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ADVOCATE

2013 Policy Priorities and Adoption-Related Legislation

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Since 1980, National Council For Adoption (NCFA) has served as a strong advocate for adopted individuals, adoptive families, and birthparents. Motivated by the belief that every child deserves to thrive in a loving, safe, and permanent home, NCFA continues to seek the passage of laws, the creation of policies, and the development of practices to help promote permanency for the many thousands of children in need of families.

This issue of the *Adoption Advocate* presents NCFA's specific adoption policy priorities for 2013, as well as an overview of adoption-related legislation in the recently ended 112th Congress. NCFA rarely endorses specific legislation, but instead prioritizes advocating for the policies and practices that will provide essential services and the best possible support for children, adopted individuals, birthparents, and adoptive families.

ADOPTION TAX CREDIT AND OTHER FINANCIAL ASSISTANCE

Issue Overview

The adoption tax credit, which was introduced in 1997, offsets the cost of domestic infant adoption, intercountry adoption, and adoptions from foster care. It has been extended or amended through such measures as



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the Small Business Job Protection Act of 1996, the Economic Growth and Tax Relief Reconciliation Act of 2001, the Health Care and Education Reconciliation Act of 2010, and the Tax Relief Act at the end of 2010.

In 2012, families could claim a maximum adoption tax credit of \$12,650. Unlike tax years 2010 and 2011, the credit was no longer refundable. Although the 2012 credit can be carried forward for five years, lower- and middle- income families cannot always receive the full benefit of the tax credit without refundability.

Relevant Legislation Passed at the Close of the 112th Congress

H.R. 8: American Taxpayer Relief Act of 2012 passed on January 1, 2013; it became law when President Barack Obama signed it on January 2, 2013. Amongst the provisions of the American Taxpayer Relief Act was an extension of the adoption tax credit. As of this article's publication date, complete details regarding implementation remain to be seen – but the bill will permanently extend the adoption tax credit. The maximum credit is set at \$10,000, though it will once again be scaled for inflation, potentially bringing it to nearer the 2012 maximum amount of \$12,650. Families with incomes under \$150,000 will receive the full credit, and it will gradually phase out for higher incomes.

Status: Passed on January 1, 2013; signed by President Obama on January 2, 2013.

NCFA Position

NCFA has been a longtime supporter of the adoption tax credit and other programs that help defray the financial burden of adoption. The high cost of some adoptions could prevent children from finding their way to families willing and eager to adopt. NCFA commends the federal government for its support of permanency for children through the adoption tax credit, and looks forward to working with Members of Congress to ensure the continuation of the adoption tax credit in the years to come. It is NCFA's hope that the adoption tax credit will remain inclusive, continue to increase with inflation and the rising costs of adoption, and be made refundable once again, now that it is a permanent part of the tax code.¹

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¹ To learn more about the adoption tax credit, see: *Adoption Advocate* Special Edition No. 1, "Adoption Tax Credit Advocacy Kit" (Feb./May 2012), available at: www.adoption-council.org/images/stories/NCFA_Adoption_Tax_Credit_Advocacy_Kit.pdf

NATIONAL PUTATIVE FATHER REGISTRY

Issue Overview

Resulting in part from highly publicized, contested adoption cases in the 1990s, 35 states have created putative father registries. These registries ensure that an unwed biological father who registers in a timely manner will receive notice of any pending or future adoption proceeding involving his child, allowing him the right to notice and participation in the judicial hearings. Providing a putative father with adequate notice not only guarantees the protection of his parental rights, but also decreases the likelihood that adoptions will be contested—protecting children’s need for stable, permanent caretakers. Putative father registries can also spare biological mothers the task of personally informing biological fathers, and helps to ensure that those making adoption plans for their children will not find those plans disrupted.

Although putative father registries made great advances in protecting a father’s parental rights, there is much room for improvement. In many cases, it is difficult for a putative father to preserve his rights because adoptions may take place across state lines. For example, if a father registers in Virginia, but his child is placed for adoption in Delaware, he will not receive notice of adoption proceedings. In light of this problem, Congress introduced legislation to create a national putative father registry, which would allow existing registries to liaise with one another and encourage new registries to be created in states that currently lack a registry in order to participate in the national registry.

