FOSTER CARE AND ADOPTION-RELATED LEGISLATION IN THE 111TH CONGRESS

By Rebecca Hampton

Introduction
Since 1980, the National Council For Adoption (NCFA) has served as a strong voice for children, birthparents, and adoptive families. NCFA rarely endorses a specific piece of legislation, but rather advocates for policies to help ensure that adoption remains a positive option and encourages permanency for children. This issue of the Adoption Advocate includes an overview of important foster care and adoption-related legislation that was introduced, but not passed, during the 111th Congress. It also outlines NCFA’s specific policy recommendations for the 112th Congress.

Adoption Tax Credit and Other Financial Assistance

Issue Overview
Since its establishment in 1996, the adoption tax credit has defrayed the high cost of adoption for many families who would otherwise find adoption financially prohibitive. The adoption tax credit enables thousands of children who would otherwise languish in foster or institutionalized care to find loving, permanent families of their own.

The Affordable Health Care for America Act (Public Law 111-148) included a provision that increased the adoption tax credit by $1,000 and made it refundable for adoptive families. Importantly, this Act also extended the tax credit through 2011. The passage of the Middle Class Tax Relief Act of 2010 (Public Law 111-312) during the surprisingly productive “lame duck” session of the 111th Congress further extended the adoption tax credit through the end of 2012. The adoption tax credit is not a permanent fixture in the tax code; therefore, Congress must continually renew it to ensure that families receive the credit. The current maximum adoption tax credit that may be claimed by income-eligible families is $13,170 per domestic or intercountry adoption.

Relevant Legislation Pending at the Close of the 111th Congress

H.R. 3409 – Advocates Dedicated to Older Child Parental Tax Credit (ADOPT) Act of 2009. Representative Melissa Bean (D-IL) introduced this bill, which would amend the Internal Revenue Code of 1986 to allow a permanent tax credit for expenses related to adopting a child age nine or older. This credit could be claimed each year until the child reaches age 19.

1 The bills listed in this article did not complete the legislative process during the 111th Congress. In order to be reconsidered by our elected officials, they must be reintroduced during the 112th Congress.
**Adoption Advocate**

**H.R. 2524 – Dave Thomas Adoption Act of 2009.** Introduced by Representative Peter King (R-NY), this bill would allow penalty-free withdrawals from individual retirement accounts in order to pay for adoption expenses.

**NCFA’s Position**

NCFA recognizes that the high cost of adoption prevents some American families from considering adoption as a viable family building option. For this reason, NCFA has long been an advocate for the adoption tax credit as well as other financial assistance policies that makes adoption more affordable for families. NCFA will continue to advocate for making the adoption tax credit a permanent part of the Internal Revenue Code of 1986, and looks forward to working with members of Congress on this issue in the 112th Congress.

**Birthparent Issues**

**Issue Overview**

Birthmothers and birthfathers may face many challenges both before and after making the decision to place a child for adoption. Some of these challenges may include resistance to adoption from family and friends, feelings of grief and loss, and misinformation about the process of adoption. Many people still misunderstand or even stigmatize birthparents, despite the loving, difficult choice they make to ensure the wellbeing of their child(ren).

A recent question that has been raised with some frequency is: What are the legal rights of a putative father? Putative fathers are the presumed fathers of children born to single mothers, and their rights vary from state to state. If a birthmother makes an adoption plan for her child and the father is not properly notified pursuant to the state statute, the adoption proceeding could be in jeopardy. To address this issue, many states have created a putative father registry, which allows a putative father to voluntarily acknowledge paternity and establish the right to be notified of any legal proceedings concerning his child, including an adoption plan. However, policies and statutes differ from state to state, and not all states have putative father registries. In the absence of a national putative father registry database, a putative father may register with his state registry but fail to be notified of an adoption proceeding if the mother places the child for adoption in a different state. This event could occur even if both states maintain a putative father registry.

