



## Implementation of Section 70403, Recognizing Indian Tribal Governments for Purposes of Determining Whether a Child Has Special Needs for Purposes of the Adoption Tax Credit

### Tribal Consultation Summary and Federal Response

February 27, 2026

## Background

On September 15, 2025, the U.S. Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) (collectively “the Department”) held a consultation on Section 70403, Recognizing Indian Tribal Governments for Purposes of Determining Whether a Child Has Special Needs for Purposes of the Adoption Credit, in Public Law 119-21, 139 Stat. 72 (July 4, 2025), commonly known as the One, Big, Beautiful Bill Act (OBBBA).

OBBBA added Section 70403 which recognizes Indian tribal government “special needs” determinations for the purpose of the adoption tax credit. Now, Indian tribal government and State government determinations of special needs are both recognized for the purposes of the adoption tax credit. Prior to OBBBA, a Tribal court special needs determination could not qualify for the adoption tax credit because the statute restricted such determination to State entities. As a result, families adopting children through Tribal courts were excluded from this tax benefit, in contrast to State court adoptions of similarly situated children with special needs. OBBBA also added Section 70402, which provides an enhancement of the adoption tax credit. Specifically, this provision makes the adoption tax credit partially refundable up to \$5,000 (indexed for inflation) for taxable years beginning after December 31, 2024. This means that taxpayers can now receive a refund of up to \$5,000 per child from the adoption tax credit regardless of whether there is a tax liability to offset.

Details about the topics of conversation for the consultation can be found in the [Dear Tribal Leader Letter](#) that was published on August 25, 2025. Treasury held a virtual consultation to maximize Tribal participation across Indian Country. Sixty-six attendees joined the virtual consultation, and nine comment letters were received. Commenters represented 163 different Tribal governments. The comment period ended on October 10, 2025.

Pursuant to Treasury’s [Tribal consultation policy](#), below is a summary of the feedback received in the Tribal consultation and the Department’s response.

## Broad Feedback

### Parity and Respect for Tribal Sovereignty in Implementing the Adoption Tax Credit

Overall, commenters strongly support the inclusion of Tribal governments in designation of special needs for the adoption tax credit. Commenters expressed their belief that Native American children are overrepresented in the foster care system, particularly among those with special needs. Additionally, commenters believe that including Tribal governments in the special needs determination for an adoption tax credit will provide vital financial support for eligible adoptive families. Commenters shared their interpretation that Congress enacted Section 70403 to provide parity between State and Tribal governments and that the documentation rules should reflect this intent.

The majority of commenters requested that any revisions to [Form 8839, Qualified Adoption Expenses](#) or [Form 14806, Adoption Credit Documentation Requirements](#), and any supplemental guidance issued by the Department recognize Tribal self-governance. Commenters further expressed their belief that Tribal governments are best positioned to understand the unique needs of Tribal children, including cultural, community, and family considerations. Specifically, these commenters urge the Department to add language providing that Tribal determinations for special needs are entitled to the same deference as those of States. Commenters believe adding this language will ensure that adoptive families relying on determinations by Tribal governments, Tribal courts, or Tribal child welfare agencies can claim the adoption tax credit without facing uncertainty or undue administrative burdens.

Overall commenters urged Treasury to allow any administrative body of a Tribe with authority over child custody proceedings to determine whether an eligible child has special needs. Commenters requested that the Department interpret this authority to include Tribal governments, Tribal courts, Tribal child welfare agencies, or other governmental entities vested with such authority as the Tribe deems appropriate. These commenters emphasized that recognizing the difference between Tribal and State governmental processes is critical to affording Tribes the same deference as States when making special needs determinations under their own laws. Commenters further believe that accepting this recommendation would expand access to financial resources for eligible Tribal adoptive families to support their children, foster stronger families, and preserve cultural connections across Tribal nations.

**Federal Response:** The Department appreciated the Tribal consultation feedback and background explaining why the adoption tax credit is a vital financial support for adoptive families. The Department agrees with Tribal and Treasury Tribal Advisory Committee comments that a Tribe is in the best position to determine special needs for adoptions and that the incorporation of parity and Tribal self-governance are consistent with the goals of the OBBBA statute and the Department’s priorities.

