

## Making Improvements to the Adoption Tax Credit Permanent for Children and Families

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### History of the Adoption Tax Credit: Helping Families Open their Homes to Children by Defraying Adoption Costs since 1997

The decision to open one's heart and home to a child in need of a family is among the most rewarding a person can make. Unfortunately, this decision can also be an expensive one. Private and independent domestic adoptions can cost anywhere from \$5,000 to \$40,000, and expenses for intercountry adoptions generally total between \$7,000 and \$40,000. These wide ranges are the result of a host of factors which affect expenses such as the type of placement agency or facilitator, attorney fees, the child's age, and whether the child has a medical condition. Domestic adoptions out of foster care are typically much less expensive, usually costing the adoptive parent \$2,500 or less.

In recognition of the benefits that adoption provides to children, families and society, members of Congress introduced the Adoption Promotion and Stability Act in 1996 to "help families defray adoption costs."<sup>1</sup> The Act was ultimately subsumed into Section 1807 of the Small Business Job Protection Act (SBJPA) of 1996. At the time of its passage, SBJPA introduced a non-refundable tax credit of \$6,000 for adoptive parents of children with special needs, and a non-refundable tax credit of \$5,000 for the adoptive parents of all other children. The tax credit for the adoptive parents of children without special needs was set to sunset on December 31, 2001. SBJPA also included an income eligibility phase-out beginning at \$75,000 per year in adjusted gross income and ending at \$115,000 per year in adjusted gross income.<sup>2</sup> Citing the success of SBJPA in reducing the costs of

adoption, members of Congress passed the Economic Growth and Tax Relief Reconciliation Act (EGTRRA) in 2001.<sup>3</sup> EGTRRA increased the tax credit for all adoptions to \$10,000 and raised the phase-out range to \$150,000 - \$190,000 in annual adjusted gross income, beginning in 2002. Both the tax credit and income limitations were indexed for inflation. Also, EGTRRA mandated that beginning in 2003, families adopting a child from foster care would not need to document expenses in order to claim the tax credit.

### Looming Sunset of the EGTRRA Provisions Threatens to Reduce Benefits to Adoptive Families, Sparks Debate on Effectiveness of the Tax Credit and its Future

In both its pre- and post-EGTRRA forms, the adoption tax credit has helped tens of thousands of children over the past decade achieve a loving, permanent family through adoption. Unfortunately, the EGTRRA provisions which raised the amount that adoptive families can claim and increased the income eligibility phase-out range will sunset on December 31, 2010. Thus, beginning in 2011, the amount adoptive parents of children with special needs will be able to claim under the adoption tax credit will revert to the pre-EGTRRA level of \$6,000 per child. As the sunset date for the adoption tax credit for children without special needs as mandated under SBJPA has already passed, adoptive parents of children without special needs will lose their tax credit entirely at this time. Finally, adoptive families reporting \$75,000 - \$115,000 in annual adjusted gross income will again be restricted in the amount they can claim, and those reporting more than \$115,000 in annual adjusted gross

1. *Adoption Promotion and Stability Act of 1996*, HR 3286, 104<sup>th</sup> Cong., 2d sess.

2. Under SBJPA, gross income did not include any amounts paid by an employer for qualified adoption expenses if such amounts were furnished as part of an adoption assistance program. This stipulation carried over into EGTRRA as well.

3. House Committee on Ways and Means, *House Report 107-064 - Hope for Children Act*, 107<sup>th</sup> Congress, 1<sup>st</sup> sess., 2001

income will again be prohibited from claiming the tax credit at all. Several bills have been introduced in Congress to repeal the sunset and make EGTRRA's reforms of the adoption tax credit permanent. Their introduction and the looming sunset of the EGTRRA provisions have sparked a debate on the future of the adoption tax credit among child welfare advocates.

