

# FAIRNESS FOR FOSTER CARE FAMILIES ACT OF 2001

MAY 15, 2001.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. THOMAS, from the Committee on Ways and Means,  
submitted the following

## R E P O R T

[To accompany H.R. 586]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 586) to amend the Internal Revenue Code of 1986 to provide that the exclusion from gross income for foster care payments shall also apply to payments by qualified placement agencies, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Fairness for Foster Care Families Act of 2001”.

**SEC. 2. EXCLUSION FOR FOSTER CARE PAYMENTS TO APPLY TO PAYMENTS BY QUALIFIED PLACEMENT AGENCIES.**

(a) **IN GENERAL.**—The matter preceding subparagraph (B) of section 131(b)(1) of the Internal Revenue Code of 1986 (defining qualified foster care payment) is amended to read as follows:

“(1) **IN GENERAL.**—The term ‘qualified foster care payment’ means any payment made pursuant to a foster care program of a State or political subdivision thereof—

“(A) which is paid by—

“(i) a State or political subdivision thereof, or

“(ii) a qualified foster care placement agency, and”.

(b) **QUALIFIED FOSTER INDIVIDUALS TO INCLUDE INDIVIDUALS PLACED BY QUALIFIED PLACEMENT AGENCIES.**—Subparagraph (B) of section 131(b)(2) of such Code (defining qualified foster individual) is amended to read as follows:

“(B) a qualified foster care placement agency.”

(c) **QUALIFIED FOSTER CARE PLACEMENT AGENCY DEFINED.**—Subsection (b) of section 131 of such Code is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

“(3) **QUALIFIED FOSTER CARE PLACEMENT AGENCY.**—The term ‘qualified foster care placement agency’ means any placement agency which is licensed or certified by—

“(A) a State or political subdivision thereof, or

“(B) an entity designated by a State or political subdivision thereof,

for the foster care program of such State or political subdivision to make foster care payments to providers of foster care.”

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after December 31, 2001.

## **I. SUMMARY AND BACKGROUND**

### **A. PURPOSE AND SUMMARY**

The bill, H.R. 586, as amended (the “Fairness for Foster Care Families Act”), provides for an expansion of the exclusion from income for certain foster care payments.

The bill provides net tax reductions of over \$181 million over fiscal years 2001–2006. This will provide needed revision of the tax treatment of qualified foster care payments.

### **B. BACKGROUND AND NEED FOR LEGISLATION**

The provisions approved by the Committee reduces complexity and provides needed revision of the tax treatment of qualified foster care payments to reflect current practices in the State foster care systems. The estimated revenue effects of the provisions comply with the most recent Congressional Budget Office revisions of budget surplus projections.

### **C. LEGISLATIVE HISTORY**

#### **COMMITTEE ACTION**

The Committee on Ways and Means marked up the provisions of the bill on May 9, 2001, and reported the provisions, as amended, on May 9, 2001, by a voice vote, with a quorum present.

## II. EXPLANATION OF THE BILL

### A. EXPANSION OF THE EXCLUSION FROM INCOME FOR QUALIFIED FOSTER CARE PAYMENTS

(Sec. 2 of the bill and sec. 131 of the Code)

#### PRESENT LAW

If certain requirements are satisfied, an exclusion from gross income is provided for qualified foster care payments paid to a foster care provider by either (1) a State or local government; or (2) a tax-exempt placement agency. Qualified foster care payments are amounts paid for caring for a qualified foster care individual in the foster care provider's home and difficulty of care payments.<sup>1</sup> A qualified foster care individual is an individual living in a foster care family home in which the individual was placed by: (1) an agency of the State or local government (regardless of the individual's age at the time of placement); or (2) a tax-exempt placement agency licensed by the State or local government (if such individual was under the age of 19 at the time of placement).