**Relevant Legislation Pending at the Close of the 111th Congress**

**S. 939 – Protecting Adoptions and Promoting Responsible Fatherhood Act of 2009.**

Introduced by Senator Mary Landrieu (D-LA), this bill establishes and maintains a National Putative Father Registry (PFR) to be administered by the U.S. Department of Health and Human Services (HHS). Registries would contain contact information submitted by putative fathers. Upon registering, a putative father would secure the right to notice of any proceedings related to a pending or planned adoption of the child, a proceeding to terminate the putative father’s rights, a proceeding related to the entry of the child into state custody, and the opportunity to establish paternity. Registry access would be limited to state agencies maintaining the database and to any state agencies or entities involved in the placement of children for adoption. The bill would also establish grants for states to enhance legal protections for putative fathers, assist mothers in planning for a child’s future, and protect the privacy of birthparents.

**H.R. 6298 – Protecting Adoption and Promoting Responsible Fatherhood Act of 2010.**

This legislation, introduced by Representative Laura Richardson (D-CA), is related to the Protecting Adoptions and Promoting Responsible Fatherhood Act of 2009. It establishes a National Putative Father Registry to facilitate adoptions and makes grants available to states that promote both responsible fatherhood and permanent families for children.
S. 1032, H.R. 2035 – Pregnant Women Support Act. This bill was introduced by Representative Lincoln Davis (D-TN) in the House and Senator Bob Casey (D-PA) in the Senate. Goals of the legislation are to provide services to help women carry their pregnancies to term and to support new parents. Presenting adoption as an option to young women facing unintended pregnancy and educating them about adoption is also a goal of the Pregnant Women Support Act. The bill includes other measures to support pregnant and newly parenting women, with additional funding for food stamps, the Women, Infants, and Children (WIC) program, childcare assistance, and a nurse home visiting program. The bill would also prohibit insurance companies from denying coverage to women because they are pregnant.

H.R. 3312 – Preventing Unintended Pregnancies, Reducing the Need for Abortion, and Supporting Parents Act. Section 1601 of this bill, introduced by Representative Tim Ryan (D-OH), expands assistance programs for children and new parents.

H.R. 643 – Care for Life Act. This bill, introduced by Representatives Jeffery Fortenberry (R-NE) and Cathy McMorris Rodgers (R-WA), seeks to accomplish goals similar to those of the Pregnant Women Support Act by creating an Office of Pregnancy Support Services within the U.S. Department of Health and Human Services. In addition to funding services for pregnant women, the bill also contains provisions for expanding the adoption tax credit and adoption assistance programs. The bill would increase the adoption tax credit and adoption assistance for the adoption of a special needs child to $15,000, and raise the income cap for receiving the tax credit to $200,000 a year. It would also make the adoption tax credit permanent and refundable.

H.R. 1505 – Birth Parent Assistance Act of 2009. Representative Jean Schmidt (R-OH) introduced this bill, which provides funding for birthparent services, including post-adoption services and individual, group, and family counseling. In addition, it would provide funding to train professionals at hospitals and other birth facilities on how to better serve birthparents and adoptive families.

NCFA’s Position

NCFA is sensitive to the challenges birthparents face when an unintended pregnancy occurs. The loving option of adoption may be the best choice for many birthparents and their child. Accordingly, NCFA lists the protection of the rights of birthparents among its highest legislative priorities.

NCFA believes that protecting birthparents’ rights, and limiting situations in which an uninvolved and/or uninformed birthfather can prevent a birthmother from placing a child for adoption, is necessary to the security of the adoption process. Public policy must ensure that those parents facing an unintended pregnancy receive timely and accurate information about adoption, as well as the necessary counseling and support if they choose to make an adoption plan. Senator Landrieu’s legislation, the Protecting Adoptions and Promoting Responsible Fatherhood Act of 2009, accomplishes this goal through the establishment of a National Putative Father Registry. NCFA, along with many other concerned groups, worked with Senator Landrieu in drafting this legislation, and looks forward to advocating for its reintroduction in the 112th Congress. For additional information on this issue, please see NCFA’s Adoption Advocate No. 14, On the Benefits of a National Putative Father Registry (https://www.adoptioncouncil.org/images/stories/documents/adoPTIONAdvocate14.pdf).
Foster Care Issues

**Issue Overview**

The U.S. foster care system was created to be a safe haven for children experiencing abuse and/or neglect in their homes. Of the more than 420,000 children currently in the foster care system, over 114,000 are waiting to be adopted. Most children placed in foster care are at high risk for poor educational outcomes and low levels of participation in extra curricular activities.