Accordingly, the [Instructions for Form 8839](#) and the published [frequently asked questions](#) (FAQs) reflect deference to Tribes in determining special needs for adoptive children. As explained below, the implementation of Section 70403 also accepts recommendations to recognize any Tribal government entity with the authority to make a special needs determination as acceptable for purposes of the adoption tax credit.

## Tribal Responses to Consultation Questions

### 1. What questions or comments do you have regarding the Adoption Tax Credit under Section 23?

Commenters asked that the Department confirm that Tribal special needs determinations made by a Tribal government entity<sup>1</sup> be recognized, even if the adoption decree occurred in 2025, but prior to the passage of OBBBA on July 4, 2025. Commenters further recommended that in cases where the original 2025 Tribal adoption decree did not expressly reference “special needs,” that the Department allow a Tribal government entity to issue supplemental certifications confirming that the child met the required criteria at the time of the adoption. To reduce administrative uncertainty, these commenters also requested that the Department establish a transition-year safe harbor for adoptions finalized in 2025 but prior to revisions to Section 23. One commenter also requested clarification regarding the eligibility of the adoption tax credit in cases where a stepparent adopts a child pursuant to a Tribe’s children’s code.

<sup>1</sup> A Tribal government entity would be a body authorized by the Tribal government to make a special needs determination. This may include, but isn’t limited to, a Tribal court, welfare department, or the Tribal Council.

**Federal Response:** The Department incorporated these helpful comments into the [FAQs](#). See FAQ Topic B, Q3 and Q4, which confirm that beginning in tax year 2025, Tribal government determinations of a “child with special needs” are recognized for purposes of the adoption tax credit. Thus, an adoption that is finalized in 2025, prior to the enactment of OBBBA on July 4, 2025, with no special needs determination may qualify if the Tribal government subsequently determined that the child is a “child with special needs,” assuming all other requirements are met.

The Department is unable to expand the definition of qualified expenses to include a stepparent. Under 26 U.S.C. § 23-Adoption expenses, expenses in connection with the adoption by an individual of a child who is the child of such individual’s spouse, do not qualify for the adoption tax credit.

## 2. What questions or comments do you have regarding Section 70402 which provides that a portion of the Adoption Tax Credit is refundable?

A commenter explained that the socioeconomic status of many Native American families is lower than that for other families and, accordingly, their tax liability may be less. The commenter further noted that adoption-related expenses can continue beyond the first year after an adoption is finalized. Commenters also explained that not all Tribal adoption agreements negotiated with adoptive parents resemble state adoption agreements. In a State agency context, adoption agreements may include a monthly subsidy or public health insurance coverage for children from foster care with special needs to help offset the cost of raising a child. Commenters added that many Tribal child welfare programs operate with small staff and limited funding. As a result, in a Tribal setting, adoption agreements may provide services or other non-monetary assistance rather than direct payments. For example, a Tribal child welfare agency may provide car seats, diapers, fireproofing, and other measures to make the home safe, as well as counseling services to supplement support in lieu of monetary assistance. Because of these differences in financial support, commenters recommended that the Department allow the refundability portion of the 2025 tax credit to also be available in the following 2026 tax year. In this recommendation, an additional \$5,000 would be refundable to support Tribal adoptive families.

Some commenters recommended that the Department publish FAQs to clarify allowable and unallowable qualified expenses. One commenter explained that their reliance on Treaty Fishing Rights for subsistence and income is a way of life that is essential to their community in rural Alaska. This reliance on seasonal and subsistence-based income makes refundability critical for Tribal adoptive families. The commenter further requested that the Department provide guidance on how refundability will be calculated for families that have subsistence-based income.

