



Volume 3

NATIONAL TAXPAYER ADVOCATE  
Special Report to Congress

# EARNED INCOME TAX CREDIT

**Making the EITC Work for Taxpayers and the Government**

*Improving Administration and Protecting Taxpayer Rights*



*This report is dedicated to  
the amazing  
Taxpayer Advocate Service employees*

*who, for eighteen years,  
have tirelessly given of their time and energy  
to enable us to submit our Reports to Congress.*

*As a group of people dedicated to the rights of taxpayers  
and to achieving systemic solutions,  
they have no peer*



*In memoriam,  
to Scott Rutz,  
our friend and colleague,  
who is truly missed.*

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## Executive Summary of Recommendations

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We are pleased to present this special report on the Earned Income Tax Credit (EITC). The EITC is a refundable tax credit that provides substantial financial assistance to many low income working families. Research indicates the credit substantially reduces poverty and encourages many individuals to enter the workforce. While the EITC has historically had bipartisan support, it has also been criticized for being overly complex, difficult to administer, and prone to high error rates.

In this report we present proposals to improve the EITC and its administration so that the credit better achieves policymakers' objectives (*i.e.*, increasing labor force participation and reducing poverty) while being less burdensome on both the IRS and taxpayers. Specifically, we recommend the following EITC reforms:

1. *Redesign the credit and modernize its eligibility criteria.*
  - Recommendation 1.1: Replace the EITC with a per-worker credit based on earned income and a universal per-child benefit.
  - Recommendation 1.2: Redefine and modernize the definition of a qualifying child that reflects the experiences of primary carers and their children.
2. *Establish greater IRS oversight of tax preparation intermediaries such as return preparers and software providers.*
  - Recommendation 2.1: Authorize the Secretary to establish standards for return preparers.
  - Recommendation 2.2: Authorize the Secretary to establish standards for tax return software providers.
  - Recommendation 2.3: Require disclosure and reporting of fees.
3. *Ensure EITC compliance procedures are consistent with due process norms and fundamental taxpayer rights.*
  - Recommendation 3.1: Limit summary assessment authority (SAA) use to appropriate cases based on clear criteria.
  - Recommendation 3.2: Update and modernize the SAA process.
  - Recommendation 3.3: Develop a structure for ban determination that protects taxpayer rights.
  - Recommendation 3.4: Clarify and improve court review of ban determinations.

In providing our specific recommendations related to the EITC, we also identify several general recommendations that can guide policymakers who seek to use the tax system effectively to deliver social benefits.

**General recommendation #1:** The IRS must acknowledge its role as a benefits administrator and change its practices and processes to reflect this role. Congress must also provide additional funding so that the IRS can succeed in this role. Instead of acting purely as an enforcement agency, the IRS should strive to ensure that low income taxpayers are treated with respect and fairness and ensure that taxpayers receive the benefits they are eligible for.

**General recommendation #2:** Congress must consider the administrability of tax provisions, especially family and child-related provisions, whose eligibility criteria may be difficult if not impossible for the IRS to verify. When a tax provision is difficult for the IRS to administer, it can be more prone to improper payments, and ultimately subject certain taxpayers to additional scrutiny. This additional scrutiny can be particularly burdensome for low income taxpayers.

**General recommendation #3:** Congress should conduct regular oversight hearings of the IRS on a permanent basis. These hearings would provide an opportunity for the IRS to identify challenges and successes with all the tax laws it administers. In the case of low income tax benefits, these hearings would provide a forum for Congress to hear directly from outside experts, including Low Income Taxpayer Clinics, return preparers, and others with particular insights into the lives and challenges facing low income taxpayers and their families.

## PREFACE: Introductory Remarks by the National Taxpayer Advocate: *Making the EITC Work for Taxpayers and the Government: Improving Administration and Protecting Taxpayer Rights*

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In 1975, the year the Earned Income Tax Credit (EITC) was enacted, I “hung out my shingle” as a tax return preparer for the first time. Thus, the EITC and I have been sisters-in-arms throughout my entire career in tax. In fact, as a young, newly divorced mother struggling to pay bills, I myself received the EITC. From both a professional and personal perspective, I have witnessed the significant, positive impact the EITC can have on people’s lives.

Back in 1975, I certainly did not expect that much of my life’s work would involve the EITC. But as my work evolved to include legal practice and tax controversy, I saw how vulnerable populations could lose the much-needed safety net of the EITC merely because they did not understand the IRS’s audit processes or could not afford to take time off from work during business hours to gather documentation or sit on the phone trying to get through to the IRS. If they took time off, their pay would be docked. They might even lose their jobs. So they didn’t respond, the IRS assumed they were not entitled to the credit, and the taxpayer (and her family) lost out on hundreds or thousands of dollars in much-needed benefits for which she was, in fact, eligible.

I saw this sequence of events played out time after time after I founded and directed The Community Tax Law Project, the first independent low income taxpayer clinic (LITC) in the country. I also saw taxpayers who had no idea what the EITC eligibility criteria were and were completely dependent on a new breed of return preparers—ones who had no training in tax law but who simply relied on software and viewed tax preparation as a way to lure vulnerable taxpayers into expensive refund anticipation loans.

I found this heartbreaking because what I saw, almost every day of my working life, first at the LITC and later as the National Taxpayer Advocate, was the substantial, life-supporting difference the EITC made in the lives of tens of millions of taxpayers. Yes, the EITC is a complicated statute. Yes, the EITC is undermined by overclaims—both inadvertent and fraudulent. And yes, the EITC requires the IRS to play a different role than merely revenue collector. *But it is important to keep in mind that the EITC is a low-cost, effective, and efficient method of delivering tens of billions of dollars in assistance to families and individuals who are working in low-paying jobs.*

As the National Taxpayer Advocate, I have spent much of the last 18 years thinking about how to improve the administration of the EITC. How should the IRS change its approach and processes? How should the IRS and others increase the participation rate? And how can the IRS minimize noncompliance while respecting taxpayer rights and not deterring participation by eligible taxpayers? I have attempted to seek answers and make recommendations with respect to these questions. I and Taxpayer Advocate Service (TAS) employees have conducted research studies, served on Treasury and IRS taskforces, conducted training sessions for IRS and TAS employees, and made scores of administrative and legislative recommendations about the EITC.<sup>1</sup>

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<sup>1</sup> In fact, in my first Annual Report as National Taxpayer Advocate, I proposed an overhaul of the six definitions of a child in the family status provisions of the Internal Revenue Code (IRC)—dependency exemption, head of household status, child and dependent care credit, child tax credit, earned income tax credit, and the definition of “not married” under IRC § 7703(b). National Taxpayer Advocate 2001 Annual Report to Congress 76-127. In 2004, Congress incorporated significant portions of my recommendation into the Uniform Definition of a Qualifying Child, Pub. L. No. 108-311, although there is still much more work to be done in this area. See National Taxpayer Advocate 2016 Annual Report to Congress 325-357.

It is fitting, then, in my last Report to Congress before I retire as National Taxpayer Advocate on July 31, 2019, that we should publish this extraordinary document, *Making the EITC Work for Taxpayers and the Government: Improving Administration and Protecting Taxpayer Rights*. This report, with its discussions, analyses, and recommendations, will serve as a reference for future work. The EITC Databook and Literature Review in the appendices provide valuable information for future tax administration studies.

But this report is not just a research document. It is a call to action. As we show throughout this report, the way the EITC is structured and the way the IRS is administering it often harms the very taxpayers it is intended to serve. We have made specific, common sense recommendations to mitigate that harm and reform the administration of the EITC. All our recommendations are actionable and supported by data and research.

Finally, what is so remarkable about this report is that it is the result of a unique and collaborative effort between academia and the executive and legislative branches of the federal government. The stars aligned in March 2019, when TAS was able to bring on Professor Leslie Book of the Villanova University School of Law as a Professor-in-Residence, and Margot Crandall-Hollick on detail from the Congressional Research Service. Les and Margot led a small and dedicated team of TAS employees that included attorney advisors, research and technical analysts, and a Local Taxpayer Advocate. Several team members had represented taxpayers in EITC audits and Tax Court cases during their earlier careers as LITC attorneys; thus, they brought to this project their “real world” experience with EITC administration. The team conducted extensive interviews with internal and external stakeholders, and it compiled and reviewed reams of documents, studies, and data about the EITC, as well as other benefit programs and tax credits of other countries.

The bottom line is that this report reflects intimate knowledge of the EITC from many different perspectives. I am enormously proud of—and grateful to—the team that prepared it, and I am hopeful that it will lead to a serious conversation about how to advance the twin goals of increasing the participation rate of eligible taxpayers and reducing overclaims by ineligible taxpayers. This conversation needs to be framed by the fundamental realization that the IRS is no longer just a tax collector but is also a benefits administrator. Unless the IRS embraces that role and organizes itself accordingly, we will continue to have problems with the EITC, and vulnerable taxpayers will continue to be denied the assistance they dearly need.

Respectfully submitted,



Nina E. Olson  
National Taxpayer Advocate  
30 June 2019

## Introduction<sup>2</sup>

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The Earned Income Tax Credit (EITC) is a refundable credit for low and moderate income working families. In tax year (TY) 2017, 26.2 million workers and families received about \$64.5 billion in EITC.<sup>3</sup> Decades of research indicate that the EITC is an effective tool in reducing poverty, encouraging work, and improving health and education outcomes among low income Americans.<sup>4</sup> Despite these positive outcomes, relatively high participation rates<sup>5</sup> and low direct administrative costs,<sup>6</sup> the credit has been plagued by a stubbornly high rate of improper payments.<sup>7</sup> Improper payments increase the cost of the program, making it and similar low income refundable tax credits subject to intense scrutiny. Improper payments also lead the IRS to audit a disproportionately high share of low income taxpayers.<sup>8</sup> In fiscal year (FY) 2018, 43 percent of all individual returns selected for audit included an EITC claim and 37 percent of all audited individual returns were selected because they included an EITC claim.<sup>9</sup> This is despite the fact that EITC returns account for approximately 18 percent of all individual returns filed

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- 2 The principal authors of this report are Leslie Book, Margot Crandall-Hollick, Laura Baek, Susan Morgenstern, Amy Ibbotson, Jeff Wilson, Zachary Bend, and Katrina Leifeld. The authors would like to thank Jill MacNabb, Eric Lopresti, and Francis Cappelletti for their assistance in drafting this report. This report would not have been possible without Nina Olson's leadership and determination. During her 18-year tenure as National Taxpayer Advocate, Nina Olson has championed the rights of all taxpayers, especially the most vulnerable. Nowhere is this dedication more apparent than in her work on the Earned Income Tax Credit (EITC). Nina Olson has written extensively on the issues discussed in this report. Many of the ideas and recommendations in this report directly reflect those past writings.
- 3 IRS, Compliance Data Warehouse (CDW), Individual Returns Transaction File (IRTF), tax year (TY) 2017 returns processed through cycle 13 of 2019 (May 2019).
- 4 For an excellent summary of the research surrounding the effects of the EITC, see Austin Nichols & Jesse Rothstein, *The Earned Income Tax Credit*, in *ECONOMICS OF MEANS-TESTED TRANSFER PROGRAMS IN THE UNITED STATES* (2016), <https://www.nber.org/chapters/c13484.pdf>. For summaries of specific aspects of the EITC, see pages 180-181 (impact on poverty); pages 187-198 (impact on labor); pages 181-182 (impact on health outcomes); and pages 185-187 (impact on education outcomes).
- 5 *Id.* at 174-176 (looking at take up rates for taxpayers at different positions on the EITC schedule and favorably comparing EITC take up to other transfer programs).
- 6 The IRS estimates costs for administering the EITC are less than one percent of benefits delivered; administrative costs for non-tax benefits programs can range as high as 37 percent of program expenditures. See Appendix 1, EITC Databook. As discussed below, other data shows that administrative costs for non-tax benefits programs as a percent of total program costs may be even higher.
- 7 Since 2010, EITC estimated improper payment rates have fluctuated between a low of 22.8 percent in 2012 and a high of 27.2 percent in 2014. National Taxpayer Advocate 2018 Annual Report to Congress 91, 95 (Most Serious Problem: *Improper Earned Income Tax Credit Payments: Measures the IRS Takes to Reduce Improper Earned Income Tax Credit Payments Are Not Sufficiently Proactive and May Unnecessarily Burden Taxpayers*).
- 8 IRS, 2018 Data Book, table 9a (May 2019).
- 9 *Id.*

in calendar year 2017.<sup>10</sup> While EITC misreporting represents a small portion of the tax gap<sup>11</sup> there has been a persistent emphasis on reducing the EITC improper payment rate.<sup>12</sup>

As a result of that scrutiny and a narrow internal view of how the IRS considers its responsibilities, all too often the IRS takes an enforcement-oriented approach to administering the EITC, leading to relatively high audit rates for low income taxpayers. This approach can deter or altogether block eligible taxpayers from claiming the credit, prevent ineligible taxpayers from understanding what they did wrong, and squander opportunities to educate taxpayers to encourage future voluntary tax compliance.<sup>13</sup> The enforcement-oriented approach is problematic because the population of taxpayers who rely on the EITC often share a common set of characteristics, such as limited education and high transiency, which create challenges for taxpayer compliance.<sup>14</sup> All of this unduly burdens some of the most vulnerable populations—kids and families struggling to make ends meet. And it has subjected the IRS to criticism for unfair audit coverage of low income taxpayers at the expense of other taxpayers.<sup>15</sup>

Yet, in spite of these challenges, Congress continues to view refundable credits for the working poor as a desirable way to help low income working Americans. Congress has proposed various bills to expand the EITC and related family credits like the Child Tax Credit to boost wages, increase labor force participation, reduce poverty, and support families.<sup>16</sup> Given these competing forces of wanting to provide more social benefits through the tax code while also reducing existing administrative and compliance challenges, this report provides policymakers a framework to achieve both goals.

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<sup>10</sup> IRS, 2018 Data Book, table 9a (May 2019).

<sup>11</sup> The most recent estimate of the gross tax gap, based on data for TYs 2008-2010, is \$458 billion. Of that amount, \$264 billion, or 58 percent, is attributable to income misreporting by individual taxpayers. IRS Pub. 1415, *Federal Tax Compliance Research: Tax Gap Estimates for Tax Year 2008-2010* 1 (May 2016). The EITC represents approximately six percent of the gross tax gap and ten percent of the tax gap attributable to income misreporting by individuals. Department of the Treasury, *Agency Financial Report Fiscal Year 2018* 146 (2018). National Taxpayer Advocate 2018 Annual Report to Congress 98 (Most Serious Problem: *Improper Earned Income Tax Credit Payments: Measures the IRS Takes to Reduce Improper Earned Income Tax Credit Payments Are Not Sufficiently Proactive and May Unnecessarily Burden Taxpayers*). The largest component of the tax gap attributable to individual income misreporting is business income misreporting, which amounts to \$125 billion, or approximately 47 percent of the tax gap attributable to income misreporting. For further discussion on the relative significance of the EITC and the underreporting tax gap, see National Taxpayer Advocate 2018 Annual Report to Congress 98-100.

<sup>12</sup> See, e.g., Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2018-40-032, *The Internal Revenue Service is Not in Compliance With Improper Payment Requirements* (Apr. 2018). Money is fungible and in theory one more dollar improperly claimed as a credit has an equal impact budgetarily as one fewer dollar collected in taxes. What accounts for the additional scrutiny on low income taxpayers? Professor Larry Zelenak explains that an underpayment of tax allows the taxpayer to keep more of his or her pretax income, and that there is a persistent sense that the government's right to tax pretax income "was dubious to begin with." Larry Zelenak, *The Myth of Pretax Income* 101 Mich. L. Rev. 2261, 2263-2264 (2003).

<sup>13</sup> National Taxpayer Advocate 2018 Annual Report to Congress 91-104 (Most Serious Problem: *Improper Earned Income Tax Credit Payments: Measures the IRS Takes to Reduce Improper Earned Income Tax Credit Payments Are Not Sufficiently Proactive and May Unnecessarily Burden Taxpayers*); National Taxpayer Advocate 2017 Annual Report to Congress 141-150 (Most Serious Problem: *Earned Income Tax Credit: The IRS Continues to Make Progress to Improve Its Administration of the EITC, But It Has Not Adequately Incorporated Research Findings That Show Positive Impacts of Taxpayer Education on Compliance*).

<sup>14</sup> National Taxpayer Advocate 2015 Annual Report to Congress 235-239 (Introduction: *The IRS Can Do More to Improve Its Administration of the Earned Income Tax Credit and Increase Future Compliance Without Unduly Burdening Taxpayers and Undermining Taxpayer Rights*).

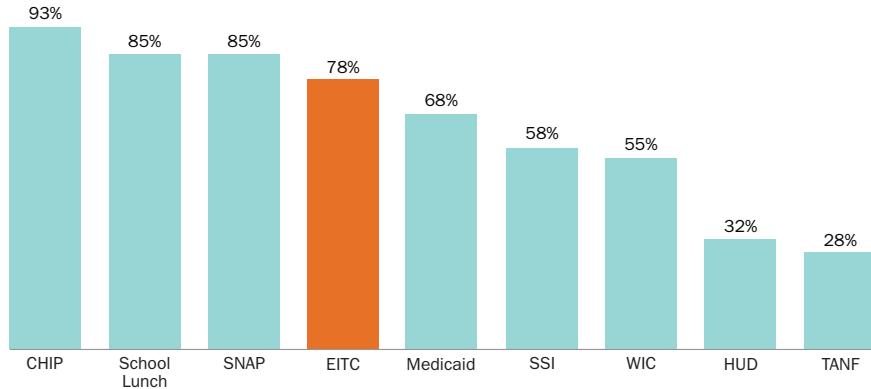
<sup>15</sup> Paul Kiel, *It's Getting Worse: The IRS Now Audits Poor Americans at About the Same Rate as the Top 1%*, PRO PUBLICA (May 30, 2019), <https://www.propublica.org/article/irs-now-audits-poor-americans-at-about-the-same-rate-as-the-top-1-percent>.

<sup>16</sup> Isabel Sawhill & Christopher Pulliam, *Lots of plans to boost tax credits: which is best?*, BROOKINGS INST. (Jan. 15, 2019), <https://www.brookings.edu/research/lots-of-plans-to-boost-tax-credits-which-is-best/>.

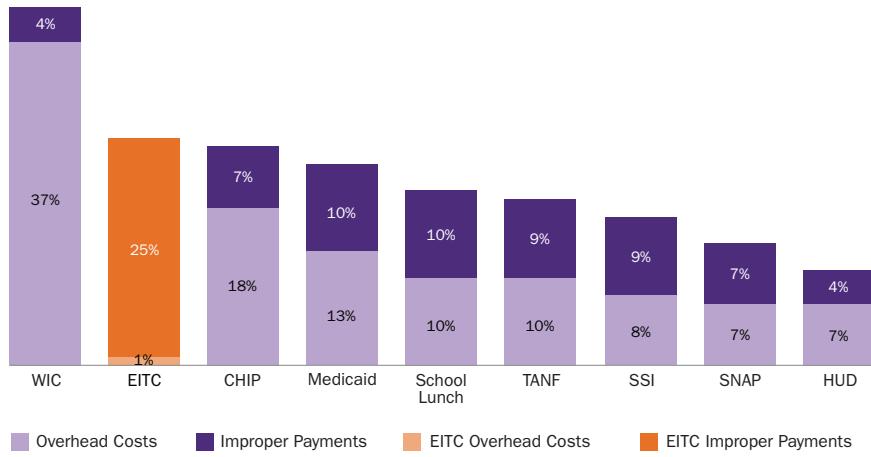
**FIGURE 1, EITC Participation Rates and Program Costs Compared to Other Benefits Programs<sup>17</sup>**

Placing the EITC in the tax system has many benefits relative to other programs including fewer direct administrative costs, higher participation rates, and less stigma for recipients. The absence of upfront eligibility screening associated with other programs contributes to less direct administrative costs for the IRS but also generally means that there are higher error rates, both intentional and unintentional. As this figure shows, however, the EITC's combined costs, taking into account errors and administrative cost, is similar to many other programs. (See the EITC Databook appendix for additional data). And recent research shows that the behavioral responses to the EITC—including how it reduces public assistance to households and increases taxes that those households pay—suggests that the true costs of the EITC are lower than many have thought.<sup>18</sup>

**EITC Participation Rates Compared to Other Means-Tested Programs**



**EITC Overhead Costs and Improper Payments Compared to Other Means-Tested Programs**



<sup>17</sup> See Appendix 1, EITC Databook Figure A.9, *infra*.

<sup>18</sup> Jacob Bastian & Maggie Jones, *Do EITC Expansions Pay For Themselves? Effects on Tax Revenue and Public Assistance Spending* (2019).

## STRUCTURE OF REPORT

This report proposes three major areas of reforms to the EITC that can improve the credit's administrability and efficacy, reduce taxpayer burden, and reduce erroneous payments. These proposals include:

- Redesigning the credit and modernizing its eligibility criteria;
- Establishing greater IRS oversight of tax preparation intermediaries such as return preparers and software providers; and
- Ensuring EITC compliance procedures are consistent with due process norms and fundamental taxpayer rights.

Each proposal includes a discussion of the current practice or law, reasons for change, and specific reform recommendations. In presenting these proposals, we are mindful of the significant research and background relating to the EITC in general and the specific issues we discuss. For readers interested in further detail, the appendices provide additional data relating to the EITC, summaries of the significant work that the Taxpayer Advocate Service (TAS) has done on the EITC, including prior Most Serious Problems, Legislative Recommendations, and research studies, as well as a Literature Review of important EITC studies and articles.

These proposals and their associated recommendations are not intended to be exhaustive, nor address every policy goal. Instead, they are meant to guide policymakers interested in modifying the EITC or other refundable credits (or developing new ones) so that their proposals are effective at achieving their objectives. By considering our proposals in light of the foundational principles, the report also provides a framework for improving the administration of tax benefits more broadly.

## PRINCIPLES AND GENERAL RECOMMENDATIONS

Underlying the proposals and specific recommendations in this report are three foundational principles and more general recommendations that we believe should inform policymakers as they consider using the tax system to deliver social benefits in the form of refundable credits.

### The IRS Mission Statement: The IRS Must Explicitly Acknowledge Its Role As a Benefits Administrator

How the IRS publicly identifies its role and mission matters. It matters in terms of how employees view their role in interacting with taxpayers, it matters in terms of what type of employee the IRS hires, and it matters in terms of how the IRS dedicates resources to particular responsibilities. In the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98), Congress directed the IRS to restate its mission statement with an emphasis on taxpayer service.<sup>19</sup> The IRS soon adopted the following mission statement: "Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by *applying the tax law* with integrity and fairness to all."<sup>20</sup> In 2009, without any public notice or discussion, the IRS changed the statement to read "Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and *enforce the tax law* with integrity and fairness to all."<sup>21</sup>

<sup>19</sup> Pub. L. No. 105-206, § 1002, 112 Stat. 685 (1998).

<sup>20</sup> <https://www.irs.gov/pub/irs-news/ir-98-59.pdf>.

<sup>21</sup> IRM 1.1.1.2, *IRS Mission* (June 2, 2015).

The EITC has grown in importance since its inception in 1975 and has grown significantly since RRA 98.<sup>22</sup> Despite this growth in the EITC and other credits, the current mission statement fails to recognize the IRS's dual lines of business—revenue collector and benefits administrator. If an agency views its primary mission as enforcing the tax laws and fails to even identify its role in delivering benefits, it will design its procedures and apply its resources with a focus that will likely not meet Congress's desire that the IRS "restate its mission to place a greater emphasis on serving the public and meeting taxpayer needs."<sup>23</sup>

The IRS mission statement sends a clear message about the IRS's priorities. The IRS has continued to employ an approach to administering the EITC that is primarily based on enforcement. To successfully meet the needs of the low and moderate income taxpayers that benefit from the EITC, the IRS should hire employees whose education, skills, and background are suited for the work of delivering benefits.<sup>24</sup> That could include, for example, employees with skills that are drawn from social work. By explicitly stating the IRS's benefits administration role as a separate agency mission in the context of service and non-coercive compliance, the IRS would be required to align its procedures, goals, and measures with those of other agencies serving similar situations. That would in turn build taxpayer trust and confidence, leading to improved compliance and an environment that reflects the essential dignity of all taxpayers.

One example of the IRS's failure as a benefits administrator is the agency's continued refusal to reform EITC audits so that one IRS employee is assigned to work the audit if the taxpayer calls or writes the IRS in response to an IRS audit notice.<sup>25</sup> Family matters are inherently personal and private. A single IRS employee can gain familiarity with the taxpayer's issues and be able to suggest alternate sources of documentation given that familiarity, as well as reassure the taxpayer who may be anxious about sharing personal information. The employee may also play a key role if the taxpayer is not entitled to the EITC and help educate the taxpayer so he or she understands how the rules apply to their specific circumstances.<sup>26</sup> Such education is particularly important since the population eligible to claim the

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22 See Austin Nichols & Jesse Rothstein, *The Earned Income Tax Credit*, in ECONOMICS OF MEANS-TESTED TRANSFER PROGRAMS IN THE UNITED STATES (2016), <https://www.nber.org/chapters/c13484.pdf>.

23 Pub. L. No. 105-206, § 1002 112 Stat. 685 (1998).

24 National Taxpayer Advocate 2016 Annual Report to Congress 1, 15-16 (Special Focus: IRS Future State: The National Taxpayer Advocate's Vision for a Taxpayer-Centric 21st Century Tax Administration).

25 See National Taxpayer Advocate 2014 Annual Report to Congress 134-144 (Most Serious Problem: Correspondence Examination: The IRS Has Overlooked the Congressional Mandate to Assign a Specific Employee to Correspondence Examination Cases, Thereby Harming Taxpayers).