Relevant Legislation Pending at the Close of the 112th Congress

S. 3321 and H.R. 6035: Protecting Adoption and Promoting Responsible Fatherhood Act of 2012 introduced in the Senate on June 20, 2012 by Sen. Mary Landrieu. On June 27, 2012, Rep. Laura Richardson introduced the bill in the House. The bill would establish a national putative father registry and require the use of reasonable efforts to encourage states to participate in the registry. Such efforts might include the promise of grant money. The bill would also encourage states to establish an automated state putative father registry.

Status: Read twice and referred to the Senate Committee on Finance on June 20, 2012. Referred to the House Subcommittee on Human Resources on July 9, 2012.

NCFA Position

NCFA believes that best practice in adoption requires making every possible and available effort to include biological fathers in the adoption process.²

A putative father registry should not be the only means used to reach a father, but it is an important option to include as a safeguard for parents and children. NCFA believes that a fully implemented national putative father registry would significantly enhance the usefulness of existing state registries, making participation more valuable for fathers in all states and providing important additional security for children and parents.

For additional information on this issue, see NCFA's *Adoption Advocate* No. 14, "On the Benefits of a National Putative Father Registry" (June 2009), available at: www.adoptioncouncil.org/publications/adoption-advocate-no14.html

POST-ADOPTION SERVICES AND SUPPORT

Issue Overview

A great deal of attention is rightfully given to the process of finding permanent and loving adoptive families for children. Yet finding ways to help these families succeed and thrive after their adoptions are finalized is also of vital importance. It is important to study and determine how many adoptive placements are disrupted, how many adoptions are dissolved, and why these unfortunate outcomes occur. New and better data can help provide evidence-based examples of services that will not only help children find their way into permanent families, but also ensure that all adoptive families and adopted children receive the support and resources they need to succeed together.

Relevant Legislation Pending and Passed at the Close of the 112th Congress

S. 1318: Supporting Adoptive Families Act introduced in June 2011 by Sen. Amy Klobuchar, a reintroduction of S. 3726 from the 111th Congress. Sen. Klobuchar presented this bill on behalf of herself, Sen. Blunt, Sen. Johnson, and Sen. Landrieu. It sought the creation of new support services programs to encourage permanency in adoptive families. NCFA issued a letter in support of this bill at the request of Sen. Klobuchar, and hopes that a similar bill will be introduced and passed during the next Congressional term.

Status: Referred to the Senate Committee on Finance on June 30, 2011.

²See *Adoption Advocate* No. 37, "Fathers, Families and Friends: Involving and Prioritizing a Pregnant Client's Support System" (July 2011), available at: www.adoptioncouncil.org/publications/adoption-advocate-no-37.html

NCFA Position

Legislation that prioritizes both pre- and post-adoption support and services has the potential to help many children and adoptive families. It is essential to prepare and support children as they find their way to loving families, but the process does not end with “paper permanency.” NCFA believes that adopted children and adoptive families should receive all the services they need for as long as necessary. As we work to help find loving families for children, we must also work to give them every opportunity to thrive and realize true and lasting permanency in their new families.

ADOPTION FROM FOSTER CARE

Issue Overview

Of the 400,540 children currently in U.S. foster care, over 104,236 are waiting to be adopted. The foster care system saw significant reforms as a result of the Fostering Connections to Success and Increasing Adoptions Act of 2008, which mandated many policies focused on promoting permanency and positive outcomes for children in foster care. However, practitioners, advocates, and policymakers agree that significant reforms are still needed to provide timely permanency for the thousands of children and youth in care.⁴

Relevant Legislation Pending and Passed at the Close of the 112th Congress

H.R. 3873: Enhancing the Quality of Parental Legal Representation Act of 2011 introduced on February 1, 2012 by Rep. Gwen Moore. The bill would provide federal funds to state courts so that parents and legal guardians can receive legal representation for child abuse and neglect cases. Providing legal representation will increase the efficiency of the court system.

Status: Referred to the Subcommittee on Human Resources on February 9, 2012.