#### REASONS FOR CHANGE

The Committee is aware that States, in their continuing efforts to improve the foster care system, have realized the utility of both tax-exempt and for-profit private placement agencies. In some instances, the States have utilized for-profit private placement agencies to perform the functions previously reserved for State or local government or tax-exempt entities. This bill is intended to modernize the exclusion to reflect these changes at the State level by equalizing the tax treatment of payments to qualified foster care providers regardless of the source of the payment. Also, the Committee believes that allowing placement by any qualified foster care agency (regardless of the individual's age at placement) will improve older children's chances for adoption. Finally, the Committee believes that these simpler rules may encourage more families to provide foster care.

#### EXPLANATION OF PROVISION

The bill makes two modifications to the present-law exclusion for qualified foster care payments. First, the bill expands the definition of qualified foster care payments to include payments by any placement agency that is licensed or certified by a State or local government, or an entity designated by a State or local government to make payments to providers of foster care. Second, the bill expands the definition of a qualified foster care individual by including foster care individuals placed by a qualified foster care placement agency (regardless of the individual's age at the time of placement).

<sup>1</sup> A difficulty of care payment is a payment designated by the person making such payment as compensation for providing the additional care of a qualified foster care individual in the home of the foster care provider which is required by reason of a physical, mental, or emotional handicap of such individual and with respect to which the State has determined that there is a need for additional compensation.

## EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2001.

**III. VOTE OF THE COMMITTEE**

Ordered reported by voice vote, with quorum present.

**IV. BUDGET EFFECTS OF THE BILL****A. COMMITTEE ESTIMATE OF BUDGETARY EFFECTS**

In compliance with clause 3(d)(2) of the rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the revenue provisions of the bill, H.R. 586 as reported.

The bill is estimated to have the following effects on budget receipts for fiscal years 2001–2006:

ESTIMATED BUDGET EFFECTS OF H.R. 586, A BILL TO EXPAND THE EXCLUSION FROM INCOME FOR CERTAIN FOSTER CARE PAYMENTS, AS REPORTED BY THE COMMITTEE ON WAYS AND MEANS; FISCAL YEARS 2002–2006

[In millions of dollars]

Provision	Effective	2002	2003	2004	2005	2006	2002–06
Exclusion for Qualified Foster Care Payments— expand qualified foster care payments to include those made by any State-licensed or State-certified agency; eliminate the age restriction for certain placements of qualified foster individuals.	tyba 12/31/01	– 18	– 29	– 37	– 45	– 53	– 181

Note. Details may not add to totals due to rounding.

Legend for “Effective” column: tyba = taxable years beginning after.

**B. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX EXPENDITURES BUDGET AUTHORITY**

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves no new or increased budget authority. The Committee further states that the revenue reducing income tax provision involves increased tax expenditures. (See amounts in table in Part IV.A., above.)

**C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET OFFICE**

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, the following statement by CBO is provided.

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
Washington, DC, May 11, 2001.

Hon. WILLIAM "BILL" M. THOMAS,  
Chairman, Committee on Ways and Means,  
U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 586, the Fairness for Foster Care Families Act of 2001.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Erin Whitaker.

Sincerely,

BARRY B. ANDERSON  
(For Dan L. Crippen, Director).

Enclosure.

*H.R. 586—Fairness for Foster Care Families Act of 2001*

Summary: H.R. 586 would modify the exclusion from gross income allowed for qualified foster care payments paid to a foster care provider by either a state or local government or by a tax-exempt placement agency. The bill would expand the definition of qualified foster care payments to include payments by any placement agency that is licensed or certified by a state or local government, or an entity designated by such governments to make payments to foster care providers.

The Congressional Budget Office and the Joint Committee on Taxation (JCT) estimate that enacting the bill would reduce revenues by \$18 million in fiscal year 2002, by \$181 million over the 2002–2006 period, and by \$586 million over the 2002–2011 period. Because the bill would affect receipts, pay-as-you-go procedures would apply.

H.R. 586 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 586 is shown in the following table. All estimates of the revenue effects of the bill were provided by JCT.