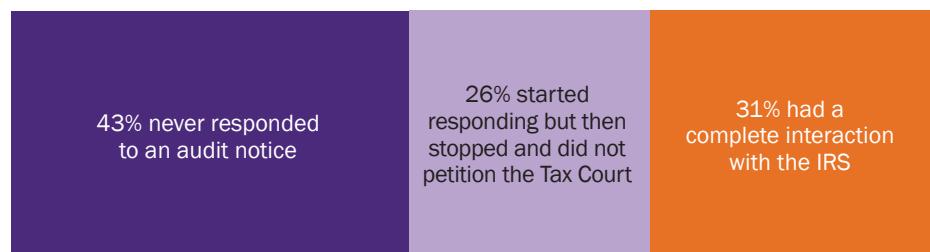
26 See National Taxpayer Advocate 2015 Annual Report to Congress 248, 252-253 (Most Serious Problem: Earned Income Tax Credit (EITC): The IRS is Not Adequately Using the EITC Examination Process as an Educational Tool and is not Auditing Returns With the Greatest Indirect Potential for Improving EITC Compliance). TAS has conducted research that has focused on educating EITC taxpayers in a manner tailored to their specific circumstances and the results reflected a statistically significant improvement in compliance for taxpayers who broke relationship and residency Dependent Database (DDB) rules. The DDB is a rule-based system incorporating data from within the IRS and information from external sources such as the Department of Health and Human Services and the Social Security Administration. TIGTA, Ref. No. 2018-40-024, *Some Tax Returns Selected for Fraud Screening Did Not Have Refunds Held and Required Notifications Were Not Always Sent to Taxpayers* 1 (Mar. 27, 2018). For more on the TAS research studies, which tested whether sending educational letters to taxpayers who erroneously claimed EITC in a previous tax year improved future compliance, see National Taxpayer Advocate 2017 Annual Report to Congress vol. 2 14-40 (Research Study: Study of Subsequent Filing Behavior of Taxpayers Who Claimed Earned Income Tax Credits (EITC) Apparently In Error and Were Not Audited But Were Sent an Educational Letter From the Taxpayer Advocate Service, Part 2: Validation of Prior Findings and the Effect of an Extra Help Phone Number and a Reminder of Childless-Worker EITC); National Taxpayer Advocate 2016 Annual Report to Congress vol. 2 32-52 (Research Study: Study of Subsequent Filing Behavior of Taxpayers Who Claimed Earned Income Tax Credits (EITC) Apparently In Error and Were Sent an Educational Letter From the National Taxpayer Advocate).

EITC is constantly churning, with approximately one-third of the eligible population changing every year.<sup>27</sup>

Assigning a single IRS employee would also likely increase the percentage of audited EITC taxpayers that fully engage with the IRS during an audit. Almost all EITC audits are correspondence audits (*i.e.*, conducted via the mail). For FY 2018, *less than a third* (31 percent) of EITC claimants who were audited had a complete interaction with the IRS that led to some resolution of their EITC claim, as illustrated in Figure 2.

**FIGURE 2<sup>28</sup>**

#### EITC Claimants' Audit Interactions With the IRS in FY 2018



In contrast, in FY 2018, 43 percent of audited EITC claimants were denied the credit because they never responded to the audit notice (*i.e.*, the “non-response rate” was 43 percent); while 26 percent responded to some IRS notices, but the EITC was denied because the taxpayer stopped responding and did not petition the Tax Court or sign an agreement with the IRS (*i.e.*, the “default assessment rate” was 26 percent).<sup>29</sup> Personal engagement between EITC claimants and IRS employees helps to build trust in

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**For fiscal year 2018, less than a third (31 percent) of EITC claimants who were audited had a complete interaction with the IRS that led to some resolution of their EITC claim, as illustrated in Figure 2.**

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27 IRS, *EITC Fast Facts*, <https://www.eitc.irs.gov/partner-toolkit/basic-marketing-communication-materials/eitc-fast-facts/eitc-fast-facts> (last visited May 17, 2019).

28 IRS, CDW, Audit Information Management System (AIMS) Closed Case Database for EITC audits closed in FY 2018 (May 2019).

29 For comparison, among the field and office audits of non-EITC returns that were closed in FY 2018, the non-response rate was five percent and the default assessment rate (the taxpayer stopped responding) was ten percent. (Because virtually all audits of EITC returns are correspondence audits, it is not possible to compare these statistics to field and office audits of EITC returns.) These statistics do not include correspondence audits on non-EITC returns. IRS, CDW, AIMS Closed Case Database for EITC audits closed in FY 2018 (May 2019).

the tax system. An impersonal correspondence-based process without the personal engagement with a specific IRS employee will likely negatively affect taxpayers' perception of the agency.<sup>30</sup>

**General recommendation #1:** The IRS must acknowledge its role as a benefits administrator and change its practices and processes to reflect this role. Congress must also provide additional funding so that the IRS can succeed in this role. Instead of acting purely as an enforcement agency, the IRS should strive to ensure that low income taxpayers are treated with respect and fairness and ensure that taxpayers receive the benefits they are eligible for.

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If a tax provision cannot be effectively administered by the IRS, it can dampen or lessen the provision's effectiveness, increase taxpayer burden, cost the federal government money, and subject the benefit (and its recipients) to increased scrutiny.

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### Congress Must Consider Administrability in Furtherance of Other Policy Goals

While the IRS must embrace its role as a benefits administrator, Congress should directly consider issues of administrability when it enacts or amends provisions like the EITC. Policymakers understandably focus on other aspects of a proposal—how many people will the policy lift out of poverty, how will the policy affect decisions about working, how will it affect children—and too often gloss over whether the IRS can administer the provision so that it achieves its intended goals. If a tax provision cannot be effectively administered by the IRS, it can dampen or lessen the provision's effectiveness, increase taxpayer burden, cost the federal government money, and subject the benefit (and its recipients) to increased scrutiny. For example, when the IRS is unable to verify or authenticate data relating to EITC eligibility, or the EITC's complexity means that taxpayers and preparers cannot understand how the law applies,<sup>31</sup> it makes the EITC more vulnerable to opposition and increases pressure on the IRS to audit EITC claimants. That then leads to a cycle where the IRS is criticized for disproportionately auditing low income taxpayers<sup>32</sup> while still being unable to reduce stubbornly high improper payment rates.<sup>33</sup>

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30 One TAS Research study found that "taxpayers who experienced a correspondence audit report relatively low perceived levels of procedural, informational, interpersonal, and distributive justice." For more information, see National Taxpayer Advocate 2017 Annual Report to Congress vol. 2 148, 167 (Research Study: *Audits, Identity Theft Investigations, and Taxpayer Attitudes: Evidence from a National Survey*).

31 Government Accountability Office (GAO), *Refundable Tax Credits: Comprehensive Compliance Strategy and Expanded Use of Data Could Strengthen IRS's Efforts to Address Noncompliance* 21 (2016) ("[T]he complexity of eligibility requirements, besides being a major driver of noncompliance and complicating IRS's ability to administer these credits, are also a major source of taxpayer burden."), <https://www.gao.gov/assets/680/677548.pdf>.

32 See, e.g., Paul Kiel & Hannah Fresques, *Where in the U.S. Are You Most Likely to Be Audited By the IRS*, PRO PUBLICA, (Apr. 1, 2019), <https://projects.propublica.org/graphics/eitc-audit>.

33 See, e.g., Kyle Pomerlau, *Earned Income Tax Credit Still Plagued with High Error Rate*, TAX FOUNDATION (May 14, 2014), <https://taxfoundation.org/earned-income-tax-credit-still-plagued-high-error-rate> (suggesting that wage subsidies in the tax code may be predisposed to high error rates that may make any reform efforts "futile").

## EITC COMPLEXITY AND FAMILY LIFE

Many observers have noted that the EITC is a complex provision. The combination of family complexity and strict eligibility requirements contributes to many families struggling to determine eligibility. Consider three family scenarios from a 2016 Government Accountability Office (GAO) report<sup>34</sup> that includes examples of complications that can arise when applying EITC Eligibility Rules:

### **Scenario 1:**

A woman separated from and stopped living with her husband in January of last year, but they are still married. She has custody of their children. She is *likely eligible* for the EITC because she can file using the head of household status.

However ... If the couple separated in **November**, she is *likely NOT eligible* for the EITC because she was not living apart from her husband for the last six months of the year and therefore cannot claim the head of household filing status.

### **Scenario 2:**

An 18-year-old woman and her daughter **moved home** to her parents' house in November of last year. She is *likely eligible* for the EITC because she was supporting herself and her child.

However ... If she always lived at her parents' house, she is *likely NOT eligible*<sup>35</sup> for the EITC because she was a dependent of her parents for the full tax year and therefore cannot claim the EITC on her own behalf.

### **Scenario 3:**

A young man lives with and supports his girlfriend and her two kids. He and the mom used to be married, got divorced, and are now back together. He is *likely eligible* for the EITC because the children are his stepchildren and therefore meet the relationship requirement.

However ... If he and the mom were **never married**, he is *likely NOT eligible* for the EITC because the children are not related to him.

Whether Congress redesigns the credit entirely or only modernizes certain eligibility criteria to reflect the reality of Americans' lives, the changes should reflect the changing dynamics of the American family while ensuring appropriate administrative tools are available to the IRS.

By understanding the dynamics of the EITC population, Congress can design an expanded, more inclusive EITC that furthers its original goal of supporting low income working taxpayers and their families. In so doing, Congress will reaffirm the IRS's dual roles as revenue collector and benefits administrator, and explicitly affirm taxpayer rights as a guiding principle for tax administration.<sup>36</sup>

<sup>34</sup> GAO, *Refundable Tax Credits: Comprehensive Compliance Strategy and Expanded Use of Data Could Strengthen IRS's Efforts to Address Noncompliance* 21 (2016).

<sup>35</sup> Crucially, these are stylized examples of the likely eligibility of the taxpayer given the limited information provided. The actual eligibility of a taxpayer in this situation may differ, especially in light of additional information not provided in these examples. For example, in scenario 2, if the 18-year old woman was paying rent to her parents, buying her own food, and generally supporting herself and her child, she likely would qualify for the credit. The applicability of general rules to very specific circumstances highlights some of the complexity in administering family and child related tax benefits like the EITC.

<sup>36</sup> We note that this foundational principle is consistent with Congress' directive in The IRS Reform and Restructuring Act of 1998 (RRA 98) that IRS front-line technical experts should advise Congress about the administrability of pending tax legislation. Pub. L. No. 105-206, § 4021, 112 Stat. 685 (1998). This has not been followed. See National Taxpayer Advocate 2014 Annual Report to Congress 108-111 (Most Serious Problem: Complexity: The IRS Has No Process to Ensure Front-Line Technical Experts Discuss Legislation with the Tax Writing Committees, as Requested by Congress).

When Congress considers legislation with tax administration in mind, the legislation is likely to be simpler and less burdensome.

**General recommendation #2:** Congress must consider the administrability of tax provisions, especially family and child related provisions, whose eligibility criteria may be difficult if not impossible for the IRS to verify. When a tax provision is difficult for the IRS to administer, it can be more prone to improper payments, and ultimately subject certain taxpayers to additional scrutiny. This additional scrutiny can be particularly burdensome for low income taxpayers.

### Congress Must Provide Effective Oversight of the IRS

The IRS has faced significant budget constraints in recent years.<sup>37</sup> As the National Taxpayer Advocate has stated before, however, the support that the IRS needs is not just financial.<sup>38</sup> The IRS needs an engaged Congress that provides appropriate oversight over IRS policies and initiatives. That oversight will lead to greater transparency and public trust in the tax system. It will provide Congress with information on how legislation is meeting the goals that Congress has identified and the challenges that both the IRS and taxpayers face.

We note that there is precedent for this type of legislative engagement. As part of the agency's reorganization mandated by RRA 98, Congress held joint annual meetings, over five years, to review the IRS strategic plan.<sup>39</sup> The hearing participants included three members (two from the majority and one from the minority) from each of the congressional committees with jurisdiction over the IRS: Senate Finance, Appropriations, and Government Affairs, and House Ways and Means, Appropriations, and Government Reform and Oversight.

**General recommendation #3:** Congress should conduct regular oversight hearings of the IRS on a permanent basis.<sup>40</sup> These hearings would provide an opportunity for the IRS to identify challenges and successes with all the tax laws that the IRS administers. In the case of low income tax benefits, these hearings would provide a forum for Congress to hear directly from outside experts, including Low Income Taxpayer Clinics, return preparers, and others with particular insights into the lives and challenges facing low income taxpayers and their families.

With these principles and general recommendations in mind, we now turn to the EITC reform proposals and specific recommendations.

<sup>37</sup> In inflation-adjusted dollars, the IRS budget has declined from \$12.1 billion in 2010 to \$10.1 billion in 2018. Department of the Treasury, *FY 2012 Budget in Brief* 1 (Feb. 2012), [https://home.treasury.gov/about/budget-performance/budget-in-brief/Documents/FY2012\\_BIB\\_Complete\\_508.pdf](https://home.treasury.gov/about/budget-performance/budget-in-brief/Documents/FY2012_BIB_Complete_508.pdf). Department of the Treasury, *FY 2020 Budget in Brief* 1 (March 2019), <https://home.treasury.gov/system/files/266/FY2020BIB.pdf>.

<sup>38</sup> National Taxpayer Advocate 2016 Annual Report to Congress 6-11 (Special Focus: *IRS Future State: The National Taxpayer Advocate's Vision for a Taxpayer-Centric 21st Century Tax Administration*).

<sup>39</sup> Pub. L. No. 105-206, § 4001, enacting Internal Revenue Code (IRC) § 8021(f), & § 4002, amending IRC § 8022, 112 Stat. 685, 783-84 (1998).

<sup>40</sup> This oversight would include issues beyond refundable credits (like the IRS modernization progress), but the EITC is a particularly important provision that could benefit from systematic Congressional review and information and suggestions from the IRS and external stakeholders.

## Restructure the EITC As Two Credits: A Worker Credit and a Child Benefit, and Modernize the Definition of a Qualifying Child

### PRESENT LAW AND PRACTICE

Eligibility for the EITC and the amount of EITC a taxpayer is entitled to are based on a variety of factors including the presence and number of qualifying children, the taxpayer's earned income, adjusted gross income (AGI), investment income, and marital status.<sup>41</sup>

There are eight different EITC formulas as illustrated in Figure 3 (see EITC Databook appendix for the TY 2018 credit parameters), although all follow the same general structure: the EITC increases in value over a range of earned income (between \$0 and the "earned income amount"), reaches its maximum level (when earned income is between the "earned income amount" and the "phase out amount threshold"), and then begins to phase out to zero (when earned income (or AGI, whichever is greater) exceeds the "phase out amount threshold"). The income level at which the credit begins to phase out is higher for married couples than unmarried recipients (this is often referred to as "marriage penalty relief").

**FIGURE 3<sup>42</sup>**

#### EITC Amounts by Earned Income, Marital Status, and Qualifying Children for Tax Year 2018



41 See IRC § 32. For a comprehensive list of EITC eligibility requirements and how to calculate the credit, see Gene Falk & Margot Crandall-Hollick, Cong. Research Serv., R43805, *The Earned Income Tax Credit (EITC): An Overview* (2018). See also National Taxpayer Advocate 2016 Annual Report to Congress 325, 330-331 (Legislative Recommendation: Tax Reform: Restructure the Earned Income Tax Credit and Related Family Status Provisions to Improve Compliance and Minimize Taxpayer Burden).

42 See IRC § 32 and IRS Revenue Procedure 2018-18. EITC phases out based on the taxpayer's earned income or adjusted gross income whichever is greater.

The size of the credit varies substantially depending on the number of qualifying children the taxpayer has, as illustrated in Figure 3. An individual must meet three primary requirements to be a “qualifying child.” First, the individual must have a specific relationship to the tax filer (son, daughter, adopted child, step child, foster child, brother, sister, half-brother, half-sister, step brother, step sister, or descendent of such a relative such as a grandchild, niece, or nephew). Second, the individual must share a residence with the taxpayer for more than half the year in the United States. Third, the individual must be under the age of 19 (or age 24, if a full-time student) or be permanently and totally disabled.<sup>43</sup>

## REASONS FOR CHANGE

The current credit design may not be the most effective means of increasing labor force participation and reducing poverty among all low income taxpayers. The current credit is also complicated for taxpayers to comply with, difficult for the IRS to administer, and is associated with a high improper payment rate, especially among taxpayers with qualifying children.<sup>44</sup>

When the credit was first enacted, its purpose was to encourage work and reduce dependence on cash welfare among single mothers.<sup>45</sup> Economic research has consistently shown that the credit has been effective at increasing the labor force participation of this population.<sup>46</sup> Of note, when the EITC was originally created, a credit for childless workers did not exist.

During the 1990s, Congress enacted the EITC for workers without qualifying children, often referred to as the “childless EITC.” The main rationale for the childless EITC was to offset a gasoline tax increase.<sup>47</sup> The credit was and remains small in comparison to the credit for those with children. In 2018, an individual without any qualifying children working full time at a minimum wage job would receive an EITC of about \$60.<sup>48</sup> Research indicates that while the EITC has had a significant impact on reducing poverty among recipients with children, it has little poverty reduction impact among childless

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<sup>43</sup> The individual must also have a Social Security number that is valid for employment. IRC §§ 32(c)(3)(D), (m).

<sup>44</sup> An improper payment is defined as “any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements” and “any payment to an ineligible recipient.” Improper Payments Elimination and Recovery Act of 2010, Pub. L. No. 111–204, § 2(e), 124 Stat. 2224 (2010) amending Improper Payments Information Act of 2002, Pub. L. No. 107–300, 116 Stat. 2350 (2002) (striking § 2(f) and adding (f)(2)). The IRS estimates that for FY 2018, 25 percent of the total EITC program payments were improper. Department of the Treasury, *Agency Financial Report Fiscal Year 2018* 42–43 (2018).

<sup>45</sup> Margot Crandall-Hollick, Cong. Research Serv., R44825, *The Earned Income Tax Credit (EITC): A Brief Legislative History* 7 (2018).

<sup>46</sup> Nada Eissa & Hilary Hoynes, *Behavioral Responses to Taxes: Lessons from the EITC and Labor Supply*, 20 TAX POL’Y & ECON. 73 (2006). For a review, see Margot Crandall-Hollick & Joseph Hughes, Cong. Research Serv., R44057, *The Earned Income Tax Credit (EITC): An Economic Analysis* (2018).

<sup>47</sup> See Margot Crandall-Hollick, Cong. Research Serv., R44825, *The Earned Income Tax Credit (EITC): A Brief Legislative History* 7 (2018).

<sup>48</sup> This assumes a federal minimum wage of \$7.25 received by a worker who works 40 hours per week for 50 weeks per year equaling an annual pre-tax earned income of \$14,500.

individuals.<sup>49</sup> And given the relatively small benefit (and lower participation rate)<sup>50</sup> it is unlikely to have any labor supply increasing effect among low income childless adults.

Concerns about the size and limited effect on poverty and labor force participation of the childless EITC have become more relevant in light of research showing decreased labor force participation of some childless adults and stagnant wage growth among many workers, especially the poorest workers.<sup>51</sup> Indeed, a recent proposal by Leonard Burman to create a substantially larger and near universal per-worker EITC is partially conceived as a way to encourage work and mitigate wage stagnation for both low and middle income workers.<sup>52</sup>

In addition, TAS, the IRS, and other organizations have repeatedly documented how the EITC's complex structure burdens taxpayers and is difficult for the IRS to administer.<sup>53</sup> Much of the complexity, administrative issues difficulty, and taxpayer burden associated with the credit center around the qualifying child rules.

First, the IRS cannot independently verify that a child meets all the current EITC qualifying child rules, especially the residency requirement, during filing season. There is no national, authoritative, and timely database that indicates where and with whom a child lives during a calendar year for the purposes of administering this tax benefit, making accurate verification of this requirement difficult. Nor do we believe U.S. taxpayers would tolerate the government creating such a database. Failure of a taxpayer

- 49 Chuck Marr et al., *Strengthening the EITC for Childless Workers Would Promote Work and Reduce Poverty* 6 (2016), <https://www.cbpp.org/research/federal-tax/strengthening-the-eitc-for-childless-workers-would-promote-work-and-reduce>. In addition, analysis by the Congressional Research Service indicates that the EITC reduces the proportion of unmarried childless workers in poverty from 19.9 percent to 19.6 percent (a 1.5 percent reduction). In comparison, the EITC reduces the proportion of unmarried households with three children in poverty from 40.5 percent to 32.3 percent (a 20.2 percent reduction). Margot Crandall-Hollick & Joseph Hughes, Cong. Research Serv., R44057, *The Earned Income Tax Credit (EITC): An Economic Analysis* (2018).
- 50 For TY 2016, an estimated 65 percent of eligible childless workers claimed the EITC, compared to an estimated 86 percent participation for those with one child, 85 percent participation for those with two children, and 82 percent participation for those with three children. For more information, see the EITC Databook appendix, *infra*.
- 51 See Figure 4 in Chuck Marr et al., *Strengthening the EITC for Childless Workers Would Promote Work and Reduce Poverty* 6 (2016), <https://www.cbpp.org/research/federal-tax/strengthening-the-eitc-for-childless-workers-would-promote-work-and-reduce>; Isabel V. Sawhill & Christopher Pulliam, *Lots of plans to boost tax credits: which is best?*, BROOKINGS INST. (Jan. 15, 2019), <https://www.brookings.edu/research/lots-of-plans-to-boost-tax-credits-which-is-best/>. See also, Dylan Matthews, *Senate Democrats have coalesced around a big plan to expand tax credits*, Vox (April 10, 2019), <https://www.vox.com/future-perfect/2019/4/10/18302183/tax-cut-democrats-earned-income-tax-credit-child-allowance>; Peter S. Goodman & Jonathan Soble, *Global Economy's Stubborn Reality: Plenty of Work, Not Enough Pay*, N.Y. TIMES, Oct. 7, 2017, <https://www.nytimes.com/2017/10/07/business/unemployment-wages-economy.html>; Jay Shambaugh et al., *Thirteen Facts about Wage Growth* (2017); Matthew Desmond, *Americans Want to Believe Jobs Are the Solution to Poverty. They're Not*, N.Y. TIMES, Sept. 11, 2018, <https://www.nytimes.com/2018/09/11/magazine/americans-jobs-poverty-homeless.html>.
- 52 Leonard E. Burman, *A Universal EITC: Sharing the Gains from Economic Growth, Encouraging Work, and Supporting Families* (2019).
- 53 See National Taxpayer Advocate 2016 Annual Report to Congress 325-340 (Legislative Recommendation: *Tax Reform: Restructure the Earned Income Tax Credit and Related Family Status Provisions to Improve Compliance and Minimize Taxpayer Burden*); National Taxpayer Advocate Fiscal Year 2017 Objectives Report to Congress 113-118 (Area of Focus: *Earned Income Tax Credit Reform Could Reduce the EITC Improper Payment Rate Without Reducing Participation by Eligible Taxpayers*); Margot Crandall-Hollick, Cong. Research Serv., R43873, *The Earned Income Tax Credit (EITC): Administrative and Compliance Challenges* (2018); IRS Pub. 5162, *Compliance Estimates for the Earned Income Tax Credit Claimed on 2006-2008 Returns* (Aug. 2014); Jason J. Fichtner, William G. Gale & Jeff Trinca, *Tax Administration: Compliance, Complexity, and Capacity* (2019); Elaine Maag, *Simplicity: Considerations in Designing a Unified Child Credit*, 63 NAT'L TAX J. 765 (2010). In addition, in its most recent Annual Financial Report, the Treasury Department stated "Treasury and IRS analyses, as well as audits by the Government Accountability Office (GAO) and Treasury Inspector General for Tax Administration (TIGTA), have consistently found that payment errors for EITC and other tax credit programs are largely attributable to the statutory design and complexity of the credits within the tax system, and not rooted in internal control weaknesses, financial management or financial reporting deficiencies." Department of the Treasury, *Agency Financial Report Fiscal Year 2018* 150 (2018).

to meet the residency requirement results in the greatest amount of erroneous claims of the credit in dollar terms.<sup>54</sup> It is also difficult for the IRS to verify that children meet the relationship requirement. While the IRS does have data on a child's age and data that links him or her to at least one biological parent, the IRS does not have data that links the child to other family members (like aunts, siblings, or grandparents).

Second, the qualifying child rules often do not reflect the real-life connections between children and adults in low income families. A 2016 study by the Tax Policy Center found that the number of households made up of "traditional families" (married parents with only biological children) have declined while alternative family types, such as families led by a single parent or cohabitating parents, have increased.<sup>55</sup> Only 51.6 percent of children living in families with income at or below 200 percent of the federal poverty level (FPL) were in families headed by married couples. Low income children were more likely to live with either a single parent, in a multigenerational household, a cohabiting household, or in a family with at least one non-biological child in comparison to their higher income peers.<sup>56</sup> Refundable credits intended to support low income working families should be designed to benefit their target population.

