October 7, 2013

The Honorable Max Baucus
Chairman
Senate Finance Committee
219 Dirksen Senate Office Building
Washington, DC, 20510-6200

The Honorable Orrin G. Hatch
Ranking Member
Senate Finance Committee
219 Dirksen Senate Office Building
Washington, DC, 20510-6200

Dear Chairman Baucus and Ranking Member Hatch:

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. As detailed below, we urge that the Senate bill, in addition to providing federal incentive payments to states for increases in guardianships and adoptions, add a category of incentive payments to states for stable family reunifications. This would be fully consistent with the draft bill’s commendable targeting of a share of the incentive payments to states for post-reunification services.

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 policy 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 advocates for lawmakers to encourage all types of permanency for children, including safe and stable reunifications, by creating 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 for adoptions.

I. The ABA commends the Finance Committee for its commitment to permanency for children and youth in foster care.
The ABA commends the continued commitment of the U.S. Senate Finance Committee to encouraging legal permanency for children in foster care and for drafting legislation which 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 the raw number of adoptions. This is an important change which will ensure the adoption incentive program’s relevancy as foster care caseloads, hopefully, 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, in 1997, the Adoption and Safe Families Act 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. 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. 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 incentive payments 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.

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 families. 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. 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,

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., Child Protection and Child Outcomes: Measuring the Effects of Foster Care 97(5) AM. ECON. REV. 1583 (2007).
while the time it takes children to reach permanency through adoption significantly sped up.\textsuperscript{4} Incentive 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 \textit{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 \textit{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\textsuperscript{5}) and it is designed to address four services: reunification, adoption services, family preservation, and family support. In 2010, state expenditures under the \textit{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.\textsuperscript{6}

The ABA commends the Finance Committee for its recognition of the importance of sustaining safe reunification of children with their families by requiring that no less than 25% of the incentive payments address post-reunification support services, including emancipated children who have reunified with their families. This important dedication of funds would help states deliver effective post-reunification services to strengthen and secure families. However, also offering incentives to secure safe reunification would further motivate states to help families achieve that goal and ensure that reunification is recognized as a priority permanency goal to be explored in most cases.

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 mere 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.

\textsuperscript{5} Child Trends, \textit{Federal, State, and Local Spending to Address Child Abuse and Neglect in SFYs 2008 and 2010} (June 2012).
\textsuperscript{6} Child Trends, \textit{Id.} at 13.
The ABA recommends that for a state to receive *any reunification incentive payment for a child*, that child should have to 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 since that would benefit the jurisdiction monetarily. 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 number of new reunification exits to ensure that such 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 home in a safe and stable situation, i.e., for at least six months without any repeat substantiated abuse or neglect.

**III. Conclusion**

In 2011 over 26,000 youth aged-out or “emancipated” from foster care. Additionally, approximately 104,000 children in foster care were waiting to be adopted.¹ 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 on Children and the Law (202-662-1720; howard.davidson@americanbar.org).

Sincerely,

Thomas M. Susman

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¹ AFCARS, *supra*. 