



Native Child and Family Policy Update

October 2025

A copy of this update with live links can be found on the National Indian Child Welfare Association's (NICWA) website at <https://www.nicwa.org/child-and-family-policy-updates/>

Hot Topics

Department of Treasury Seeks Comments on Implementation of Tribal Adoption Tax Credit

Tucked into the One Big Beautiful Bill Act (P.L. 119-21) is a provision that allows families that adopt through a Tribal court eligibility to receive the federal adoption tax credit. This federal tax credit has been available since 1997 for families that adopted a child with special needs through a state court, but the new law now extends that eligibility to adoptions performed in Tribal courts. The new law requires that a Tribe (or state) must make a determination that a child being adopted meets the Tribe's criteria for being special needs. Tribes and states are given flexibility to define what constitutes "special needs" which can include several factors including the child's ethnic background or race, age, medical condition, or presence of physical, mental, or emotional disabilities. The tax credit includes the option to receive tax credits (lower tax liability) for reasonable costs associated with an adoption and the ability to seek full refundability for up to \$5,000 for associated costs.

The Treasury Department held a consultation for Tribal Nations and Tribal organizations on Monday, September 15, to receive comments on the development of guidance by the Internal Revenue Service to implement the Tribal tax credit provisions. Over 20 Tribal leaders, representatives and NICWA attended the consultation and provided recommendations on the development of implementing guidance. NICWA focused primarily on the importance of recognizing all forms of Tribal adoption, including adoptions that don't require termination of parental rights, such as Tribal customary adoption. NICWA's comments also recommended that the guidance recognize all forms of Tribal courts or processes used to finalize adoptions and be flexible in how they define child welfare agency and adoption assistance services. You can find a copy of NICWA's comments [here](#). **The public comment period is open until October 10, 2025**, so NICWA is urging Tribal Nations and Tribal organizations to file comments on the new law. You can find a copy of the Treasury letter to Tribal leaders that describes

the new law and provides instructions on submitting comments [here](#).

Administration for Children and Families (ACF) Seeks Tribal Comments and Consultation on Implementation of the Supporting America's Children and Families Act (P.L. 118-258)

ACF is moving to develop guidance on the implementation of the Supporting America's Children and Families Act (see description of the law in Legislative Policy section). The legislation was enacted into law in early January 2025 and contains several helpful provisions for Tribal Nations, including increased funding, streamlining of administrative reporting requirements, collecting and reporting data on state implementation of the Indian Child Welfare Act (ICWA), and development of technical assistance for Tribes and states to improve ICWA implementation.

To collect comments on implementation of the law, ACF is seeking written comments on elements of the law regarding technical assistance, streamlining of reporting requirements, Tribal engagement in state court child welfare proceedings, and improving development of Tribal evidence-based prevention services. The ACF announcement seeking written comments can be found [here](#), and NICWA's written comments can be found [here](#). **In addition, ACF is holding Tribal consultations on the law, in-person and virtual, through December 2025.** Tribal comments can be shared at these consultations or via written comments that are due by January 9, 2026. You can find information about the Tribal consultations and submission of written comments in the [Dear Tribal Leader Letter](#) disseminated by ACF.

NICWA is urging Tribal Nations to attend these consultations and provide written comments. The Tribal provisions in the new law have the potential to improve Tribal child welfare capacity and improve data and reporting on ICWA compliance. NICWA has provided sample [talking points](#) that you can adapt for the Tribal consultations.

Legislative Policy

Child Welfare Legislation Contains Benefits for Tribal Child Welfare Systems

On January 4, 2025, President Biden signed into law the [Supporting America's Children and Families Act](#) (P.L. 118-258). The legislation reauthorizes two child welfare programs under Title IV-B of the Social Security Act that provide some of the most flexible federal funding for Tribes and states to help children at risk of removal into foster care stay at home safely. The legislation contains several provisions that benefit Tribal Nations and Native children and families.

Key child welfare provisions in the new law include:

- Increase mandatory funding under Title IV-B, Subpart 2 of the Social Security Act (Promoting Safe and Stable Families Program) that increases funding for existing Tribal grantees and will allow new Tribes to qualify to receive the funding (Section 107 through an increase to the overall appropriation).

- Change the current Tribal funding mechanism under Title IV-B, Subpart 1 of the Social Security Act (Child Welfare Services) from the outdated regulatory formula to a 3% set-aside from the overall appropriation. This will provide a small increase in Tribal funding under the program (Section 107).
- Increase funding for the Tribal Court Improvement Program from \$1 million to \$2 million per year (Section 107).
- Authorize the Secretary of the Department of Health and Human Services (HHS) to modify Title IV-B reporting requirements for Tribes and states to reduce administrative burden (Sections 106 and 107).
- Require HHS to use data to assess state strengths and areas for improvement regarding ICWA compliance and provide a bi-annual report to Congress (Section 107).
- Require HHS to provide technical assistance to states and Tribes for the purpose of supporting effective implementation of ICWA (Section 107).
- Require HHS to consult with Tribes on the development of guidelines to maximize the engagement of Tribes in state court proceedings involving ICWA (Section 104).
- Allow Tribes the option of using their federally negotiated indirect rate in the operation of Title IV-B programs (Section 107).
- Clarify Tribes as eligible to receive competitive grant funding to evaluate programs or services that meet one of the evidence-based criteria under the Title IV-E Prevention Services Program (Section 108).
- Authorize the Secretary of HHS to waive or modify an application requirement or matching requirement for Tribal grants addressing the needs of foster children who have parents that are incarcerated (Section 113).
- Require the Secretary of HHS to use Tribally relevant data in carrying out evaluation activities for Tribal grants addressing the needs of foster children who have parents that are incarcerated (Section 113).