## RECOMMENDATIONS

### **Recommendation 1.1: Replace the EITC With a Per-Worker Credit Based on Earned Income and a Universal Per-Child Benefit**

TAS recommends restructuring the EITC into (1) a refundable worker credit based on *each individual worker's* earned income irrespective of the presence of a qualifying child, and (2) a refundable child benefit that would reflect the costs of caring for a child. This child benefit would also replace the child tax credit and the dependent exemption which is scheduled to be reinstated beginning in 2026.<sup>57</sup> TAS has proposed a similar restructuring of the EITC and other child and family related tax benefits in the past.<sup>58</sup>

#### *The Worker Credit*

Much like the current EITC, the worker credit would be structured to phase-in as a percentage of earned income, reach a plateau, and then phase out.<sup>59</sup> Unlike the current EITC, however, the benefit would be uniform for each worker at a given income level and not vary depending on the number of children the worker has or, if the worker is married, the couple's combined income. This structure would target the benefit to the lowest income taxpayers and help ensure that workers in low-wage jobs receive enough

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54 IRS, Pub. 5162, *Compliance Estimates for the Earned Income Tax Credit Claimed on 2006-2008 Returns* (Aug. 2014).

55 Elaine Maag, H. Elizabeth Peters & Sarah Edelstein, *Increasing Family Complexity and Volatility: The Difficulty in Determining Child Tax Benefits* 10 (2016). See also National Taxpayer Advocate 2016 Annual Report to Congress 334 (Legislative Recommendation: *Tax Reform: Restructure the Earned Income Tax Credit and Related Family Status Provisions to Improve Compliance and Minimize Taxpayer Burden*).

56 *Id.*

57 Under § 11041 of Pub. L. No. 115-97, personal exemptions equal \$0 for TYs 2018-2025.

58 See National Taxpayer Advocate 2016 Annual Report to Congress 325-340 (Legislative Recommendation: *Tax Reform: Restructure the Earned Income Tax Credit and Related Family Status Provisions to Improve Compliance and Minimize Taxpayer Burden*).

59 For examples on how to structure a per-worker credit, see Elaine Maag, *Investing in Work by Reforming the Earned Income Tax Credit* (2015).

money to meet their basic needs.<sup>60</sup> In order to prevent wealthy taxpayers with relatively low levels of earned income from claiming the credit, the credit could phase out based on AGI (a broader measure of income that includes unearned income like capitals gains, dividends, rents and royalties) and/or retain the EITC provision that denies the credit to taxpayers with excessive investment income.<sup>61</sup> The exact parameters could be adjusted to meet policymakers' distributional, anti-poverty, and budgetary goals.<sup>62</sup> Several proposals have already been put forth that expand the EITC for childless workers, providing a framework for how to design a worker credit.<sup>63</sup>

Since the credit would be based on earned income and not on the presence of qualifying children, the dollar amounts of improper payments of the worker credit would likely fall in comparison to current EITC improper payments. Most EITC recipients have at least some Form W-2, *Wage and Tax Statement*, wage income, and errors associated with this type of income are relatively small in dollar terms. In TY 2017, about 15 percent of EITC recipients had both self-employment and W-2 income, while about 11 percent had only self-employment income (see the EITC Databook appendix for additional data).<sup>64</sup>

In addition, as a result of changes made by the Protecting Americans from Tax Hikes (PATH) Act, the IRS has more timely data it can use to detect and prevent any overclaims of the worker credit based on W-2 income.<sup>65</sup> The PATH Act requires employers to submit W-2s (and information returns for nonemployee compensation like Form 1099-MISC, *Miscellaneous Income*) by January 31 and requires the IRS to hold refunds until February 15 if the taxpayer claims EITC or the refundable portion of the child tax credit. These legislative changes were made in part to prevent "refund fraud related to fabricated wages and withholdings."<sup>66</sup> Data indicate that more Forms W-2, *Wage and Tax Statement*, were submitted to the IRS earlier in the 2019 filing season compared with the 2018 filing season.<sup>67</sup> The IRS received 219 million Forms W-2 as of February 4, 2019, compared with 101 million for the same

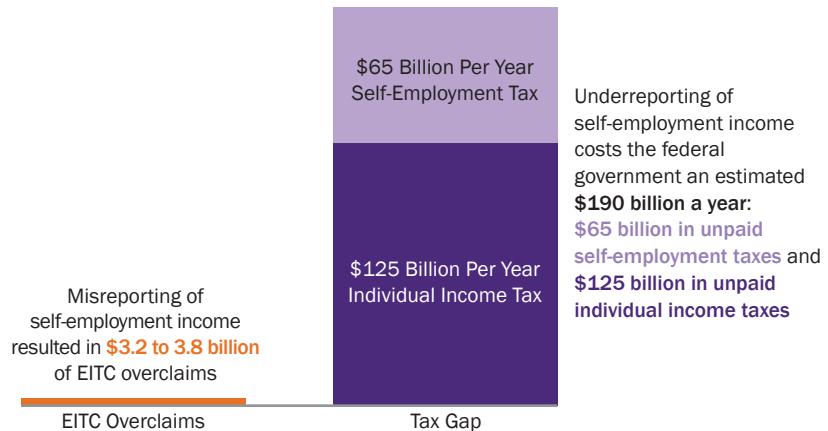
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- 60 Some experts caution that without a minimum wage, employers would reduce and capture the benefit of an increased EITC. See Austin Nichols & Jesse Rothstein, *The Earned Income Tax Credit, in Economics of Means-Tested Transfer Programs in the United States* Vol. 1 137 (Robert A. Moffitt ed., 2016). Therefore, many proposals couple an increased childless EITC or worker credit with an increased minimum wage. See Isabel V. Sawhill & Quentin Karpilow, *Raising the Minimum Wage and Redesigning the EITC*, BROOKINGS INST. (Jan. 30, 2014), <https://www.brookings.edu/research/raising-the-minimum-wage-and-redesigning-the-eitc/>.
- 61 IRC § 32(i).
- 62 For more information about how changing different parameters of the credit can affects taxpayers, see Elaine Maag, Donald Marron & Erin Hoffer, *Redesigning the EITC: Issues in Design, Eligibility, Delivery, and Administration* (2019).
- 63 See, e.g., Leonard E. Burman, *A Universal EITC: Sharing the Gains from Economic Growth, Encouraging Work, and Supporting Families* (2019). For a summary of other recent proposals to modify the EITC and child tax credit, see Isabel V. Sawhill & Christopher Pulliam, *Lots of plans to boost tax credits: which is best?*, BROOKINGS INST. (Jan. 15, 2019), <https://www.brookings.edu/research/lots-of-plans-to-boost-tax-credits-which-is-best/>.
- 64 IRS, CDW, IRTF and Information Returns Master File (IRMF), TY 2017 returns processed through cycle 13 of 2019 (May 2019).
- 65 See Pub. L. No. 114-113, Division Q, Title II, § 201 (a) and (b), 129 Stat. 2242, 3076 (2015) codified at IRC §§ 6071(c) and 6402 (m).
- 66 IRS, *New Federal Tax Law May Affect Some Refunds Filed in Early 2017; IRS to Share Details Widely with Taxpayers Starting This Summer*, <https://www.irs.gov/tax-professionals/new-federal-tax-law-may-affect-some-refunds-filed-in-early-2017> (last visited June 10, 2018).
- 67 For more information about the 2019 Filing Season, see National Taxpayer Advocate FY 2020 Objectives Report to Congress (*Review of the 2019 Filing Season*), *supra*.

period last filing season—an increase of about 117 percent.<sup>68</sup> Assuming payouts of the worker credit were also held till February 15, this additional data would minimize improper payments of the credit associated with W-2 income, although improper payments associated with self-employment income would still exist.

The 2006-2008 EITC Compliance Study indicates that income reporting errors account for approximately one-quarter of credit dollars erroneously claimed, with most of those errors attributed to self-employment income.<sup>69</sup> While manipulation of self-employment income to maximize the credit could still occur, it would likely be relatively small in dollar terms in comparison to the tax gap that results from misreporting of self-employment income, as illustrated in Figure 4.

**FIGURE 4<sup>70</sup>**

**Comparison of the Tax Gap and EITC Overclaim Estimates  
Attributable to Misreported Self-Employment Income**



According to IRS data, the cost of the misreporting of self-employment income in terms of EITC overclaims is between \$3.2 and \$3.8 billion per year while the foregone tax revenue attributable to underreporting of self-employment income costs is approximately \$190 billion per year, nearly fifty times more.

In addition, by making the benefit per worker, the total amount of the credit would no longer fall when taxpayers married, as often happens currently (because their combined incomes exceed the phase out amount threshold). This would eliminate the main driver of the marriage penalty among low income

68 IRS Identity Theft (IDT) and Integrity Verification Operations (IVO) Modeling Analysis - MAIN Performance Report, slide 10 (Feb. 6, 2019). See IRC § 6402(m), which prevents the IRS from issuing certain refunds before Feb. 15 each year. The increase in timely received Form W-2 data, in conjunction with two other changes, likely resulted in more returns being released earlier in the process this year compared to last year. One change is the newly adopted systemic release feature which allows returns to be released back into normal processing systematically rather than waiting for an IRS employee to manually release the refund. The other is the availability of third-party documentation daily rather than weekly.

69 See Table 5 in IRS Pub. 5162, *Compliance Estimates for the Earned Income Tax Credit Claimed on 2006-2008 Returns* (Aug. 2014).

70 IRS Pub. 1415, *Federal Tax Compliance Research: Tax Gap Estimates for Tax Years 2008-2010* 7 (May 2016) & Table 5 in IRS Pub. 5162, *Compliance Estimates for the Earned Income Tax Credit Claimed on 2006-2008 Returns* (Aug. 2014).

taxpayers. It would also reduce the incentive for taxpayers to misreport their marital status, which is a factor, although a comparatively small one in dollar terms, in erroneous claims of the EITC.<sup>71</sup> Finally, a per-worker structure would not discourage work among secondary earners in a married couple, a phenomenon that research suggests does occur with the current EITC.<sup>72</sup>

### ***The Child Benefit***

The child benefit would be designed as a fixed amount per child, without a phase in or phase out, and would replace the current EITC and child credit (and potentially other child related benefits, including the “suspended” dependent exemption). The current child tax credit (a smaller but similar benefit as the EITC) is available to married taxpayers with up to \$400,000 of income. The additional child tax credit—the refundable portion of the child tax credit—currently phases in as earned income increases, limiting the benefit for the lowest income taxpayers.<sup>73</sup>

Providing a fixed, nearly universal child benefit irrespective of income would acknowledge that families at all income levels need a minimum amount of resources to adequately care for children. Additionally, as some commentators have explained:

[p]roviding a universal child benefit is a material and symbolic expression of our common interest in [childrens’] welfare. Local and state governments in the United States recognized this common interest by leading the world throughout most of the nineteenth and twentieth centuries in the public provision of universal elementary and secondary education.<sup>74</sup>

A fixed benefit would be more transparent and easier for low income taxpayers to understand. As with Social Security benefits,<sup>75</sup> policymakers could implicitly target this universal benefit to lower income taxpayers by including part of the benefit amount in the gross income of wealthier taxpayers.<sup>76</sup> (Alternatively, policymakers could retain the current income phase out level of the child tax credit.)

One key objective for policymakers would be to design these new credits so that no current taxpayers would be worse off. The two credits’ structures and amounts should be designed so that the hypothetical amount of the new credits for a given family would not be less than the current levels of the tax benefits they would replace, at least for low and moderate income taxpayers.

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71 In a 2001 report, the J. Comm. on Tax'n identified the structure of the EITC as one of the primary causes of marriage penalties among low income taxpayers. The other major factor they identified was the size of the standard deduction for married taxpayers compared to single taxpayers. J. COMM. ON TAX'N, JCX-8-01, *Overview of Present Law and Economic Analysis Relating to the Marriage Tax Penalty, the Child Tax Credit, and the Alternative Minimum Tax 3* (2001). At the time, the standard deduction for married filers was less than double the amount for single filers. The standard deduction for married filers is currently double the amount for single filers, implying that the structure of the EITC is now the primary cause of marriage penalties among low income taxpayers.

72 Elaine Maag, *Simplicity: Considerations in Designing a Unified Child Credit*, 63 NAT'L TAX J. 765 (2010).

73 See Cong. Research Serv., R41873, *The Child Tax Credit: Current Law* (May 15, 2018).

74 H. Luke Shaefer et al., *A Universal Child Allowance: A Plan to Reduce Poverty and Income Instability Among Children in the United States*, 4 RUSSELL SAGE FOUND. J. SOC. SCI. 22 (2018).

75 Social Security benefits include monthly retirement, survivor, and disability benefits. They don't include Supplemental Security Income (SSI) payments, which aren't taxable. For more information see IRS Pub. 915, *Social Security and Equivalent Railroad Retirement Benefits* (Jan. 2019).

76 For a longer discussion of targeting benefits within a universal program, see Theda Skocpol, *Targeting within Universalism: Politically Viable Policies to Combat Poverty in the United States*, in THE URBAN UNDERCLASS 441 (Christopher Jencks & Paul E. Peterson eds., 1991).

Without modifying the current qualifying child rules or other administrative aspects of the credit, a child benefit could still be subject to improper payments associated with complex qualifying children rules. Therefore, simplifying these rules to reflect actual family circumstances could reduce taxpayer burden and make this benefit easier for the IRS to administer.

### **Recommendation 1.2: Redefine and Modernize the Definition of a Qualifying Child that Reflects the Experiences of Primary Carers and Their Children**

TAS recommends that Congress develop a “primary carer” definition that best reflects the variety of experiences of primary carers and their children. TAS believes that this recommendation would be most effective if it were applied to a child benefit, although it could also provide a framework for restructuring the current qualifying child rules for the EITC and other child related benefits (like the child tax credit and currently suspended dependent exemption).

Adults provide care for children in a variety of ways that may better designate them as the child’s carer than a relationship or residency test. A child’s primary carer may not be their biological parent but may instead be an aunt who takes the child to the doctor, prepares the child’s meals, reads to the child every night, and provides most of the child’s financial support.<sup>77</sup> In Canada, the recipient of their child benefit is defined as the individual who is “primarily responsible for the care and upbringing of a child” meaning the individual is “responsible for such things as supervising the child’s daily activities and needs, making sure the child’s medical needs are met, and arranging for child care when necessary.”<sup>78</sup>

Any approach to administering this more realistic definition would be imperfect. There is simply no data—nor would many Americans tolerate the government having this information—on some of the most personal aspects of a family. Family life is often complicated and defining a family with rigid bright line requirements that cannot be verified during filing season is counterproductive and burdensome. Instead, Congress should seek a definition that is “good enough” to achieve its policy goals. And the IRS, embracing its role as a benefits administrator, should administer this definition in such a way that minimizes taxpayer burden and compliance risks.

One approach to administering a child benefit is to simply pay out the benefit to the taxpayer who attests with his or her income tax return that the taxpayer is the primary carer of the child (as long as the child exists, fulfills any age requirements, and is not being claimed by another taxpayer, all of which is verifiable during filing season using existing databases).

Congress could require that taxpayers include with their income tax return up front information about their relationship with eligible children. Taxpayers could provide this information in the form of a taxpayer checklist like the one that paid tax preparers must currently complete (Form 8867, *Paid Preparer’s Due Diligence Checklist*) or a form similar to the one used to claim the Canadian Child Benefit

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<sup>77</sup> In the past, TAS has suggested that the credit be claimed by the primary carer. As TAS has previously discussed, and as discussed below, in Australia, the primary carer is, in situations where a child has multiple carers, the individual with the greater responsibility for the child. This is determined by identifying who has major daily responsibility for the child, looks after the child’s needs (such as dressing and clothing), makes appointments for the child, is the primary contact for daycare or school, and transports the child to and from school. National Taxpayer Advocate 2016 Annual Report to Congress 339 (Legislative Recommendation: *Tax Reform: Restructure the Earned Income Tax Credit and Related Family Status Provisions to Improve Compliance and Minimize Taxpayer Burden*).

<sup>78</sup> According to the instructions for the Canada Child Benefit (CCB), “If there is a female parent who lives with the child, we usually consider her to be this person.” See Canada Revenue Agency, RC66, *Canada Child Benefits Application* (June 30, 2017).

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There is simply no data—nor would many Americans tolerate the government having this information—on some of the most personal aspects of a family. Family life is often complicated and defining a family with rigid bright line requirements that cannot be verified during filing season is counterproductive and burdensome.

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(CCB).<sup>79</sup> This document could ask the taxpayer several questions that would identify various aspects of his or her caregiving relationship with the child, as well as ask whether the taxpayer could substantiate these claims and explain the documentation that would be needed (like school or medical records) if audited. This should be drafted in plain language with the assistance of benefits providers, social workers, low income caregivers and tax practitioners who work with low income populations. Taxpayers could also be required to sign a statement *at the beginning* of this form attesting to the veracity of their answers (*i.e.*, a jurat). As scholars have noted, “[r]equiring taxpayers to sign the jurat at the start of the return means that they have “pre-committed” to honesty … [and] may make it more difficult for them to subsequently lie about whether they qualify for the tax break.”<sup>80</sup> Any taxpayer who completes the checklist would generally be eligible to receive the credit.

One concern with this flexible definition is that since the IRS cannot accurately verify information on a checklist during filing season and is instead relying on the honesty of the taxpayer, a significant number of duplicate claims (both fraudulent and those that are honest mistakes) could occur. While some taxpayers may rush to claim a child before the eligible taxpayer, there is limited evidence of how often this would happen under a more flexible definition. Indeed, under current EITC eligibility criteria, qualifying children are already defined in such a way that multiple taxpayers may be eligible to claim the child in a given year (often children who live in multigenerational households).<sup>81</sup> Yet, data indicate 152,893 of the 32.9 million children claimed for the EITC—less than 0.5 percent of EITC qualifying children—were claimed more than once in TY 2017.<sup>82</sup> This resulted in a total of 306,148 returns claiming at least one duplicative EITC child. In other words, about 1.2 percent of returns claiming the EITC included a duplicate claim of an EITC qualifying child.<sup>83</sup> And there is no data that indicates that EITC claimants are any more dishonest than any other taxpayers—like the self-employed—who are not currently required to provide documentation during filing season to substantiate claims made on their

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79 Canada Revenue Agency, RC66, *Canada Child Benefits Application* (June 30, 2017).

80 Leslie Book, David Williams & Krista Holub, *Insights From Behavioral Economics Can Improve Administration of the EITC*, 37 VA. TAX REV. 177, 237 (2018).

81 See Elaine Maag, H. Elizabeth Peters & Sarah Edelstein, *Increasing Family Complexity and Volatility: The Difficulty in Determining Child Tax Benefits* (2016) (finding that in 2008, almost one-fifth of children living with a single parent also lived in a multi-generational household). See also National Taxpayer Advocate 2016 Annual Report to Congress 335 (Legislative Recommendation: *Tax Reform: Restructure the Earned Income Tax Credit and Related Family Status Provisions to Improve Compliance and Minimize Taxpayer Burden*).

82 Data show that in TY 2017, among EITC claimants, 32,758,373 dependents were claimed once, 152,568 dependents were claimed twice, 305 dependents were claimed three times, and 20 dependents were claimed four or more times. IRS, CDW, IRTF, TY 2017 returns processed through cycle 13 of 2019 (May 2019).

83 The data is for returns claiming the EITC after the IRS exercises its summary assessment authority (SAA), discussed below. IRS, CDW, IRTF, TY 2017 returns processed through cycle 13 of 2019 (May 2019).

tax returns.<sup>84</sup> However, even if the extent of this problem is unknown, addressing this issue upfront will increase public support for the program, limit erroneous claims, and mitigate taxpayer burden.

### *Paying Out the Child Benefit When There Are Multiple Claims*

In cases in which more than one individual claimed the child, Congress should work with the IRS and advocates for low income taxpayers to develop effective and fair rules that balance the need for an accurate determination with the need for a timely one.<sup>85</sup> Below is one proposal on how to administer the child benefit that balances these competing interests. The costs and benefits of this proposal can inform policymakers seeking to accurately administer child related tax benefits. The proposal has two main components: holding of the returns for a longer period of time, and processing multiple claims for a child when they arise.

#### **HOLDING INCOME TAX RETURNS UNTIL THE VAST MAJORITY HAVE BEEN FILED**

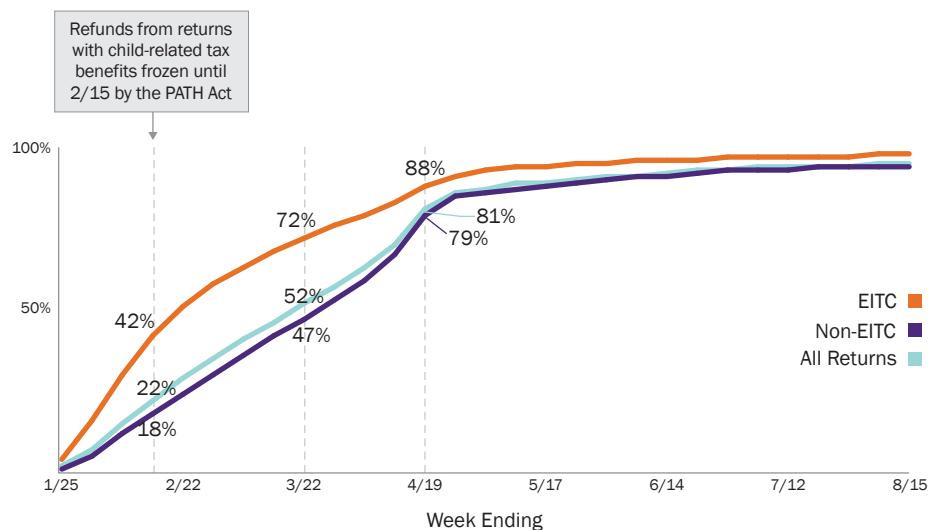
Absent a longer holding and verification period, ineligible taxpayers have an incentive to file a return early and claim the child benefit. Providing the IRS with additional time to process returns claiming the benefit can discourage this behavior, by allowing the IRS to screen for multiple claims *before* paying out the benefit.

Data from the 2018 filing season of TY 2017 returns indicate that by March 22 almost three quarters of EITC returns had been filed, while nearly half of non-EITC returns had been filed. (For more information see the EITC Databook appendix.) By April 19, almost nine in ten EITC returns had been filed, while almost eight in ten non-EITC returns had been filed.

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- 84 Underreporting of income is the largest source of the tax gap. One study found that the “ratio of aggregate misreported income to true income generally increases with income... Much of the distributional pattern of noncompliance is associated with the fact that on average high-income taxpayers receive their income in forms that have higher noncompliance rates.” Andrew Johns & Joel Slemrod, *The Distribution of Income Tax Noncompliance*, 63 Nat'l Tax J. 397, 397 (2010). Most underreported income is from individual income tax returns, and most of this underreported income is from business and self-employment income. See IRS, Pub. 1415, *Federal Tax Compliance Research: Tax Gap Estimates for Tax Years 2008-2010* 7 (May 2016). A study of EITC claimants found that for every 24 cents of the EITC that go to ineligible taxpayers, roughly 11 cents are “responding to the EITC incentive to wrongly claim children and 13 cents to taxpayers who would wrongly claim children even in the absence of the EITC (and who would be making inadvertent errors).” Jeffrey B. Liebman, *The EITC Compliance Problem*, 2 POVERTY RES. NEWS 10 (1998).
- 85 Under current EITC tie-breaker rules, the child is generally treated as a qualifying child of: (1) the parents if they file a joint return; (2) the parent if only one of the persons is the child’s parent; (3) the parent with whom the child lived the longest during the tax year if two of the persons are the child’s parent and they do not file a joint return together; (4) the parent with the highest AGI [adjusted gross income] if the child lived with each parent for the same amount of time during the tax year, and they do not file a joint return together; (5) the person with the highest AGI if no parent can claim the child as a qualifying child; or (6) a person with higher AGI than any parent who can also claim the child as a qualifying child but does not. See IRS, *Qualifying Child of More Than One Person*, <https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit/qualifying-child-of-more-than-one-person> (last visited May 13, 2019).

**FIGURE 5<sup>86</sup>**

**Percent of Tax Year 2017 Individual Income Tax Returns Filed by Type of Return and Filing Date**



Congress could choose to hold returns until mid-March, a month later than returns claiming the EITC or refundable portion of the child tax credit are currently held for income verification purposes. By that date, if only one taxpayer had claimed a given child for the child benefit (using the previously mentioned checklist or application form), the credit would be paid out promptly to the taxpayer.

Any proposal that holds returns for longer periods of time could burden the lowest income taxpayers. A study by the Tax Policy Center found that almost 80 percent of taxpayers who claimed the EITC or child tax credit reported a financial hardship.<sup>87</sup> It may also drive more of the working poor to refund anticipation products that, if unregulated, would erode the value of the child benefit. The receipt of the worker credit, if paid out promptly, could reduce this hardship, especially in the first year the child benefit is administered when the delay will be particularly burdensome. Data indicate that most poor children (approximately two-thirds) live in families with at least one worker.<sup>88</sup>

Alternatively, taxpayers could be required to pre-certify eligibility to claim the child benefit for a particular child (*e.g.*, returning a checklist to the IRS before filing season) which might reduce some of the burden on taxpayers as well as the IRS.<sup>89</sup> Under this scenario, taxpayers who did not pre-certify

<sup>86</sup> IRS, CDW, IRTF, TY 2017 returns processed through cycle 13 of 2019 (May 2019).

<sup>87</sup> Elaine Maag, Stephen Roll & Jane Oiphant, *Delaying Tax Refund for Earned Income Tax Credit and Additional Child Tax Credit Claimants* 4 (2016).

<sup>88</sup> Joseph Dalaker, Maggie McCarty & Gene Falk, Cong. Research Serv., R44698, *Demographic and Social Characteristics of Persons in Poverty: 2015* (2016).