	By fiscal year, in millions of dollars—				
	2002	2003	2004	2005	2006
CHANGES IN REVENUES					
Estimated Revenues .....	– 18	– 29	– 37	– 45	– 53

Pay-as-you-go-considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in governmental receipts that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

	By fiscal year, in millions of dollars—										
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Changes in outlays ....						Not applicable					
Changes in receipts ...	0	– 18	– 29	– 37	– 45	– 53	– 61	– 71	– 80	– 91	– 102

Intergovernmental and private-sector impact: H.R. 586 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: Erin Whitaker.

Estimate approved by: G. Thomas Woodward, Assistant Director for Tax Analysis.

## **V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE**

### **A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS**

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was a result of the Committee's oversight review concerning the tax burden on individual taxpayers that the Committee concluded that it is appropriate and timely to enact the revenue provision included in the bill as reported.

### **B. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES**

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives for which any measure authorizes funding is required.

### **C. CONSTITUTIONAL AUTHORITY STATEMENT**

With respect to clause 3(d)(1) of the rule XIII of the Rules of the House of Representatives (relating to Constitutional Authority), the Committee states that the Committee's action in reporting this bill is derived from Article I of the Constitution, Section 8 ("The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises . . ."), and from the 16th Amendment to the Constitution.

### **D. INFORMATION RELATING TO UNFUNDED MANDATES**

This information is provided in accordance with section 423 of the Unfunded Mandates Act of 1995 (P.L. 104–4).

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

### **E. APPLICABILITY OF HOUSE RULE XXI 5(b)**

Rule XXI 5(b) of the Rules of the House of Representatives provides, in part, that "A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a

vote of not less than three-fifths of the Members voting, a quorum being present.” The Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not involve any Federal income tax rate increases within the meaning of the rule.

#### F. TAX COMPLEXITY ANALYSIS

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 (the “IRS Reform Act”) requires the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Department of the Treasury) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the House Committee on Ways and Means, the Senate Committee on Finance, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code and has widespread applicability to individuals or small businesses.

The staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Internal Revenue Code and that have “widespread applicability” to individuals or small businesses.

### VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

#### SECTION 131 OF THE INTERNAL REVENUE CODE OF 1986

##### SEC. 131. CERTAIN FOSTER CARE PAYMENTS

(a) \* \* \*

(b) **QUALIFIED FOSTER CARE PAYMENT DEFINED.**—For purposes of this section—

[(1) **IN GENERAL.**—The term “qualified foster care payment” means any amount—

[(A) which is paid by a State or political subdivision thereof or by a placement agency which is described in section 501(c)(3) and exempt from tax under section 501(a), and]

(1) *IN GENERAL.*—*The term “qualified foster care payment” means any payment made pursuant to a foster care program of a State or political subdivision thereof—*

*(A) which is paid by—*

*(i) a State or political subdivision thereof, or*

*(ii) a qualified foster care placement agency, and*

\* \* \* \* \*

(2) **QUALIFIED FOSTER INDIVIDUAL.**—The term “qualified foster individual” means any individual who is living in a foster family home in which such individual was placed by—

(A) an agency of a State or political subdivision thereof,  
or

[(B) in the case of an individual who has not attained age 19, an organization which is licensed by a State (or political subdivision thereof) as a placement agency and which is described in section 501(c)(3) and exempt from tax under section 501(a).]

*(B) a qualified foster care placement agency.*

(3) *QUALIFIED FOSTER CARE PLACEMENT AGENCY.—The term “qualified foster care placement agency” means any placement agency which is licensed or certified by—*

*(A) a State or political subdivision thereof, or*

*(B) an entity designated by a State or political subdivision thereof,*

*for the foster care program of such State or political subdivision to make foster care payments to providers of foster care.*

[(3)] (4) *LIMITATION BASED ON NUMBER OF INDIVIDUALS OVER THE AGE OF 18.—In the case of any foster home in which there is a qualified foster care individual who has attained age 19, foster care payments (other than difficulty of care payments) for any period to which such payments relate shall not be excludable from gross income under subsection (a) to the extent such payments are made for more than 5 such qualified foster individuals.*

\* \* \* \* \*