The Fostering Connections to Success and Increasing Adoptions Act of 2008 mandated many improvements that focus on promoting permanency and positive outcomes for children in foster care. On October 7, 2010, in an effort to bring attention to the much-needed reform of the foster care system, Senator Landrieu and Senator Grassley released a “Call to Action,” presenting options to build on successful foster care policies. This document can be accessed at: http://grassley.senate.gov/news/Article.cfm?customel_dataPageID_1502=29565.

The foster care system is in desperate need of reform, and child welfare advocates and policymakers are constantly discussing ways to improve the system to better serve the children who must enter it.

**Relevant Legislation Pending at the Close of the 111th Congress**

**S. 3726 – Supporting Adoptive Families Act.** This bill, introduced by Senator Amy Klobuchar (D-MN), enhances pre- and post-adoption support services by amending Title IV, Part E of the Social Security Act (SSA) to revise the requirements for state expenditures for adoption support services. The bill also allows for the awarding of grants or cooperative agreements to eligible entities to develop and implement state-sponsored post-adoption mental health services for all adopted children. Lastly, the bill amends SSA Title IV, Part D to require states to collect and report information regarding children adopted within the United States and from other countries who enter into state custody due to disruption or dissolution of an adoption.

**S. 3968 – Children’s Act of 2010.** Introduced by Senator Christopher Dodd (D-CT), this bill establishes the National Council on Children with the following purposes: (1) to conduct a comprehensive study to examine and assess the health, safety, and learning needs of children; (2) to examine systems for children’s programs and assess ways to increase spending in preventative services for children and youth in order to improve outcomes; (3) to build upon the evaluations of other entities and avoid unnecessary duplication; (4) to submit a report to the President and Congress on findings, conclusions, and recommendations; and (5) to make an annual assessment of the wellbeing of American children.

**H.R. 6192 – Foster Children Self-Support Act.** Representative Pete Forney Stark (D-CA) introduced this bill, which ensures that foster children are able to use their Social Security and Supplemental Security Income benefits to address their needs and improve their lives. The bill accomplishes this task by requiring states to: (1) screen all foster children for Social Security eligibility and assist them in application; (2) identify other appropriate representative payees for eligible children, such as family members, before becoming the payee themselves; and (3) develop a plan with the child and the child’s advocate(s) on how best to use the Social Security benefits for current and future needs. In addition, it provides

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3 Foster Care and Adoption Assistance

4 Child Support and Establishment of Paternity
for the conservation of funds for the child in dedicated accounts and ensures that accumulation of substantial amounts of assets will not cause the child to lose eligibility for future benefits. The bill also ensures that youth are provided assistance to maintain eligibility for benefits after they transition out of care and requires reporting on states’ progress in screening foster children for Social Security eligibility.

H.R. 6193 – Foster Youth Financial Security Act of 2010. Introduced by Representative James Langevin (D-RI), this bill amends Part E\(^5\) of the Social Security Act to prepare foster youth who are making the transition to independent living to properly manage their finances. The bill accomplishes this task by helping foster youth: (1) obtain credit reports; (2) obtain a driver’s license/ID card; and (3) establish financial accounts.

H.R. 6156 – To renew the authority of the Secretary of Health and Human Services to approve demonstration projects designed to test innovative strategies in state child welfare programs. Introduced by Representative Jim McDermott (D-WA), this bill renews the authority of the Secretary of HHS to approve demonstration projects through fiscal year 2016. Projects benefited by this bill will promote the objectives of Part B\(^6\) or E\(^7\) of Title IV of the SSA, including projects that: (1) identify and address barriers that delay kinship guardianship; (2) provide early intervention and crisis intervention services to reduce out of home placements; or (3) identify and address domestic violence that places youth in foster care. Such projects will ultimately improve life outcomes for children in foster care.