<sup>89</sup> A 2005 IRS report to Congress about its EITC Certification Initiative found that “[t]axpayers also appear not to object to the concept of proving eligibility prior to receiving the EITC. About 64 percent of the test group and 59 percent of the control group taxpayers thought that taxpayers should be required to prove they meet the EITC requirements before they received the EITC. About 30 percent of the test group answered no to this question, as did 36 percent of the control group.” IRS, *IRS Earned Income Tax Credit (EITC) Initiative, Final Report to Congress* 43 (October 2005).

would have their child benefit held beyond February 15 to give the IRS more time to verify eligibility and reduce improper payments of the benefit.<sup>90</sup>

Regardless of the approach, Congress should weigh the benefit of a process intended to reduce improper payments (*e.g.*, holding returns for a longer period of time or pre-certification) against the burden that process places on low income taxpayers with children when determining the appropriate way to administer a child benefit.

#### PROCESSING MULTIPLE CLAIMS OF THE CHILD BENEFIT

In cases where there are multiple claims of the child benefit for a given child, there should be clear criteria for paying out the credit. Congress could decide that in cases where there are multiple claims, no benefit would be paid out until the IRS verified which taxpayer best satisfied the primary caregiver requirements. (Taxpayers would still get their worker credit, minimizing the impact of the delay.) The IRS would then request via audit additional documentation described in the primary caregiver checklist. This approach could, however, be financially burdensome to many low income Americans, especially during the first year of the credit or if IRS eligibility determinations took months to complete. One TAS study found that it took, on average, 241 days for the IRS to complete an EITC correspondence audit.<sup>91</sup>

As previously mentioned, 152,893 of the 32.9 million children claimed for the EITC were claimed more than once in TY 2017, corresponding to a total of 306,148 duplicative returns—1.2 percent of EITC returns—including a duplicate EITC qualifying child.<sup>92</sup> More broadly, when examining all dependents—not just dependents claimed for the EITC—on EITC returns, about 1.3 percent of these returns had at least one duplicate dependent.<sup>93</sup>

Among non-EITC returns, 124,685 different dependents were claimed more than once in TY 2017 representing 261,112 returns claiming at least one duplicate child (about 0.2 percent of the 106,756,327 non-EITC returns with dependents).<sup>94</sup> Even if the IRS audited all of these 567,260 returns

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90 If taxpayers did submit pre-certification documentation, but the IRS found that another taxpayer had claimed the same benefit for the same child (*i.e.*, they had also submitted pre-certification documentation), the IRS would have additional time under this process to determine the valid claim, although both returns could be held past February 15.

91 IRS, CDW, AIMS Closed Case Database for EITC audits closed in FY 2018 (May 2019). We note that IRS has recently released a six-year plan to update and modernize the agency's information technology and improve digital experiences for taxpayers. See IRS, Pub. 5336, *Integrated Modernization Business Plan* (Apr. 2019), [https://www.irs.gov/pub/irs-utl/irs\\_2019\\_integrated\\_modernization\\_business\\_plan.pdf](https://www.irs.gov/pub/irs-utl/irs_2019_integrated_modernization_business_plan.pdf). While improvements in technology alone cannot address the needs of low income taxpayers, we note that advances in technology may improve the audit process and allow for taxpayers and the IRS to communicate in more of a real-time environment. Video technology allowing for virtual face-to-face meetings on cell phones or tablets may be particularly helpful to this population. See also National Taxpayer Advocate FY 2020 Objectives Report to Congress 108-112 (Area of Focus: *Facilitate Digital Interaction Between the IRS and Taxpayers While Still Maintaining Strict Security of Taxpayer Information*); National Taxpayer Advocate 2015 Annual Report to Congress vol. 2 101-110 (Research Study: *Understanding the Hispanic Underserved Population*).

92 The data is for returns claiming the EITC after the IRS exercises its SAA. IRS, CDW, IRTF, TY 2017 returns processed through cycle 13 of 2019 (May 2019).

93 A total of 277,578 dependent children were claimed on more than one return in TY 2017, representing 567,260 returns claiming at least one duplicate dependent (about two percent of the returns where EITC was present of the return after the IRS exercised its SAA). After eliminating returns claiming duplicate dependents almost certainly attributable to fraud (a few dependents were claimed on about 20,000 returns each), 1.3 percent of the EITC returns included at least one duplicative dependent. IRS, CDW, IRTF, TY 2017 returns processed through cycle 13 of 2019 (May 2019).

94 IRS, CDW, IRTF, TY 2017 returns processed through cycle 13 of 2019 (May 2019). Returns not claiming the EITC after the IRS used its SAA.

with duplicate dependent claims, these audit numbers would still be less than the 892,187 of individual income tax returns audited in FY 2018.<sup>95</sup>

This approach however fails to recognize that in many cases a child may be cared for by multiple individuals. Congress could explore the possibility of allowing the child benefit to be divided—based on income, how long the child lived with the caregiver, or other data provided on the checklist—or simply equally—between two caregivers. If neither of the two taxpayers disputed the other’s claim, the credit would be split and paid out. TAS has previously written about how Australia pays out multiple claims of its child benefit, providing a potential model for this approach.<sup>96</sup> In cases where there is a dispute between the two taxpayers, or more than two claims for a child, the determination could be made as part of the audit process. Assuming some of the duplicate claims were split between two carers, the number of audits related to this benefit would likely be less than the number of audits when only one taxpayer could claim the benefit (and hence also less than the current number of audits of EITC recipients).

This proposal is one approach to administering a nearly universal child benefit that is intended to reduce improper payments of the credit while ensuring caregivers receive a benefit that helps them with the cost of raising a child. However, if a definition is unworkable for the IRS or is poorly targeted to the population policymakers are seeking to help, then Congress could, as part of its oversight authority, continue to work with the IRS and outside experts to refine the definition of a qualifying child.

And ultimately, if a revised qualifying child definition remains unworkable for the IRS to administer, Congress may consider whether another agency would be a more effective administrator of a child benefit.<sup>97</sup> For example, Congress may want to examine whether the Social Security Administration—which currently provides survivor benefits to children if a parent dies—would more effectively administer a child benefit or other family tax benefits.<sup>98</sup> If the IRS continues to operate with the mindset of collecting revenue and not administering benefits, Congress may want to reconsider continuing to provide substantial amounts of financial assistance for children through the tax code.

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<sup>95</sup> In FY 2018, the IRS audited a total of 382,203 individual income tax returns which included an EITC claim. Of those returns, about 330,000 were selected for audit on the basis of an EITC claim. IRS, *FY 2018 Data Book* (table 9a).

<sup>96</sup> National Taxpayer Advocate 2016 Annual Report to Congress 339 (Legislative Recommendation: *Tax Reform: Restructure the Earned Income Tax Credit and Related Family Status Provisions to Improve Compliance and Minimize Taxpayer Burden*).

<sup>97</sup> Unlike the proposed child benefit, the proposed worker credit would still be administered by the IRS given its access to accurate and timely income data, as described previously in this chapter.

<sup>98</sup> Social Security Administration, *Benefits Planner: Survivors/If You Are The Survivor*, <https://www.ssa.gov/planners/survivors/ifyou.html> (last visited May 17, 2019).

## Establish Greater IRS Oversight of Tax Preparers and Tax Preparation Software

### PRESENT LAW AND PRACTICE

Private third-party intermediaries—paid preparers and software platforms—have a significant role in the administration of the EITC.<sup>99</sup> The application process for social benefit programs administered outside the tax system typically includes government-provided assistance.<sup>100</sup> Unlike those other programs, the IRS has essentially outsourced significant functions in the EITC claim and distribution process to the private sector. (A small proportion—about two percent in TY 2017—of EITC returns are prepared by IRS trained volunteers, such as those with Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) programs.)<sup>101</sup> Specifically, the following private third-party intermediaries are instrumental in the administration of this credit:

- Paid preparers, which include:
  - Unenrolled tax return preparers;
  - Attorneys;
  - CPAs; and
  - Enrolled agents;
- Commercial tax return preparation and filing software providers, including Free File and Free File Fillable Forms programs; and
- Ancillary product and service providers, including those who sell or facilitate access to refund products.

Overall, most paid preparers are non-credentialed and hence are not required to pass any competency tests or take any educational courses on tax return preparation.<sup>102</sup> EITC returns generally also follow this pattern, with most prepared by non-credentialed preparers. The following figure details the various methods used to prepare and file EITC returns in TY 2017.

99 See the EITC Databook appendix, for detail on the low overhead costs to administer the EITC as compared to other social benefit programs, *infra*.

100 For more information on the various different social benefit programs, see *Government Benefits*, <https://www.usa.gov/benefits> (last visited May 15, 2019).

101 IRS, CDW, IRTF and Return Preparers Program Database, TY 2017 returns processed through cycle 13 of 2019 (May 2019).

102 As of May 1, 2019, the IRS has issued over 750,000 Preparer Tax Identification Numbers (PTINs), of which approximately 29,000 are attorneys, 209,000 are Certified Public Accountants (CPAs), 200 are enrolled actuaries, 55,000 are enrolled agents, 670 are enrolled retirement plan agents, and 60,000 are Annual Filing Season Program (AFSP) Record of Completion Holders, a program discussed below. Thus, at least 400,000 preparers are uncredentialed (some preparers have multiple designations). IRS, *Return Preparer Office Federal Tax Return Preparer Statistics* (last visited May 21, 2019) (data current as of May 1, 2019).

**FIGURE 6, Methods of Preparation of TY 2017 EITC Returns<sup>103</sup>**

Preparation Method	Percentage of TY 2017 EITC Returns
Electronically Filed	94%
Paid Preparer	55%
Paid Preparer: Unenrolled or Unknown Type	39%
Paid Preparer: CPAs	5%
Paid Preparer: Enrolled Agents	4%
Paid Preparer: Attorney	0% <sup>104</sup>
Self-Prepared Using Commercial Software	41%
Free File	2%
Filed Using Refund Product	34%

### PRIOR EFFORTS TO REGULATE UNENROLLED PREPARERS

In 2009, the IRS Commissioner concluded that the IRS had the authority to impose minimum standards on all paid tax preparers. The IRS initiated an extensive series of hearings and discussions with stakeholder groups to receive comments and develop a system within which all parties believed they could operate.<sup>105</sup> The IRS began to implement the program in 2011, but it was terminated after a U.S. district court held that the IRS does not have the authority to impose preparer standards without statutory authorization.<sup>106</sup> Since that time, members of the House and Senate have introduced legislation that would provide the IRS with the statutory authorization to establish and enforce minimum standards.<sup>107</sup>

The current state of oversight differs depending on the intermediary. There are no mandatory competency or licensing requirements for unenrolled tax return preparers of federal income tax returns.<sup>108</sup> Attorneys, CPAs, and enrolled agents have to pass competency examinations and satisfy continuing education requirements. In addition, the IRS requires volunteer preparers to pass competency examinations as part of the VITA and TCE programs.<sup>109</sup>

<sup>103</sup> These categories are not mutually exclusive, so the percentages sum to more than 100 percent. IRS, CDW, IRTF, Return Preparers Program Database, and Electronic Tax Administration Database, TY 2017 returns processed through cycle 13 of 2019 (May 2019). Only select paid preparer types are shown.

<sup>104</sup> This percent is equal to 0.2 percent and rounds to zero percent. IRS, CDW, IRTF, Return Preparers Program Database, and Electronic Tax Administration Database, TY 2017 returns processed through cycle 13 of 2019 (May 2019).

<sup>105</sup> See IRS, Pub. 4832, *Return Preparer Review* (Dec. 2009).

<sup>106</sup> *Loving v. IRS*, 917 F. Supp. 2d 67 (D.C.C. 2013), aff'd, 742 F.3d 1013 (D.C. Cir. 2014).

<sup>107</sup> Protecting Taxpayers Act, S. 3278, 115th Cong. § 202 (2018); Taxpayer Protection and Preparer Proficiency Act, S. 137, 114th Cong. (2015); JOINT COMM. ON TAX'N, JCX-108-15, *Description of the Chairman's Mark of a Bill to Prevent Identity Theft and Tax Refund Fraud* 16-21 (2015); Tax Return Preparer Competency Act, H.R. 4141, 114th Cong. § 2 (2015) (Cong. Black); Taxpayer Rights Act of 2015, H.R. 4128, 114th Cong. § 202 (2015) (Cong. Becerra).

<sup>108</sup> Return preparers are subject to various penalties. For example, IRC § 6695(g) imposes due diligence requirements on preparers of returns claiming EITC, the child tax credit, or the American Opportunity Tax Credit. IRC § 6695(g) provides for a penalty, currently \$500, for each failure to satisfy the due diligence requirements for one of the above-mentioned tax benefits claimed on a return. Thus, there could be several violations associated with one return.

<sup>109</sup> IRS, Pub. 5166, *IRS Volunteer Quality Site Requirements* 5 (Oct. 2018); IRS, Pub. 5101, *Intake/Interview & Quality Review Training, 2019 Filing Season* (Oct. 2018); IRS, Pub. 4961, *VITA/TCE Volunteer Standards of Conduct – Ethics Training, 2018 Returns* (Oct. 2018).

The IRS currently administers a voluntary “certification” program for return preparers called the Annual Filing Season Program (AFSP), which has continuing education requirements; one of the required annual courses includes a test.<sup>110</sup> As a sweetener to participate in the program, return preparers who satisfy the requirements receive a Record of Completion and have the ability to represent taxpayers before the IRS during an examination of a tax return or claim for refund they prepared.<sup>111</sup> In addition, AFSP Record of Completion holders are included in a public database of return preparers on the IRS website.<sup>112</sup> However, the participation in this voluntary program is low. As of May 1, 2019, the IRS issued approximately 60,000 AFSP Records of Completion.<sup>113</sup>

IRS oversight of commercial return preparation and filing software providers is minimal. The IRS imposes requirements on all software providers as detailed in section seven of Revenue Procedure 2007-40.<sup>114</sup> In addition, the IRS has a contractual relationship with Free File, Inc. Only about 2.7 million returns filed during the 2019 filing season (about two percent of all individual income tax returns) were filed using Free File.<sup>115</sup> Further, the IRS does not test any commercial software, including Free File software that is accessible through its own website, to determine if the program accurately prepares returns and provides clear prompts for the user.<sup>116</sup>

The IRS does not have meaningful oversight of the providers of ancillary products, such as refund products or audit protection insurance.<sup>117</sup> In addition, the United States GAO recently reported on the limitations of IRS data on refund products sold to taxpayers during the tax preparation and filing process.<sup>118</sup> GAO found that the data is unreliable because the IRS provides insufficient and limited options for the preparers to accurately report usage of all available refund products. The IRS has also failed to inform preparers of changes made to the way preparers should report usage of these products.

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<sup>110</sup> Rev. Proc. 2014-42, 2014-29 I.R.B.; IRS, *Requirements for Annual Filing Season Program Record of Completion*, <https://www.irs.gov/tax-professionals/general-requirements-for-the-annual-filing-season-program-record-of-completion> (last visited May 21, 2019). The voluntary program requires preparers to renew their PTIN for the upcoming year and consent to adhere to the obligations in Circular 230, Subpart B and section 10.51.

<sup>111</sup> To receive the record of completion, the preparer must consent to be subject to the duties and restrictions relating to practice before the IRS in § 10.51 of Circular 230 for the entire period covered by the record of completion. Rev. Proc. 2014-42, 2014-29 I.R.B.

<sup>112</sup> The Directory of Federal Tax Return Preparers with Credentials and Select Qualifications includes the name, city, state, ZIP Code, and credentials of all attorneys, CPAs, enrolled agents, enrolled retirement plan agents, and enrolled actuaries with a valid PTIN, as well as all AFSP Record of Completion holders. IRS, *Directory of Federal Tax Return Preparers with Credentials and Select Qualifications*, <https://irs.treasury.gov/rpo/rpo.jsf> (last visited Apr. 25, 2019).

<sup>113</sup> IRS Return Preparer Office, *Return Preparer Office Federal Tax Return Preparer Statistics* (May 1, 2019).

<sup>114</sup> 2007-26 I.R.B (June 25, 2007). These requirements are further detailed in IRS Pub. 1345, *Handbook for Authorized IRS e-file Providers of Individual Income Tax Returns* (Feb. 2019).

<sup>115</sup> Eligible taxpayers with AGI of less than \$66,000 can use the Free File software of one of the listed programs to self-prepare their returns at no charge. See IRS, *Free File: Do Your Federal Taxes For Free*, <https://www.irs.gov/filing/free-file-do-your-federal-taxes-for-free> (last visited May 15, 2019). Pursuant to an agreement between the IRS and Free File, Inc., the last renewal of which is dated Oct. 31, 2018, Free File programs and Free File Fillable Forms are accessible through the IRS website. IRS, *Daily E-File at a Glance: U.S. Totals for Individual Returns* (May 14, 2019).

<sup>116</sup> For a more detailed discussion of Free File, see National Taxpayer Advocate 2018 Annual Report to Congress 65-78 (*Most Serious Problem: Free File: The IRS's Free Offerings Are Underutilized, and the IRS Has Failed to Set Standards for Improvement*).

<sup>117</sup> The IRS has the authority to impose civil or criminal penalties for the unauthorized use or disclosure of tax return information during the marketing and sale of these products. IRC §§ 7216, 6713. The National Consumer Law Center (NCLC), in its most recent report of refund products, found that the products continue to evolve with a resurgence of interest-bearing refund anticipation loans (RALs) during FS 2019 (in addition to the no-fee RALs that were prevalent in 2017). Mandi Matlock & Chi Chi Wu, NATIONAL CONSUMER LAW CENTER, 2019 Tax Season: *The Return of the Interest-Bearing Refund Anticipation Loan and Other Perils Faced by Consumers* 13-23 (2019).

<sup>118</sup> GAO, GAO-19-269, *Tax Refund Products: Product Mix Has Evolved and IRS Should Improve Data Quality* (2019).

Finally, there are currently no meaningful federal requirements for return preparers, software programs, or ancillary product providers to provide a detailed breakdown of all fees charged during the return preparation and filing process.<sup>119</sup> If the IRS had the ability to track all fees charged in the preparation and filing process, including ancillary fees, it could better understand preparer and taxpayer behavior and tailor its consumer protection communications accordingly. Tracking of fees would enable the IRS to identify potentially unscrupulous preparation practices, especially those questionable practices targeting EITC recipients. An example of such practices includes charging exorbitant fees for ancillary refund products. The IRS could provide tips on how to avoid scams and educate taxpayers about the various refund delivery options available, including the advantages and disadvantages of each, and what questions to ask the preparer at the beginning of the engagement.<sup>120</sup>

## REASONS FOR CHANGE

There is strong evidence that some private intermediaries are not acting in the best interest of taxpayers and tax administration.

### Paid Preparer Oversight

The evolution of the commercial tax return preparation and filing industry has made it easier for inexperienced and untrained preparers to enter the business. An individual wishing to enter the business can now easily do so without having any knowledge of tax law. All it takes is a tax return preparation software package and perhaps an arrangement with a settlement service provider who works with a financial institution to accept and process refund products.<sup>121</sup> Figure 7 provides information on TY 2017 EITC returns prepared by unenrolled preparers a well as the amount of credit paid.

**FIGURE 7, Tax Year 2017 EITC Returns Prepared by Unenrolled Preparers and Amounts of EITC Paid Out<sup>122</sup>**

Total EITC paid (\$ billions)	\$63.8
Number of EITC Returns (millions)	26.2
EITC Returns by Paid Preparer (millions)	14.3
EITC Returns by Unenrolled Paid Preparer (%)	71.5
Percent of EITC Paid by Unenrolled Preparer (%)	78.5

<sup>119</sup> IRS, Pub. 1345, *Handbook for Authorized IRS e-file Providers of Individual Income Tax Returns* 35 (Feb. 2019). Pub. 1345 provides that all authorized e-file providers should “[a]dvice taxpayers of all fees and other known deductions to be paid from their refund and the remaining amount the taxpayers will receive.” However, this language is located in the refund products section of the publication and only seems to apply to returns claiming refunds. Further, it is unclear whether the IRS actually enforces this provision in its administrative guidance. In 2017, the National Taxpayer Advocate recommended that the IRS require all electronic return originators (EROs) to prepare a “truth-in-lending” statement if they offered a RAL. National Taxpayer Advocate 2017 Annual Report to Congress 233 (Most Serious Problem: Refund Anticipation Loans: Increased Demand for Refund Anticipation Loans Coincides with Delays in the Issuance of Refunds).

<sup>120</sup> Leslie Book, *U.S. Refundable Credits: The Taxing Realities of Being Poor*, 4 J. TAX ADMIN. 71 (2018).

<sup>121</sup> For a detailed discussion of the participants in the tax preparation and refund product industry, see GAO, GAO-19-269, *Tax Refund Products: Product Mix Has Evolved and IRS Should Improve Data Quality* 4-9 (2019).

<sup>122</sup> For the purposes of this table unenrolled preparers are those preparers that have not self-identified as a specific type of paid preparer on Form W-12, *IRS Paid Preparer Tax Identification Number (PTIN) Application and Renewal*. IRS, CDW, IRTF and Return Preparers Program Database, TY 2017 returns processed through cycle 13 of 2019 (May 2019).

In addition, studies have found that non-credentialed tax return preparers routinely prepare inaccurate returns, which has the effect of harming both taxpayers and tax administration.<sup>123</sup> Some of those studies have shown non-credentialed preparers have higher error rates than other preparers. For example, the IRS conducted a study to estimate compliance with the EITC during the 2006 to 2008 period. That study found that unaffiliated unenrolled preparers (*i.e.*, non-credentialed preparers who are not affiliated with a national tax return preparation firm) were responsible for “the highest frequency and percentage of EITC overclaims.”<sup>124</sup> The study also found that about half of the EITC returns prepared by unaffiliated unenrolled preparers contained overclaims, and the overclaim averaged between 33 percent and 40 percent.<sup>125</sup> More recent IRS data also indicate that unenrolled preparers have on average higher Dependent Database (DDb) scores than other types of paid preparers.<sup>126</sup> A higher DDb score indicates a higher probability of an error on the return.

Since 2002, the National Taxpayer Advocate has recommended that Congress authorize the IRS to conduct preparer oversight. Her proposals included a program to register, test, and certify unenrolled preparers, as well as increase preparer penalties and improve due diligence requirements. The National Taxpayer Advocate has also recommended that the IRS mount a comprehensive education campaign to inform taxpayers how to choose a competent preparer and remind them to obtain a copy of the tax return with the preparer’s signature.<sup>127</sup> Such proposed oversight has received widespread support from various practitioner groups and members of Congress.<sup>128</sup>

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<sup>123</sup> GAO, GAO-06-563T, *Paid Tax Return Preparers: In a Limited Study, Chain Preparers Made Serious Errors* (2006) (statement of Michael Bostik, Director - Strategic Issues, Before the Committee on Finance, U.S. Senate); GAO, GAO-14-467T, *Paid Tax Return Preparers: In a Limited Study, Preparers Made Significant Errors* (2014) (statement of James R. McTigue, Jr., Director - Strategic Issues, Before the Committee on Finance, U.S. Senate); TIGTA, Ref. No. 2008-40-171, *Most Tax Returns Prepared by a Limited Sample of Unenrolled Preparers Contained Significant Errors* (Sept. 2008); Statement of Jamie Woodward, Acting Commissioner, New York Dept. of Taxation and Finance, before IRS Tax Return Preparer Review Public Forum (Sept. 2, 2009); Tom Herman, *New York Sting Nabs Tax Preparers*, WALL ST. J. (Nov. 26, 2008). For example, the average DDb score of a preparer type unknown was more than twice the score of a CPA. A higher DDb score is associated with a greater risk or error or noncompliance. IRS, CDW, IRTF, DDb, TY 2017 returns processed through cycle 13 of 2019 (May 2019); See EITC Databook appendix, *Preparer Type and Average DDB Score - Tax Year 2017*, *infra*.

<sup>124</sup> IRS, Pub. 5162, *Compliance Estimates for the Earned Income Tax Credit Claimed on 2006-2008 Returns* 24-26 (Aug. 2014).

<sup>125</sup> *Id.*

<sup>126</sup> For more information, see the EITC Databook appendix, *infra*.

<sup>127</sup> National Taxpayer Advocate 2013 Annual Report to Congress 61-74; National Taxpayer Advocate 2009 Annual Report to Congress 41-69; National Taxpayer Advocate 2008 Annual Report to Congress 503-512; National Taxpayer Advocate 2006 Annual Report to Congress 197-221; National Taxpayer Advocate 2005 Annual Report to Congress 223-237; National Taxpayer Advocate 2004 Annual Report to Congress 67-88; National Taxpayer Advocate 2003 Annual Report to Congress 270-301; National Taxpayer Advocate 2002 Annual Report to Congress 216-230; *Fraud in Income Tax Return Preparation: Hearing Before the H. Subcomm. on Oversight of the H. Comm. on Ways and Means*, 109th Cong. (2005) (statement of Nina E. Olson, National Taxpayer Advocate).

<sup>128</sup> Tax Administration Good Government Act, H.R. 1528 (incorporating Tax Administration Good Government Act, S. 882), 108th Cong. § 141 (2004); Telephone Excise Tax Repeal Act, S. 1321 (incorporating Taxpayer Protection and Assistance Act, S. 832), 109th Cong. § 203 (2006); Tax Administration Good Government Act, H.R. 1528 (incorporating Tax Administration Good Government Act, S. 882), 108th Cong. § 141 (2004). The organizations supporting oversight included the American Bar Association, the American Institute of Certified Public Accountants (AICPA), the National Association of Enrolled Agents, the National Society of Accountants, and the National Association of Tax Professionals. See *Fraud in Income Tax Return Preparation: Hearing Before the H. Subcomm. on Oversight of the H. Comm. on Ways & Means*, 109th Cong. (2005).

