that you have. We ask that you

1 provide them to us by email, if possible, to
2 consultation@bia.gov by March 16th this year. And
3 what's driving that deadline is that under the
4 act, BIA has to issue the final guidance by
5 June 3rd. So we are building in a bit of buffer
6 so that we can have time to review all the
7 comments that we have and update the guidance so
8 that it's as useful as possible to you all.

9 So with that, that is our overview of
10 what the draft guidance and the act require. So
11 we now open it up to you all for your input, and
12 we can carry around the mike to you all. That's
13 easiest.

14 MAXIE ROCKYMORE: My name is Maxie
15 Rockymore. I'm the manager of foster care and
16 Title IV-E for the State of Minnesota with the
17 Minnesota Department of Human Services. My
18 question is, does NACSA allow funding for tribes
19 to conduct the background checks? Is funding
20 available? And if not, is that going to be
21 considered?

22 EVANGELINE CAMPBELL: Currently the
23 part 63 that would cover this act remains an
24 unfunded mandate with the Bureau of Indian
25 Affairs. This is Evangeline Campbell. It remains

1 an unfunded mandate.

2 NICOLE HOMER: Hi, my name is a
3 Nicole Homer, and I am Tribal Counsel with the
4 Ho-Chunk Nation in Wisconsin. 23.54 percent of
5 our children as of 2016 lived outside of
6 Wisconsin. In Wisconsin we have access, read
7 only, to our (inaudible) data in order to do the
8 review of the child abuse registry. But there
9 doesn't appear to be any mandates on the states to
10 assist us. So I'm wondering, what assets will the
11 BIA provide in order to assist tribes in the event
12 that we run into not obtaining access to such
13 information in other states that our children
14 reside in?

15 EVANGELINE CAMPBELL: The act itself
16 covers the BIA as well as Indian programs. As Liz
17 had indicated earlier, we are working in
18 partnership with the Department of Health and
19 Human Services. I can't give you a direct answer
20 to your question, but we are capturing the
21 comments, and it is all taken. I'm not going to
22 sit here and say that we are going to do something
23 that is not underway, but the act itself covers
24 Indian tribes in foster care placement. I don't
25 think that answers your question.

1 NICOLE HOMER: Well, we do try to
2 assist with finding homes and licensing homes in
3 other states. Our service territory does
4 technically go beyond Wisconsin. Part of our
5 service territory includes a county in Minnesota,
6 and furthermore, we have non-trust land in
7 Illinois, even. So we often do work to find homes
8 for our children in other states. So that is an
9 issue that we have run into in the past, and it
10 would be helpful if that is taken back to
11 consider.

12 EVANGELINE CAMPBELL: Thank you very
13 much. And that is the purpose of consultation,
14 again, and that is to include these additional
15 comments.

16 ELSIE LEOSO-CORBINE: Elsie
17 Leoso-Corbine, Social Family Services Director for
18 battered children.

19 I'm in Wisconsin, and I think one of
20 the glitches that we experience in Wisconsin right
21 now as far as best practices and background checks
22 is that tribes have a different threshold than the
23 state and counties do when opening a case. So
24 when you do a background check in Wisconsin, we
25 follow the full background check. We do a

1 childcare (inaudible) check in Wisconsin, and it
2 goes into the state registry.

3 However, let's say, for example, I
4 want a licensed home in -- a family from Lac du
5 Flambeau that live in Bad River. And they have
6 something -- they opened a case in Lac du
7 Flambeau. Because we know this in Wisconsin, we
8 know to call Lac du Flambeau and say, We have a
9 family that we're going to license here. Can you
10 let us know if you opened a case on them. So
11 we'll send our information.

12 However, an Ashland County worker,
13 which is the county we reside in, doesn't know to
14 do that. So in essence, the tribes in Wisconsin
15 will open cases that you will not see on the state
16 database system. They will only be within the
17 tribal system. And the other part to that glitch
18 is that not all tribes have the luxury of a
19 software system. Like Bad River doesn't.

20 So if there's a case that opened up
21 that have a permanent bar, or some type of bar on
22 it, or could be a possible bar, it could be in a
23 shed that we have to go dig out. So other tribes
24 might have the luxury of a database system where
25 it's going to be in, but smaller tribes that don't

1 have that and are running on a shoe string budget,
2 still have paper files, like Bad River. So we
3 have to go and look for those, and it might take
4 us a couple days. Whereas, if we had a software
5 system, we could punch the names in, and it would
6 be right there on cases we opened in Bad River.

7 So Bad River has had a child welfare
8 office since the passing of the act in 1980. And
9 they have opened up cases that the county would
10 not open. And we're not the only tribe in
11 Wisconsin. I'm sure other tribes in this region
12 have opened cases that their county or the state
13 wouldn't open on the reservation or in the service
14 area. So I just wanted to share that.