**Federal Response:** The Department thanks the TTAC and Tribal commenters for their feedback explaining the importance of the refundability of the adoption tax credit to adoptive parents who are willing to open their homes to a child in need. The Department clarified in FAQ Topic A: *General Refundability* that OBBBA made the adoption tax credit refundable up to \$5,000 (indexed for inflation) and explained rules regarding the portion of the adoption tax credit that is carried forward after the first year.

Further, the Department incorporated feedback regarding non-monetary support from the Tribe in lieu of monetary adoption assistance in FAQ Topic B, Q6. This FAQ confirms that even if an adoptive family did not incur or pay any qualified adoption expenses but received non-monetary support from the Tribe, the family will be treated as having paid the maximum amount of expenses allowable for the 2025 tax year if the adoption (1) involved a child with special needs and (2) was finalized. Therefore, the adoptive parent may still qualify for an adoption tax credit, if all other requirements of the credit are met.

Regarding income derived from Treaty Fishing Rights, FAQ Topic B, Q7 clarifies that even if an adoptive parent does not owe federal income tax, the adoption tax credit is refundable up to \$5,000 (indexed for inflation) per child beginning in tax year 2025. With regard to qualified adoption expenses as well as expenses that are not eligible, Instructions to Form 8839 include examples.

### **3. What questions or comments do you have regarding Section 70403, which recognizes Indian tribal government special needs determinations for the purposes of the adoption tax credit?**

Commenters asked that the Department give equal weight to Tribal special needs determinations without requiring additional State confirmation. One commenter recommended revising Form 8839 to include language in the instructions clarifying who may determine special needs. For example: “A state or an Indian tribal government may determine that a child has special needs. For children adopted through tribal court proceedings, a tribal government’s determination of special needs is recognized as the same as a state’s determination.”

Commenters strongly urged the Department to recognize Tribal customary adoptions, in addition to conventional court-initiated adoptions, for purposes of the special needs determination. Commenters analogized the unique aspects of Tribal adoptions to policies by other federal agencies and statutes. Consistent with federal policy from the U.S. Department of Health and Human Service (HHS), commenters requested that Department recognize that not all Tribal adoptions take place in a “Western” court or require the termination of parental rights. Commenters further shared their understanding that the Children’s Bureau within HHS recognizes adoptions without termination of parental rights as eligible for Title IV-E Adoption Assistance and specifically allows a “special needs” determination to be made for such adoptions.<sup>2</sup> Further, commenters illustrated examples in which a Tribe recognizes an adoption through a customary traditional process that may ultimately be memorialized through a Tribal legal process. Commenters provided a specific example from the Sisseton Wahpeton Oyate Juvenile Code section 38-03-24<sup>3</sup>, which 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 at least two years.

Some commenters noted that while most Tribes have Tribal courts that operate similar to State courts, not all do. Some Tribes handle child welfare or adoption matters through administrative processes or through the Tribal political processes. Another commenter explained that some Tribes have cultural courts, in which Tribal elders or Tribal spiritual leaders assist people in need. Commenters highlighted the Indian Child Welfare Act, 25 U.S.C. §1903(12), which defines “Tribal court” to include not only courts in the conventional sense, but also “any other administrative body of a Tribe which is vested with authority over child custody proceedings.” These commenters stated their understanding that this definition recognizes the different processes that some Tribes may use in child custody matters.

<sup>2</sup> [U.S. Department of Health and Human Service Children’s Bureau Manual, Section 9.2, question 3.](#)

<sup>3</sup> [Sisseton-Wahpeton Oyate Codes of Law: Chapter 38 – Juvenile Code.](#)

Relatedly, commenters noted that while most Tribal governments have formal child welfare agencies, not all do. For example, some smaller Tribal governments may have a single designated individual who handles child welfare matters and reports to the elected officials of the Tribe. These commenters reiterated their request that the requirement for an adoption certificate to be issued by a court be modified to allow the certificate and special needs determination to come from any Tribal government entity authorized to recognize or finalize an adoption.

**Federal Response:** The Department appreciates the examples provided during the Tribal consultation on the varied operational processes and cultural traditions regarding child welfare and adoption matters. OBBBA expressly added that State government and Tribal government determinations of special needs are both recognized for purposes of the adoption tax credit. Accordingly, the [Instructions for Form 8839](#) and other IRS documentation have been revised to reflect this parity.