In addition, the law also authorizes Tribal Nations to access the Treasury Offset Program (TOP) that allows states and Tribes to access tax returns of parents that are behind in child support payments (Section 202). The funds are then distributed to the custodial parent. Previously, only states were allowed to utilize this program. The National Tribal Child Support Association and National Association of Tribal Child Support Directors were key supporters of this legislation.

NICWA worked on the legislation for over two years with Tribal advocates to develop Tribal provisions and secure passage of the legislation before the end of the congressional session last December. Reauthorizations of major child welfare laws only happen every 10 years, so it was critical that Tribal voices were heard in the process.

Administrative Policy

Trump Administration Executive Orders Causing Concern in Indian Country

Starting with President Trump's first day in office on January 20, 2025, his Administration began issuing numerous Executive Orders and other policies that are expanding the scope of the Executive Branch's authority in the federal government and challenging constitutional norms regarding the powers of the Executive Branch. These actions are putting roadblocks up to accessing federal funding authorized for Tribal Nations by Congress, eliminating federal staff positions that help oversee and administer federal programs for Tribal Nations, and freezing regulations and other policies that benefit Tribal Nations. As of September 2025, the Administration has issued 204 Executive Orders and the number is expected to grow. You can find a regularly updated list of Executive Orders [here](#). NICWA has summaries of key Executive Orders that impact Tribal Nations and Native Children and Families [here](#).

Examples of Executive Orders and administrative policies that have impacts for Tribal Nation human service programs and Native children and families:

- [Executive Order 14332](#) Improving Oversight of Federal Grantmaking. This Executive Order establishes a "senior appointee" in federal agencies to review grants to "ensure that they are consistent with agency priorities and the national interest." The Executive Order outlines that going forward, the Director of Office of Management and Budget should revise agencies' process of reviewing grant applications and require all discretionary grants to allow for termination by convenience, including if it is found that the award no longer advances agency priorities or the national interest. This is an additional level of review that could slow down the process of grantmaking and raise concerns on how senior appointees might interpret whether Tribal discretionary grants support agency priorities or the national interest.
- [Executive Order 14151](#) Ending Radical and Wasteful Government Diversity, Equity and Inclusion (DEI) Programs and Preferencing and [Executive Order 14173](#) Ending Illegal Discrimination and Restoring Merit-Based Opportunity. These Executive Orders require federal agencies to assess programs, grants, and contracts within their agencies for DEI promotion or activities and eliminate the programs and funding that support them. While Tribal Nations and Native people have a unique political status that is the basis for federal programs and policies that address their needs and are separate from their racial status, there are numerous reports of federal programs and activities related to Tribal Nations being canceled based on them being considered DEI-related. This may also have an impact on technical assistance or other services being offered by Native organizations under contract with the federal government.
- [Executive Order 14170](#) Reforming the Federal Hiring Process and Restoring Merit to Government Service and [Executive Order 14210](#) Implementing the President's "Department of Government Efficiency" Workforce Optimization Initiative: While Tribal Nations and Native people have a unique political status that is the basis for federal programs and policies that address their needs and is separate from their racial status, there are concerns that the language in the Executive Order does not address the unique status of Indian Preference in

hiring that is separate from hiring prohibitions based upon race, sex, or religion. Executive Order 14210 seeks to reduce the federal workforce dramatically, requiring federal agency heads to consult with and seek approval for new hires from the newly created Department of Government Efficiency (DOGE). This could impede the hiring of federal staff with relevant experience in the support and administration of federal programs Tribal Nations access.

- [Repeal of Richardson Waiver in the regulatory process at HHS](#): The Richardson Waiver has been used for a number of years to promote greater public knowledge and input into the federal agency regulatory process. Among other things, it allows public comments on proposed regulation changes. The Department of Health and Human Services has issued a Rule (policy statement) revoking the use of the Richardson Waiver and reducing or eliminating the use of public comments in the regulation process going forward. This will severely limit the ability of Tribal Nations to comment on HHS regulation changes and raises concerns about changes being made to regulations that introduce barriers to Tribal access and operation of federal programs and weaken protections for Native people contained in existing federal regulations.