## Tax Software Oversight

About 90 percent of all federal individual income tax returns are electronically prepared and filed using some type of software product. Further, 94 percent of EITC returns are e-filed using commercial software, including Free File.<sup>129</sup> Even though preparation software providers play a crucial role in the administration of the EITC, the IRS has very limited authority over them. The IRS also does not even conduct testing for calculations or reporting accuracy. The complexity of the tax laws puts the taxpayers at a disadvantage in spotting errors or omissions in the software. Since 2006, the National Taxpayer Advocate has recommended that the IRS test software programs for completeness and accuracy.<sup>130</sup> However, to date, the IRS has failed to develop adequate testing procedures.

In addition to testing for accuracy, there may be an important role for the IRS to play in regulating the format of tax software. For example, research has shown that the format of software, such as the presence of a pre-completion refund status bar, may encourage taxpayers to take aggressive positions.<sup>131</sup> This may be especially relevant in the context of EITC when the answer to a prompt may involve information that is not subject to verification and may mean the difference between a sizeable refund and a balance due. At a minimum, the IRS should have input into not only ensuring that the content of software is accurate but that its format minimizes the risk of unintentional errors and encourages taxpayers to be honest.<sup>132</sup>

### WOULD PREPARER REGULATION BE TOO COSTLY?

Opponents of preparer regulation have raised the concern that taxpayers and the government will bear the costs of such regulation. However, the GAO addressed this issue in a 2008 report evaluating the costs and effectiveness of state return preparer regulatory programs in California and Oregon. GAO found that TY 2001 federal individual income tax returns prepared under the Oregon program, which is similar to the one implemented by the IRS in 2011 and enjoined by the D.C. Circuit Court in *Loving* in 2014, were significantly more accurate than returns prepared in the rest of the country.<sup>133</sup> The additional tax revenue associated with the increased accuracy far outweighed the government's cost to administer the Oregon program. Further, the costs of compliance incurred by the preparers were spread out among all of the preparers' clients. Moreover, clients will also avoid all the downstream consequences (*i.e.*, enforcement treatments, including penalties and interest) resulting from return inaccuracy or, even worse, being victimized by unscrupulous preparers.

<sup>129</sup> IRS, CDW, IRTF, TY 2017 returns processed through cycle 13 of 2019 (May 2019).

<sup>130</sup> See *Tax Return Preparation Options for Taxpayers: Hearing Before the S. Finance Comm.*, 109th Cong. (2006) (transcript of testimony); National Taxpayer Advocate 2015 Annual Report to Congress 167, 170 n.20 (*Most Serious Problem: Affordable Care Act (ACA) – Individuals: The IRS Is Compromising Taxpayer Rights as It Continues to Administer the Premium Tax Credit and Individual Shared Responsibility Payment Provisions*).

<sup>131</sup> See Jay A. Soled & Kathleen D. Thomas, *Regulating Tax Return Preparation*, 58 B.C.L. Rev. 151, 180-181, 200-201 (2017).

<sup>132</sup> Jay A. Soled & Kathleen D. Thomas, *Regulating Tax Return Preparation*, 58 B.C.L. Rev. 178-183 & 200-201 (2017).

<sup>133</sup> GAO, GAO-08-781, *Tax Preparers: Oregon's Regulatory Regime May Lead to Improved Federal Tax Return Accuracy and Provides a Possible Model for National Regulation* (2008).

### *Free File*

The argument for government oversight of software providers is even stronger for Free File programs. Because it is in the best interest of both taxpayers and the government that EITC claimants have access to free and accurate filing software, government oversight of Free File is important.

While the IRS has entered into a partnership with Free File, Inc. and both parties negotiated and are bound by the terms of the agreement, the IRS currently has very limited oversight authority over the program. The software industry understandably has a profit motive and the IRS is limited in what it can require of the participants. The appropriate level of oversight is subject to differing opinion but given the issues in the news at the time of drafting, it is clear that stronger oversight is necessary.<sup>134</sup> Such oversight should cover access to the programs, tax forms included, accuracy of calculations, and clarity of software prompts and guidance. The need to regulate Free File was recently illustrated when the program was subject to allegations that some program participants used code to prevent consumers from accessing their Free File option through an internet search. As a result, the IRS engaged an outside contractor to review the program and some congressional members called on the Federal Trade Commission to investigate the allegations.<sup>135</sup>

### *Fee Transparency and Disclosure*

While the IRS does not have the authority to regulate the financial institutions that offer refund products, it is in the best interest of tax administration to maintain a degree of oversight over the marketing and use of these products by return preparers and software providers. The fees charged for these products reduce the amount of the EITC ultimately received by taxpayers.<sup>136</sup> Further, the IRS needs to have a clear understanding of the demand for these products so that it can provide informative communications to both taxpayers and preparers. Finally, quality data will enable the IRS, other regulators, consumer advocacy groups, and researchers to report on tax policy and consumer protection issues.<sup>137</sup>

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<sup>134</sup> See, e.g., Justin Elliott & Kengo Tsutsumi, *The TurboTax Trap: TurboTax Uses A “Military Discount” to Trick Troops Into Paying to File Their Taxes*, PROPUBLICA (May 23, 2019). Developed in response to a directive in H.R. REP. NO. 114-194, at 21-22 (2016) by the House of Representatives’ Committee on Appropriations, the IRS-Treasury Tax Software Field Experiment is a study conducted in partnership with tax preparation software providers. The study tested ways to improve self-preparers’ abilities to assess their own eligibility for the EITC by embedding additional questions in the tax preparation software. Department of the Treasury, *Report to Congress on Strengthening Earned Income Tax Credit Compliance through Data Driven Analysis* 12-14 (July 5, 2016).

<sup>135</sup> Naomi Jagoda, *IRS Bringing in Outside Contractor on Review of ‘Free File’ Program*, THE HILL (May 15, 2019, 3:13 PM), <https://thehill.com/policy/finance/443883-irs-working-with-outside-contractor-on-review-of-free-file-program>; Jad Chamseddine, *IRS to Review Charges that Free File Members Hide Services*, TAX NOTES TODAY (May 13, 2019), <https://www.taxnotes.com/tax-notes/legislation-and-lawmaking/irs-review-charges-free-file-members-hid-services/2019/05/13/29gh4>. In addition, Senators Elizabeth Warren and Jeanne Shaheen and Congressman Brad Sherman are introducing the Tax Filing Simplification Act of 2019, which is a revised version of S. 912, 115th Cong. (2017). The bill prevents the IRS from entering into an agreement restricting its ability to provide tax preparation or filing software. It also directs the IRS to develop a free, online tax preparation and filing service that would allow all taxpayers to prepare and file their taxes directly with the federal government. See Press Release, Elizabeth Warren, Senator, Senator Warren Leads Colleagues in *Reintroducing Legislation to Simplify and Decrease the Costs of Tax Preparation and Filing* (Apr. 12, 2019), <https://www.warren.senate.gov/newsroom/press-releases/senator-warren-leads-colleagues-in-reintroducing-legislation-to-simplify-and-decrease-the-costs-of-tax-preparation-and-filing>.

<sup>136</sup> National Taxpayer Advocate 2017 Annual Report to Congress 227-234 (Most Serious Problem: Refund Anticipation Loans: Increased Demand for Refund Anticipation Loans Coincides with Delays in the Issuance of Refunds).

<sup>137</sup> GAO, GAO-19-269, *Tax Refund Products: Product Mix Has Evolved and IRS Should Improve Data Quality* 41 (2019).

## RECOMMENDATIONS

TAS recommends that Congress provide the IRS with the authority to establish minimum competency and other standards for paid preparers and software providers. TAS recommends that the IRS work with TAS to establish effective standards that protect the most vulnerable taxpayers.

### **Recommendation 2.1: Authorize the Secretary to Establish Standards for Return Preparers**

Congress should amend Title 31, section 330 of the U.S. Code to authorize the Secretary to establish minimum competency standards, including education and testing, for federal tax return preparers.<sup>138</sup> In addition to the standards applicable to preparers of all returns, the legislation should authorize the Secretary to create a voluntary EITC-specific designation with EITC-specific minimum competency standards. The voluntary program could have incentives such as releasing refunds for prepared returns more quickly or, similar to the AFSP, allowing participants to represent taxpayers on EITC audits of returns they prepare.

### **Recommendation 2.2: Authorize the Secretary to Establish Standards for Tax Return Software Providers**

Congress should authorize the Secretary to establish minimum standards for commercial return preparation software providers, including participants in Free File, Inc., by promulgating regulations setting forth requirements for software providers and imposing appropriate sanctions for negligent or willful violations of such requirements.<sup>139</sup> The Secretary should initially propose the requirements in a notice of proposed rulemaking to give the industry, taxpayers, representatives, and consumer advocates an opportunity to provide comments. The proposed requirements should include access to free software,<sup>140</sup> accuracy of calculations in preparation, coverage of forms enumerated periodically by the IRS, marketing of ancillary products, and disclosure of all associated fees. Because the line between preparers and software is blurring as software providers are increasingly including consultations with preparers as part of their software offerings, such regulation should also provide that any error caused by individual preparer advice that is virtually incorporated into a software program, such as through a virtual chat feature, is treated the same as if the error were programmed into the software.<sup>141</sup> In addition, the regulation should include a provision requiring the IRS, in collaboration with the National Taxpayer Advocate or a third-party contractor, to perform routine tests of return preparation software for accuracy and completeness before the start of the filing season with a particular focus on the accuracy of EITC calculations. The testing should also cover whether the software prompts and descriptions are clear and easy to understand.

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<sup>138</sup> For legislative language generally consistent with this recommendation, see Taxpayer Protection and Preparer Proficiency Act, S.137, 114th Cong. (2015) and other bills cited herein.

<sup>139</sup> Congress can add this authority to 31 U.S.C. § 330(a) as proposed by Jay A. Soled and Kathleen DeLaney Thomas, *Regulating Tax Return Preparation*, 58 B.C.L. Rev. 151, 193-194 (2017). In addition, Congress could amend 31 U.S.C. § 330(c) to authorize the IRS to impose sanctions such as suspension, expulsion, censure, or monetary penalties on software providers.

<sup>140</sup> Access to free software includes prohibitions on misleading practices, including attempts by software providers to lure free software customers to their fee-based versions. Jay A. Soled and Kathleen DeLaney Thomas, *Regulating Tax Return Preparation*, 58 B.C.L. Rev. 151, 193-194 (2017).

<sup>141</sup> Regulating the software provider rather than the individual preparer seems more appropriate due to the difficulty in administrating such oversight on the individual preparers who may only provide advice on a minor component of the return.

### Recommendation 2.3: Require Disclosure and Reporting of Fees

Congress should require all paid return preparers to provide a fee disclosure statement to the taxpayer prior to providing tax preparation and filing services. The law should also require preparers to keep a copy of such statements, so the IRS can conduct random audits or visits to verify compliance. The statement could take the form of a “truth-in-preparation fees” statement similar in nature to a “truth-in-lending” statement.<sup>142</sup> Alternatively, the statement could take a form similar to the National Consumer Law Center (NCLC) standard fee disclosure table as detailed in its Model Individual Tax Preparer Act.<sup>143</sup> Regardless of the model used to develop the fee disclosure form, the law should require the IRS to work with the industry and consumer advocates to incorporate clear language and design to help the taxpayer better understand all direct and indirect fees and eliminate the ability of preparers to hide fees.

To address the shortcomings identified by GAO, Congress could mandate the Secretary partner with the commercial return preparation and filing industry and consumer protection groups to identify the gaps and limitations in its current ancillary tax refund product reporting structure. For example, the discussions should cover methods to improve IRS data on tax-time financial products to accurately reflect product use; updating refund product indicators (currently the IRS only provides three: no product, RAL, and refund anticipation check); and necessary refund product reporting guidance for tax preparers. Ultimately, such discussions would result in recommendations to address identified reporting issues as well as improve data collection and analysis. The Secretary should report to Congress on the results of these discussions and provide an implementation timeline for such recommendations.

<sup>142</sup> Since October 3, 2015, Truth-in-Lending disclosures are now termed “Loan Estimates.” The Loan Estimate provides the applicant with important information about estimated interest rate, monthly payments, and total closing costs for the loan. It also informs the applicant about estimated tax and insurance costs, any anticipated changes in interest rate, penalties, and a negative amortization feature, if applicable. Consumer Financial Protection Bureau, *What is a Loan Estimate?* (Sept. 12, 2017), <https://www.consumerfinance.gov/ask-cfpb/what-is-a-loan-estimate-en-1995/>.

<sup>143</sup> Chi Chi Wu, *Riddled Returns: How Errors and Fraud by Paid Tax Preparers Put Consumers at Risk and What States Can Do* (2014). The National Consumer Law Center disclosure provision is based on a similar Maryland provision, Md. Code §§ 21-101 to 21-502.

## Ensure Low Income Taxpayers Have Due Process Protections Comparable to Protections of Other Taxpayers by Limiting the Use of Summary Assessment Authority

### PRESENT LAW AND PRACTICE

The IRS has a variety of mechanisms intended to ensure taxpayer compliance with income tax provisions, including the EITC. Enforcement procedures undertaken *before a refund is issued* to the taxpayer are generally referred to as “pre-refund compliance” measures. From the standpoint of the IRS as a revenue collector, pre-refund compliance measures are a better way to ensure the IRS protects revenue than post-refund compliance measures that seek to claw back money that has already been paid out. In addition, some have argued that pre-refund compliance measures are less burdensome to taxpayers than post-refund measures.<sup>144</sup> Two of the most common “pre-refund compliance measures” are pre-refund audits and summary assessment authority (SAA—commonly known as “math error” authority, or MEA).<sup>145</sup>

#### WHAT IS “SUMMARY ASSESSMENT” AUTHORITY ANYWAY?

In certain circumstances, the IRS has special authority to “summarily assess” tax without first sending the taxpayer a “notice of deficiency.” A notice of deficiency generally gives the taxpayer at least 90 days to petition the Tax Court before being required to pay. Thus, summary assessments bypass important procedural protections. When “summary assessment authority” was first enacted in 1926, the IRS could only use it to address math errors—generally arithmetic mistakes that could be detected on the face of the return (*e.g.*,  $2+2=5$ ).<sup>146</sup> For this reason it is generally referred to as “math error authority,” but that terminology is no longer accurate.

In 1976, Congress expanded the IRS’s summary assessment authority to cover “clerical errors” (*e.g.*, inconsistent entries on the face of the return, certain omissions, and credit claims in excess of statutory maximums),<sup>147</sup> and then later expanded it to cover other circumstances such as where a taxpayer omits a required Taxpayer Identification Number or uses a Social Security number that does not match the one in the Social Security Administration’s Numident database.<sup>148</sup>

<sup>144</sup> See, *e.g.*, Charles P. Rettig, Commissioner, IRS, *Testimony Before the Senate Appropriations Committee Subcommittee on Financial Services and General Government on the IRS Budget and Current Operations* (May 15, 2019), where he discusses a proposal to “Lower Employer Threshold for Mandatory Electronic Reporting of W-2 data.” See also GAO, GAO 18-544, *Tax Fraud and Noncompliance: IRS Could Further Leverage the Return Review Program to Strengthen Tax Enforcement* (2018).

<sup>145</sup> Although the IRS generally makes summary assessments (*e.g.*, to correct math errors) when processing returns, and thus before it pays any refunds, it believes it has the authority to make summary assessments after it has processed the return and paid any refunds. See Program Manager Technical Advice (PMTA) 2018-17 (Apr. 10, 2018), [https://www.irs.gov/pub/lanca/pmta\\_2018\\_17.pdf](https://www.irs.gov/pub/lanca/pmta_2018_17.pdf). TAS is concerned about post-refund SAA and has written extensively on this topic. See National Taxpayer Advocate Fiscal Year 2019 Objectives Report to Congress 114-118 (Area of Focus: *The IRS Has Expanded Its Math Error Authority, Reducing Due Process for Vulnerable Taxpayers, Without Legislation and Without Seeking Public Comments*); National Taxpayer Advocate 2018 Annual Report to Congress 164-169 (Most Serious Problem: *Post-Processing Math Error Authority: The IRS Has Failed to Exercise Self-Restraint in Its Use of Math Error Authority, Thereby Harming Taxpayers*).

<sup>146</sup> H.R. REP. No. 69 1, at 10-11 (1926).

<sup>147</sup> Pub. L. No. 94-455, § 1206(b), 90 Stat. 1520, 1704 (1976). The IRS had interpreted “math errors” broadly, but some courts had limited it to arithmetic errors; thus the 1976 legislation formally expanded the IRS’s authority to encompass “clerical” errors, while also “restricting” its use. See H.R. REP. No. 94-658, at 289 (1976).

<sup>148</sup> The IRS was not expressly authorized to use the summary assessment procedures to address the omission of a dependent’s taxpayer identification number on a return until 1996. See Small Business Job Protection Act of 1996, Pub. L. No 104-188, § 1615, 110 Stat. 1853 (1996); H.R. REP. No. 104-737, at 319-20 (1996).

Crucially, summary assessment authority was intended by Congress to be used to correct an error when it “will be apparent, and the correct answer will be obvious.”<sup>149</sup> Congress only granted the IRS summary assessment authority to address the specific types of errors described in Internal Revenue Code (IRC) Sections 6213(b) and (g). The IRS cannot summarily assess tax anytime it believes a return might contain an error.

In FY 2018, approximately 330,000 EITC returns were audited.<sup>150</sup> Most of these audits—about 75 percent—were conducted before the refund was issued to the taxpayer.<sup>151</sup> As a result of these pre-refund audits, the IRS was able to prevent what it believed were to be over \$800 million in improperly claimed EITC from being paid out.<sup>152</sup>

Recent media reports have highlighted the human toll of audits on low income taxpayers, many of whom are EITC claimants.<sup>153</sup> In addition, research suggests EITC audits also discourage participation in the program.<sup>154</sup> On numerous occasions, TAS has highlighted the need to reform the audit process, especially with respect to low income taxpayers, and has provided many recommendations on how to do so, although few of these proposals have been implemented by the IRS. Despite serious concerns with the EITC audits, the current audit process—imperfect as it is—does include numerous provisions that safeguard taxpayer rights, and if significantly improved, the National Taxpayer Advocate believes the audit process could improve long-term voluntary compliance.<sup>155</sup>

SAA allows the IRS, often after cross-checking taxpayer information on the income tax return with third-party or government databases, to correct what the IRS determines is an error and notify the taxpayer of the corrected tax owed/refund amount. Of the 26.2 million EITC returns in TY 2017, all were screened for a so-called math error, and slightly over 197,000—less than one percent—were determined to include one.<sup>156</sup> (A wide range of discrepancies involving the EITC can trigger summary assessments; see the EITC Databook appendix for the types of SAA and associated IRS notices.) As

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<sup>149</sup> H.R. REP. No. 94-658, at 290 (1976).

<sup>150</sup> IRS, CDW, AIMS Closed Case Database for EITC audits closed in FY 2018 (June 2019).

<sup>151</sup> IRS, CDW, AIMS audits closed in FY 2018 and the Individual Master File (IMF) through cycle 13 of 2019 (June 2019).

<sup>152</sup> IRS, CDW, AIMS Closed Case Database for EITC audits closed in FY 2018 and IMF through cycle 13 of 2019 (June 2019). The IRS reversed the EITC claim before any moneys were disbursed (during a pre-refund audit).

<sup>153</sup> See Paul Kiel, *It's Getting Worse: The IRS Now Audits Poor Americans at About the Same Rate as the Top 1%*, PRO PUBLICA (May 30, 2019), <https://www.propublica.org/article/irs-now-audits-poor-americans-at-about-the-same-rate-as-the-top-1-percent> and Paul Kiel & Jesse Eisinger, *Who's More Likely to Be Audited: A Person Making \$20,000 — or \$400,000?*, PRO PUBLICA (Dec. 12, 2018, 5 AM), <https://www.propublica.org/article/earned-income-tax-credit-irs-audit-working-poor>.

<sup>154</sup> See John Guyton et. al., *The Effects of EITC Correspondence Audits on Low-Income Earners* (NBER, Working Paper No. 24465, 2019).

<sup>155</sup> See National Taxpayer Advocate 2018 Annual Report to Congress 91-104 (Most Serious Problem: *Improper Earned Income Tax Credit Payments: Measures the IRS Takes to Reduce Improper Earned Income Tax Credit Payments Are Not Sufficiently Proactive and May Unnecessarily Burden Taxpayers*); National Taxpayer Advocate 2015 Annual Report to Congress 248-260 (Most Serious Problem: *Earned Income Tax Credit (EITC): The IRS Is Not Adequately Using the EITC Examination Process As an Educational Tool and Is Not Auditing Returns With the Greatest Indirect Potential for Improving EITC Compliance*); National Taxpayer Advocate 2015 Annual Report to Congress 261-283 (Most Serious Problem: *Earned Income Tax Credit (EITC): The IRS's EITC Return Preparer Strategy Does Not Adequately Address the Role of Preparers in EITC Noncompliance*); National Taxpayer Advocate 2005 Annual Report to Congress 94-122 (Most Serious Problem: *Earned Income Tax Credit Exam Issues*); National Taxpayer Advocate 2002 Annual Report to Congress 75-80 (Most Serious Problem: *The Length of EITC Audits Contributes to Taxpayer Concerns*).

<sup>156</sup> IRS, CDW, IRTF, TY 2017 returns processed through cycle 13 of 2019 (May 2019). The EITC Databook in the appendix contains a listing of math errors related to EITC; however, other math errors changes to the tax return may automatically reduce EITC, *infra*.

a result of SAA, the IRS was able to prevent what it believed was nearly \$350 million in improperly claimed EITC from being paid.<sup>157</sup>

From the IRS's viewpoint, SAA is a cheaper alternative to the audit process. According to the Treasury Inspector General for Tax Administration (TIGTA), it costs \$1.50 to resolve an erroneous EITC claim using automated SAA compared to \$278 for an audit.<sup>158</sup> From the taxpayer's point of view, SAA and pre-refund audits both result in the taxpayer having to prove eligibility *before* he or she can receive the credit. However, in comparison to the audit process, the way in which a taxpayer can contest a "math error" is not only more limited in time, but is also significantly more confusing and burdensome, with fewer protections.

### **Audits and Summary Assessment Authority: A Comparison of Determining Taxpayer Compliance With the EITC Qualifying Child Residency Requirement**

Understanding the key distinctions of a pre-refund audit and SAA can be illustrated by comparing how both processes would be used to try to determine whether a taxpayer was non-compliant with the EITC's qualifying child residency requirement. As previously discussed, a qualifying child for the EITC must live with the taxpayer for more than half the year, in addition to satisfying other requirements.

For the purposes of this example, we will assume a child's parents are divorced, that the father pays the mother child support for the child and is considered the non-custodial parent of the child, the mother is the custodial parent, and that the child lived for more than half the year with his or her father. The father claims EITC with respect to the child. While it is often assumed that the child lives for more than half the year with the custodial parent, that may not always be the case. For example, a custodial parent may be unable to care for the child in a given year due to many reasons, including job loss or illness. The taxpayer is assumed to fulfill all the other eligibility criteria for the credit and for simplicity is assumed to have no other non-EITC errors on his or her income tax return.

#### ***Pre-Refund Audit (Deficiency Procedures)***

In the pre-refund audit process, the IRS validates the information on the taxpayer's return with information in the DDb database, assigning the tax return a score that indicates the probability that the taxpayer is not in compliance with EITC eligibility requirements, in this case the qualifying child residency requirement. In the case of this particular taxpayer, data from Federal Case Registry of Child Support Orders (FCR)—a database that identifies the custodial and non-custodial parents of the child for the purposes of the administration and enforcement of child support laws<sup>159</sup>—would indicate that the taxpayer claiming the credit was the non-custodial parent.

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<sup>157</sup> IRS, CDW, IRTF, TY 2017 returns processed through cycle 13 of 2019 (May 2019). Some SAA adjustments are later reversed.

<sup>158</sup> TIGTA, Ref. No. 2014-40-093, *Existing Compliance Processes Will Not Reduce the Billions of Dollars in Improper Earned Income Tax Credit and Additional Child Tax Credit Payments* 16 (Sept. 2014).

<sup>159</sup> The Federal Case Registry (FCR) is a national database maintained by the Department of Health and Human Services (HHS). The FCR aids the administration and enforcement of child support laws. Court ordered enforcement actions generally stem from the non-custodial parent's failure to pay child support. The FCR data consist of records that identify children, custodial parties, non-custodial parents, and putative (alleged) parents, along with other relevant information. See Appendix A of IRS, *Federal Case Registry Final Report*, Project 5-02-12-3-005 (CR-39) (Sep. 2003), (on file with TAS).

Hence, if a non-custodial parent claims a child for the EITC, the IRS will assign his return a higher probability of having an error (*i.e.*, a higher DDb score), even if the claim is accurate. A subsample of tax returns with a high DDb score will then be selected for pre-refund audits. Of the approximately 6.6 million EITC returns that are flagged during the DDb process, about five percent were selected for pre-refund audit in TY 2017.<sup>160</sup>

If a taxpayer is selected for a pre-refund audit, the IRS then holds the amount of the refund associated with that potential error (in this case the qualifying child error) and issues a letter to the taxpayer explaining the items that the IRS believes are in error and the IRS's proposed adjustment of the taxpayer's tax bill or refund. (If the taxpayer owes additional tax or is due a smaller refund, the difference between the taxpayer and IRS's calculation is referred to as a "deficiency.") The taxpayer then has 30 days to respond to this letter and can either accept the proposed adjustment or request an administrative appeal.<sup>161</sup> If the taxpayer does not respond to this 30-day letter (or their appeal is not successful), the IRS will then issue a "statutory notice of deficiency" (SNOD).<sup>162</sup> The SNOD informs the taxpayer of the right to dispute the deficiency in U.S. Tax Court—before paying any additional tax the IRS claims is due—and prohibits the IRS from assessing and collecting additional tax during the 90-day period beginning from the date of the letter. SNODs are often referred to as 90-day letters or "tickets to Tax Court."