15 EVANGELINE CAMPBELL: Yeah, and also,
16 too, I was talking to Val here. Wisconsin is a
17 280 state, and in Indian country, there's so many
18 different means set up for which foster care
19 placements can occur. 280 is different from what
20 the tribe was offered in the program. BIA is
21 offering the program. And I say that to say that
22 these are really important comments to put
23 forward. I'm not going to elaborate on the
24 comment from Bad River, but the point is so very
25 well taken, and it is what we've found when we go

1 out and review the programs, we look at these
2 tribal programs. What you have stated is
3 universal, and it's really (inaudible) Indian
4 country. So thank you for your comment.

5 NICOLE HOMER: I just wanted to
6 clarify one statement that I made. When we're
7 looking at working with other states, the reality
8 is you're telling us that we have to do a review
9 of every state that an individual has lived in in
10 the past five years. So that's kind of where I'm
11 coming from with this, is that we are transient
12 people. We don't stay on our reservations. So
13 even though the family might now reside in
14 Wisconsin, and this foster family that we're
15 looking at, they might have previously lived in
16 Arizona two years ago.

17 So that's where we're coming from.
18 We have to reach out to them. We just need to
19 know that there are people that hear our concerns,
20 and they're looking at ways to help us collaborate
21 with those states. Thank you.

22 EVANGELINE CAMPBELL: Thank you.

23 VALERIE BLACKDEER: Hi, I'm Valerie
24 Blackdeer from Ho-Chunk Nation out of (inaudible)
25 Division, Director for Child and Family Services.

1 I guess I have a couple things. One is just a
2 comment that it would be really nice to get a list
3 of those state contacts, when you're saying that
4 we should contact, you know, the Department of
5 Child and Family Services, or however those states
6 are connected, to be able to have a list of who
7 those contact people are so we're not getting sent
8 from office to office saying no, you need to go
9 there. That can take a lot of valuable time away
10 if we don't have some level of an office of where
11 we should at least start to get our information
12 from.

13 The other thing, I guess, is just
14 finding out more related to the ability of -- I
15 guess, what type of training are the states being
16 given, or consultation? You've done this with the
17 tribes today, but is there going to be something
18 that's also going to happen with the states and
19 counties so that they're understanding that, you
20 know, it would be in your best interests to work
21 well with them because it talks about MOU's with
22 different agencies and stuff.

23 When we are going with our tribal
24 court cases with no background base, that's the
25 one thing with Ho-Chunk Nation with their

1 interesting level, they're not reservation-bound,
2 so we can be going wherever. We can be sending
3 our workers into Minnesota, into Iowa, wherever,
4 if you've got family there, that potentially are
5 going to have -- under our tribal court, we can be
6 going many places to try to find families for our
7 placements.

8 DARLA BLACK: Once again, I'm Darla
9 Black. I'm representing the Oglala Sioux Tribe
10 today. I'm the vice-president. Good morning. I
11 have a question for you: The biggest problem that
12 we have, I think, is this data collection, a data
13 collection base. Now, I know BIA, a part of BIA's
14 requirement is to provide technical assistance to
15 the tribes. Now, it appears that BIA would access
16 these programs much quicker than the tribes. On
17 the Pine Ridge, there was a lawsuit that was filed
18 in Rapid City concerning ICWA, and it seemed like
19 it affected the relations between the state and
20 the tribe, concerning our children.

21 So what if BIA compiled a national
22 data collection apparatus that would benefit the
23 tribes? Because there are some tribes that don't
24 have the funding to do that, that don't have the
25 resources. Thank you.

1 EVANGELINE CAMPBELL: Thank you.

2 VALERIE BLACKDEER: Hi, this is
3 Valerie again. Just the thought about resources
4 and talking about different things, and the factor
5 that you have to follow, the Title IV-E -- IV-B, I
6 guess. I'm just going to put this out here. This
7 has been one of my issues for a long time -- I've
8 been working for the tribe for almost 15 years
9 now -- is that we apply for Title IV-B funds.
10 IV-B funds are prevention funds, and it's to help
11 keep children at home, or also, there's the
12 portion where you can have, for the faster
13 reunification, the 15th months, that part. So
14 there is a reunification part there.

15 Title IV-E asks for all of this stuff
16 that you need to do because they get databases out
17 of this. My big issue is, Title IV-B is
18 prevention, keeping kids from being removed.
19 Title IV-E on this hand is, okay, after the family
20 is falling apart and the kids get removed, now
21 we're going to give you some extra funding so you
22 can do all of this. My big beef is, why are we
23 spending all of this money after the children have
24 been removed from home, but giving me a little bit
25 of money over here for the prevention fund.