The Department incorporated commenter feedback regarding conventional, court-initiated adoptions into the Instructions for Form 8839. These instructions provide examples demonstrating that a Tribe’s determination that a “child with special needs” includes, but is not limited to, determinations made by an entity within the Tribe, a Tribal court, a Tribal welfare agency, or in accordance with the Indian Child Welfare Act. Further, the [IRS website](#) was updated to include acceptable documentation of a Tribe’s determination of special needs.

4. **To support the implementation of Section 70403, do you have recommendations or comments related to Form 8839, Qualified Adoption Expenses, and/or Form 14806, Adoption Credit Documentation Requirements?**
  - a. **Would Tribal examples be helpful in the instructions and do you have recommended topics and examples?**

Commenters requested that Forms 8839 and 14806 include specific language recognizing Tribal government determinations of special needs wherever State determinations are referenced. Commenters provided several example recommendations for additions to Form 8839, including: a Tribal court order confirming a child’s placement with adoptive parents; a Tribal court order for an adoption under the Indian Child Welfare Act; a Tribal child welfare office determination of special needs; and adoption cases where Tribal placement supports the continuity of Tribal culture and language. Commenters also requested that the Department clarify in the revisions to Form 8839 that a child adopted through a Tribal court or with a determination by a Tribal government be treated the same as a child adopted through a state court proceeding.

Commenters recommended that the Department supplement Form 8839 with plain-language guidance, FAQs, or a toolkit specifically tailored toward Tribal governments and Tribal families. One commenter further noted that Tribal families in Alaska often face barriers when navigating federal tax benefits, particularly where IRS assistance is limited. Commenters also suggested that the IRS conduct targeted outreach and training for Tribal families. Another commenter recommended that the Department partner with the Administration for Children and Families, Office of Child Support Services (OCSS)<sup>4</sup>, at the U.S. Department of Health and Human Services when conducting training to reach Tribal IV-D agencies.

Commenters suggested adding specific clauses to Form 14806 to ensure Tribal governments, Tribal courts, and Tribal welfare agencies were included in the documentation requirements to obtain the tax credit:

- **Final Adoption Decree:** Add “*or [T]ribal court*” everywhere “[S]tate court” appears.
- **Special Needs Final Adoption:** Expand to “*[S]tate’s or [T]ribal government’s determination of special needs*”

<sup>4</sup> The Office of Child Support Services (OCSS) changed the name of the office to the Office of Child Support Enforcement after the Tribal consultation period. To maintain accuracy of commenters, comments refer to the office as OCSS.

*designation.*” Include “[T]ribal welfare agency” alongside State and county agencies.

- **Domestic Adoption Not Yet Finalized:** Recognize placement agreements from State or Tribal authorized placement agencies; recognize adoption orders from State or Tribal courts.
- **Verification of Qualified Expenses:** Explicitly recognize a “[S]tate’s or [T]ribal government’s determination”.
- **Carryforwards Section:** Clarify that verification may be issued by “[S]tate or [T]ribal government”.
- **Caution Section:** Revise to include both “[S]tate child welfare agencies or [T]ribal child welfare agencies” when defining who may determine special needs.

**Federal Response:** The Department consulted with the TTAC and made clarifying edits to the existing examples in the Instructions to Form 8839 and added Tribal-specific examples to demonstrate the breadth of support for Tribal self-governance in determining special needs. Some examples to assist Tribes with special needs determinations include: an adoption in accordance with the Indian Child Welfare Act; a child that is special needs because the child is a citizen of a Tribe; a Tribal court or Tribal child welfare agency making a determination; and a child that is a member of Tribe A being adopted in Tribe B that made a special needs determination. The examples are non-exhaustive and are meant to be an illustration of the application of the rules.

