NICWA
National Indian Child Welfare Association
Protecting Our Children • Preserving Our Culture

COMMENTS OF THE NATIONAL INDIAN CHILD WELFARE ASSOCIATION ON IMPLEMENTATION OF SECTION 70403 OF P.L. 119-21, RECOGNIZING INDIAN TRIBAL GOVERNMENTS FOR PURPOSES OF DETERMINING WHETHER A CHILD HAS SPECIAL NEEDS FOR PURPOSES OF THE ADOPTION TAX CREDIT

The National Indian Child Welfare Association (NICWA) is a national American Indian/Alaska Native (Native) nonprofit organization based in Portland, Oregon. NICWA has been a leader in the development of public policy that supports Tribal self-determination in child welfare and social services for over 40 years. We have extensive knowledge and expertise in federal child welfare programming, including Department of Health and Human Services programs under Title IV-B and Title IV-E of the Social Security Act. NICWA works at the Tribal, state, and national levels to develop policies that improve Tribal capacity and the exercise of Tribal sovereignty in child welfare and strengthen the ability of Tribal families to access federal benefits, like the federal adoption tax credit. Our comments will focus on impacts to Native children and families from Section 70403 of P.L. 119-21, Recognizing Indian Tribal Governments for Purposes of Determining Whether a Child Has Special Needs for Purposes of the Adoption Credit and recommendations for implementation. Our comments also respond directly to the questions contained in the Dear Tribal Leader Letter published on August 25, 2025, by the Department of Treasury announcing the new law and requesting public comments.

NICWA has advocated for many years for changes to the adoption tax credit that would recognize adoptions that have been finalized by Tribal Nations pursuant to their inherent Tribal sovereign authority. The new law's provisions in this area have always had strong bipartisan support in Congress, by Tribal Nations, and by professional organizations involved in tax policy and adoption. NICWA is pleased that Congress has taken action to address this gap in access to federal tax credits for adoptions by Native families and looks forward to the Department of Treasury's guidance and support of this new policy.

Comments and Recommendations

In some ways, implementation of this amendment is very straightforward. In the forms implementing the adoption tax credits and in internal documents interpreting this tax provision, such as the Internal Revenue Manual section interpreting the tax credit provision (IRM 4.19.15.5.4 (03-12-2018)), the term "Indian Tribe" should be added wherever the terms "state" or "state or county" appear.

However, there are differences between how some Tribal Nations handle adoptions, as compared to the typical state adoption, that must be recognized in any guidance that is issued.

First, many Tribes recognize "Tribal customary adoptions" in addition to more "conventional" adoptions. These are adoptions which typically take place without the termination of parental rights. In some cases, these adoptions are initiated in Tribal court. In other cases, they take place through a traditional process, although they may ultimately be memorialized through Tribal legal processes. For example, the Sisseton Wahpeton Oyate Juvenile Code section 38-03-24 authorizes the Tribal court to recognize "ecagwaya or traditional adoption" if a child has been placed with another family without court involvement and has lived with that family for two years.

The Children's Bureau recognizes that Tribal or state adoptions that take place without termination of parental rights are eligible for Title IV-E Adoption Assistance and specifically provides that a "special needs" determination can be made in regard to such adoptions (Children's Bureau Manual, section 9.2, question 3). Some state statutes recognize Tribal customary adoptions as well.[1] It is important for the Internal Revenue Service implementation policy to likewise recognize Tribal customary adoptions for the purposes of the tax credit.

Second, while most Tribes have Tribal courts that operate in a fashion similar to state courts, not all do. Some Tribal Nations (especially smaller ones) may handle child welfare or adoption matters through an administrative process or through the Tribal political process. In fact, the Indian Child Welfare Act, 25 U.S.C.§1903(12), defines Tribal Court to include not only courts in the usual sense of the word, but also "any other administrative body of a Tribe which is vested with authority over child custody proceedings"—which is a recognition of the different processes that some Tribes may use. Thus, the requirement that the adoption certificate be issued by a court should be modified to allow for the certificate to come from any Tribal entity authorized to recognize or finalize an adoption.

[1] For example, see Colorado Revised Statutes, section 19-1.2-124.

Third, while most Tribal Nations have formal child welfare agencies, not all do. For example, some smaller Tribal Nations may have a single designated individual who handles child welfare matters and who reports to the Tribal elected government. Thus, the requirement that the special needs determination come from the child welfare agency should be modified to allow for the determination by the child welfare agency or any other entity recognized by the Tribe as having the authority to determine whether the child has special needs.

Fourth, while it is estimated that about 275 Tribal Nations have the authority to operate Title IV-E through direct federal funding or a Tribal-state agreement, most of the 574 federally recognized Tribal Nations do not operate a Title IV-E program. Thus, it should be explicitly recognized that Tribal adoption assistance agreements that are negotiated with adoptive parents may look very different than state agreements. For example, an adoption agreement may provide for services rather than payments.

We would also note there are issues pertaining to the implementation of other adoption tax credit sections in P.L. 119-21 that may be very important for families adopting children, particularly Native families. In general, the socioeconomic status of Native families is lower than that for other families and accordingly their tax liability may be less. Providing for the maximum refundability of the tax credit provided for in section 70402 of P.L. 119-21 will ensure that Native families are able to fully benefit from the tax credit. In particular, we believe that it would be helpful if the refundability portion of the tax credit for 2025 can be carried forward into the 2026 tax year which would allow for another $5,000 to be refundable. Expenses for adoption can continue beyond the first year after the adoption is finalized and having the full benefit of refundability of eligible adoption expenses will be an important support for many Native families.

NICWA believes that the long overdue extension of the tax credit to adoptions performed under Tribal law has the potential to alleviate burdens that are currently incurred by many Native families that are trying to adopt. We urge the new law provisions to be implemented in as flexible a manner as possible so that Native families are able to and feel comfortable with claiming the adoption tax credit when they file their federal tax returns.

Thank you for considering NICWA's comments and recommendations.

Please contact Evan Roberts, NICWA Government Affairs and Community Development Specialist at evan@nicwa.org or David Simmons, NICWA Director of Government Affairs and Advocacy, at desimmons@nicwa.org with any questions you may have regarding NICWA's comments or recommendations.