1 So I guess if there's any way for the
2 BIA to advocate to look at the funds that are
3 given to the tribes under Title IV-B versus Title
4 IV-E, I think all of us would be much better off
5 and be able to help our children at a whole
6 different level, and our families, than always
7 focusing on Title IV-E. Give us title case
8 management under Title IV-B and let us get our
9 funds that way, rather than billing for funds.
10 And I guess I'm going to speak also, Title IV-E is
11 really not -- in my mind, it's not a benefit
12 because it's after the kids, but also, we have
13 some issues with our per capita district use when
14 we're working with families. The income
15 guidelines are 1986 income guidelines. It doesn't
16 do anything for us to put all of this work and
17 energy into doing that. It takes away from the
18 time of what we want to do.

19 So I guess, that's just our advice.
20 So I really think that there needs to be some
21 advocacy for more Title IV-B funding for the
22 titled communities versus always pushing this
23 Title IV-E. Because to me, it says a whole
24 different thing. When you look at the historic
25 trauma and everything about families being

1 removed, that's just an alternative of what you're
2 doing. Going back to the healing process, it's
3 going to help a lot better with more Title IV-B
4 funding.

5 EVANGELINE CAMPBELL: Thank you for
6 your comment. I think what you're stating is
7 really important. However at the Bureau of Indian
8 Affairs, we don't provide oversight for Title IV-A
9 or IV-B, and I'm certain that most of you know
10 that anyway. But I hear you loud and clear.

11 The Department of Health and Human
12 Services, they were instrumental in helping us in
13 putting the guidance together. I can't honestly
14 say that this administration is listening to the
15 comments. The secretary of the board did attend
16 the last session, and we sent a representative
17 that's here today.

18 And I appreciate the comments,
19 because what is being put forth in the guidance is
20 going to be challenging, to say the least. And
21 that's why it's so critical for not only that the
22 guidance be implemented, we go out and experience
23 what type of practices are out there, but also,
24 too, how do we make the service with the system
25 that we're providing the children when it comes to

1 placement and families more realistic and
2 efficient. That's one thing to think about.

3 So again, that's why we're here, to
4 get the comments and suggestions for viable
5 solutions to some of these dilemmas that you're
6 talking about. Thank you.

7 MAXIE ROCKYMORE: I just wanted to
8 respond to this young lady here about having
9 prevention elements upfront. So Title IV-E was
10 just admitted to add the Family First Prevention
11 Act, which adds up-front dollars to do the things
12 that you're saying. It helps our Title IV-E
13 dollars that will be used, and they disconnect the
14 financial requirements under Title IV-E, the
15 income eligibility requirements. So that act was
16 just amended. That just passed about a week ago.

17 EVANGELINE CAMPBELL: My colleague
18 also brought to my attention, and to really
19 directly answer the question, is that we can in
20 addition to having that meeting at the Department
21 of Health and Human Services, provide input on the
22 guidance. I will certainly coordinate with DHHS
23 to see when and where we can do consultation. In
24 fact, we did do one listening session before the
25 guidance was actually issued, and that was back in

1 November of 2017. It was November.

2 We did do one session, but it wasn't
3 a formal consultation, because we don't do
4 consultation with the states. But nonetheless, we
5 will look into additional opportunities to do
6 that. Because it's key. I think what you're
7 saying is key.

8 JILL KEHANLANI ESCH: Hello, and good
9 morning. My name is Jill Kehanlani Esch. I'm the
10 ombudsperson for American Indian families for the
11 State of Minnesota. As the ombudsperson, I can
12 work with all -- and it's now 573 federally
13 recognized tribes -- if they have a child
14 protection case here in Minnesota. I really
15 understand as to the questions that are asked
16 about the resources, because depending on where
17 the tribe is, where the family is, it is really
18 important when you're trying to look for
19 placement. So it's important that the monies have
20 to be there. They have to help support the
21 tribes.

22 The other thing is, regarding the
23 training, we had a licensing session here before.
24 Well, BIA regulations went into effect, which is
25 December of 2016. Here in Minnesota we have 87

1 counties. I think we have less than half a dozen
2 trainings that they have had for those counties.
3 I have counties that are calling me and asking me
4 to provide them with information about the ICWA
5 training that Minnesota has not done.

6 And this is just the State of
7 Minnesota. Minnesota, as we know, is number one
8 in the nation for the removal of American Indian
9 children. We have 17 times more native children
10 being removed to one white child. I have a case
11 right now I'm investigating because the guardian
12 ad litem recommended to the court, remove the
13 child from the home and terminate mom's rights.
14 Not because of child abuse, not because of child
15 maltreatment, but because this 11-year old child
16 was not doing his homework.

17 So when you have things like that,
18 and it's a matter of the resources, but think
19 about where the tribes are, and it's -- I'm really
20 glad to have the opportunity to have people come
21 in from around the region and Canada to listen to
22 this, but it's really important when the rules go
23 in to think about how the individual tribes -- as
24 to what do they need to do. When you're working
25 with paper form, how long does it take to go into

1 a room this size to look for them.