If the taxpayer does not timely file a petition with the U.S. Tax Court, the IRS's proposed deficiency (either the taxpayer paid too little tax or received too large a refund) will often stand (although the taxpayer could still take their case to district court or the Court of Federal Claims).<sup>163</sup> If the taxpayer does file a timely petition, the IRS is prevented from assessing and collecting additional tax while the case is pending.

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<sup>160</sup> IRS, CDW, DDb, AIMS Closed Case Database, and the IMF for TY 2017 returns processed by cycle 13 of 2019 (May 2019).

<sup>161</sup> In some cases, the IRS sends the taxpayer the 30-day letter at the initiation of the audit, where the IRS combines the initial contact letter and the preliminary report into a "combo letter." This practice can undercut the protections of the audit process and confuse the taxpayer. See National Taxpayer Advocate 2018 Annual Report to Congress 126, 141 (Most Serious Problem: Correspondence Examination: The IRS's Correspondence Examination Procedures Burden Taxpayers and Are Not Effective in Educating the Taxpayer and Promoting Future Voluntary Compliance) (recommending that IRS end the practice of using combo letters).

<sup>162</sup> IRC § 6212(a).

<sup>163</sup> In *Flora v. United States*, the Supreme Court held that taxpayers must fully pay a liability before bringing a refund suit in either a federal district court or the Court of Federal Claims. See *Flora v. United States*, 357 U.S. 63 (1958), *reaff'd*, *Flora v. United States*, 362 U.S. 145 (1960). To allow greater opportunity for pre-payment judicial review, TAS has recommended repealing what is commonly known as the *Flora* rule. See National Taxpayer Advocate 2018 Annual Report to Congress 364-386 (Legislative Recommendation: Fix the *Flora* Rule: Give Taxpayers Who Cannot Pay the Same Access to Judicial Review as Those Who Can). See also Nina E. Olson, *Why We Should Repeal the Flora Rule or Find Another Way to Give Taxpayers Who Cannot Pay the Same Access to Judicial Review as Those Who Can (Part 1 of 3)*, NTA BLOG (May 29, 2019), <https://taxpayeradvocate.irs.gov/news/nta-blog-Why-We-Should-Repeal-the-Flora-Rule-Part-1-of-3>; Nina E. Olson, *Why We Should Repeal the Flora Rule or Find Another Way to Give Taxpayers Who Cannot Pay the Same Access to Judicial Review as Those Who Can (Part 2 of 3)*, NTA BLOG (June 5, 2019), <https://taxpayeradvocate.irs.gov/news/nta-blog-Why-We-Should-Repeal-the-Flora-Rule-Part-2-of-3?category=Tax%20News>; Nina E. Olson, *Why We Should Repeal the Flora Rule or Find Another Way to Give Taxpayers Who Cannot Pay the Same Access to Judicial Review as Those Who Can (Part 3 of 3)*, NTA BLOG (June 12, 2019), <https://taxpayeradvocate.irs.gov/news/nta-blog-Why-We-Should-Repeal-the-Flora-Rule-Part-3-of-3?category=Tax%20News>.

### **WHAT BENEFIT DOES A STATUTORY NOTICE OF DEFICIENCY PROVIDE A LOW INCOME TAXPAYER IN COMPARISON TO SUMMARY ASSESSMENT AUTHORITY?**

While TAS has written extensively on the flaws with the current EITC audit process, some of the aspects of this process—including the statutory notice of deficiency (SNOD)—can protect low income taxpayers from additional financial burden. A stylized example can illustrate this point.

Assume a taxpayer had a \$500 income tax liability and claimed a \$1,500 EITC, resulting in an expected \$1,000 refund from the IRS.

If, as a result of a pre-refund audit, the IRS determined that the taxpayer was ineligible for the entire EITC, the IRS would not pay out the taxpayer's \$1,000 refund. Instead the IRS would propose that the taxpayer owe the IRS \$500. As part of this audit, the IRS would typically send the taxpayer a SNOD, which informs a taxpayer of this proposed change. The SNOD also provides the taxpayer with a right to challenge the proposed denial of the EITC in Tax Court without first paying the \$500 tax. During the 90-day period and until the case is resolved, the IRS could not collect the \$500. Thus, the SNOD is the taxpayer's ticket to Tax Court and pre-payment court review.

In contrast, if, as a result of SAA, the IRS determined the taxpayer was ineligible for the entire credit, the taxpayer would not only be denied her refund, but she would need to request that the summary assessment be canceled (or abated) within 60 days. If she did not make that request, the taxpayer would have to pay the \$500 balance to the IRS or face possible IRS collection action. Only after she fully paid the \$500 balance, could the taxpayer get court review in federal district court or the Court of Federal Claims in a refund case.

Given that low income taxpayers may be unable to pay the proposed additional tax, and that the Tax Court is a more user-friendly court than most other courts, the receipt of a SNOD is a valuable taxpayer right.

These “deficiency” or “exam” procedures (as audit processes are often referred to) provide taxpayers with the right to automatically petition the Tax Court and resolve their issues, without having to first pay any additional tax the IRS claims is owed. Nonetheless, there are still many concerns with the current audit process, especially considering many barriers low income taxpayers may have in navigating it. Indeed, in FY 2018, virtually all EITC audits (99.9 percent) were done via mail (referred to as correspondence audits). Approximately 43 percent of audited EITC taxpayers did not respond to audits and of those, they waited an average of 207 days to have the dispute resolved (see the EITC Databook appendix for additional information).<sup>164</sup>

#### ***Summary Assessment Authority (aka “Math Error” Authority)***

If the qualifying child residency error was adjusted using summary assessment authority, the same taxpayer’s return would again be compared to the data in the FCR (and other databases). However, under SAA, if a non-custodial parent claimed the EITC for that child, the IRS would assume the taxpayer was incorrectly claiming the child. (Importantly, while the IRS does have the authority to use the FCR for summary assessment based on mismatches, the IRS has adopted the National Taxpayer Advocate’s recommendation not to do this because of the inaccuracy of this database. For a further discussion, see below.) Hence what was once a factor in assigning a *probability* that a taxpayer had made a mistake, would now be used to *definitively* identify a taxpayer who made a mistake. By way of comparison, while approximately five percent of EITC returns flagged by the DDb are currently audited,

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<sup>164</sup> IRS, CDW, AIMS Closed Database for EITC audits closed in FY 2018 (May 2019).

approximately nine percent break the DDb residency rule.<sup>165</sup> The portion of the refund associated with this error would be denied by the IRS. As part of these “summary assessment” procedures, the IRS would send the taxpayer in our example a letter documenting the change it actually made to his EITC and informing him that he has 60 days to contact the IRS to request the IRS change its determination if he believes the IRS’s correction was in fact a mistake (this is often referred to as requesting an “abatement”). If the taxpayer did not request abatement within the 60 days, the summary assessment effectively would stand (although the taxpayer could still go to a U.S. District Court or the Court of Federal Claims in a refund proceeding, if he could afford to pay any additional tax in full), and the change could not be appealed to the U.S. Tax Court. If the taxpayer did request abatement within the 60-day window, the IRS would abate the assessment and follow formal “deficiency procedures” used in the audit process, as previously described.

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**Approximately 43 percent of audited EITC taxpayers did not respond to audits and of those, they waited an average of 207 days to have the dispute resolved (see the EITC Databook appendix for additional information).**

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## REASON FOR CHANGE

In cases where a determination is not factually simple or cannot be accurately verified using a database, SAA often leads the IRS to incorrectly classify inconsistencies on tax returns. For example, the IRS has the authority to summarily adjust EITC returns that are inconsistent with the FCR database—where a person listed as a noncustodial parent in the FCR database claims the child.<sup>166</sup> However, the IRS has not done so because a study, which Congress mandated be undertaken with the National Taxpayer Advocate, showed that the FCR was not sufficiently reliable for purposes of verifying a child’s residence.<sup>167</sup> The study found that *up to 40 percent* of the cases selected solely based on FCR data were incorrect.<sup>168</sup> Thus, while the FCR is useful for identifying *questionable* returns and selecting them for audit, it is not appropriate as a basis for *summarily* denying a credit or exemption.

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<sup>165</sup> Of the 6.7 million TY 2017 returns scored by the DDb—indicating they may include an error, virtually all of them—6.6 million—were returns that included a claim for the EITC. Of these 6.6 million returns, about 605,000 (or nine percent) were flagged as potentially breaking the EITC qualifying residency rule (of those 312,000 broke only the residency rule, with the remainder breaking the residency rule in combination with another rule). The approximately 6.6 million EITC returns claimed approximately \$25 billion of the EITC, and those that were flagged as potentially breaking the residency rule claimed \$1.9 billion of the credit. Amounts are calculated after summary assessment. Just because an EITC dependent breaks a residency rule, the entire amount of EITC may not be affected (for example there may be another EITC child claimed on the return who did not break a residency rule). IRS, CDW, DDb (June 2019).

<sup>166</sup> IRC § 6213(g)(2)(M).

<sup>167</sup> See IRS, *Federal Case Registry Final Report*, Project 5-02-12-3-005 (CR-39) (Sept. 2003). In 2001, Congress authorized the IRS to use summary assessment procedures to deny EITC, beginning in 2004, where data from the FCR of Child Support Orders indicates the taxpayer claiming a child is actually the noncustodial parent. *Economic Growth and Tax Relief Reconciliation Act of 2001*, Pub. L. No. 107-16, § 303(g), 115 Stat. 38 (2001) (codified at IRC § 6213(g)(2)(M)). The House Conference Report requested a study of the FCR database by the Department of Treasury, in consultation with the National Taxpayer Advocate, of the accuracy and timeliness of the data in the FCR; the efficacy of using math error authority in this instance in reducing costs due to erroneous or fraudulent claims; and the implications of using math error authority in this instance, given the findings on the accuracy and timeliness of the data. H.R. REP. NO. 107-84, at 147 (2001) (Conf. Rep.).

<sup>168</sup> IRS, *Federal Case Registry Final Report*, Project 5-02-12-3-005 (CR-39) (Sept. 2003), (on file with TAS).

## DUE PROCESS AND THE TAX SYSTEM

Based on the 5th and 14th Amendments of the U.S. Constitution, procedural due process (PDP) analysis identifies what interests are protected and what process is due. In the field of taxation, courts have reasoned that for taxpayers, PDP does not require the right to petition a court before paying taxes. This conclusion is based on the reasoning that “taxes are the lifeblood of government” and if taxes can be contested before they are paid, the government will be deprived of revenue and severely impaired.

Congress, however, has provided taxpayers more procedural protections than the courts. For example, Congress established the predecessor to the Tax Court in 1924. The Tax Court allows taxpayers to have their cases heard before they have to pay any proposed tax deficiency.

The mid-20th century saw major constitutional law developments in PDP including the 1970’s Supreme Court case, *Goldberg v Kelly*. In this case, the Supreme Court held that the government must provide notice and hearing before the government deprives welfare recipients of their benefits. Subsequent cases have cut back on some of the protections of *Goldberg v. Kelly*.

In spite of these late 20th century legal developments and the changing function of the tax system from an exclusive collector of revenue to a social benefits provider, courts still rely on the “taxes are the lifeblood of government” rationale and apply a tax exceptionalist approach when considering taxpayers’ PDP protections. As the National Taxpayer Advocate has previously explained, this rationale and approach is no longer persuasive.<sup>169</sup>

A 2011 TAS study echoed this finding more broadly for verifying eligibility of all child-related tax provisions. TAS studied a statistically valid sample of TY 2009 accounts in which the IRS reversed all or part of its dependent TIN math error corrections. *The IRS ended up abating all or part of the math error in 56 percent of the returns in which it originally assessed additional tax.*<sup>170</sup> Likewise, applying data collected for nontax purposes to tax claims is akin to relying on the addresses shown in a telephone directory to deny the home mortgage interest deduction. Even if virtually all the entries in a directory were accurate, they were compiled for a different purpose, do not disprove eligibility under the tax law, were compiled at a prior date and may not be current. SAA is simply not appropriate for determining eligibility for many of the complex aspects of the EITC (and other family status tax benefits).

169 See, e.g., National Taxpayer Advocate 2018 Annual Report to Congress 364-386 (Legislative Recommendation: *Fix the Flora Rule: Give Taxpayers Who Cannot Pay the Same Access to Judicial Review as Those Who Can*); Nina E. Olson, *Why We Should Repeal the Flora Rule or Find Another Way to Give Taxpayers Who Cannot Pay the Same Access to Judicial Review as Those Who Can* (Part 1 of 3), NTA Blog (May 29, 2019), <https://taxpayeradvocate.irs.gov/news/nta-blog-Why-We-Should-Repeal-the-Flora-Rule-Part-1-of-3>; Nina E. Olson, *Why We Should Repeal the Flora Rule or Find Another Way to Give Taxpayers Who Cannot Pay the Same Access to Judicial Review as Those Who Can* (Part 2 of 3), NTA Blog (June 5, 2019), <https://taxpayeradvocate.irs.gov/news/nta-blog-Why-We-Should-Repeal-the-Flora-Rule-Part-2-of-3?category=Tax%20News>; Nina E. Olson, *Why We Should Repeal the Flora Rule or Find Another Way to Give Taxpayers Who Cannot Pay the Same Access to Judicial Review as Those Who Can* (Part 3 of 3), NTA Blog (June 12, 2019), <https://taxpayeradvocate.irs.gov/news/nta-blog-Why-We-Should-Repeal-the-Flora-Rule-Part-3-of-3?category=Tax%20News>; Nina E. Olson, 2010 Erwin N. Griswold Lecture Before the American College of Tax Counsel, *Taking the Bull by Its Horns: Some Thoughts on Constitutional Due Process in Tax Collection*, 63 TAX LAW. 227 (2010).

170 National Taxpayer Advocate 2011 Annual Report to Congress vol. 2 114, 117 (Research Study: *Math Errors Committed on Individual Tax Returns: A Review of Math Errors Issued for Claimed Dependents*). For taxpayer Notice Code 743 (dealing with only EITC qualifying children), the IRS ended up abating all or part of the math error in 55 percent of the returns in which it originally assessed additional tax. Other taxpayer notice codes may apply to EITC or other child related tax benefits such as the child tax credit.

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Likewise, applying data collected for nontax purposes to tax claims is akin to relying on the addresses shown in a telephone directory to deny the home mortgage interest deduction. Even if virtually all the entries in a directory were accurate, they were compiled for a different purpose, do not disprove eligibility under the tax law, were compiled at a prior date and may not be current.

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However, TAS has acknowledged that SAA is appropriate in certain circumstances, specifically cases where the error is unambiguous and factually simple or in cases where the IRS has access to databases that are timely, reliable, and accurate to verify compliance with income tax law. For example, if the taxpayer claims a child that does not meet the age requirements of the EITC, and data from the Social Security Administration's (SSA's) Numident database confirms the child is not eligible based on his or her age, summary assessment authority may be an appropriate way to correct this error and protect revenues while minimizing taxpayer burden.

As currently applied, SAA and the associated notices from the IRS limit a taxpayer's right to contest the IRS's determination, first by providing less information to the taxpayer about their rights and by shortening the time the taxpayer has to challenge the IRS and be heard, as well as making access to judicial review for taxpayers more difficult. Low income taxpayers are some of the most vulnerable taxpayers, with limited English skills, limited computer access, low literacy rates, low education levels, and disabilities. In light of the IRS's role as a benefits administrator and the way other means-tested benefits are administered, the IRS should be providing EITC claimants subject to summary assessment a clear understanding of the error, the taxpayer's rights when the IRS believes that there is an error, and how to contest a determination that the taxpayer disagrees with. And yet, as TAS has repeatedly documented and discussed below, the IRS's math and clerical error notices consistently fail on all these fronts.

In the National Taxpayer Advocate's 2014 Annual Report to Congress, TAS reviewed math and clerical error notices and found that their lack of clarity made it hard for taxpayers to decide whether to accept the determination or request abatement. For example, one notice sent out for an inconsistent number of dependents claimed on the return simply stated:

We changed your total exemption amount on page 2 of your tax return because there was an error in the number of exemption provided on lines 6a, 6d and/or computation of your total exemption amount.<sup>171</sup>

We suggest the notice explain explicitly what is at issue on the return, inform the taxpayers of the steps he or she may take to remedy or contest the issue, and provide the consequences if he or she fails to take those steps. For example, 17,408 taxpayers in TY 2017<sup>172</sup> received a summary assessment notice from the IRS with this paragraph:

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<sup>171</sup> IRS, Document 6209 (2014) (TPNC 200). See also National Taxpayer Advocate 2014 Annual Report to Congress 168 (Most Serious Problem: Math Error Notices: The IRS Does Not Clearly Explain Math Error Adjustments, Making It Difficult for Taxpayer to Understand and Exercise Their Rights).

<sup>172</sup> IRS, CDW, IRTF, TY 2017 returns processed through cycle 13 of 2019 (May 2019). Taxpayer Notice Code 810.

You, your spouse, or one or more of your dependents claimed on your return didn't have an assigned taxpayer identification number by the due date of the tax return. As a result, we disallowed certain credits claimed on your return. This change may affect any of the following credits: American opportunity credit, child tax credit, additional child tax credit, earned income credit.

This notice leaves a taxpayer with more questions than answers: Which dependent? Which credit? The alternative notice we suggest would reflect the taxpayer's *right to be informed* by stating at the outset which individual might have caused the problem on the return and which credit is being disallowed. Instead, the language could read:

We reviewed your tax year 2018 return. You claimed exemptions, the child tax credit, and the earned income credit for your three dependents. However, we find that your dependent named [insert name] may not have had a Social Security number when you filed your return. The consequence is that we are not allowing the child tax credit and the earned income credit for that child. The dollar value of this adjustment is \$xxx.

The letter could then explain to the taxpayer how to contest the adjustment within 60 days to preserve any subsequent rights to adjudicate the issue.<sup>173</sup>

As discussed above, the unique characteristics of low income taxpayers make them more vulnerable to confusion associated with math and clerical error notices. Vague and confusing explanations of summary assessments compromise the taxpayer's *right to challenge the IRS's position and be heard* because the taxpayer may be unable to effectively raise objections and provide additional documentation in response to an IRS proposed adjustment. (Unclear explanations may also undermine the taxpayer's *right to be informed*, which includes the ability to know what is required to comply with tax laws.)<sup>174</sup>

Even when the notices include an explanation of the 60-day deadline and the possible loss of prepayment judicial review, this information is often on the second page of the notice (where taxpayers are less likely to see it), in a dense block of text taxpayers may skip over. In an effort to clarify any confusion, taxpayers may want to go to an IRS Taxpayer Assistance Center.<sup>175</sup> However, a recent report from TIGTA indicates that many of these centers are located far from low income populations that are likely to receive IRS notices.<sup>176</sup> Taxpayers may also try to call the IRS. However, reaching an employee might take days. Data from the IRS indicate that the IRS provided less than a 67 percent Level of Service

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<sup>173</sup> This approach is consistent with Congress's vision of summary assessment authority and its hope that IRS would explain the circumstances that justified the summary assessment. S. REP. NO. 94-938(I), at 375 (1976).

<sup>174</sup> See National Taxpayer Advocate 2014 Annual Report to Congress 168-169 (Most Serious Problem: *Math Error Notices: The IRS Does Not Clearly Explain Math Error Adjustments, Making It Difficult for Taxpayer to Understand and Exercise Their Rights*).

<sup>175</sup> Generally, taxpayers must make an appointment to receive service at a Taxpayer Assistance Center. See National Taxpayer Advocate 2017 Annual Report to Congress 117-127 (Most Serious Problem: *Taxpayer Assistance Centers (TACs): Cuts to IRS Walk-In sites Have Left the IRS With a Substantially Reduced Community Presence and Have Impaired the Ability of Taxpayers to Receive In-Person Assistance*).

<sup>176</sup> TIGTA, Ref. No. 2019-40-029, *The Internal Revenue Service Did Not Follow Congressional Directives Before Closing Taxpayer Assistance Centers; a Data-Driven Model Should Be Used to Optimize Locations* 10 (May 2019).

(the IRS's narrow benchmark measure) for incoming calls during the 2019 filing season.<sup>177</sup> If taxpayers cannot reach a human being to help them understand notices in a timely fashion, they may ultimately exceed the 60-day requirement to contact the IRS, and lose not only the credit, but their right to judicial review in Tax Court. Indeed, when Congress expanded SAA in 1976, Congress explicitly instructed the IRS to explain the math or clerical error adjustment, requiring that “[e]ach notice under this paragraph shall set forth the error alleged and explanation thereof.”<sup>178</sup> And, in its explanation of errors involving inconsistent entries for personal exemptions, the committee stated that it:

expects that the Service will so phrase its notification to the taxpayer as to include questions designed to show whether the taxpayer indeed is entitled to a greater number of exemptions indicated on line 46 rather than the lesser number of exemptions indicated on line 7.<sup>179</sup>

And yet current notices fall far short of the congressional intent.

Despite the flaws with the current SAA, both the Obama and Trump administrations proposed to further expand SAA, including provisions that give almost unfettered discretion to the IRS to exercise SAA.<sup>180</sup> This is particularly concerning, because unlike audits which are performed on a subsample of EITC returns, all returns are subject to inspection for math and clerical errors, and a vastly larger population of the poorest taxpayers could have their EITC withheld, exacerbating current compliance burdens on low income taxpayers.

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<sup>177</sup> IRS, Joint Operations Center (JOC), Snapshot Reports: Enterprise Snapshot (week ending April 20, 2019). The National Taxpayer Advocate has previously expressed concerns that the IRS Level of Service (LOS) benchmark measure masks problems that taxpayers experience when attempting to contact the IRS by telephone. For example, the LOS benchmark does not include calls directed to IRS compliance functions or automated response lines, and only includes calls to its Accounts Management lines. The metric also does not provide information on the qualitative information the assistor provides to taxpayers. See *National Taxpayer Advocate Hearing on the Tax Filing Season Before the H. Subcomm. On Oversight of the H. Comm. On Ways and Means*, 116th Cong. 6-11 (2019) (statement of Nina E. Olson, National Taxpayer Advocate). For more on concerns with LOS, see Nina E. Olson, *Measuring the Taxpayer Experience – The IRS’s Level of Service Measure Fails to Adequately Show the Experience of Taxpayers Seeking Assistance Over the Phone (Part 1 of 2)*, NTA Blog (Sept. 26, 2018), <https://taxpayeradvocate.irs.gov/news/nta-blog-measuring-the-taxpayer-experience-part-1>; Nina E. Olson, *Measuring the Taxpayer Experience – The IRS’s Level of Service Measure Fails to Adequately Show the Experience of Taxpayers Seeking Assistance Over the Phone (Part 2 of 2)*, NTA Blog (Oct. 3, 2018), <https://taxpayeradvocate.irs.gov/news/nta-blog-measuring-the-taxpayer-experience-part-2>.

<sup>178</sup> S. REP. No. 94-938(I), at 375 (1976).

<sup>179</sup> H.R. REP. No. 94-658, at 291 (1976).

<sup>180</sup> For a discussion of these proposals, see National Taxpayer Advocate 2015 Annual Report to Congress 329-339 (Legislative Recommendation: *Math Error Authority: Authorize the IRS to Summarily Assess Math and “Correctable” Errors Only in Appropriate Circumstances*); Nina E. Olson, *Why Correctible Error Authority Raises Significant Taxpayer Rights Concerns – Part 1*, NTA Blog (Aug. 9, 2017), <https://taxpayeradvocate.irs.gov/news/why-correctible-authority-error-raises-significant-taxpayer-rights-concerns-part-1>; Nina E. Olson, *Correctible Error Authority Part 2: Why Correctible Error Authority Creates More Problems Than It Resolves*, NTA Blog (Aug. 16, 2017), <https://taxpayeradvocate.irs.gov/news/correctible-error-authority-part-2-why-correctible-error-authority-creates-more-problems-than-it-resolves?category=Tax News>.

## SUMMARY ASSESSMENT AUTHORITY AND THE TWO-YEAR BAN ON CLAIMING THE EITC

Under current law, taxpayers that the IRS determines have claimed the EITC with “reckless disregard for the rules” are banned from claiming the EITC for two years (see the final section of this report discussing the ban, *Ensure Low Income Taxpayers Have Due Process Protections Comparable to Protections of Other Taxpayers: The Ban Under IRC § 32(k)*). As discussed below, the procedures for making this determination are flawed and harm vulnerable taxpayers.

The ban status is currently subject to SAA, meaning that when taxpayers claim the credit when they are banned from doing so, the IRS has the authority to use SAA procedures; taxpayers will receive the 60-day letter and have fewer due process rights than under normal “deficiency” or audit procedures.

As the IRS can enforce the ban using SAA, it is important that there is a deliberate and transparent process for determining whether a taxpayer’s conduct justifies imposing the ban.

In the next section, we offer specific recommendations to ensure that the IRS’s administration of the ban is consistent with fundamental taxpayer rights and due process.

## RECOMMENDATIONS

### **Recommendation 3.1: Limit SAA Use to Appropriate Cases Based on Clear Criteria**

Congress should limit the IRS’s authority to use SAA for EITC compliance to appropriate aspects of the EITC that are not factually complex and that can be accurately verified using reliable third-party or government databases and to situations with low abatement rates. Congress should also require, that where appropriate, the IRS verify a potential error against historical return data before determining that there is indeed an error.

