August 28, 2013

The Honorable Dave Camp  
Chairman  
Committee on Ways and Means  
U. S. House of Representatives  
344 Cannon House Office Building  
Washington, DC 20515

The Honorable Sander Levin  
Ranking Member  
Committee on Ways and Means  
U. S. House of Representatives  
1236 Longworth House Office Building  
Washington, DC 20515

Dear Chairman Camp and Ranking Member Levin:

I write on behalf of the American Bar Association in response to the Committee’s request for comments regarding draft legislation to extend and improve the Adoption Incentives Program.

The ABA has long been committed to improving the lives of our nation’s most vulnerable children and families. Dating back to 1988, the ABA House of Delegates has approved policies that address key services and supports to families involved or at risk of becoming involved in the child welfare system. In 2010, an ABA House of Delegates approved a policy that urged, among other things, reform of the federal child welfare financing structure to increase the amount and flexibility of funding available for child abuse and neglect prevention, family preservation and support, family reunification, and post-permanency supports. The 2010 ABA child welfare financing policy urges law makers to encourage all types of permanency for children, including safe and stable reunifications, and to create an enhanced federal permanency encouragement initiative that rewards states for increasing their rates of safe and stable parental reunifications and relative guardianships, as well as adoptions.

I. The ABA commends the Committee on Ways and Means for its commitment to permanency for children and youth in foster care.

The ABA commends the continued commitment of the U.S. House of Representatives Committee on Ways and Means to encourage legal permanency for children in foster care and for drafting legislation
that extends, improves, and expands the federal adoption incentive program. The draft legislation improves the current adoption incentive program by rewarding states for increasing adoption rates, rather than by raw number of adoptions. This is an important change that will ensure the adoption incentive program’s relevancy as foster care caseloads continue to decline.

In addition, the ABA applauds the Committee’s proposed expansion of the adoption incentive program to provide incentive payments to states for increasing the rate of children reaching permanency through legal guardianship. As the Committee knows, the 1997 Adoption and Safe Families Act (AFSA) made safety, permanency, and well-being the primary focus of federal child welfare policy. ASFA sets forth clearly defined, preferred permanency goals for children: reunification with family, adoption, and legal guardianship.\(^1\) When safe and stable reunification or adoption are not viable permanency options, helping children achieve permanency through guardianship involves time and investment from the states and should be encouraged through federal financial incentives.

II. \textbf{The ABA recommends that the Committee’s draft legislation be revised to include incentive payments for increases in the rate of safe and stable family reunifications.}

As part of the Committee’s commitment to encouraging state and local child welfare agencies to achieve permanency for children and youth in their care, the ABA recommends that the Committee revise the proposed legislation to include payments to provide incentives to states that increase their rate of safe and stable family reunifications. Foster care is not ideal for any child, and child welfare law has been built on the twin principles of (1) limiting the possibility of removing children from their families to those children who are at imminent risk of suffering harm if kept at home and (2) striving to return foster children to their families as quickly as feasibly consistent with the child’s safety. Safe and stable family reunification is the primary and most common permanency goal for children in foster care and in most cases is likely to be in the child’s best interest when a parent has made the changes necessary to address the issues that led to the child’s placement.\(^2\)

However, while the rate of children adopted from foster care has increased since the Adoption Incentive Program began, with 15\% of children and youth exiting to adoption in 1998 and 21\% exiting to adoption in 2012, there has been a decrease in the rate of children reunifying with their family. In 1998, 60\% of children exited foster care to reunify with family. Since 2009, only 51\% of children exit foster care to reunify with family.\(^3\) Additionally, while reunification continues to be the most common permanency outcome for children exiting foster care, a 2004 study found that through the 1990s and since the passage of ASFA, the time it takes children to reach permanency through reunification has slowed down, while the time it takes children to reach permanency through adoption significantly sped up.\(^4\) Incentive

\(^2\) Recent studies have found that children often have better life outcomes when they are able to stay with their parents rather than face foster care placement, even when the care they receive with their parents may meet the statutory definition of abusive or neglectful. See, e.g. Joseph Doyle, Jr., \textit{Child Protection and Child Outcomes: Measuring the Effects of Foster Care} 97(5) AM. ECON. REV. 1583 (2007).
payments for safe and stable family reunifications could further motivate agencies to invest in the services and guidance necessary to safely reunite families without delay.