H.R. 4111: To Amend the Internal Revenue Code of 1986 to Exclude from Gross Income Certain State Foster Care Payments introduced by Rep. Raymond Green on February 29, 2012. The bill would amend the Internal Revenue Code to exclude from gross income certain state foster care program payments made to the biological parents of disabled children.

Status: Referred to the House Committee on Ways and Means on February 29, 2012.

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³ S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau, "The AFCARS Report 19." Available at: <http://www.acf.hhs.gov/sites/default/files/cb/afcarsreport19.pdf>

⁴ NCFA has published numerous articles in the *Adoption Advocate* and other publications advocating for necessary foster care reforms. A partial list is available at: www.adoption-council.org/adoption-out-of-foster-care/publications.html

S. 3231: Families for Foster Youth Stamp Act of 2012 introduced on May 23, 2012 by Sen. John F. Kerry. The bill would request the issuance and sale of a postage stamp to raise money for programs aimed at improving permanency options for children in foster care.

Status: Read twice and referred to the Senate Committee on Homeland Security and Governmental Affairs on May 23, 2012.

H.R. 5868: Fostering Success in Education introduced on May 23, 2012 by Rep. John Lewis. The bill would require schools receiving improvement funds under Part A of Title I of the Elementary and Secondary Education Act of 1965 to provide fair and impartial procedures to resolve school selection disputes. Additionally, the act would require child welfare agencies to provide transportation for children in foster care so that they can remain at their schools and prevent further disruptive school changes.

Status: Referred to the Subcommittee on Early Childhood, Elementary, and Secondary Education on September 26, 2012.

S. 3472 and H.R. 5876: Uninterrupted Scholars Act passed on January 1, 2013. This bill will increase collaboration between state educational agencies and state child welfare agencies by allowing them to access and share foster students' records, enabling youth in care to remain in their schools of origin or better transition to new schools when necessary. The agencies will be required to create and implement plans to ensure the proper and complete transfer of a student's academic credits if she or he must change schools.

Status: Passed by the Senate on December 17, 2012; passed by the House of Representatives on January 1, 2013. Will be sent to President Obama for his signature.

S. 3295: Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act of 2013 introduced on June 14, 2012 by Sen. Thomas Harkin. The bill appropriated funds for the Department of Labor, Department of Health and Human Services, the Department of Education, and other related agencies for Fiscal Year 2013. It designated payments for foster care and permanency.

Status: Placed on Senate Legislative Calendar under General Orders on June 14, 2012.

S. 3665: A Bill to Amend the Higher Education Act of 1965 to provide information to foster youth on their potential eligibility for Federal Student Aid introduced by Sen. John Kerry on December 6, 2012. The bill amends the Higher Education Act of 1965 to provide information to foster youth on their potential eligibility for federal student aid funds.

Status: Read twice and referred to the Senate Committee on Health, Education, Labor, and Pensions.

NCFA Position

Expanding support and opportunities and promoting permanency for the more than 104,000 children in foster care currently available and waiting to be adopted is a top policy priority for NCFA. We are keenly aware of the hardships faced by youth who age out of foster care without permanent families – hardships that include decreased high school graduation rates, low college attendance rates, early pregnancy, and high incidences of homelessness. While legislation supporting youth who age out of foster care is vitally important, NCFA believes that the best way to prevent the challenges and difficult outcomes they face after aging out of care is to work towards the goal of giving *every* child the permanency of a safe, loving family, where they are most likely to find the lifelong commitment and support that they both need and deserve. Whether this permanency is achieved through adoption, family reunification and preservation, kinship care, or some other alternative, permanency itself – and the safety and stability it can provide – should be a priority for every child in care.

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DOMESTIC INFANT ADOPTION

Issue Overview

There were approximately 18,000 infant adoptions in the U.S. in 2011, a year in which the number of infant adoptions continued to decline. This decline may be attributable to a number of factors. The stigma against unmarried parents has decreased over the years; accordingly, many single parents facing unintended pregnancy now choose to parent their children instead of making adoption plans. Alternatively, many women also choose to terminate their pregnancies instead of making adoption plans. Although these are both common choices made by expectant parents, it is also possible that the decline in the number of infant adoptions is due in part to a lack of awareness about adoption as an option. Some birthparents may still feel that their adoption choice is not positively or universally accepted and understood, leading some expectant parents to feel concerned about the perceptions of others should they choose to make an adoption plan.