## Why Critics Are Wrong to Assert the Adoption Tax Credit Is Ineffective

At the center of this debate is a recent Treasury Report which found that parents who adopted children internationally account for a disproportionately large number of adoption tax credit recipients, while parents who adopted children from foster care represent a disproportionately small number. More specifically, international adoptions accounted for 34 percent of all adoptions supported by the tax credit despite making up only 15 percent of all adoptions in the United States, while domestic adoptions out of foster care made up 18 percent of adoptions supported by the tax credit despite making up nearly 40 percent of all adoptions in the United States.<sup>4</sup> This finding has led some to claim that the adoption tax credit is not fulfilling a primary goal of promoting domestic adoptions out of foster care. Some advocates have suggested that the federal government should therefore eliminate the adoption tax credit and redistribute the funds saved to other pro-adoption programs. Others have asked the federal government to consider what responsibility it has to promote private or intercountry adoptions, implying that the adoption tax credit should be reformed to support domestic adoptions out of foster care only.<sup>5</sup> However, the argument that the adoption tax credit is not fulfilling a primary goal of promoting adoptions from foster care and should therefore be ended or restricted to the parents of children adopted from the U.S. foster system is specious on several fronts.

**1) The argument that the adoption tax credit is not fulfilling a primary goal of promoting foster care adoptions focuses on the degree the tax credit supports such adoptions to the exclusion of all other forms of adoption, when such a focus is not reflected in the legislation's language nor the testimonies of those in Congress who supported it.** As originally introduced, the Adoption Promotion and Stability Act of 1996 had two purposes, first among which was "to defray adoption costs for families seeking to adopt" by establishing the adoption tax credit.<sup>6</sup> The bill made no distinction between adoptions out of foster care and any other type of adoption, except to stipulate that foreign adoptions had to be completed before the adoptive parents could claim the tax credit.

Statements from members of Congress during the debates over both SBJPA and EGTRRA also indicate supporters of the tax credit intended it to support all adoptions. Representative Louis Stokes (D., OH) said, in support of SBJPA, that "the promotion of adoption is one of the most important things we can do to strengthen American families...Adoption enables children, whose parents cannot or will not raise them, to become part of a permanent family."<sup>8</sup> Representative Stokes' emphasis on strengthening American families shows those in favor of the bill recognized the benefits that adoption provides to families and society irrespective of the adopted child's origin. Also, his inclusion of children whose parents "will not" raise them among the beneficiaries of the bill indicates that the legislation intended to promote private and international adoptions, in which the birthmother voluntarily places her child with an adoptive family.

Similarly, Senator Mary Landrieu (D., LA), who helped draft the adoption-related legislation in EGTRRA, stated after the bill's passage that, "Because of our action here, 60,000 plus children will find their 'forever families' in the year to come."<sup>9</sup> The annual number of adoptions out of foster care has never reached 60,000, and was only 46,000 during 1999, the most recent year for which statistics were available at the time

4. Geen, R., *The Adoption Tax Credit: Is it an Effective Approach to Promote Foster Care Adoption?* Child Trends Research Brief, Publication # 2007-24. Available online at [http://www.childtrends.org/Files/Child\\_Trends-2007\\_08\\_07\\_RB\\_AdoptionTaxCredit.pdf](http://www.childtrends.org/Files/Child_Trends-2007_08_07_RB_AdoptionTaxCredit.pdf). Accessed on Nov. 11, 2008.

5. Kroll, J., *The Adoption Tax Credit: An Ethical Dilemma*, Adoptalk, Fall 2007. Available online <http://www.nacac.org/adoptalk/adoptiontaxcredit.html>. Accessed on Nov. 11, 2008.

6. The bill's second purpose, "to promote the adoption of minority children," was addressed in the bill's amendments to federal law promoting the transracial placement of children in foster care.

7. As mentioned, parents were allowed under Sec. 1807 of the SBJPA to claim a maximum tax credit of \$6,000 for each adopted child with special needs, versus a maximum tax credit of \$5,000 for each adopted child without special needs.

8. *Adoption Promotion and Stability Act of 1996*, HR 3286, 104<sup>th</sup> Cong., 2d Sess., *Congressional Record* E787 (May 10, 1996).

9. *Economic Growth and Tax Relief Reconciliation Act of 2001*, HR 1836, 107<sup>th</sup> Cong., 1<sup>st</sup> Sess., *Congressional Record* S5606 (May 24, 2001).

of Senator Landrieu's statement.<sup>10</sup> Thus, her testimony only makes sense when one realizes that her intention in drafting the adoption-related legislation in EGTRRA was to promote private and international adoptions as well as adoptions out of foster care.

To conclude, while the adoption tax credit allowed the adoptive parents of some children adopted from foster care to claim a higher tax benefit prior to EGTRRA, the proportionate representation of adoptions from foster care among all adoptions supported by the tax credit was never specified in legislation nor suggested by members of Congress as an indicator of the tax credit's success. On the contrary, both the language of the bills and statements from members of Congress indicate that those in favor of the adoption tax credit intended it to support all adoptions. Calls to eliminate the adoption tax credit based on the fact that it supports a relatively low number of adoptions from foster care are therefore unwarranted.