The Department published answers to [FAQs](#) addressing general refundability and special needs determinations made by Tribal governments for the adoption tax credit. The content was developed in response to Tribal consultation comments and requests for clarity on specific topics. The Department agrees that coordination with the Office of Child Support Enforcement (titled Office of Child Support Services at the time of the Tribal consultation) is appropriate and recognizes the critical role it plays in Tribal child welfare. The Department is engaged with the Office of Child Support Enforcement, as well as Tribal organizations to provide resources.

The Department thanks the TTAC and Tribal commenters for the detailed recommendations to Form 14806, which was revised in response to the comments.

##### 5. Regarding the documentation for Tribal special needs determinations, what questions or comments do you have?

Commenters recommended that updates to Form 8839 explicitly include language that states that if the adoption was finalized in a Tribal court or by an entity of the Tribal government, the adoption decree or assistance agreement reflecting the Tribal government’s determination of special needs constitutes sufficient documentation.

Commenters strongly recommended that the Department accept a broad range of Tribal documentation to establish a safe harbor or administrative guidance that lists acceptable forms of documentation. Examples recommended include a special needs determination set forth in a Tribal council resolution, an adoption decree or Tribal court order confirming a child’s placement with adoptive parents, adoption assistance agreements from a Tribal child welfare authority that reference special needs factors such as sibling placement, medical needs, or enrolled Tribal citizen or eligible for Tribal citizenship, or other cultural considerations. Commenters further requested that the Department allow Tribal governments full discretion in formatting their special needs determinations.

With respect to the use of the exact term “special needs,” a commenter explained that Tribal governments and Tribal courts may use different terminology when making a “special needs” determination. The commenter recommended that to avoid denials, instructions and guidance permit supplemental certifications from the Tribal court or Tribal child welfare agency when the original decree does not contain the exact term “special needs,” but the underlying proceeding reflects such a determination.

**Federal Response:** The Department is clarifying that, generally, “special needs adoptions” are the adoptions of children whom the State or Tribal child welfare agencies, or the Tribe considers difficult to place for adoption. As discussed above, the Instructions to Form 8839 were revised to provide Tribal-specific examples of special needs determinations.

Regarding acceptable documentation, Forms 8839 and 14806 were revised to include updates to acceptable documentation for the verification of an adoption and determination of special needs based on consultation comments. Acceptable documentation of the State or Tribal government’s determination of a “child with special needs” includes, but is not limited to:

- An adoption assistance or subsidy agreement issued by the State, Tribal court, or Tribal government representative;
- Certification from the State, county or Tribal welfare agency, or Tribal government verifying that the child is approved to receive adoption assistance;
- Certification from the State, county, or Tribal welfare agency, or Tribal government verifying that the child has special needs; or
- An official letter on State, county, or Tribal government letterhead confirming the special needs determination.

**6. What other questions or comments are important for the Department to know in implementing Section 70403?**

To support compliance, commenters requested that the IRS designate a Tribal liaison for adoption tax credit cases, similar to the existing Indian Tribal government specialists within the IRS. One commenter further requested that IRS staff training include Tribal adoption tax issues, so that staff are familiar with the nuances of Tribal special needs determinations.

Commenters asked that the Department not only update Forms 8839 and 14806 but also internal documents interpreting the tax provision, such as the Internal Revenue Manual (IRM). Further the commenter recommended that the section interpreting the tax credit provision (IRM 4.19.15.5.4 (03-12-2018)), add the term “Indian Tribe” wherever the terms “[S]tate” or “[S]tate or county” appear.

**Federal Response:** The Department appreciates this feedback and recognizes that ongoing IRS staff training provides mutual benefits. Given the complexities of Tribal tax, the IRS Office of Indian Tribal Governments plans to continue conducting onboarding training sessions and maintains technical advisors on staff to assist with matters related to Tribal specific tax matters.

With respect to the Internal Revenue Manual, the Department acknowledges that it serves as the primary guide for IRS employees, outlining policies, procedures, and instructions for administering tax laws. As discussed above, to respond to commenters, the [IRS website](#) has been updated with information on eligibility requirements for claiming the adoption tax credit, qualified expenses, and other acceptable documentation.