NCFA Position

Although there is no federal legislation currently pending regarding infant adoption, it remains a key policy priority for NCFA. Through the Infant Adoption Awareness Training Program, a training program funded by the Children's Bureau of the U.S. Department of Health and Human Services,

NCFA trains pregnancy counselors and other professionals to share the option of adoption with clients who are facing an unintended pregnancy. NCFA's *Consider the Possibilities* uses a similar curriculum to reach other audiences throughout the United States.

NCFA's iChooseAdoption.org website and accompanying public awareness campaign also grew out of our commitment to supporting birthparents, expectant parents considering adoption, and infant adoption. We are anticipating the launch of a new iChooseAdoption campaign in early 2013.

NCFA believes that expectant parents deserve to be fully informed of all pregnancy options, including the option of adoption, and that they should be respectfully supported and provided with accurate and helpful information about adoption no matter what their pregnancy decision ultimately is. While adoption is not the best decision for everyone, it can be a good option for many. Women facing unintended pregnancy deserve to make a fully informed decision that includes the option of adoption.

Furthermore, NCFA believes that birthparents who do choose adoption for their children should have the opportunity to receive counseling and support for as long as needed in order to successfully move forward with the difficult decision they have made. NCFA will continue to advocate for the rights of birthparents, adopted individuals, and adoptive families in order to ensure that domestic infant adoption remains a positive option for all involved.

INTERCOUNTRY ADOPTION

Issue Overview

Intercountry adoption, the process by which an individual or family adopts a child or children from another country, has strong support among the citizens of the United States. The U.S. is a signatory to The Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, which establishes international standards of practice for intercountry adoption amongst all countries that are signatories. The Hague Convention standards were created to safeguard children and parents adopting from a Hague participating country. Among other things, the treaty requires accreditation of adoption service providers that facilitate the adoption of children from other signatory countries.

When adoptions between the United States and non-Hague countries occur, intercountry adoption agreements govern.⁵ Until now, adoption service

⁵ To learn more about a specific countries intercountry adoption practices see the U.S. Department of State, Bureau of Consular Affairs, Intercountry Adoption Country Information. Updated country information available at: http://adoption.state.gov/country_information.php

providers have not been required to receive accreditation when facilitating intercountry adoptions from a non-signatory country. Some believe that this distinction contradicted the express purpose of The Hague Convention by allowing service providers that serve children in non-Hague nations to operate by a different set of standards. *Universal accreditation*, passed by Congress on January 2, 2013, will require all intercountry adoption service providers to abide by the same standards – those established by The Hague convention – thereby protecting all children equally regardless of the varying standards that may exist in their countries of origin.

Despite the staggering numbers of orphaned, abandoned, and vulnerable children worldwide and Americans' rising interest in and commitment to intercountry adoption, the number of intercountry adoptions taking place in the U.S. has steadily declined over the past several years. Intercountry adoption peaked in 2004, when American families adopted over 22,000 children from other countries. In 2011, American families adopted only 9,320 foreign-born children, which represented an approximately 58% decrease since 2004, and about a 15% decrease since 2010.

Many challenges remain to be addressed in the area of intercountry adoption policy. Federal legislation could simplify and expedite the intercountry adoption process while maintaining and promoting safeguards for children and families. Additionally, the immigration process for children entering the U.S. through intercountry adoption requires some children to be readopted when they enter the U.S., while others acquire citizenship automatically. A system that treats all children equally and automatically grants U.S. citizenship to all intercountry adoptees would simplify the process and provide the equality that these children deserve.

Relevant Legislation Passed at the Close of the 112th Congress

S. 3331 and H.R. 6027: Intercountry Adoption Universal Accreditation Act of 2012 introduced in the Senate on June 21, 2012 by Sen. John Kerry. On June 26, 2012, Rep. Albio Sires introduced the bill in the House. The bill requires all adoption service providers to comply with the accreditation requirements outlined in The Hague Convention on Intercountry Adoption, regardless of whether they are facilitating adoptions from Hague or non-Hague countries.