**2) Statistics suggest the under-representation of foster care adoptions among all adoptions supported by the tax credit is a result of a lack of awareness of eligibility on the part of adoptive parents, as opposed to large numbers of adoptive parents being ineligible for the tax credit. Legislation has been passed to remedy this situation by mandating the education of prospective adoptive parents on their eligibility for the adoption tax credit.** Some critics of the adoption tax credit have suggested a large number of parents who adopt from foster care have little or no income, and are thus unable to claim the adoption tax credit.<sup>11</sup> Those making this argument have yet to offer any statistics supporting this explanation for the under-representation of foster care adoptions among all adoptions supported by the tax credit. In the meantime, while there is no doubt some adoptive parents do not earn enough to incur a tax liability, it is

highly unlikely they account for a significant portion of the under-representation of parents who have adopted children from foster care among those claiming the tax credit.

Nationally representative data on income levels for adoptive parents who have adopted children out of foster care is not available. However, there is such data on income levels for foster parents. Given that a majority of children adopted out of foster care are adopted by non-relative foster parents, data on income levels of non-relative foster parents can stand as a reasonable proxy for data on income levels of adoptive parents who have adopted children from foster care.<sup>12</sup> In 2003, only eight percent of foster parents reported a household income of less than \$15,000 per year—the approximate poverty threshold in that year for a family of three. Sixty five percent of non-relative foster parents reported an annual household income of \$35,000 or higher.<sup>13</sup> In other words, approximately two thirds of non-relative foster parent families reported incomes in the middle or upper class range, while less than ten percent reported incomes below the federal poverty level.

Furthermore, if it were the case that large numbers of parents of children adopted from foster care were ineligible for the tax credit because of very low income levels, we would expect to see at least some statistically significant correlation between a state's median household income and the percentage of adoptions from its foster care system supported by the tax credit. An analysis of the percentage of adoptions out of foster care supported by the adoption tax credit for each state and each state's median household income revealed no statistically significant correlation.<sup>14</sup>

A far more likely explanation for the under-representation of foster care adoptions among all adoptions supported by the tax credit is that a large number of parents who have adopted children

10. Children's Bureau, Administration for Children and Families, U.S. Department of Health and Human Services, *Adoptions of Children with Public Child Welfare Agency Involvement by State, FY 1995 - FY 2005*. Available online at [http://www.acf.hhs.gov/programs/cb/stats\\_research/afcars/adoptchild05.htm](http://www.acf.hhs.gov/programs/cb/stats_research/afcars/adoptchild05.htm) Accessed on Nov. 11, 2008.

11. Kroll, J., *The Adoption Tax Credit*, Adoptalk, Fall 2007

12. United States Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau, *The AFCARS Report: Preliminary Estimates for FY 2006 as of January 2008 (15)*. Available online at [http://www.acf.hhs.gov/programs/cb/stats\\_research/afcars/tar/report14.htm](http://www.acf.hhs.gov/programs/cb/stats_research/afcars/tar/report14.htm). Accessed on Nov. 11, 2008.

13. United States Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau, *National Survey of Child and Adolescent Well-Being, One Year in Foster Care Wave 1 Data Analysis Report*, Chapter 4. Available online at [http://www.acf.hhs.gov/programs/opre/abuse\\_neglect/nscaw/reports/nscaw\\_oayc/oyfc\\_toc.html](http://www.acf.hhs.gov/programs/opre/abuse_neglect/nscaw/reports/nscaw_oayc/oyfc_toc.html). Accessed on Nov. 11, 2008.