Secretary of the Department of Interior (DOI), Doug Bergum, issued [Secretary's Order 3415](#) that exempts the Department's treaty and trust obligations to Tribal Nations from DEI policies identified in Presidential Executive Order 14151. Following the DOI Order, the Office of General Counsel for the Department of Health and Human Services (HHS) issued an [advisory opinion](#) (25-01) in response to a question about the application of Executive Order 14151 to Indian Health Services programs. In their opinion, they state that Executive Order 14151 and a number of related Executive Orders should not be interpreted to rescind, eliminate, hinder, or impair the Department's legal obligations to Tribal Nations. While these departmental orders and opinions are helpful, there are still questions about how the policies of the new Administration will impact Tribal Nation human service program funding, federal staffing for programs that Tribal Nations administer, and changes for state programs that will trickle down to Native children and families in state human service systems.

If your Tribe or urban Native organization is seeing impacts from these or other Executive Orders, you can provide information to the Senate Committee on Indian Affairs by emailing them at oversight@indian.senate.gov. The Committee is tracking impacts to Indian Country from Executive Orders and communicating concerns to the Administration. All information provided will be held confidential. You can also contact NICWA Government Affairs and Community Development Specialist Evan Roberts at evan@nicwa.org to provide information on your experiences.

AFCARS Final Rule on ICWA Data Elements Published

On December 5, 2024, the Biden Administration published a Final Rule restoring many of the ICWA data elements that were previously eliminated in 2020. The ICWA data elements were first approved in 2016, and then in mid-2020. 85% of the previously approved data elements were eliminated. A review of comments filed by states, Tribes, child welfare organizations, and individuals during the public comment period

revealed there was strong support for restoring the proposed ICWA data elements. These data elements are critical to helping the Administration for Children and Families (ACF), states, and Tribes better understand how ICWA is being implemented across the country and effectively target resources to improve implementation where needed. The proposed data elements would be added to the Adoption and Foster Care Analysis Reporting System (AFCARS), which collects data from state child welfare agencies. The Final Rule goes into effect on February 5, 2025, with the first data collection period starting on October 1, 2028 (first data due to ACF on May 15, 2029). This caps over 30 years of NICWA advocacy to close the gap in data collection on Native children and families that can inform improved implementation of ICWA.

Administration for Children and Families Expands Flexibility for Tribes to Provide Cultural Services in Federal Child Welfare Programs

On July 30, 2024, the Children's Bureau published [new policies](#) in their Child Welfare Policy Manual that expand flexibility to Tribes that are operating the Title IV-E program under an agreement with a state Title IV-E agency. The new policies clarify that a Tribe in an agreement with a state may provide prevention programs and services adapted to the culture and context of the Tribal community served. This allows eligible Tribes to use cultural programs and services beyond those approved under the [Title IV-E Prevention Services Clearinghouse](#). States can only use prevention programs and services that are approved under the Clearinghouse.

The new policy will allow Tribes in agreements with states to utilize cultural programs and services that are not approved by the Clearinghouse. A Tribe must still document the cultural program and services they are using, such as providing information on the program and service, how it meets the specific needs of the eligible children or caregivers, and previous outcomes that have been achieved when using the program and service. Title IV-E Tribes may still use Clearinghouse-approved programs and services and culturally adapt them, but they are not limited to these. Previous guidance for Tribes operating Title IV-E directly from the federal government under the statutory language (ACYF-CB-PI-18-10) is also the basis for these new policy changes. The current guidance will likely need to be updated in the future to include Tribes in agreements with states and how they can utilize this new flexibility.

In 2018, Congress passed the Family First Prevention Services Program (P.L. 115-123) that established a new program component within the Title IV-E Foster Care and Adoption Assistance Program. The new component allowed states and Tribes with approved Title IV-E plans to seek reimbursement for eligible prevention services provided to children who were at imminent risk of placement in foster care and their parents or relative caregivers. Like other parts of Title IV-E, the funding provides reimbursement for services already provided as opposed to grant-style funding. The prevention services component of Title IV-E is optional, so not every state may opt for the funding, which determines whether a Tribe in an agreement with a state will be able to operate the prevention services component. Currently, there are about 130 Tribes operating Title IV-E through an agreement with a state.

Appropriations

Unable to Finish Fiscal Year (FY) 2026 Appropriations on Time, Congress Considers a Continuing Resolution (CR) to Keep the Government Running

The House and Senate Appropriation Committees have been working to complete work on FY 2026 bills but have run out of time to complete the work before the end of the FY on September 30. House and Senate Republican leadership have proposed passing a CR to fund the government temporarily while work continues to either pass the remaining appropriation bills or develop an omnibus bill that covers all of the appropriation bills. Republican leadership has been debating the length of the CR and the House passed a Republican sponsored CR on September 19 that would fund the government until November 21, 2025, while Democratic leaders are pushing for provisions in the CR that would protect health care, housing, and nutrition and social programs. The House passed CR was blocked by Senate Democrats when provisions they were advocating for were not included.

The Democratic leadership have been reluctant to agree to any Republican appropriations bills unless they contain at least some of the provisions that Democrats have asked for. Another concern for Democrats has been the Trump Administration's efforts to rescind or delay congressionally approved funding, which has occurred with FY 2025 funding. While Democrats seem committed to forcing a government shutdown if necessary. It is a risky strategy that could further delay final appropriations bills being adopted and also hurt them politically.

For more information relating to this update, please contact NICWA Director of Government Affairs and Advocacy David Simmons at desimmons@nicwa.org.