Status: Passed by unanimous vote of the Senate on December 5, 2012; passed by the House of Representatives on January 2, 2013. Will be sent to President Obama for his signature.

⁶ U.S. Department of State, FY 2011 Annual Report on Intercountry Adoption (November 2011), available at: http://adoption.state.gov/content/pdf/fy2011_annual_report.pdf

NCFA Position

NCFA passionately believes that every child deserves a family, and that every child being adopted deserves a family that can meet their needs and an adoption process completed with the utmost respect for their safety and wellbeing. Universal accreditation will help to ensure that adoption service providers in the United States serve as examples of excellence by maintaining a high standard of care for every child, regardless of whether the child's nation of origin has required this same standard.

Intercountry adoption advocacy is a key policy priority for NCFA. By building and maintaining relationships with U.S. and foreign officials and legislators, serving as a resource to them as needed, and educating them on the many benefits provided to children who find permanent homes through intercountry adoption, NCFA seeks to promote the safety and well-being of children throughout the world.

According to NCFA president and CEO Chuck Johnson, the continued decrease in intercountry adoptions "is not right, and it is not good for children. Given the increasing number of orphaned children worldwide, the continued decline in intercountry adoptions means that children's most basic needs and rights are being denied and, as a result, children remain in institutions and temporary care situations, aging out without ever securing their basic right to a permanent, loving family of their own." Research has clearly shown that institutionalization and temporary care situations lead to bad outcomes for children, and thus NCFA seeks to ensure that intercountry adoption remains a viable option for children that cannot or likely will not find permanency in their own country. While instances of abuse and fraud within the adoption process should always be condemned, and every effort made to address and eradicate them, adoption process abuses are the exception and not the rule, representing only a very small minority of cases. Legitimate concerns about abuse or corruption should not be exaggerated at the expense of the millions of orphaned and vulnerable children around the world who await love, safety, and permanency.⁷

In addition to ensuring that intercountry adoption remains a viable option for children in need of families, NCFA considers it a priority to work towards equal treatment for all children adopted by U.S. citizens. Currently, depending on the type of visa with which a child enters the United States, he or she may receive automatic U.S. citizenship or enter as only a Legal Permanent Resident and be required to apply for U.S.

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⁷For more information on the decrease in the number of intercountry adoptions, see NCFA's press release: *Continued Decline in Intercountry Adoptions "Not Right, Not Good for Children"* (November 17, 2011), available online at: www.adoptioncouncil.org/images/stories/2011-11-17_Intercountry_Adoption_Decline_Not_Right_Not_Good_For_Children.pdf

citizenship. NCFA believes that adopted children and biological children of U.S. citizens should be treated equally under the law, and that all adopted children should receive automatic U.S. citizenship when their adoptions are finalized in their respective countries of origin. This much needed reform in immigration law would promote equality amongst all American children born and adopted, create a simpler and more affordable process for adoptive families, and provide a direct and more transparent route to citizenship for internationally adopted children. While there is currently no pending legislation, NCFA is working with Members of Congress, child welfare and adoption experts, and other key stakeholders to address this important issue, and we are hopeful that the necessary legislative reforms will soon be passed. Until then we will continue to work with our partners to advocate for policies that promote citizenship equality for adopted children.⁸

For more information regarding current adoption-related legislation, see also “Foster Care and Adoption Legislation in the 112th Congress,” published by the Congressional Coalition on Adoption Institute, available online at: www.ccaainstitute.org/for-members-of-congress-/legislation.html

ABOUT THE AUTHOR

Jamel Rowe is NCFA’s legal fellow. She graduated from William & Mary Law School, where she was the Senior Article Editor for *The Journal of Women and the Law*. Her interest in adoption sprung from her work in family law, which she hopes to practice. Jamel researches and writes about salient adoption issues, and is currently working on an article on kin guardianship and adoption that will be published in a forthcoming issue of NCFA’s *Adoption Advocate*.



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⁸ For additional information, see *Adoption Advocate* No. 40, “Protecting the Rights of Intercountry Adoptees: Steps to Ensure the Right of Citizenship for Every Adopted Individual,” (Oct. 2011), available online at: www.adoptioncouncil.org/publications/adoption-advocate-no-40.html