For provisions that are currently subject to SAA, going forward, TAS will include in its Annual Report to Congress data documenting the number of tax returns subject to summary assessments for each category of error, the abatement rate of each (*i.e.*, what percentage of taxpayers dispute the IRS’s determination), an estimate on the number of “false positives” determined under current summary assessment procedures, and other relevant statistics indicative of SAA accuracy and taxpayer burden. This will not only help Congress in its oversight role but will also provide lawmakers with a clearer understanding of the complexity of certain tax provisions.

In cases where the IRS seeks expanded SAA, IRS, in consultation with TAS, should provide Congress an estimate of the number of taxpayers that would be affected and the accuracy of proposed databases in correctly determining errors. Since inaccurate SAA determinations harm low income taxpayers, Congress should only expand SAA to provisions of the EITC (and other tax benefits) where it determines taxpayer burden would be sufficiently low.

### **Recommendation 3.2: Update and Modernize the SAA Process**

When SAA is used, it is imperative that SAA notices clearly outline the problem, how to contest the determination, and the taxpayer’s rights when contesting the determination. The IRS must follow congressional guidance and legislative history of Congress in creating clear and understandable notices that inform taxpayers of the exact errors, and their rights in contesting this determination.

To be consistent with the math or clerical error notice examples provided in the legislative history and the statutory requirement,<sup>181</sup> the IRS should cite the specific issues and correspondence it is referring to in its notices, along with line numbers from tax forms, descriptions of what was adjusted, and the amount of increase or decrease in taxable income and tax due. Notices must be clearer and more specific, so that taxpayers can understand what error(s) the IRS has determined they have made and what they can do in response to correct it.

As TAS has noted in the past, SAA can be appropriate and beneficial to taxpayers in cases that are not factually complex and where information can be accurately verified using reliable and accurate government or third-party databases.

In fact, if the IRS viewed itself and acted as a benefits administrator, it could use SAA to provide the childless EITC proactively to eligible workers.<sup>182</sup> If a per-worker credit was enacted, as recommended in this report, SAA would be appropriate to verify that the amount of earned income used to claim the credit matched data on Forms W-2, *Tax and Wage Statement*.

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<sup>181</sup> See IRC § 6213(b)(1), which directs the IRS to provide an explanation of the math or clerical error notice to the taxpayer. See *Malone v. Comm'r*, T.C. Summ. Op. 2011-24 (holding portion of summary assessment invalid because Service letter did not notify taxpayers that adjustment was “based on a mathematical error, did not set forth the specific error alleged, and did not adequately explain such error” where letter simply states “[the IRS has] processed your Amended Return.”).

<sup>182</sup> Currently, if the taxpayer asks the IRS to calculate his or her EITC, the IRS can do so. The IRS issues a Taxpayer Notice code 284. But the IRS does not, unless requested, pay out the credit to taxpayers who otherwise appear to be eligible, although the IRS will issue a notice of potential EITC eligibility to the taxpayer.

## Ensure Low Income Taxpayers Have Due Process Protections Comparable to Protections of Other Taxpayers: The Ban Under IRC § 32(k)

### PRESENT LAW AND PRACTICE

Under current law, the IRS can ban a taxpayer from claiming the EITC for two tax years (even if otherwise eligible in those years) if it determines the taxpayer has engaged in reckless or intentional disregard of the EITC's rules.<sup>183</sup> This standard requires more than mere negligence on the part of the taxpayer;<sup>184</sup> instead it requires understanding the taxpayer's state of mind when he or she makes an incorrect claim for the credit. Audits of taxpayers' TY 2016 returns resulted in about 2,900 two-year or ten-year bans (for more ban data by year see the EITC Databook appendix).<sup>185</sup>

IRS employees—referred to as correspondence exam technicians (CETs)—consider the appropriateness of asserting the ban on *all* EITC claims they are examining.<sup>186</sup> In order to make a ban assertion determination, a CET auditor assesses the taxpayer's case against three "if/then" formulations that describe scenarios when the IRS examiner *should impose the ban*.<sup>187</sup> Only one of these "if/then" scenarios presumes the CET has actually spoken with the taxpayer and gathered enough information to ascertain the taxpayer's state of mind—which is crucial in making the ban determination accurately.<sup>188</sup> In addition to determining the appropriateness, the CET generally also makes the ban determination, for which the IRS requires that the CET receive managerial approval.

As previously discussed, if a taxpayer is subject to the ban and claims the credit during a ban year, the IRS will use its SAA to deny the taxpayer the credit for that year.<sup>189</sup> The IRS is also authorized to use

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<sup>183</sup> IRC § 32(k)(1)(B)(ii) provides for a two-year "disallowance period" of "2 taxable years after the most recent taxable year for which there was a final determination that the taxpayer's claim of credit under this section was due to reckless or intentional disregard of rules and regulations." The disallowance period is ten years in the case of fraud. IRC § 32(k)(1)(B)(i).

<sup>184</sup> Under IRC § 6662, "negligence" includes "any failure to make a reasonable attempt to comply with the provisions of this title" and is distinguished from a "disregard" which is "reckless" or "intentional." IRC § 6662(c).

<sup>185</sup> IRS, CDW, IMF and IRTF as of cycle 13 2019 (June 2019).

<sup>186</sup> Internal Revenue Manual (IRM) 4.19.14.7.1, 2/10 Year Ban – Correspondence Guidelines for Examination Technicians (CET) (May 8, 2018). The IRM directs consideration of the ban not just on EITC cases, but also in regard to other refundable credits including the child tax credit/additional child tax credit and the American Opportunity Act.

<sup>187</sup> *Id.*

<sup>188</sup> See IRM 4.19.14.7.1(7), 2/10 Year Ban – Correspondence Guidelines for Examination Technicians (CET) (May 8, 2018). The first instance requires that the examiner speak with the taxpayer if the taxpayer responded to the exam notice. The second instance requires the examiner to consider the taxpayer's audit responses, including whether there have been any telephone calls. It does not require telephone contact with the taxpayer. The third instance requires the examiner to consider the taxpayer's lack of understanding of the EITC rules but does not require the examiner to confirm that finding in a telephone call with the taxpayer. While the IRS has updated its IRM since the National Taxpayer Advocate identified the bans as a Most Serious Problem. See National Taxpayer Advocate 2013 Annual Report to Congress 103-115 (Most Serious Problem: *Earned Income Tax Credit: The IRS Inappropriately Bans Many Taxpayers from Claiming EITC*), the IRS's inquiry is still biased in favor of imposing the ban.

<sup>189</sup> IRC § 6213(g)(2)(K); IRM 4.19.14.7.1.1, Project Codes 0697 and 0698 – EITC Claimed Under the 2/10 Year Ban (Nov. 2, 2017). Note that IRS issued statutory notices of deficiency prior to 2016 when asserting the ban. This provided far more detailed notice and opportunity to participate in the ban assertion resolution than a singular summary assessment notice would provide.

summary assessment authority to disallow EITC where the taxpayer failed to recertify eligibility for EITC as required.<sup>190</sup>

Let's consider this example to understand how the ban affects taxpayer claims for the EITC.<sup>191</sup> Suppose the IRS examines a taxpayer regarding her EITC claim.

The taxpayer participates in the audit, including a phone call with exam, but does not submit appropriate documentation, likely because she did not understand the exam letter,<sup>192</sup> and thus does not resolve the exam issue.<sup>193</sup> Consequently, the taxpayer would be required to recertify for the EITC when she files the following year's return due to the EITC disallowance. The taxpayer submits the recertification form,<sup>194</sup> and the IRS examines her again. As with the year before, the taxpayer responds but does not resolve the EITC exam issue. Without a telephone conversation with the taxpayer, the IRS again disallows the EITC. Again without a telephone conversation with the taxpayer, the IRS proposes to ban our taxpayer from claiming the EITC for the following two years even though the IRS did not ascertain whether she engaged in reckless or intentional disregard of the EITC rules.<sup>195</sup>

Once the IRS has banned our taxpayer from claiming the EITC, our taxpayer could either wait for the two banned years to expire or she could pursue an audit reconsideration for the year the two year ban was proposed (the second year in our example) to ask the IRS to remove the ban. If the taxpayer pursues an audit reconsideration, the IRS would require our taxpayer to demonstrate that she was entitled to the EITC that year or that she did not engage in reckless or intentional disregard of the EITC rules.<sup>196</sup>

Importantly, the summary assessment notices the taxpayer receives if she claims EITC without the required recertification, or claims EITC while a ban is in effect advise her that she may seek abatement

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<sup>190</sup> See IRC § 32(k)(2), providing that “[i]n the case of a taxpayer who is denied credit under this section for any taxable year as a result of the deficiency procedures under subchapter B of chapter 63, no credit shall be allowed under this section for any subsequent taxable year unless the taxpayer provides such information as the Secretary may require to demonstrate eligibility for such credit.” See also IRC § 6213(g)(2)(K), extending math error authority to “an omission of information required by section 32(k)(2) (relating to taxpayers making improper prior claims of earned income credit) or an entry on the return claiming the credit under section 32 for a taxable year for which the credit is disallowed under subsection (k)(1) thereof.”

<sup>191</sup> On occasion, multiple years may be at issue due to lag times between correspondence received and reviewed. A harrowing experience is described in Bob Probasco, *The EITC Ban – It’s Worse Than You Realized*, PROCEDURALLY TAXING (Dec. 4, 2018), <https://procedurallytaxing.com/the-eitc-ban-its-worse-than-you-realized/>.

<sup>192</sup> National Taxpayer Advocate 2007 Annual Report to Congress vol. 2 94, 103 (Research Study: *The IRS EIC Audit Process — A Challenge to Taxpayers*) (more than 25 percent of taxpayers receiving an EITC audit notice did not understand that the IRS was auditing their tax return).

<sup>193</sup> National Taxpayer Advocate 2007 Annual Report to Congress vol. 2 104 (Research Study: *The IRS EIC Audit Process — A Challenge to Taxpayers*) (less than one-third of EITC audited taxpayers thought the IRS audit notification letter was easy to understand, and only about half of the respondents felt that they knew what they needed to do in response to the audit letter).

<sup>194</sup> Treas. Reg. § 1.32-3(c), designating Form 8862, *Information To Claim Certain Credits After Disallowance*, as the means of recertifying eligibility for the credit.

<sup>195</sup> See IRM 4.19.14.7.1, *2/10 Year Ban – Correspondence Guidelines for Examination Technicians (CET)* (May 8, 2018), which allows imposing a ban when the taxpayer fails to participate in an examination or communicate with the IRS. This is inconsistent with IRS guidance. See IRS, *Service Center Advisory SCA 2002-45051* (Nov. 8, 2002), where the IRS opined that a taxpayer's failure to participate in an EITC audit “does not, in and of itself, constitute reckless or intentional disregard of the rules and regulations.” See National Taxpayer Advocate 2013 Annual Report to Congress 103, 112 n.56 (Most Serious Problem: *Earned Income Tax Credit: The IRS Inappropriately Bans Many Taxpayers from Claiming EITC*).

<sup>196</sup> IRM 4.13.3.17 *Audit Reconsiderations EITC 2/10 Year Ban* (Dec. 17, 2015).

of the asserted tax, as discussed previously.<sup>197</sup> However, the notices do not instruct the taxpayer that she also can seek removal of the ban through the audit reconsideration process.<sup>198</sup>

The processes described above are complicated for even seasoned tax lawyers much less unrepresented EITC recipients. The IRS path during the ban proposal and imposition period is marked by a series of notices with limited explanation. No rules or notices pertaining to the effect on a taxpayer who files jointly with a banned taxpayer exist, and there may be limited opportunities for audit reconsideration where a significant amount of time has passed since the ban was imposed. Adding to this confusion, there is some uncertainty as to whether, and when, the Tax Court has jurisdiction to consider the ban.<sup>199</sup>

## REASONS FOR CHANGE

Previous TAS research suggests that the IRS may be imposing the ban on taxpayers whose conduct does not justify the sanction.<sup>200</sup> In 2013 TAS analyzed a representative sample of two-year ban cases and found:

- In 19 percent of the cases, the IRS imposed the ban *solely* because of a prior year EITC's disallowance;
- In only ten percent of the cases did the taxpayers' responses suggest the possibility of imposing the ban;
- In 69 percent of the ban cases there was no managerial approval, despite the IRS requiring approval; and
- In almost 90 percent of the ban cases, there was no IRS documentation or correspondence explaining why IRS imposed the ban.<sup>201</sup>

This evidence suggests that the current ban determination process can be improved to ensure that taxpayers have greater opportunity to understand and exercise their rights in this process. In many cases, ban determinations are made without sufficient inquiry into the complicating factors that caused

<sup>197</sup> There are three potential summary assessment notices, CP11A, CP12A, and CP13A, on which the taxpayer notice code (TPNC) 653 would be inserted. TPNC 653 states: "We didn't allow the amount claimed as Earned Income Credit, Child Tax Credit, Additional Child Tax Credit, Credit for Other Dependents, and/or American Opportunity Credit on your tax return. We have no record of receiving Form 8862. You must submit a completed Form 8862 to recertify your eligibility for any of the credits claimed." The CP11A is issued where there is a balance owed, the CP12A is issued where the refund is adjusted, and the CP13A is issued when the result is that there is neither a tax owed or a refund due.

<sup>198</sup> Moreover, the letter the IRS issues to the taxpayer informing him or her that the ban is being imposed, the CP79A, also does not describe the taxpayer's action that led to the IRS's imposition of the ban so that the taxpayer could know what issues to dispute in her audit reconsideration request. The top of the letter's bold heading is, "We denied one or more of the credits claimed on your tax return and applied a two-year ban." By way of explanation, the letter continues, "We determined your claim was due to reckless or intentional disregard of the rules and regulations. As a result, the law doesn't allow you to claim the credits shown below for the next two years," and then states the next year the taxpayer may claim the refundable credit at issue. The letter's section, "What you need to do" responds with, "you don't need to take any action at this time," and continues to advise the taxpayer to check the refundable credits' rules. Further down the letter, the taxpayer is instructed to recertify for the credits once the ban expires.

<sup>199</sup> See Leslie Book, *Tax Court Opinion in Ballard Highlights Fundamental Uncertainty of its Jurisdiction to Rule on the IRS Power to Ban Taxpayers From Claiming Refundable Credits*, PROCEDURALLY TAXING (Feb. 19, 2016), <https://procedurallytaxing.com/tax-court-opinion-in-ballard-highlights-fundamental-uncertainty-of-its-jurisdiction-to-rule-on-the-irs-power-to-ban-taxpayers-from-claiming-refundable-credits/>.

<sup>200</sup> See National Taxpayer Advocate 2013 Annual Report to Congress 103-115 (Most Serious Problem: *Earned Income Tax Credit: The IRS Inappropriately Bans Many Taxpayers from Claiming EITC*).

<sup>201</sup> TAS is currently updating its 2013 study and will report on its current findings in the National Taxpayer Advocate 2019 Annual Report to Congress.

the credit to be disallowed in the first place.<sup>202</sup> Such an inquiry is central to understanding why the taxpayer erred, and where to place the taxpayer's error on the spectrum of "reckless or intentional disregard" of the rules to inability to understand the complexities of the statute.<sup>203</sup>

In addition, the ban itself is excessively punitive and harms the welfare of many vulnerable taxpayers. TAS's 2013 study found the average adjusted gross income of a taxpayer subject to the ban was \$15,478 and the average amount of denied EITC was \$3,731, or 24 percent of adjusted gross income on average.<sup>204</sup> And when the IRS imposes the ban on one taxpayer, it harms every member of the family, regardless of their actions or intent. For example, if a banned taxpayer subsequently marries and files jointly with an unbanned taxpayer, the IRS rules do not segregate the banned taxpayer from the unbanned taxpayer.<sup>205</sup> In contrast, the Supplemental Nutrition Assistance Program (SNAP) (food stamps) program, which has a similar ban for participants who violate its rules (called "intentional program violations"), would compute a family's food stamp benefits as though the individual who committed the program violation were not a member of the household for benefit determination purposes. Thus, a family of four, with one disqualified individual, would receive benefits for a family of three until the penalty period expired.<sup>206</sup>

The refundable credit bans are not only at times more punitive than punishments in other benefits programs, they are also more punitive than most civil sanctions imposed on other taxpayers. When Congress added IRC § 32(k), it was unprecedented in the tax system.<sup>207</sup> Other civil penalties in the Internal Revenue Code that derive from taxpayer misstatement are generally computed in proportion to the underpaid tax attributable to the misconduct.<sup>208</sup> In contrast, the ban applies to the entirety of the credit and prevents an individual in future years from receiving many thousands of dollars in credits that he or she would otherwise be entitled to receive.

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<sup>202</sup> As described in the National Taxpayer Advocate 2018 Annual Report to Congress, in the improper payments context, "Treasury and IRS acknowledge a central cause of EITC improper payments is the complexity of the rules and the errors." National Taxpayer Advocate 2018 Annual Report to Congress 91, 97 (Most Serious Problem: *Improper Earned Income Tax Credit Payments: Measures the IRS Takes to Reduce Improper Earned Income Tax Credit Payments Are Not Sufficiently Proactive and May Unnecessarily Burden Taxpayers*).

<sup>203</sup> Even the U.S. Tax Court grapples with this dilemma. In almost all of the cases where the IRS proposed the ban, the Court did not impose the ban, attributing the incorrect claims on the return to the preparer.

<sup>204</sup> National Taxpayer Advocate 2013 Annual Report to Congress 106 (Most Serious Problem: *Earned Income Tax Credit: The IRS Inappropriately Bans Many Taxpayers from Claiming EITC*).

<sup>205</sup> An unbanned married taxpayer cannot file a return with a filing status of married filing separately and claim the EITC. IRC § 32(d) (requiring married individuals to file a joint return to be eligible to claim the EITC).

<sup>206</sup> See 7 C.F.R. § 273.11(c)(1)(i).

<sup>207</sup> Effective for tax years beginning after December 31, 2015, the IRS has the authority to impose the ban for the Child Tax Credit and the American Opportunity Tax Credit. See IRC §§ 24(g) & 25A(b)(4)(A). The principles discussed in this section with regard to the administration of the EITC ban apply equally to the imposition under those refundable credits.

<sup>208</sup> IRC § 6662(a), (b)(1).

## RECOMMENDATIONS

### **Recommendation 3.3: Develop a Structure for Ban Determination That Protects Taxpayer Rights**

While it may be appropriate to impose the ban in the right circumstance, the decision to impose it must be done within a framework respecting due process protections and proposed in a manner that is both consistent with the administration of a public benefits program and sensitive to the population whom the EITC is designed to benefit.

The IRS should develop a ban examination process independent from the audit process modelled on Intentional Program Violation (IPV) processes in other means-tested programs, like SNAP. Under the SNAP program,<sup>209</sup> the IPV determination is separate from the benefits determination process, and the determination is made following a hearing in which the SNAP recipient is given clear opportunity to participate. The penalties for the program violations are successive in nature, where each subsequent violation allows for a longer period of disqualification from the program.

In addition, the penalties for EITC program violations should be proportional to only the taxpayer subject to the ban. For example, where a taxpayer subject to the ban subsequently files jointly with a taxpayer on whom the IRS has not asserted the ban, the IRS could “carve out” that portion of the credit proportionally linked to the banned taxpayer’s income.

A revised ban process should be designed in consultation with TAS, which the National Taxpayer Advocate would assess in his or her annual report to Congress, including a review of due process protections and the accuracy of bans.

### **Recommendation 3.4: Clarify and Improve Court Review of Ban Determinations**

Because the Tax Court is a court of limited jurisdiction, commentators have questioned whether and when the Tax Court can decide whether the IRS appropriately imposed the ban.<sup>210</sup> In at least one bench opinion, the Tax Court has also expressed concern about its jurisdiction.<sup>211</sup> To address that uncertainty Congress should provide an explicit grant of jurisdiction for Tax Court review of an IRC § 32(k) ban determination, either in a standalone proceeding (especially if there is a defined ban examination process as we recommend above) or as part of deficiency proceedings. In addition, as TAS has previously recommended, in asserting a ban the IRS should have the burden to prove that the imposition of the ban is appropriate.<sup>212</sup> As with the administrative recommendations above, a clear path to court review is consistent with those found in other benefits’ programs such as SNAP and is an essential way to ensure that a person is afforded due process protections.

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<sup>209</sup> 7 C.F.R. § 273.16.

<sup>210</sup> William Schmidt, *Tax Court Jurisdiction and the EITC Ban*, PROCEDURALLY TAXING (Sept. 7, 2018), <https://procedurallytaxing.com/tax-court-jurisdiction-and-the-eitc-ban/>.

<sup>211</sup> *Ballard v. Comm'r*, No. 3843-15S (T.C. Feb. 12, 2016) (questioning jurisdiction to consider the ban given its effect on future years), <https://www.ustaxcourt.gov/InternetOrders/DocumentViewer.aspx?IndexSearchableOrdersID=191190>.

<sup>212</sup> National Taxpayer Advocate 2013 Annual Report to Congress 311 (Legislative Recommendation: *Allocate to the IRS the Burden of Proving it Properly Imposed the Two-Year Ban on Claiming the Earned Income Tax Credit*).

## APPENDIX 1: EITC Databook

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**FIGURE A.1, EITC Parameters by Marital Status and Number of Qualifying Children for Tax Year 2018**

Number of Qualifying Children	0	1	2	3 or more
<b>Unmarried Tax Filers (single and head of household filers)</b>				
Credit rate	7.65%	34%	40%	45%
Earned income amount	\$6,780	\$10,180	\$14,290	\$14,290
Maximum credit amount	\$519	\$3,461	\$5,716	\$6,431
Phase-out amount threshold	\$8,490	\$18,660	\$18,660	\$18,660
Phase-out rate	7.65%	15.98%	21.06%	21.06%
Income where credit = 0	\$15,270	\$40,320	\$45,802	\$49,194
<b>Married Tax Filers (married filing jointly)</b>				
Credit rate	7.65%	34%	40%	45%
Earned income amount	\$6,780	\$10,180	\$14,290	\$14,290
Maximum credit amount	\$519	\$3,461	\$5,716	\$6,431
Phase-out amount threshold	\$14,170	\$24,350	\$24,350	\$24,350
Phase-out rate	7.65%	15.98%	21.06%	21.06%
Income where credit = 0	\$20,950	\$46,010	\$51,492	\$54,884

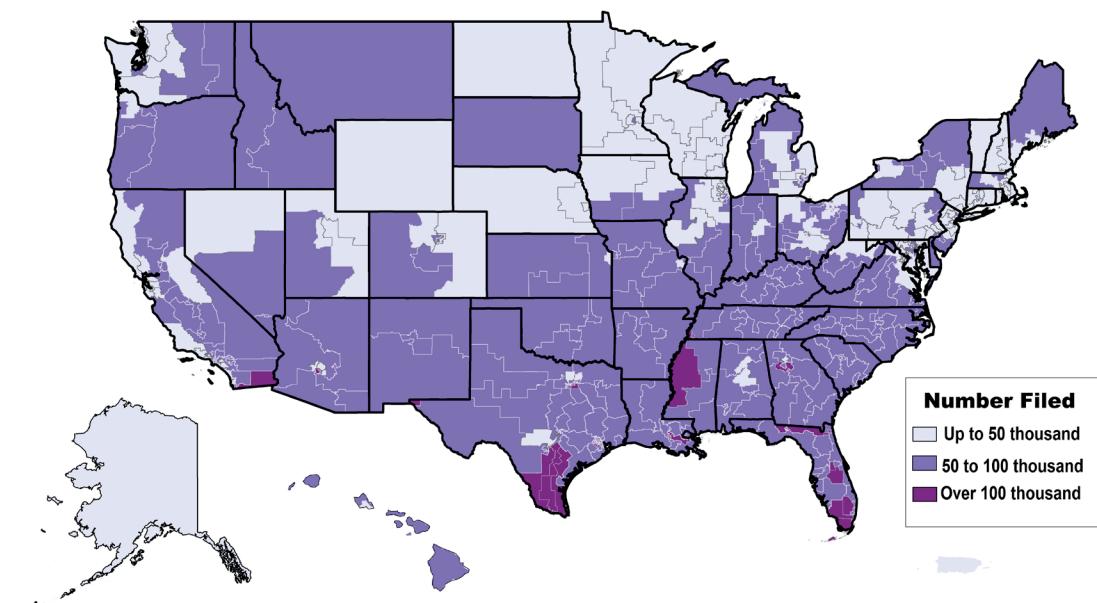
Source: IRS Revenue Procedure 2018-18 and Internal Revenue Code (IRC) Section 32.