H.R. 5830 – One Church, One Child Act of 2010. Representative Jim Cooper (D-TN) introduced this bill, which would provide competitive grants for the establishment and expansion of programs that use networks of public, private, and faith-based organizations to recruit and train foster and adoptive parents. The bill also provides support services to the foster children and their families.

H.R. 5817 – Fostering Success in Education Act. Introduced by Representative John Lewis (D-GA), this bill aims to provide children in foster care with school stability and equal access to educational opportunities. More specifically, this bill directs the Secretary of Education to promote adoption and foster parent recruitment through a contract with a nationally recognized, nonprofit organization.

S. 2801 – Fostering Success in Education Act. Introduced by Senator Al Franken, this bill creates a new program under which a state’s child welfare and education agencies would collaborate on and submit a plan to receive funds to meet the educational needs of children in foster care. The plan must include details on how the state would enforce the law, resolve disputes, provide for the educational transportation of children, and make determinations to promote educational stability and the best interests of children in foster care. (This bill was created in response to the mandate in the Fostering Connections Act requiring state child welfare agencies to ensure that children in foster care remain in their schools if it is in their best interest. However, it is the states’ education agencies that have authority over school enrollment policies. This bill is intended to ensure that there is a reciprocal mandate for each agency.)

H.R. 4787 – Medicaid Services Restoration Act of 2010. This legislation, as introduced by Representative Tammy Baldwin (D-WI), extends Medicaid’s Section 101 medical assistance coverage to therapeutic foster care

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\(^5\) Foster Care and Adoption Assistance
\(^6\) Child and Family Services
\(^7\) Foster Care and Adoption Assistance
services provided for children under 21 years old, who, due to mental illness or other emotional/behavior disorder, medically fragile conditions, or developmental disabilities, require the highest levels of care.

**S. 1217 – Medicaid Services Restoration Act of 2009.** Similar to the Medicaid Services Restoration Act of 2010, this bill, introduced by Senator Debbie Stabenow (D-MI), amends the Social Security Act to improve and protect rehabilitative services. With regard to children in the foster care system, this bill extends medical assistance coverage to therapeutic foster care services.

**H.R. 4806 – Every Child Deserves a Family Act.** This bill, introduced by Representative Peter Stark (D-CA), is intended to prohibit discrimination in adoption or foster care placements based on the sexual orientation, gender identity, or marital status of any prospective adoptive or foster parent, or the sexual orientation or gender identity of the child involved.

**H.R. 4317, S. 986 – Foster Care Mentoring Act of 2009.** Introduced by Representative Joseph Crowley (D-NY) in the House and Senator Mary Landrieu (D-LA) in the Senate, this bill supports the establishment or expansion and operation of programs using a network of public and private community entities to provide mentoring for children in the U.S. foster care system.

**H.R. 3329 – Look-back Elimination Act of 2009.** This bill, introduced by Representative John Lewis (D-GA), eliminates the requirement that, to be eligible for foster care maintenance payments, a child would have been eligible for aid under a former program at the time of removal from the home.

**H.R. 2072 – School Choice for Foster Kids Act.** Introduced by Representative Michele Bachmann (R-MN), this bill would promote educational stability by authorizing states to use funds from the Chafee Foster Care Independence Program to provide school vouchers to children of all ages in foster care. The vouchers could be used to cover the cost of tuition at private schools, transportation costs to and from public schools, and enrollment in a school that meets a child’s special needs. Currently, these funds can only be used to provide vouchers to those students aged 16 to 23.

**S. 410 – Resource Family Recruitment and Retention Act of 2009.** Introduced by Senator Blanche Lincoln (D-AR), this bill requires public and private child-placing agencies to provide foster parents with specific and detailed information in order to have their licenses renewed. This information would include: notification of case meetings, support services, a child’s history, the child’s permanency options, and services for dealing with loss when the child leaves the foster home. In addition, this bill allows the U.S. Department of Health and Human Services to award grants to states for innovative programs designed to recruit and retain foster and adoptive families.