2 In our families, they do travel with
3 them. We do want to make sure that the children
4 are safe. We really, really want to do that. But
5 you need to provide the resources. You need to
6 provide the technical dollars, and you also need
7 to provide the trainings and education for
8 everybody. In two weeks, I'm going to be going to
9 the Shakopee correctional facility to work with
10 the moms out there so I can work with them and
11 educate them on the Indian Child Welfare Act. So
12 I can let them know that they can work on their
13 case plans when they're in prison to give them the
14 motivation with it, because the children are the
15 future, and that's what we really, really want to
16 do.

17 But it's important to continue to
18 talk, but it's important for leadership to hear
19 and listen. And like under the Indian Child
20 Welfare Act, actively go about for it so that we
21 can do the best for the children. Thank you.

22 EVANGELINE CAMPBELL: You're welcome.
23 Thank you for that comment. I want to also note
24 that we have several -- not just here on the
25 panel -- but several social workers that work

1 within the Bureau of Indian Affairs. What you're
2 saying is so critical. So much so that they're
3 here, not just to participate in the session, but
4 to hear the concerns of the programs and provide
5 me assistance when we're talking about training
6 and technical assistance.

7 We also -- it's so important and
8 critical that the training in the technical
9 assistance is conducted that we're working with
10 the Rocky Mountain Tribal Leadership Council to
11 assist us further.

12 So in terms of the act itself, the
13 funding remains an unfunded mandate, and that's
14 the reality we're working with. But when it comes
15 to training and technical assistance, there are
16 several individuals in this room today that will
17 help the central office provide the training and
18 technical assistance. Will we be able to cover
19 all of Indian country within the first year?
20 Probably not. But will we try to cover as many
21 areas as we can? Absolutely.

22 DARLA BLACK: I have another comment.
23 Darla Black with the Oglala Sioux tribe. There
24 was a case that came up recently, and it came to
25 the elected officials after it was adjudicated. It

1 was a case out of Sioux Falls, South Dakota. What
2 happened was the law enforcement officer took the
3 child and placed the child with a non-Indian
4 family. He never notified the tribe. They didn't
5 follow ICWA at all. And when it reached to the
6 court level, because the officer took those
7 measures and placed that child, when the tribe did
8 file a motion to intervene, the judge claimed,
9 Okay, well, it was filed too late.

10 Although all those steps were not
11 followed, ICWA wasn't followed at all, or
12 recognized, and we're still fighting that. The
13 tribe was planning to take some action on that.

14 But what do we do in a situation like
15 that, when the state -- that's why it's important
16 for you to inform the states. To my
17 understanding, I don't think that they understand
18 the law. They understand the law of ICWA. And
19 what we do is we try to protect our children.
20 This past year, the Oglala Sioux tribe followed
21 our sister tribe, Rosewood. We brought back some
22 of our family members that were adopted out.

23 And to hear horrific stories of what
24 happened to them while they were in adoption.
25 It's still happening today. We have kids coming

1 back telling us what's going on with them. Just
2 recently, my tribe was outraged. There was a
3 family in Rapid City, non-native family, and had a
4 lot of Indian children with them, slapping them in
5 the head, you know, belittling them in front of
6 everybody. And these were kids that were removed
7 through the state and placed with non-native
8 families.

9 And I came here today to send a voice
10 because we want our children. We want our
11 children home. To us they're safer. Just like
12 the lady said. We want our children home. But
13 when you have systems like the state law
14 enforcement that are not following ICWA laws, you
15 know, there's something very, very biased about
16 this. Especially this case in Sioux Falls. There
17 was a lot of publicity around it. It involved a
18 homicide, but that's still not okay for them not
19 to give that native child the opportunity to go
20 back to the family.

21 That opportunity -- what we heard in
22 those testimonies from the people that came
23 home -- and that was just this past year -- one,
24 they didn't even know the language. Two, they had
25 no idea of the systems. And I'll guarantee you,

1 every single one of them had a substance abuse
2 problem and identity problem of who they are,
3 where they came from. When we brought them home,
4 they had family members there that they didn't
5 even know. They had heard some people being
6 brought back with this last name, and they
7 reunited. You know, it was really a cheerful
8 ceremony that we held. But to listen to these
9 adults come back and tell their horror stories,
10 and that stuck in my heart, and that's why I'm
11 here today.

12 And these background checks, how do
13 we know the state didn't background that person
14 that they placed this Indian child with? We don't
15 know that, because they don't give us that
16 information. Thank you.

17 LOUISE REYES: Maybe Liz can help us
18 here, but my understanding is NACSA is focused on
19 reservations. And one thing that, from our
20 region, at least -- I'm from the Rocky Mountain
21 region, which is Montana and Wyoming -- one of our
22 biggest issues is, it doesn't apply to emergency
23 removals. All of our removals are emergency
24 removals. There are no planned removals. We have
25 serious situations, especially with the drug

1 problem. When we separate families, it's because
2 they need protection. That's what our regulations
3 say. That's the only reason we place children.

