



# USET

SOVEREIGNTY PROTECTION FUND

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October 10, 2025

Fatima Abbas  
Director  
Office of Tribal and Native Affairs  
U.S Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington D.C 20220

Dear Director Abbas,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to the Department of the Treasury's (Treasury) expedited Tribal consultation to implement Section 70403 of Public Law 119-21 (P.L. 119-21), "Recognizing Indian Tribal Governments for Purposes of Determining Whether a Child has Special Needs for Purposes of the Adoption Credit" (Adoption Tax Credit). Implementation of the Adoption Tax Credit for Tribal governments provides long overdue recognition of Tribal government "special needs" determinations for adoption tax credit in parity with state determinations. Effective implementation of the Adoption Tax Credit is critical for Tribal adoptive families, as it ensures access to significant financial support to the extent that a Tribal government makes certain determinations regarding an adoptive child's eligibility. By empowering Tribal governments to make these determinations, the law better recognizes Tribal sovereignty and expands access to vital resources for eligible Tribal adoptive families to support their children, foster stronger families, and preserve cultural connections across our sovereign Tribal Nations. To ensure clear and uniform application, we support and echo the Treasury Tribal Advisory Committee's (TTAC) Subcommittee on Parity and Reform recommendations on revisions to Internal Revenue Service (IRS) forms, instructions, examples, and documentation requirements submitted to Treasury on August 29, 2025.

USET SPF is a non-profit, inter-Tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico.<sup>1</sup> USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

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<sup>1</sup> USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Catawba Indian Nation (SC), Cayuga Nation (NY), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe—Eastern Division (VA), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mi'kmaq Nation (ME), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Rappahannock Tribe (VA), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), Upper Mattaponi Tribe (VA), and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

### **Support and Recommendations for Implementation of the Tribal Adoption Tax Credit**

Prior to enactment of Section 70403 of P.L. 119-21, a Tribal court could not make a “special needs” determination, for prospective adoptive parents seeking access to an increased tax credit for qualified adoption expenses. Rather, this determination could only be made by a state court. Section 70403 of P.L. 119-21 has finally brought Tribal governments into parity with states for “special needs” adoption determinations for the enhanced Adoption Tax Credit beginning for all taxable years after December 31, 2024. USET SPF appreciates Treasury and the Office of Tribal and Native Affairs for hosting an expedited Tribal consultation on September 15, 2025 to gather feedback on implementation of the Adoption Tax Credit.

USET SPF also echoes and supports the recommendations for its implementation put forward by the TTAC Subcommittee on Parity and Reform in comments submitted to Treasury on August 29, 2025. These recommendations are as follows—

- **Ensure parity and respect for Tribal sovereignty in implementing the Adoption Tax Credit.** Treasury and IRS Guidance documentation requirements should be designed to respect Tribal sovereignty and avoid imposing unnecessary administrative burdens on Tribal governments. The Guidance should state clearly that Tribal determinations are entitled to the same deference as those of states. Treasury and the IRS should adopt documentation standards that respect the authority of Tribal governments while maintaining consistency with state practices. Guidance should ensure that adoptive families relying on Tribal court determinations can claim the adoption tax credit without facing uncertainty or undue administrative hurdles.
- **No suggested edits or recommendations for IRS Form 8839 (OMB 1545-007).** Since there are no references to state or local governments in this form, USET SPF has no suggested edits.
- **Recommended revisions to IRS Form 14806 – Adoption Credit Documentation Requirements to ensure that Tribal governments, Tribal courts, and Tribal welfare agencies are included.** USET SPF recommends adding the following clauses to IRS Form 14806 to ensure that it reflects the Congressional intent of Section 70403 of P.L. 119-21 by providing full parity between Tribal and state governments.
  - **Final Adoption Decree:** Add “*or Tribal court*” everywhere “state court” appears.
  - **“Special Needs” Final Adoption:** Expand to “*state’s or Tribal government’s determination of ‘special needs’ designation.*” Include “*Tribal 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 “*state’s or Tribal government’s determination.*”
  - **Carryforwards Section:** Clarify that verification may be issued by “*state or Tribal government.*”

