



Native Child and Family Policy Update

February 2026

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

White House Issues an Executive Order on Child Welfare

On November 13, 2025, the Trump Administration issued an Executive Order (EO) entitled “[Fostering the Future for American Children and Families](#)” (EO 14359). The EO directs federal agencies overseeing child welfare policy and programs, among other things, to review current child welfare policies to assess how data collection is used to evaluate whether a program is successful, expand the use of Artificial Intelligence (AI) and predictive analytics in child welfare services, speed up the placement of children into a permanent placement if they can't return home, and increase partnerships between child welfare agencies and faith-based organizations. Related to EO 14359, Assistant Secretary for the Administration of Children and Families under the Department of Health and Human Services, Alex Adams, has spoken about his goal to have a foster home for every child that needs a foster care placement and generally increase support for foster care families and at-risk families through prevention services in the U.S. child welfare system.

Some of the actions outlined in the EO could support Tribal Nation priorities, including data collection of information indicative of child well-being and safety. The Adoption and Foster Care Analysis Reporting System (AFCARS) [data elements](#) that measure implementation of the Indian Child Welfare Act (ICWA) with Native children in state child welfare systems are an example of this effort that could enhance positive outcomes associated with ICWA for Native children. The EO also directs the Department of Health and Human Services (HHS) to publish an annual scorecard for states on achievement of key metrics and outcomes that include a number of data points important to Tribal Nations and associated with effective implementation of ICWA, such as 1) reducing unnecessary entries into foster care, 2) decrease the time between reports of child maltreatment and investigations, 3) reduce child injuries and fatalities caused by

caregiver neglect and abuse, 4) increase caregiver recruitment and retention, 5) improve caregiver and child matching (relative care), 6) reduce placement disruptions, 7) decrease the average time that children spend in foster care, and 8) accelerate permanent placement for children when necessary (ICWA placement preferences).

However, there are also [concerns](#) with how AI and predictive analytics could be incentivized and implemented in child welfare. Predictive analytics, a data-driven process that has been used to assist child welfare agencies in making risk assessments, determining when children should be placed in out-of-home placements, and determining services, has been criticized for reinforcing biases against certain families, particularly against families of color. While some applications of AI in child welfare, such as improving digitization of case notes and training and skill development, could be beneficial, advocates are concerned about the use of AI in other areas that inform key decisions in child welfare. Using AI in child welfare also raises questions about how Tribal data and data on Native children and families in child welfare systems might be used and how this would impact data sovereignty for Tribes and Native children and families.

NICWA, in partnership with Tribal Nations, is taking steps to learn more about the directives in this EO and talk with the Administration about their plans for implementing the EO with Indian Country, including consultation with Tribal Nations. We encourage you to read more about AI in child welfare and have conversations with your colleagues, state child welfare agency, and Tribal leadership.

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

ACF has extended the deadline for Tribal comments for the Supporting America's Children and Families Act to March 11, 2026. Originally, the deadline was January 9, but ACF Tribal Advisory Committee members asked Assistant Secretary Alex J. Adams to extend the date based on the delays caused by the government shutdown in October. Written comments can be submitted to TribalConsultationACYF@acf.hhs.gov. Written materials describing the issues that ACF would like responses to can be found [here](#).

Assistant Secretary Adams also supported rescheduling one of the previously cancelled in-person Tribal consultations for February 11, 2026, in Washington, DC, from 1:30 p.m. to 4:30 p.m. Eastern Time. The consultation will take place at the Mary E. Switzer Building, 330 C Street SW, Washington, DC 20201. The consultation will provide in-person as well as virtual options. The in-person option registration can be found [here](#), and the virtual option registration can be found [here](#).

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. You can find a description of the law below in the Legislative Policy section of this update.

NICWA is strongly encouraging Tribal Nations and advocates to provide written comments and participate in the consultation if you are a Tribally designated representative. 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, and you can find our more detailed comments that were filed earlier in January [here](#).

Legislative Policy

Child Welfare Legislation Contains Benefits for Tribal Child Welfare Systems

On January 4, 2025, President Biden signed the [Supporting America's Children and Families Act](#) (P.L. 118-258) into law. 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

Department of the Treasury Developing Guidance 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 a child welfare agency and adoption assistance services. You can find a copy of NICWA's comments [here](#). You can find a copy of the Treasury letter to Tribal leaders that describes the new law [here](#).

The Trump Administration Continues Introduction and Implementation of Key Executive Orders

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 allowing federal agencies to change regulatory policy that impacts Tribal Nations without notice or consultation. As of January 20, 2026, the Administration has issued over 225 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:

- Office of Information and Regulatory Affairs, under the Office of Management and Budget (OMB), memorandum [“Streamlining the Review of Deregulatory Action”](#) (see also EO 14192, [Unleashing Prosperity Through Deregulation](#)). The OMB memo states the Trump Administration's goal to streamline and speed up the deregulation process for regulations that they consider “facially unlawful.” OMB says agencies shall evaluate and make determinations about what regulations are “facially unlawful” and adds that regulations that are identified as “facially unlawful” will not require notice or a public comment period before making changes. The memo specifically states that existing executive orders on Federalism ([EO 13132](#)) and Tribal Consultation ([EO 13175](#)) that require federal agencies to conduct consultation on the impacts of regulatory policy should not be assumed to apply with this Administration's deregulatory process. This policy directive provides federal agencies with the justification for making changes to

- federal regulations on an expedited basis without any Tribal notice or input.
- [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.
 - [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.

Appropriations

Senate and House Approve Remaining FY 2026 Appropriation Bills (Almost)

Just days after the Senate passed a package of the remaining federal appropriation bills, the House took up the Senate-approved package and approved it on a bipartisan vote on Tuesday, February 3, 2026. This completes the passage of all but one of the federal department's spending bills (Homeland Security). While Tribal advocates are glad that Congress has finished their appropriations work for programs that fund Tribal Nation services, this continues a trend of Tribal Nations having to wait for several months after the fiscal year begins before they can receive their federal funds. NICWA's analysis of Bureau of Indian Affairs and Department of Health and Human Services (HHS) programs that fund Tribal human services shows Tribal funding levels at or near FY 2025 levels.

Prior to the House acting upon the current spending bills there was a government shutdown during October 2025 and later passage of a continuing resolution (CR) which provided full-year funding for three federal department and operations areas, including Military and Veterans Affairs, Legislative (congressional), Agriculture, and temporary funding through January 30, 2026, for all other federal departments ([H.R. 5371](#)). The CR set up a showdown in Congress to see if they could pass the remaining full-year appropriation bills before the CR deadline was reached. The next set of appropriation bills passed by Congress before the CR deadline included the Department of the Interior and Bureau of Indian Affairs programs, Commerce and Justice, and Energy and Water ([H.R. 6938](#)). Following the passage of H.R. 6938, the Senate approved the final appropriation bills on January 30, 2026, and the House gave approval on February 3, 2026 ([H.R. 7148](#)). This final bill included federal programs under Department of Labor and HHS, Defense, Transportation and Housing and Urban Development, Financial Services, and National Security (Department of State). The Department of Homeland Security was the only federal department not funded for the full year, with H.R. 7148 providing temporary funding over a two-week window while Congress negotiates a final bill. The gap between the Senate's

approval and House approval created a four-day gap in federal funding for programs addressed under this bill, but did not significantly impact the distribution of Tribal human service funding in HHS or BIA programs. With all but the Homeland Security Department appropriations finished, hopefully Congress can begin work on FY 2027 spending bills.

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