4 And when we're looking for homes on
5 reservation, we do not have families stepping up
6 anymore. There's very few. You'll have some
7 families stepping up for certain kids, but those
8 kids that are really problematic, that have drug
9 issues, that are acting out, that have had a
10 variety of problems, or whose families have had --
11 and you can relate to that -- where you've had
12 families that may have drug issues, and the rest
13 of the family doesn't necessarily want to be
14 involved. We really have trouble identifying
15 resources.

16 So I think one of the concerns -- and
17 everybody who's in the audience who's a 638
18 contractor, I'd really encourage you to really
19 look at this and give some really good comments,
20 because this is a federal law. This will be a
21 contract requirement. So when we go out and do
22 AOTR reviews, we're going to be asking if you're
23 complying with this. So as you're identifying
24 these issues on reservations, your programs, the
25 services you're providing, those are the issues

1 you really need to be looking at because that's
2 where the problems are going to be.

3 What is an emergency removal? Do we
4 have a timeframe to identify that? Have we
5 defined it? So when does it come in that we've
6 got to get those backgrounds. We have tribal
7 courts in our region. Most of our tribal courts,
8 some of them have computerized systems to try to
9 track the state's background systems. Some of
10 them don't. And as someone else had mentioned
11 over here, it's very difficult to track paper
12 records all the years because what you have is you
13 have tribal court staff having to go back and look
14 through old files to see who has a background file
15 and who doesn't from the list on the reservation.

16 So it becomes really problematic, and
17 it's also a real burden on the tribal court. So
18 the issue is not just background, because the
19 background, the implications for that, in fact,
20 are foster care resources, the families,
21 relatives, kinship care, guardianships. This
22 talks about guardianships. We've had one tribe
23 that has had a situation with a whole bunch of
24 guardianships in another state. There are no
25 backgrounds.

1 I think Nicole talked about working
2 with other states. When you have to ask Tennessee
3 or South Carolina or North Carolina to do a
4 background on someone down there, guess what, they
5 don't want to do that. And if you ask the parent,
6 you know, if you're going to keep that kid, we
7 need a background. That's not very forthcoming.

8 And then trying to get them back to
9 the reservation with the child, to return the
10 child, it's very difficult. We've had to work
11 with the FBI, Homeland Security on exactly those
12 issues.

13 So it's not cut and dried when we're
14 just talking backgrounds. But when you're looking
15 at 638 contracts, a big issue, you can get a
16 background. You can do fingerprints, you can get
17 the background. What the regulations require is
18 adjudication of the background. It says you have
19 to determine, does it meet this requirement or
20 not.

21 It's very difficult for some of the
22 tribes to say. Who's the one who's going to
23 determine that? Is it going to be personnel? Is
24 it going to be Social Services? Who's actually
25 going to look at that background and say, This

1 person doesn't cut it, they can't have this kid.
2 So when you're doing emergency placements, this
3 doesn't happen overnight. Actually, it's very
4 difficult.

5 So I didn't mean to throw all these
6 things out, but I think we need to be considering
7 that, especially you guys, who are delivering
8 services, and how it's going to affect your
9 programs.

10 EVANGELINE CAMPBELL: Thank you,
11 Louise. See why I have my support system here?

12 REANNA JACOBS: Good morning. My
13 name is Reanna Jacobs. I am a member of the Lower
14 Sioux Indian Community, and I work as the ICWA
15 program consultant here in Minnesota at the
16 Department of Human Services. And I just need
17 some clarification. Are the tribes going to be
18 required to place in tribal court the resolution,
19 the standards, or can they do it through policy
20 and procedure?

21 LIZ APPEL: That sounds like a legal
22 question. Mr. Solicitor?

23 MILES JANSSEN: So the act encourages
24 tribes to set the standards, but I think in
25 respect to tribal sovereignty, that's up to

1 however the department wants to make those
2 changes; whether you want to place it in tribal
3 law, or implement some policies and procedures.
4 So I think that would be a decision for the tribe
5 to make.

6 CORBIN SHANGREAU: I'm Corbin
7 Shangreux. I'm a consultant for the Rocky
8 Mountain Tribal Leaders Council. I'm also from
9 Canada, from Pine Ridge. In Canada, I was the
10 administrator for a large First Nations agency.
11 We had near 1,500 children in care. Tremendous
12 expenditures every year to pay for foster care.

13 Part of the goal that I had when I
14 went in as the administrator, and part of what
15 government wanted to do was look at the issue of
16 why we had so many children in care; what could we
17 do to reduce the number of children in care.

18 But at the same time, safety was
19 paramount. And you know, I have -- just
20 observing -- there's just a couple of things.
21 Number one, one of the common practices that takes
22 place in Manitoba, when you do a background check,
23 you can have that done through your local police.
24 They will process that. And because there's so
25 many background checks that need to be processed,

1 there's a nominal charge. It can be \$25 to have
2 that processed by the police.