**H.R. 4976 – Internet Gambling Regulation and Tax Enforcement Act of 2010.** Introduced by Representative Jim McDermott (D-WA), this bill amends the Internal Revenue Code of 1986 to regulate and tax Internet gambling. In addition, this bill amends the Social Security Act to establish the Transitional Assistance Trust Fund to finance state plans for transitional education and job training assistance for children previously or currently residing in foster care.

**NCFA’s Position**

As an active member of the Senate Caucus on Foster Youth, promoting adoption out of foster care is one of NCFA’s leading policy priorities. NCFA strongly supports any policy that increases the likelihood of permanency for children, whether that permanency is achieved through
reunification or adoption. NCFA also supports the recruitment and retention of foster and adoptive parents. Many of the provisions included in the Fostering Connections Act were recommended and supported by NCFA, and we look forward to further advocating for these policies in the 112th Congress.

Research indicates that children in foster care change schools often, which threatens their educational stability and success. Although the majority of children in foster care want to attend college, only 10 percent actually do. Steps must be taken to promote the stability, educational options, and future success of children in foster care.

**Intercountry Adoption Issues**

*Issue Overview*

Intercountry adoption is the process by which an individual or a family legally adopts a child from another country. The Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption ("Hague Convention") shapes U.S. intercountry adoption policy. The U.S. ratified the Hague Convention in 2000 and implemented it on April 1, 2008. The Hague Convention establishes internationally agreed upon standards of practice for intercountry adoption. These standards were created to safeguard the children involved in the intercountry adoption process. American families adopting from a country that is also a party to the Hague Convention will also receive protections under the Convention.

NCFA and other intercountry adoption advocates saw two major victories near the end of the 111th Congress: the Help Haitian Adoptees Immediately to Integrate Act of 2010 (Help Haiti Act) and the International Adoption Simplification Act, which were both passed and signed into law. The Help Haiti Act provided for adjustment of status for certain Haitian orphans who entered the United States through humanitarian parole in response to the January 12, 2010 earthquake in Port-au-Prince. The International Adoption Simplification Act restored immunization and sibling age exemptions for children adopted by United States citizens under the Hague Convention.

However, despite the recent progress on Capitol Hill, the number of intercountry adoptions taking place in the U.S. is declining. In 2004, intercountry adoption peaked when American families adopted over 22,000 children orphaned in other countries. In 2009, there were 12,753 intercountry adoptions in the U.S. The decline in intercountry adoption leaves tens of millions of orphans worldwide facing life without a forever family. Federal legislation could simplify the intercountry adoption process and facilitate more intercountry adoptions.

**Relevant Legislation Pending at the Close of the 111th Congress**

**H.R. 5532 – International Adoption Harmonization Act of 2010.** This bill, introduced by Representative Zoe Lofgren (D-CA), amends the Immigration and Nationality Act (INA) with regard to children adopted through intercountry adoption. Specifically, this bill amends the INA to include in the definition of “child” a person adopted under the age of 18: (1) who is in the custody of, and has resided with, the adopting parent or parents for at least two years; or (2) who was battered or subject to extreme cruelty by the adopting parent or parents for at least two years; or (2) who was battered or subject to extreme cruelty by the adopting parent or a family member residing in the same household.

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9 See: http://www.adoption.state.gov/news/total_chart.html
H.R. 4986, S. 3156 – North Korean Refugee Adoption Act of 2010. Introduced by Representative Edward Royce (R-CA) in the House and by Senator Sam Brownback (R-KS) in the Senate, this bill develops a strategy for assisting stateless children from North Korea. Specifically, the bill directs the Secretary of State to develop a comprehensive strategy for facilitating the adoption of North Korean children by U.S. citizens.

S. 3091 – Adoption Fairness Act. This bill, introduced by Senators Amy Klobuchar (D-MN) and Mary Landrieu (D-LA), was designed to eliminate the cost of a Certificate of Citizenship for an internationally adopted child, regardless of whether the adoption was finalized in a foreign country or in the U.S. Currently, children whose adoptions are finalized outside the U.S. receive a Certificate of Citizenship at no cost once the adoption is finalized, while parents of children whose adoptions are finalized in the U.S. are required to pay a fee to obtain a Certificate of Citizenship for their child.