- **Caution Section:** Revise to include both “*state child welfare agencies or Tribal child welfare agencies*” when defining who may determine ‘special needs.’
- **Recommended revisions to Form 8839 instructions to ensure that Tribal governments, Tribal courts, and Tribal welfare agencies are included.** Revising the instructions to Form 8839 ensures clear recognition of Tribal authority and consistent treatment across all adoption credit claims. USET SPF recommends the following revisions—
  - **Definition of “special needs”:** Replace “a state” with “a state or an Indian Tribal government” wherever it appears. *Example:* “...if a state **or an Indian Tribal government** has determined that the child cannot or should not be returned to the parents’ home, and if a state **or an Indian Tribal government** has determined that the child will not be adopted unless adoption assistance is provided to the adoptive parents.”
  - **Evidence of “special needs” determination:** Accept Tribal adoption assistance agreements, Tribal court decrees, or other official documentation issued by a Tribal government. *Example:* “Evidence of a determination of ‘special needs’ may include a state **or Tribal adoption assistance agreement, a Tribal court adoption decree, or other official documentation issued by an Indian Tribal government.**”
  - **Instructions on who may determine “special needs”:** State explicitly that “a state or an Indian Tribal government may determine that a child has ‘special needs.’” *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.”
  - **Limitations (foreign adoptions and non-U.S. children):** Clarify that “a child adopted through an Indian Tribal court or with a determination by an Indian Tribal government is treated the same as a child adopted through a state court proceeding.” *Example:* “For purposes of this credit, **a child adopted through an Indian Tribal court or with a determination by an Indian Tribal government is treated the same as a child adopted through a state court proceeding.**”
  - **Documentation section:** Recognize that if finalized in a Tribal court, the adoption decree or assistance agreement showing the Tribal government’s determination is sufficient. *Example:* “**If the adoption was finalized in an Indian Tribal court, attach the adoption decree or assistance agreement that reflects the Tribal government’s ‘special needs’ determination.**”
- **Include the TTAC Subcommittee on Parity and Reform’s recommended Tribal examples for IRS Form 8839 instructions.** Currently, IRS Form 8839 only references state agencies, state child welfare departments, and state courts. Examples should be revised to reference “state or Tribal” when describing authority throughout IRS Form 8839. USET SPF also recommends an example added that shows how a Tribal government applies a determination. Specifically, the example must be simple enough for the average tax professional to understand that the credit should be applied without needing to comprehend the complexities of federal Indian law or the trust and treaty obligations owed to Tribal Nations. This will provide necessary clarity to tax professionals, ensuring uniform application of the credit without requiring specialized knowledge of federal Indian law. For

these reasons, USET SPF recommends that Treasury and IRS include the Tribal examples from the TTAC Subcommittee on Parity and Reform's comments submitted on August 29, 2025.