3 And then when there's an alert that
4 comes up on a name check, then there's a
5 requirement -- like if Corbin Shangreaux was put
6 in the system, and there's another Corbin
7 Shangreaux or somebody with a similar sounding
8 name in another place in Canada where a concern
9 comes up, then at that point, there's a
10 requirement that there's as fingerprint check
11 done. And again, that's done through the RCMP or
12 the city police, and there's a charge related to
13 that. And so if I'm the person that's doing it,
14 there's a charge of \$100 to have that fingerprint
15 piece done.

16 That all being said, those are just
17 procedural things that have all kinds of --
18 there's going to be all kinds of reactions to
19 doing some of those kind of things here, but
20 that's just procedures there.

21 My concern about all of these, and in
22 talking with some of the tribal leaders in Montana
23 about some of this stuff; one is, you know,
24 there's the issue of housing on the reservation
25 where sometimes there are more than one family

1 living in a house. And you know, there might be
2 adults, adult children who don't have their own
3 housing, who may be still living at home. And
4 then, you know, while we want to make sure -- and
5 I don't think there's any issue around safety,
6 that safety is paramount for children -- there's
7 the issue sometimes of will these practices
8 inadvertently lead to more children being placed
9 outside that home because of concerns, and will it
10 lead to more cross-cultural placement. Again,
11 that's the whole issue of who can meet the
12 standards better and faster and more quickly,
13 especially when you're trying to place the child.

14 So will the end result of this
15 particular piece be that there's more
16 cross-cultural placements, and then you have
17 concerns about loss of culture, loss of language,
18 all those kinds of things. And then of course,
19 the other issue -- and this was already brought
20 up -- is the resources, funding. But there's also
21 human resources and capacity to carry this all
22 out. It's a real challenge, especially if it's an
23 unfunded mandate.

24 I do want to say that I think that
25 these kinds of hearings are really necessary, and

1 you know, I look forward to seeing something like
2 this happen in Montana.

3 MARGARET BLUE: Good morning. I'm
4 Margaret Blue, Lower Sioux Indian Community
5 member, elder and registered nurse.

6 My concern, following up what he said
7 about funding, the funding for this, is that when
8 I worked for the EPA through our tribe, I had an
9 eye opener when I went down to Chicago -- and
10 Chicago covers Michigan, Wisconsin and
11 Minnesota -- and we were concerned about lead
12 abatement in the houses with kids, and they had
13 written up all this legal jargon, and yada, yada,
14 yada. And then it finally came down in our
15 meeting, who enforces this? And the people at EPA
16 said, Well, we do. There were eight people in
17 that room to cover three states. And they were
18 putting the onus on the states and the tribes to
19 do this, okay? But there was very little funding
20 for that. You had to get through grants. Some of
21 the tribes were unable to get grants.

22 So if there's a possibly of looking
23 at this piece that you want to put out there and
24 mandate, you know, can we have it supported by
25 grants, something that gives people motivation to

1 get involved in this? Because you're going to
2 need a big overseer to get this completed in the
3 way that you want, and it will probably take
4 years, just like it did with the lead program at
5 EPA. It took years to educate people.

6 CORBIN SHANGREAU: It's Corbin
7 Shangreaux again. One other thing that came up in
8 Manitoba when we were looking at some of these
9 similar things was the issue of an adult, where
10 you may have concerns about that adult who's a
11 relative of the family, what happens if they come
12 to the foster home and stay overnight. You know,
13 they can't. And then the issue of normally
14 residents, you know, some of those kinds of
15 things.

16 LIZ APPEL: Just to follow up on
17 that, the draft guidance mentions babysitting, I
18 think, as one of the additional items that tribes
19 may want to address in their standards for
20 placement. There should be requirements for very
21 temporary childcare like that.

22 REANNA JACOBS: Reanna Jacobs again.
23 I just had a question. We have a lot of relatives
24 who live outside the U.S. In Minnesota here, we
25 have a lot of South Dakota relatives who are

1 living in Canada. How do you foresee that?

2 Because we have a lot of relatives that come down
3 from those areas, and what is your guidance on
4 that, on that piece?

5 EVANGELINE CAMPBELL: Just to clarify
6 your question, so if a relative comes, say, from
7 Canada and visits (inaudible) family, because he's
8 visiting back home (inaudible), if an individual
9 comes to stay for a visit or within the home for a
10 long stay, then the provisions would be required
11 because -- also, too, I think it's important to
12 note, this is -- these are guidance, often
13 guidance, but this is a law. And when Louise had
14 said that tribes need to be mindful that this law
15 is going to be applicable -- it is applicable
16 now -- but once the guidance is issued, these
17 things are going to be the expectation. So that
18 aunty or uncle who comes down to visit, and that's
19 often the case, and if there's a change in that
20 placement, a check will have to be -- is required.

21 Actually, the guidance is asking, or
22 is expecting for that foster family to
23 self-disclose, self-report, if you will, and it's
24 not as clear because if an aunty or someone comes
25 to visit for a week, you know, we could provide

1 additional guidance for someone visiting for a
2 week versus someone staying for three,
3 four months. I think there's a different there.