14. Median household incomes for each state were obtained from the U.S. Census Bureau, *Two-Year Average Median Household Income by State: 2004-2006*. Available online at <http://www.census.gov/hhes/www/income/income06/statemhi2.html>. Accessed on Nov. 11, 2008; Percentages of adoptions out of foster care supported by the adoption tax credit for each state were included in Geen, R., *The Adoption Tax Credit*, pg. 4

out of foster care are unaware of either the tax credit itself or their own eligibility. As recently as 2003, the Administration for Children and Families stated that “resource families (e.g., foster parents, adoptive parents, and kinship caregivers) are often unaware of federal tax laws that can make a big difference in their tax returns--sometimes as much as several thousand dollars.”<sup>15</sup> This is not surprising considering the paltry amounts of federal funding allocated toward adoptive and foster parent training services.<sup>16</sup> Nor is it surprising that families who adopt through private agencies either domestically or internationally and pay for the services of adoption attorneys may be much more likely to be advised of the adoption tax credit and instructed on how to claim it. Fortunately, this issue has already been addressed legislatively. The Fostering Connections to Success and Increasing Adoptions Act of 2008, which was signed into law on October 7, 2008, mandates that states inform prospective adoptive parents of children in foster care of their eligibility for the adoption tax credit. Thus, we should expect the number of foster care adoptions supported by the tax credit to rise significantly in coming years.

## **Effectiveness of the Adoption Tax Credit: Research Shows Correlation between Federal Financial Support to the Adoptive Family and Success in Achieving Adoption for Waiting Children**

While there is no research available on the effect that the Adoption Tax Credit has on one’s ability or decision to adopt, preliminary research does show a significant and positive correlation between a state’s level of financial assistance for adoptive parents and its rate of adoptions from foster care:

“An increase of \$100 in the average level of adoption assistance payments is associated with an increase in the adoption rate of one. An increase in the adoption rate of one adoption per 1,000 births translates into 80 additional children adopted in the average state during each fiscal year. Eighty fewer foster children (on average) in each of 52 jurisdictions (50 states, the District of Columbia, and Puerto Rico) adds up to almost 4,200 fewer children waiting in foster care in the nation.”<sup>17</sup>

The author also found that increasing subsidies to adoptive parents was one of the most effective ways of boosting the adoption rate. For example, the author calculated that an increase in the amount paid in monthly subsidies to adoptive parents had ten times the effect on the adoption rate that an equivalent increase in the amount spent on services to children in foster care had. If direct, federal subsidies to parents in the form of monthly adoption assistance payments have such a significant impact on the adoption rate for children in foster care, it is reasonable to assume that the direct, federal subsidy to parents provided by the adoption tax credit also has a positive effect on the number of children adopted from foster care.

## **Conclusion: Ensuring Prospective Adoptive Parents Federal Support through the Adoption Tax Credit Is in the Best Interests of Children**

Since its implementation in 1996, the adoption tax credit has succeeded in its primary purpose of defraying the costs associated with adoption for tens of thousands of American families. Thanks to the federal government’s financial support, thousands of children who might otherwise be in foster care or living with parents unable to care for them are being raised by loving, permanent families. The recent finding that adoptions out of foster care are underrepresented among all adoptions supported by the adoption tax credit is concerning only in that it suggests that the tax credit is being underutilized. It in no way justifies the assertion that the tax credit has somehow failed. Thus, the appropriate response to this finding is not to revoke or reduce the adoption tax credit, but to provide prospective adoptive parents working with the state child welfare system mandatory education to ensure they are aware of its existence and prepared to take advantage of it. Legislation passed in October, 2008 does exactly this, and we can expect that the numbers of adoptions out of foster care supported by the adoption tax credit will rise accordingly. Most importantly, the EGTRRA provisions to the adoption tax credit due to expire in 2011 should be made permanent. For the sake of the children who might otherwise languish in foster care, we have a responsibility to ensure that adoptive families in the years to come will enjoy the same degree of federal support they do today.

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15. United States Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children’s Bureau, *Children’s Bureau Express*, 2003, 4 (1). Available online at <http://cbexpress.acf.hhs.gov/index.cfm?event=website.viewArticles&issueid=38&sectionid=5&articleid=2440>. Accessed on Nov. 11, 2008

16. For more information on the amounts of federal child welfare funding that is being allocated toward parent recruitment and training services, see Zappala, M., *Parent Recruitment and Training: A Crucial, Neglected Child Welfare Strategy*, Adoption Advocate Vol. 6., September 2007. Available online at <http://www.adoptioncouncil.org/resources/documents/AdoptionAdvocateVol6.pdf>. Accessed on Nov. 11, 2008.

17. Hansen, Mary E., 2005. *Using Subsidies to Promote the Adoption of Children from Foster Care*, Working Papers, 2005-15. Department of Economics, American University. Available online at <http://academic2.american.edu/~mhansen/Refereed/JFEI%20709%20final.pdf>. Accessed on Nov. 11, 2008. 4