- **Ensure Treasury develops clear documentation requirements for Tribal “special needs” determinations.** Treasury and the IRS should ensure that the documentation standards for recognizing a “special needs” determination by an Indian Tribal government are clear, consistent, and not more burdensome than those already applied to states. We remind Treasury that Congress enacted P.L. 119-21 with the intention of providing parity between Tribal and state governments, and the documentation rules should reflect this intent.
- **Recognize Tribal Adoption Decrees and Orders.** Treasury should confirm that a final adoption decree or order issued by a Tribal court that includes a finding of “special needs” is sufficient documentation, just as state court decrees are recognized. Tribal governments should not be required to use identical phrasing or forms used by states, so long as the decree clearly reflects that the Tribal authority determined the child had “special needs.”
- **Tribal Adoption Assistance Agreements should be accepted as valid documentation of “special needs” determinations.** Where applicable, written adoption assistance agreements between a Tribal child welfare agency and adoptive parents should be accepted as valid documentation of “special needs” determinations, equivalent to state agreements. Since some Tribal governments may not have historically issued written assistance agreements in the same format as states, Treasury should allow flexibility in the type of agreement or resolution that evidences the determination.
- **Ensure flexibility in language and format for “special needs” determinations.** Tribal courts may use different terminology when making a “special needs” determination. Treasury and IRS Guidance should make clear that substantive determinations are controlling, not precise language or formatting. To avoid inequitable denials, Treasury should permit supplemental certifications from the Tribal court or child welfare agency if the original decree does not contain the exact words “special needs,” but the underlying proceeding reflects that determination.
- **Provide safe harbor guidance for “special needs” determinations.** USET SPF agrees with the TTAC Subcommittee on Parity and Reform's recommendation to establish a safe harbor that lists acceptable documentation for Tribal “special needs” determinations, which includes:
  - A Tribal court adoption decree containing a finding of “special needs;”
  - A Tribal adoption assistance agreement; or
  - A certification or letter from the Tribal child welfare department confirming the determination.
- **Additional concerns with Tribal adoptions in 2025 before enactment of P.L. 119-21.** Tribal governments are concerned about how to handle adoptions finalized in 2025 before the enactment of Section 70403 of P.L. 119-21. Since the statute now clarifies that Indian Tribal governments may make “special needs” determinations, Treasury and IRS Guidance must address families who completed Tribal adoptions earlier in 2025 and may be uncertain about their eligibility for the adoption credit. To alleviate this concern, Treasury should retroactively confirm that any “special needs” determination already made by a Tribal court or Tribal child welfare agency in 2025 will be

recognized, even if the adoption decree was issued before the statute's effective date. This ensures that families are not penalized merely because their adoption occurred a few months before the statutory amendment. In addition, in cases where the original 2025 Tribal Adoption Decree did not expressly reference "special needs," Treasury should accept Tribal courts or child welfare agencies issuing supplemental certifications or resolutions confirming that the child met the criteria for "special needs" at the time of the adoption. Such documentation should be accepted as sufficient evidence for the Adoption Tax Credit.

Further, to reduce administrative uncertainty, Treasury should create a transition-year safe harbor for adoptions finalized in 2025, prior to the amendment. Families should be able to rely on either the original Tribal Adoption Decree (if it included a "special needs" finding), or a Supplemental Tribal Certification confirming that the child met "special needs" criteria. Finally, we remind Treasury and the IRS that Tribal "special needs" determinations must be treated in parity with states. Without such Guidance, children adopted under Tribal court jurisdiction in early 2025 may be treated less favorably than children adopted later in the year. This outcome would directly undermine the intent of Congress in amending Section 23(d)(3). Treasury should adopt a clear, family-friendly approach that recognizes Tribal "special needs" determinations retroactively, allows supplemental documentation, and ensures treatment in parity with states during the transition year.

### **Conclusion**

By implementing the recommended revisions to IRS forms, instructions, examples, and documentation standards, Treasury can ensure that the adoption credit fully reflects Congressional intent to provide parity between Tribal and state governments. These updates will bring clarity to practitioners, tax professionals, consistency for families, and respect for inherent Tribal sovereignty. USET SPF appreciates the opportunity to provide these comments that echo the TTAC Subcommittee on Parity and Reform's submitted recommendations, and we look forward to continued collaboration with Treasury and the IRS on the effective implementation of Section 70403 of P.L. 119-21. This represents an important step forward in recognizing inherent Tribal sovereignty while providing Tribal adoptive families with the support they are entitled to. Should you have any questions or require further information, please contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at [LMalerba@usetinc.org](mailto:LMalerba@usetinc.org) or 615-838-5906.

Sincerely,



Chief Kirk Francis  
President



Kitcki A. Carroll  
Executive Director