S. 1458, H.R. 3070 – Families for Orphans Act of 2009 (FFOA). The FFOA was introduced by Senator Mary Landrieu (D-LA), Senator James Inhofe (R-OK), Representative Diane Watson (D-CA), and Representative John Boozman (R-AR), and written with the goal of working towards permanency for all children on an international level. The bill would provide for the creation of an Office of Orphan Policy, Diplomacy and Development within the U.S. Department of State, which would be given diplomatic authority to help the millions of vulnerable children worldwide who have lost one or both parents or are at risk of losing parental care. The office would be responsible for supporting child-friendly policies, including that of intercountry adoption, and pursuing diplomatic relations with the international community in order to encourage permanent parental care for children in need. For additional information, please see NCFA’s Adoption Advocate No. 15, NCFA Supports the Families For Orphans Act (FFOA) and the Foreign Adopted Children Act (FACE) (https://www.adoptioncouncil.org/images/stories/documents/FACEandFFOAAdoptionAdvocate_000.pdf).

S. 1359, H.R. 3110 – Foreign Adopted Children Equality (FACE) Act. The FACE Act was introduced in the Senate by Mary Landrieu (D-LA) and James Inhofe (R-OK) and in the House by Representatives by Diane Watson (D-CA) and John Boozman (R-AR). If enacted, the bill will provide United States citizenship to all internationally adopted children of United States citizens when their adoptions are finalized in their countries of origin. Currently, the Child Citizenship Act of 2000 (CCA) grants citizenship to internationally adopted children when they enter the United States, a policy that requires families to apply for and obtain an immigrant visa for children to travel from their country of origin to the United States. This bill would eliminate the immigration process after a child has been deemed eligible for adoption by the United States government. The intent of this bill is to ensure that internationally adopted children are treated equally under the law to children born to United States citizens abroad. For additional information, please see NCFA’s Adoption Advocate No. 15, NCFA Supports the Families For Orphan Act (FFOA) and the Foreign Adopted Children Equality Act (FACE) (https://www.adoptioncouncil.org/images/stories/documents/FACEandFFOAAdoptionAdvocate_000.pdf).

NCFA’s Position

As a member of the Executive Committee of the Families for Orphans Coalition, NCFA is committed to safe and ethical intercountry adoption, and is a strong supporter of both the Foreign Adopted Children Equality Act (FACE) and the Families For Orphans Act (FFOA). NCFA assisted the bills’ sponsors in drafting both FACE and FFOA legislation, and in gathering congressional support for both bills.
NCFA believes that adopted children should be treated equally under the law as biological children of American families. The FACE Act would ensure this equality, while maintaining the safeguards that protect children, birthparents, and adoptive parents. To accomplish this task, the bill would provide United States citizenship to internationally adopted children when their adoption is finalized in their country of origin. This change in the immigration process for internationally adopted children would promote the equal treatment of all American children, save adoptive families time and money, and secure a more direct route to United States citizenship for internationally adopted children.

NCFA also supports the goal of the Families for Orphans Act, which is to achieve permanency for all children throughout the world. In an effort to avoid institutionalized care, which has been shown to have severe and negative effects on children’s health and development, NCFA advocates for a “continuum of care” in order to find permanency for all children. Based on this “continuum of care,” NCFA advocates that a child should be kept at home with his or her biological family if it is in the child’s best interests; if not, a placement with the child’s relative(s) or kin is preferred. If this is impossible, placing the child for domestic adoption, within his or her own country and culture, is the next best option. Finally, if it is the only way to avoid permanent foster care or institutionalized care, the child should be freed for an intercountry adoption. (For further information, please see NCFA’s Adoption Advocate No. 23, Continuum of Child Welfare Services to Promote Permanence for Children, https://www.adoptioncouncil.org/images/stories/documents/ncfa_advocate23 4-30.pdf) By creating a specific office within the U.S. Department of State to advocate for international permanency for children, the Families for Orphans Act would enable the United States to assist other countries in developing systems of care to better meet the needs of all children.

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