Pursuing other permanency options promptly – including planning for these options concurrently – when reunification cannot be achieved is critical to children’s well-being, but state and county child welfare agencies should be reminded that safe and stable reunification is the preferred outcome in the majority of child welfare cases. To incentivize other categories while omitting reunification signals to states and families that other permanency outcomes are more valuable than safely returning children to their homes.

Furthermore, while reunification with family is the permanency goal in most cases, the current federal financing structure for child welfare, including limiting the incentive program to adoptions (and potentially guardianship), may create the perception that reunification is not as desirable a goal. Currently, state and county child welfare agencies have very limited federal support to help families through the reunification process and to provide assistance once children return home to ensure families’ continued stability. Of the five major federal funding sources for child welfare, the only funding dedicated to reunification of foster children with their families is found under the Promoting Safe and Stable Families (Title IV-B, Part 2) Program. That funding source, however, is one of the smallest (representing less than 5% of federal expenditures for child welfare in 2010\(^5\)), and it is designed to address four services: reunification, adoption services, family preservation, and family support. In 2010, state expenditures under the Promoting Safe and Stable Families Program were $325 million. By comparison, in 2010, more than $3.5 billion in federal funds went to states for foster care maintenance and adoption assistance payments.\(^6\) Reunification incentive payments to states should be reinvested to provide vital support to states to deliver effective reunification services or post-reunification services to strengthen and secure families.

In order to safeguard against jurisdictions’ taking inappropriate advantage of a reunification incentive program, the ABA supports adding several precautionary measures to any proposed legislation. These measures can help ensure that: (1) children do not enter foster care unnecessarily; (2) child welfare agencies do not precipitously remove children from home only to have them returned a few days later after a court reviews the case and finds there was no need for that placement; and (3) children’s family reunifications from foster care are truly stable.

The ABA recommends that, for a state to receive any reunification incentive payment for a child, that child must have resided in foster care for at least 90 days before exiting to reunification. With reunification incentives there is some potential for unintended consequences – considering that some children on the margin of whether or not foster care placement is necessary could be tilted toward placement if that would monetarily benefit the jurisdiction. Very short stays in foster care can be a symptom of inadequate reasonable efforts to prevent the need for placement. Children who re-enter foster care from their family home during the same fiscal year should also be counted against the state’s

\(^5\) Child Trends, Federal, State, and Local Spending to Address Child Abuse and Neglect in SFYs 2008 and 2010 (June 2012).

\(^6\) Child Trends, Id. at 13.
number of new reunification exits to ensure that these children are not counted for incentive purposes if they are returned home with inadequate planning and supports. Finally, states should not receive reunification incentive payments for children who do not remain in their homes in safe and stable situations, that is, for at least six months without any repeat substantiated abuse or neglect.

III. Conclusion

In 2011 over 26,000 youth aged-out or were “emancipated” from foster care. Additionally, approximately 104,000 children in foster care were waiting to be adopted.\(^7\) Thousands of these children will not be adopted and will end up leaving foster care without finding permanence. With the help of effective and appropriate services and supports, many of these children could find safe and lasting permanency through family reunification. Creating three independent incentive programs to encourage the permanency goals of reunification, adoption, and guardianship will help encourage and enable state and county child welfare agencies to actively work toward and invest in each valuable and important option for children and families.

Thank you for your consideration of these comments. Should you have any questions or want additional information concerning our comments, please feel free to contact me or Howard Davidson, Director of the ABA Center for Children and the Law (202-662-1720; howard.davidson@americanbar.org).

Sincerely,

Thomas M. Susman

\(^7\) AFCARS, supra.