4 But it would apply. If a person
5 comes to visit from Canada, if they come to visit
6 from any other country, they come to visit and are
7 going to stay and are now part of that family
8 makeup, it's expected under this act that it be
9 self-reported and a background check be conducted.
10 That's my reading of it.

11 MILES JANSSEN: I agree with Angie
12 that, you know, whether a person came in from
13 Canada or tribes in the southwest border maybe
14 come in from Mexico, as of right now, the guidance
15 doesn't address how do you deal with kind of
16 international background checks, but that's
17 certainly something that we can look into and
18 address, because I think you do raise, actually, a
19 very important concern.

20 VALERIE BLACKDEER: This is Valerie
21 Blackdeer, Ho-Chunk Nation again. I'm just
22 wondering, thinking through some of the things
23 like Steve Kiplinger from Administration For
24 Children and Families does a list serve type of
25 thing. Is there a possibility to do some type of

1 a list serve that people can sign up for during
2 this timeframe to ask questions and sort of be a
3 support network amongst the tribes? I know
4 Valerie sends out like to the Region 5 and stuff,
5 but it would be nice to have across the board for
6 the different regions to have some communication
7 and feedback as we're going through this process.
8 Because I think it is going to take sort of a
9 team. And we've had some of this stuff in place
10 already, because Rosalie Clark, way back when,
11 from Minneapolis, told us, You should be also
12 backgrounding your placement homes.

13 So we've just done that. So we're
14 just going to have to firm up and make sure that
15 it's adhered to. But why have to reinvent the
16 wheel on some of this stuff, if other tribes have
17 things that we can spin off of? I just think it
18 would be nice to have either a list serve or an
19 email group or something where we can share, you
20 know, possibly what we have, or templates.
21 Because this is really a short timeframe that we
22 have to be able to get all of this pulled together
23 and working well.

24 LOUISE REYES: I think that's a
25 wonderful idea because there are some things that

1 this law requires us to do, too, that haven't been
2 put in place. It's so critical across the board
3 of allowing regions and tribes and everything,
4 encouraging them to do certain things. But as
5 Angie was saying about self-reporting, when you
6 make a placement -- and this is part of working in
7 (inaudible) area across the country -- you're
8 supposed to have a foster care placement
9 agreement, and that foster care placement
10 agreement can tell you who's in that home, what
11 you're paying, what are the responsibilities,
12 self-reporting. Doing some of those things.

13 Now, we don't go through this process
14 of doing a lot of forms, because then we have to
15 have clearance for all these forms. That's why we
16 try to keep it formats and ideas. But this may be
17 a possibility where the tribes have things out
18 there, they could share those, and we re-visit
19 that whole thought. I think that's great,
20 fantastic.

21 UNIDENTIFIED SPEAKER: I have another
22 comment in regards to background. For Bad River,
23 at least, and probably for other tribes, it is our
24 background office that actually conducts the
25 background checks. So if there's certain

1 requirements that, for example, in Wisconsin,
2 there's a caregiver check that is required to do
3 the childcare, which is a lot harder to pass than
4 foster care.

5 And so in order for our background
6 office to conduct that check, she has to go to
7 training. And that also included TA from the
8 state office to come in and go over that because
9 we have to be able to determine whether or not
10 they passed the background or not.

11 And so that would be something that
12 you would want to look at, is who is doing the
13 background checks for the tribes, and if they're
14 trained to make that determination. Because I
15 found out from that experience that there is a lot
16 of training that has to be done with background
17 offices, and what they're actually looking for
18 when they're doing the checks.

19 JILL KEHANLANI ESCH: Jill Kehanlani
20 Esch again. I have a question. Could you tell me
21 why is that June 3rd date -- how was that arrived,
22 and is that a set date? And the reason I ask that
23 is because I will be going to, along with other
24 people, to the National Indian Child Welfare
25 Association Conference in Anchorage, Alaska, which

1 is April 15th through 18th. And I think it's
2 important to get information to them there. I
3 know that there will be a number of Alaskan tribes
4 there, and having called, I think a third of the
5 Alaskan tribes the last time -- we had the BIA
6 regulations to let them know to get their comments
7 in -- I know that there's going to be a lot of
8 people there that may want to provide input. But
9 that would be a month after the written input is
10 due. So I share that with you.

11 The other question is, I do
12 understand that this will be a law. It's been a
13 law for 40 years, and we know as to where that has
14 gone, sometimes good and sometimes just ignoring
15 it.

16 And then the final thing is, I would
17 like to pass out my latest quarterly report that I
18 provided, and I will be going to Indian Affairs
19 Council, Minnesota Indian Affairs Council this
20 afternoon and providing it so that people can get
21 an understanding of the type of work that I do.
22 And for Minnesota, there's a new law -- and I put
23 it outside -- that it only affects American Indian
24 children when they're in out of home placement.
25 So there's a new law that went into effect

1 January 1st this year, and we really need to get
2 people on board so that they understand what that
3 new law is. Thank you.

4 MILES JANSSEN: To answer your
5 question of why the June 3rd, 2018 deadline, why
6 it's that date, the law was written just within
7 two years of it being enacted, so the president
8 signed it on June 3rd, 2016. So that's the
9 deadline. And I think it's also worth keeping in
10 mind, the act requires this guidance to be issued
11 within two years, but it doesn't say anything
12 about future guidance. So the BIA can certainly
13 issue guidance in the future, can issue revised
14 guidance. So I don't think you should be worried
15 that this is a final thing. Once it gets issued,
16 it can always be revised.

17 LIZ APPEL: To follow up on what
18 Miles said, that's absolutely right. I think when
19 the final guidance is issued by June 3rd, that is
20 not set in stone. It will be a living document.
21 So at any time, you all are welcome to provide
22 input directly to Angie or through the
23 consultationfbi.gov email, and that guidance can
24 be updated.

25 EVANGELINE CAMPBELL: Also, the

1 president of ICWA actually attended our
2 consultation session last week in Albuquerque and
3 did provide comment on behalf of ICWA. So I think
4 that's important to know, and I'm certain that
5 they will be at least having some discussions
6 there for that session, tonight. And we also have
7 staff, not doing a formal presentation there, but
8 they will be there.

9 So we have the room until noon, but
10 if there are no additional comments or questions,
11 we'll wrap it up early.

12 LOUISE REYES: Since nobody else is
13 going to speak, I just want to throw it out here,
14 too, if you haven't had the chance, really run
15 these things by your tribal courts, run it by your
16 tribal courts. If you're working with states who
17 are in 280 situations, you're going to have to
18 talk with your (inaudible) in your county.

19 But for those of us who have tribal
20 courts, this is new edification for courts, too.
21 They really need to look at how they refer those
22 cases, how to make sure there's backgrounds and
23 when those backgrounds are completed. There's
24 compliance issues. We're talking about code.
25 Someone raised the issue does it have to be

1 included in code.

2 It may require code additions. It
3 probably is going to require additional staff at
4 tribal courts to actually review records to look
5 at backgrounds, because it takes time, especially
6 if you've got paper trails rather than
7 computerized systems.

8 So there's a lot of implications
9 beyond just social services and just getting a
10 fingerprint check on a background. So please talk
11 to the other parts of your tribe and your programs
12 so that they're also part of this process.

13 NICOLE HOMER: This is Nicole Homer
14 from Ho-Chunk again. I did want to thank you for
15 putting in, in terms of the five-year look-back --
16 or yeah, for the crimes section, the ones that
17 would be a complete mandate versus the look-back
18 period because the way the statute, the actual law
19 is written, it just has a cross reference, and by
20 doing a cross reference, it actually made it look
21 like the burden was higher for tribes as opposed
22 to the states.

23 So I do appreciate that that language
24 was added, and I hope that that remains within
25 whatever document comes out of this. Also,

1 realizing that these are just guidelines, and not
2 necessarily law, but I do appreciate that. So
3 thank you.

4 KAREN LOLAHAGEN (phonetic): Good
5 morning. My name is Karen Lolahagen (phonetic).
6 I'm with the Ho-Chunk Nation as a placement
7 program social worker. My question is simply
8 semantics. We have also distinguished our parents
9 as placement parents, not foster parents. We have
10 placement homes, we don't have foster homes. And
11 that's just been established by our way of calling
12 them by that name. I see all the paperwork and
13 all the documentation stated as "foster parents"
14 and "foster homes." And we also certify, we don't
15 license. Thank you, my boss just gave me the
16 answer.

17 LIZ APPEL: I think someone mentioned
18 that in the Upper 13 (inaudible) location, too,
19 that they refer to foster placements by different
20 terms. So we may incorporate that. We use the
21 term "foster care placements" because that's what
22 the act uses, but we can certainly clarify that
23 that may -- that placements referred to by a
24 different term may fall within that statutory
25 definition.

1 Do you have any other comments or
2 questions? If there's no more questions, then
3 maybe we can close with a prayer.

4 (CLOSED WITH PRAYER)

5 (The meeting was concluded at 10:57 a.m.)

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NOTARY & REPORTER'S CERTIFICATE

I, Joan M. Anderson, hereby certify that the foregoing transcription of the above-mentioned Tribal Consultation, consisting of 68 pages of typewritten material, was taken down by me in Stenograph at the time and place therein named, and was thereafter reduced to computer-aided transcription under my direction;

That the foregoing transcription is a true record;

I further certify that I am not interested in the outcome of this action.

WITNESS my hand and seal at
Minneapolis, Minnesota this 28th day of February,
2018.

JOAN M. ANDERSON
Certified Shorthand Reporter

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