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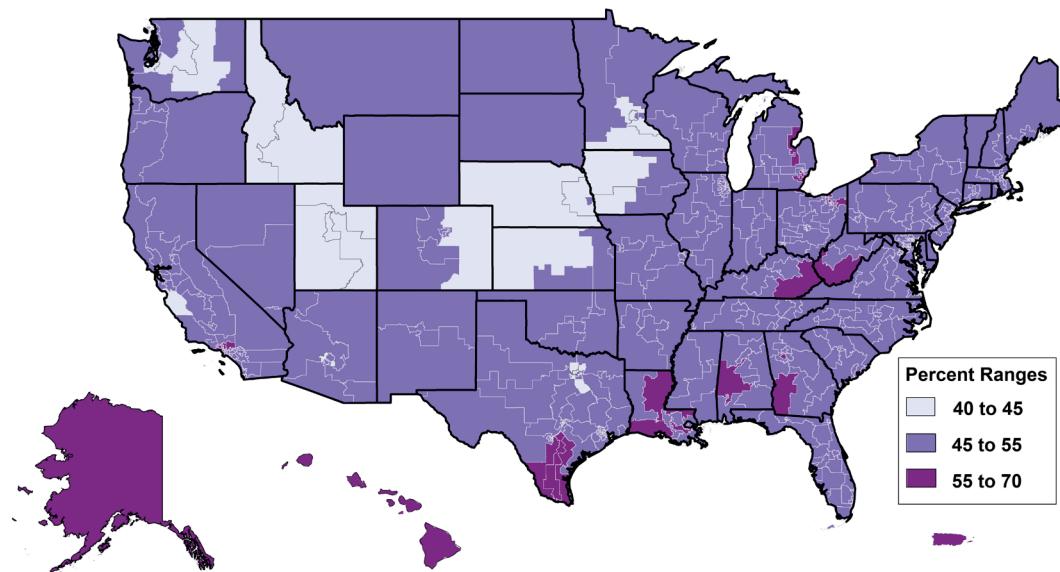
**FIGURE A.2, EITC Claims: Number of Returns, Amount Claimed, Average Credit TY 1996–TY 2017**

Tax Year	Count of Returns Where EITC Claimed (millions)	Total EITC Claimed (billions)	Average EITC
1996	19.4	28.3	\$1,461
1997	19.8	30.1	\$1,516
1998	19.4	30.8	\$1,588
1999	18.3	30.0	\$1,640
2000	19.2	31.8	\$1,657
2001	19.7	33.2	\$1,691
2002	21.6	37.8	\$1,750
2003	22.1	39.2	\$1,770
2004	22.4	40.8	\$1,817
2005	22.8	42.8	\$1,875
2006	23.2	44.8	\$1,932
2007	24.4	48.3	\$1,983
2008	24.9	50.9	\$2,045
2009	27.3	59.8	\$2,193
2010	27.5	60.5	\$2,203
2011	27.9	62.8	\$2,253
2012	27.8	64.3	\$2,312
2013	28.4	67.2	\$2,365
2014	28.2	67.6	\$2,402
2015	27.9	67.9	\$2,436
2016	27.2	66.0	\$2,428
2017	26.2	64.5	\$2,457

Source: IRS, Compliance Data Warehouse (CDW), Individual Returns Transaction File (IRTF) of Cycle 201913 (May 2019). EITC after math error processing.

**FIGURE A.3, EITC Filings for Tax Year 2017 by Congressional District**

Source: IRS, CDW, IRTF as of Cycle 201913 (May 2019). EITC after math error processing.

**FIGURE A.4, Percent of EITC Filings Under the Federal Poverty Threshold for Tax Year 2017 by Congressional District**

Source: IRS, CDW, IRTF as of Cycle 201913 (May 2019). EITC after math error processing.

**FIGURE A.5, EITC Returns by Marital Status and Number of Children, Tax Year 2017**

# of Children	Marital Status	Number of EITC Returns (millions)	EITC Amount (billions)	Avg. EITC Amount
0	Married	0.9	0.3	\$332
0	Single	5.7	1.7	\$293
1	Married	1.7	3.8	\$2,262
1	Single	7.8	18.9	\$2,411
2	Married	1.8	6.3	\$3,450
2	Single	4.8	19.1	\$3,953
3	Married	1.4	5.6	\$3,840
3	Single	2.0	8.9	\$4,504

Source: IRS, CDW, IRTF as of Cycle 201913 (May, 2019).

EITC after math error processing.

Married = married filing joint.

Single = single, head of household, or qualifying widow(er) filing statuses.

Due to rounding issues, the totals are slightly different from prior tables as a result of differing categories.

**FIGURE A.6, EITC Returns by Number of Duplicative EITC Qualifying Children, TY 2017**

Number of Times Qualifying Children Claimed	Count
1	32,758,373
2	152,568
3	305
4	13
5	2
6	3
8	1
9	1

Source: IRS, CDW, IRTF as of Cycle 201913 (May, 2019). EITC after math error processing.

**FIGURE A.7, EITC Participation Rates by Number of Qualifying Children, TY 2016**

Qualifying Children	Eligibles	Participation Rate Estimate	Margin of Error
0	7,347,000	65%	2%
1	7,204,000	86%	1%
2	5,219,000	85%	2%
3	3,098,000	82%	2%
<b>Total</b>	<b>22,868,000</b>	<b>78%</b>	<b>1%</b>

Source: TY 2016 EITC Participation-Census Report

**FIGURE A.8, EITC Returns by Type of Earned Income and Number of Forms W-2 Jobs, Tax Year 2017**

	Number of Returns (millions)	Number of Individuals (millions)	EITC Dollars (billions)
<b>W-2 Income Only</b>	<b>19.0</b>	<b>22.6</b>	<b>\$44.1</b>
One W-2 Job	10.7	12.9	\$24.0
>1 W-2 Job	8.2	9.7	\$20.1
<b>W-2 and Self Employment (SE) Income</b>	<b>4.0</b>	<b>5.4</b>	<b>\$11.7</b>
One W-2 Job + SE Income	2.4	3.3	\$6.8
>1 W-2 Job + SE Income	1.6	2.3	\$4.9
<b>Self Employment Income Only</b>	<b>3.0</b>	<b>3.8</b>	<b>\$7.9</b>
<b>Other earned Income Besides Sch. C or Sch. F.</b>	<b>0.3</b>	<b>0.4</b>	<b>\$0.8</b>
<b>Total</b>	<b>26.2</b>	<b>32.4</b>	<b>\$64.5</b>

Source: IRS, CDW, IRTF and Information Returns Master File for Tax Year 2017 as of cycle 201913 (June 2019). EITC after math error processing.

**FIGURE A.9, EITC Participation and Program Costs Compared to Other Means-Tested Programs**

Program	SNAP	WIC	SSI	TANF	HUD	CHIP	Medicaid	School Lunch	EITC
Year	FY 2018	FY 2018	FY 2017	FY 2015	FY 2016	FY 2017	FY 2017	FY 2017	FY 2018
Number of Recipients	40.3 M	6.9 M	9.1 M	4.2 M	5.1 M	6.9 M	72.4 M	22.1 M	26.3 M
Number of Eligible Persons	47.4 M	12.6 M	15.7 M	14.9 M	15.9 M	7.4 M	106.5 M	25.9 M	33.7 M
Participation Rate (# of Recipients/# of Eligible Persons)	85%	55%	58%	28%	32%	93%	68%	85%	78%
Year Participation Rate Measured	2016	2016	1998	2014	2016	2015	2009	2006	2016
Total Benefits Paid Out	\$60.6 B	\$5.4 B	\$54.5 B	\$14.0 B	\$41.0 B	\$16.3 B	\$357.6 B	\$12.3 B	\$65.3 B
Average Annual Benefit per Recipient	\$1,503	\$491	\$5,974	\$3,357	\$8,039	\$2,362	\$4,939	\$557	\$2,435
Overhead Costs	\$4.4 B	\$2.0 B	\$4.1 B	\$1.4 B	\$3.0 B	\$2.9 B	\$60.3 B	\$1.2 B	\$653 M
Overhead Costs as % of Total Benefits Paid Out	7%	37%	8%	10%	7%	18%	13%	10%	1%
Improper Payments	\$4.0 B	\$194 M	\$4.8 B	\$1.3 B	\$1.7 B	\$1.2 B	\$36.2 B	\$1.9 B	\$16.3 B
Improper Payments as a % of Total Benefits Paid	7%	4%	9%	9%	4%	7%	10%	10%	25%
Overhead Costs + Improper Payments	\$8.4 B	2.2 B	\$8.9 B	\$2.7 B	\$4.7 B	4.1B	96.5 B	\$3.1 B	\$17.0 B
Overhead Costs + improper Payments as a % of Total	14%	40%	16%	19%	11%	25%	22%	25%	26%

## Sources:

SNAP: Payment Accuracy.gov, <https://paymentaccuracy.gov/> (last visited June 26, 2019); Supplemental Nutrition Assistance Program Participation and Costs (March, 2019) USDA; USDA Reaching Those in Need: Estimates of State Supplemental Nutrition Assistance Program Participation Rates in 2016 – Summary (Mar. 2019).

WIC: Payment Accuracy.gov, <https://paymentaccuracy.gov/>, (last visited June 26, 2019); Program and Participation Costs (March 2019); USDA National and State-Level Estimates of Special Supplemental Nutritional Program for Women, Infants, and Children (WIC) eligible and Program Reach in 2016 (Summary) (Feb. 2019).

SSI: Payment Accuracy.gov, <https://paymentaccuracy.gov/> (last visited June 26, 2019); Social Security Administration 2018 SSI report; *Understanding Participation in SSI* Kathleen McGarry University of California, Los Angeles and NBER and Robert F. Schoeni University of Michigan Prepared for the 16th Annual Joint Meeting of the Retirement Research Consortium August 7-8, 2014; Social Security SSI Report 2018 Table IV.E1.—Selected SSI Costs Fiscal Years 1978-2018; SSI Annual Statistical Report, 2017 Federal Benefit Rates, Total Annual Payments, and Total Recipients.

TANF: Federal Safety Net <http://federalsafetynet.com/welfare-fraud.html> (last visited June 26, 2019); Temporary Assistance for Needy Families 12th Report to Congress

HUD: Payment Accuracy.gov, <https://paymentaccuracy.gov/> (last visited June 26, 2019); Center on Budget and Policy Priorities United States Fact Sheet: Federal Rental Assistance; Public and Indian Housing Tenant Based Rental Assistance; Congressional Research Services Congressional Research Service Department of Housing and Urban Development (HUD) FY 2017 Appropriations (June 2017). HUD overhead costs include

CHIP: Payment Accuracy.gov, <https://paymentaccuracy.gov/> (last visited June 26, 2019); Medicaid and CHIP Payment and Access Commission Medicaid and CHIP Data Book (December, 2018); Kaiser Family Foundation FY 2017 Total CHIP Spending, <https://www.kff.org/medicaid/state-indicator/total-chip-spending/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D> (last visited July 1, 2019); Medicaid/CHIP Participation Rates Rose among Children and Parents in 2015, last viewed at [http://www.urban.org/sites/default/files/publication/90346/2001264-medicaid-chip-participation-rates-rose-among-children-and-parents-in-2015\\_1.pdf](http://www.urban.org/sites/default/files/publication/90346/2001264-medicaid-chip-participation-rates-rose-among-children-and-parents-in-2015_1.pdf).

Medicaid: Payment Accuracy.gov, <https://paymentaccuracy.gov/> (last visited June 26, 2019); Medicaid Budget in Brief FY 2018; Medicaid and CHIP Payment and Access Commission Medicaid and CHIP Data Book (Dec. 2018); Understanding Participation Rates in Medicaid Implications for the Affordable Care Act (Mar. 2012) at <https://aspe.hhs.gov/basic-report/understanding-participation-rates-medicaid-implications-affordable-care-act> (last visited June 26, 2019).

School Lunch: Payment Accuracy.gov, <https://paymentaccuracy.gov/> (last visited June 26, 2019); National School lunch Program Participation and Lunches Served (Apr. 2019); Number and percentage of public school students eligible for free or reduced-price lunch, by state: Selected years, 2000-01 through 2015-16 (Digest 2017: table 204.10); Federal Cost of School Food Programs (April, 2019); Nutrition Assistance Program Report Series The Office of Research, Nutrition and Analysis Special Nutrition Programs School Lunch and Breakfast Cost Study – II Final Report (Report No. CN-08-MCII) Apr. 2008).

EITC: Payment Accuracy.gov, <https://paymentaccuracy.gov/> (last visited June 26, 2019); last viewed June 26, 2019; IRS CDW IRTF FY 2018 (June 2018); GAO testimony on Tax Administration Earned Income Noncompliance (GAO/T-GGD-97-105 May 8, 1997); TY 2016 EITC Participation-Census Report. We computed EITC improper payments by multiplying the EITC improper payment rate (25 percent) by the amount of EITC claimed after math error processing.

Totals may not add due to rounding.

**FIGURE A.10, EITC TY 2017 Returns Filed by Week in 2018**

2018 Filing Season	2017 Tax Year EITC Returns (thousands)		
Week Ending	Number	Cumulative total	% of Total Returns as of 12/27/18
January 25, 2018	1,149	1,149	4%
February 1, 2018	2,904	4,053	16%
February 8, 2018	3,859	7,912	30%
February 15, 2018	3,095	11,007	42%
February 22, 2018	2,225	13,232	51%
March 1, 2018	1,824	15,056	58%
March 8, 2018	1,455	16,511	63%
March 15, 2018	1,218	17,729	68%
March 22, 2018	1,047	18,776	72%
March 29, 2018	933	19,709	76%
April 5, 2018	855	20,564	79%
April 12, 2018	996	21,559	83%
April 19, 2018	1,420	22,979	88%
April 26, 2018	882	23,861	91%
May 3, 2018	360	24,221	93%
May 10, 2018	195	24,417	94%
May 17, 2018	169	24,586	94%
May 24, 2018	148	24,734	95%
May 31, 2018	114	24,848	95%
June 7, 2018	103	24,951	96%
June 14, 2018	102	25,054	96%
June 21, 2018	90	25,144	96%
June 28, 2018	89	25,232	97%
July 5, 2018	55	25,288	97%
July 12, 2018	45	25,332	97%
July 19, 2018	42	25,374	97%
July 26, 2018	37	25,411	97%
August 2, 2018	37	25,448	98%
August 9, 2018	32	25,480	98%
August 16, 2018	34	25,514	98%
August 23, 2018	31	25,545	98%
August 30, 2018	29	25,574	98%
September 6, 2018	24	25,598	98%
September 13, 2018	26	25,624	98%
September 20, 2018	30	25,654	98%
September 27, 2018	29	25,683	98%
October 4, 2018	32	25,715	99%
October 11, 2018	45	25,760	99%
October 18, 2018	152	25,912	99%

*continued*

2018 Filing Season		2017 Tax Year EITC Returns (thousands)		
Week Ending	Number	Cumulative total	% of Total Returns as of 12/27/18	
October 25, 2018	63	25,975	100%	
November 1, 2018	25	26,000	100%	
November 8, 2018	20	26,020	100%	
November 15, 2018	18	26,038	100%	
November 22, 2018	13	26,051	100%	
November 29, 2018	13	26,064	100%	
December 6, 2018	9	26,073	100%	
December 13, 2018	9	26,082	100%	
December 20, 2018	10	26,092	100%	
December 27, 2018	7	26,099	100%	

Source: IRS, CDW, IRTF as of Cycle 201913 (May, 2019). Numbers may differ slightly from the IRS Filing Season Reports.

EITC after math error processing.

Due to rounding issues, the cumulative totals may vary from the sum of the weekly returns filed.

**FIGURE A.11, Total and Non-EITC Tax Year 2017 Returns by Week Filed in 2018**

2018 Filing Season Week Ending	2017 Tax Year Returns			2017 Tax Year Returns w/o EITC		
	Number of Tax Year 2017 Returns (Overall) (millions)	Cumulative Total (millions)	Percent of Total Returns as of 12/27/18	Number of Tax Year 2017 Returns Without EITC (millions)	Cumulative Total (millions)	Percent of Non-EITC Returns as of 12/27/18
January 25, 2018	2.6	2.6	2%	1.4	1.4	1%
February 1, 2018	7.7	10.2	7%	4.7	6.1	5%
February 8, 2018	12.0	22.2	15%	8.1	14.3	12%
February 15, 2018	11.2	33.4	22%	8.1	22.4	18%
February 22, 2018	9.7	43.1	29%	7.5	29.9	24%
March 1, 2018	9.3	52.4	35%	7.4	37.3	30%
March 8, 2018	8.4	60.8	41%	7.0	44.3	36%
March 15, 2018	8.0	68.8	46%	6.8	51.1	42%
March 22, 2018	7.8	76.7	52%	6.8	57.9	47%
March 29, 2018	8.0	84.7	57%	7.1	65.0	53%
April 5, 2018	8.4	93.1	63%	7.5	72.6	59%
April 12, 2018	11.0	104.1	70%	10.0	82.5	67%
April 19, 2018	16.3	120.4	81%	14.9	97.4	79%
April 26, 2018	7.3	127.7	86%	6.4	103.8	85%
May 3, 2018	2.4	130.1	87%	2.1	105.9	86%
May 10, 2018	1.5	131.6	89%	1.3	107.2	87%
May 17, 2018	1.3	132.9	89%	1.2	108.4	88%
May 24, 2018	1.2	134.1	90%	1.0	109.4	89%
May 31, 2018	0.9	135.0	91%	0.8	110.2	90%
June 7, 2018	1.0	136.0	91%	0.9	111.1	91%
June 14, 2018	1.1	137.1	92%	1.0	112.1	91%
June 21, 2018	1.0	138.1	93%	0.9	113.0	92%
June 28, 2018	0.8	138.9	93%	0.7	113.7	93%
July 5, 2018	0.5	139.4	94%	0.4	114.1	93%
July 12, 2018	0.4	139.8	94%	0.3	114.4	93%
July 19, 2018	0.4	140.1	94%	0.3	114.8	94%
July 26, 2018	0.3	140.5	94%	0.3	115.0	94%
August 2, 2018	0.3	140.8	95%	0.3	115.3	94%
August 9, 2018	0.3	141.1	95%	0.3	115.6	94%
August 16, 2018	0.3	141.4	95%	0.3	115.9	95%
August 23, 2018	0.3	141.7	95%	0.3	116.1	95%
August 30, 2018	0.3	141.9	95%	0.2	116.4	95%
September 6, 2018	0.2	142.2	96%	0.2	116.6	95%
September 13, 2018	0.3	142.5	96%	0.3	116.8	95%
September 20, 2018	0.4	142.8	96%	0.3	117.2	96%
September 27, 2018	0.3	143.1	96%	0.3	117.5	96%
October 4, 2018	0.4	143.6	97%	0.4	117.8	96%
October 11, 2018	0.7	144.2	97%	0.6	118.5	97%

*continued*

		2017 Tax Year Returns			2017 Tax Year Returns w/o EITC		
2018 Filing Season Week Ending		Number of Tax Year 2017 Returns (Overall) (millions)	Cumulative Total (millions)	Percent of Total Returns as of 12/27/18	Number of Tax Year 2017 Returns Without EITC (millions)	Cumulative Total (millions)	Percent of Non-EITC Returns as of 12/27/18
October 18, 2018	2.6	146.8	99%		2.4	120.9	99%
October 25, 2018	0.7	147.5	99%		0.6	121.5	99%
November 1, 2018	0.3	147.8	99%		0.2	121.8	99%
November 8, 2018	0.2	148.0	100%		0.2	122.0	100%
November 15, 2018	0.2	148.2	100%		0.2	122.2	100%
November 22, 2018	0.1	148.3	100%		0.1	122.3	100%
November 29, 2018	0.1	148.4	100%		0.1	122.4	100%
December 6, 2018	0.1	148.5	100%		0.1	122.4	100%
December 13, 2018	0.1	148.6	100%		0.1	122.5	100%
December 20, 2018	0.1	148.7	100%		0.1	122.6	100%
December 27, 2018	0.0	148.7	100%		0.0	122.6	100%

Source: IRS, CDW, IRTF as of Cycle 201913 (May, 2019).

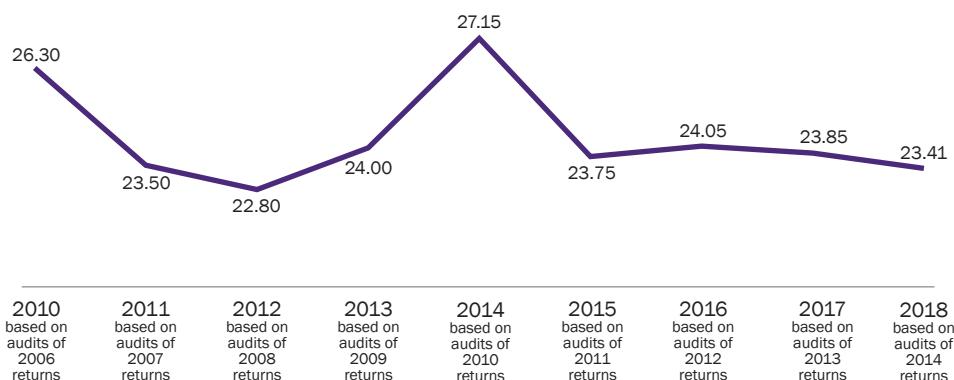
EITC after math error processing.

Numbers may differ slightly from the IRS Filing Season Reports.

Due to rounding issues, the cumulative totals may vary from the sum of the weekly returns filed.

**FIGURE A.12**

**Estimated EITC Improper Payment Rates, 2010-2018**

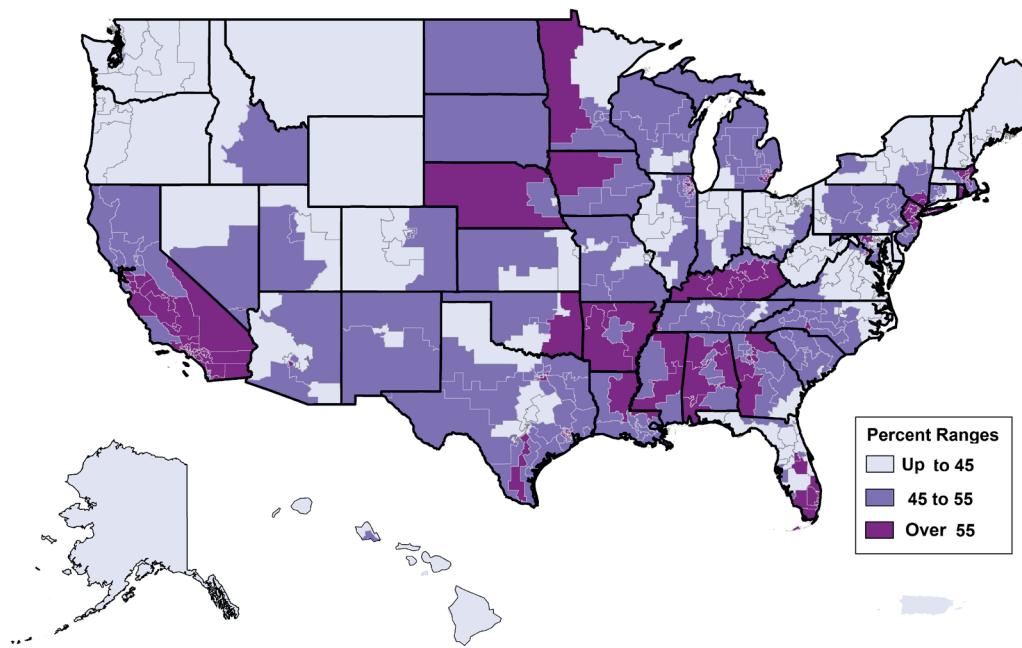


Source: See U.S. Dept. of the Treas., AFRs, FYs 2010-2018, <https://home.treasury.gov/about/budget-financial-reporting-planningand-performance/agency-financial-report>. Until FY 2010, the improper payment rate was expressed as a midpoint between upper and lower bounds. The upper and lower bounds reflected assumptions about whether taxpayers who did not participate in the NRP audits were actually entitled to EITC. Beginning with FY 2010, the rate was expressed as a single rate with confidence intervals, with nonparticipating taxpayers treated as being entitled to EITC at the same rate as those who participated in the NRP audit. However, the AFR continued to report upper and lower bounds through 2014. Unlike prior improper payment rate estimates, the Treasury FY 2018 estimated improper payment estimate does not subtract projected recovered improper payments prior to calculating the rate. Figure A.12 depicts the midpoint value for the 2010-2014 and the single point estimate thereafter. For purposes of consistency the FY 2018 value, 23.41 percent, is the one that takes into account recovered amounts.

**FIGURE A.13, EITC Returns and Total EITC Amount by Paid Preparer Type, TY 2017**

	Filers (millions)	EITC Computed (billions)	Avg. DDB Score
Prepared Type Unknown	10.2	\$28.4	10.36
Prepared Attorney	0.1	\$0.1	5.52
Prepared CPA	1.3	\$2.5	4.15
Prepared Enrolled Agent	1.2	\$2.7	6.05
Prepared State Regulated	0.8	\$2.0	7.7
Prepared Enrolled Retirement Planner	0.0	\$0.0	17.27
Volunteer Income Tax Assistance (VITA)	0.6	\$1.0	4.41
Prepared Enrolled Actuary	0.0	\$0.0	10.74
Prepared Certified Acceptance Agent	0.1	\$0.3	8.43
Self	11.9	\$27.5	8.89
<b>Total</b>	<b>26.2</b>	<b>\$64.5</b>	

Source: IRS, CDW, IRTF as of Cycle 201913, Return Preparers and Providers Database and Dependent Database (DDb) (May 2019). EITC after math error processing.

**FIGURE A.14, Percent of EITC Filings With a Paid Preparer for Tax Year 2017 by Congressional District**

Source: IRS, CDW, IRTF as of Cycle 201913 (May 2019). EITC after math error processing.

**FIGURE A.15, Math Errors by Paid Preparer Type, Tax Year 2017**

	Returns with EITC Math Error	Total Returns by Preparer Type (millions)	Percent
Prepared Type Unknown	41,493	10.2	0.41%
Prepared Attorney	503	0.1	0.90%
Prepared CPA	8,053	1.3	0.62%
Prepared Enrolled Agent	4,229	1.2	0.36%
Prepared State Regulated	3,944	0.8	0.50%
Prepared Enrolled Retirement Planner	*	*	*
VITA	1,887	0.6	0.30%
Prepared Enrolled Actuary	27	0.0	0.63%
Prepared Certified Acceptance Agent	793	0.1	0.64%

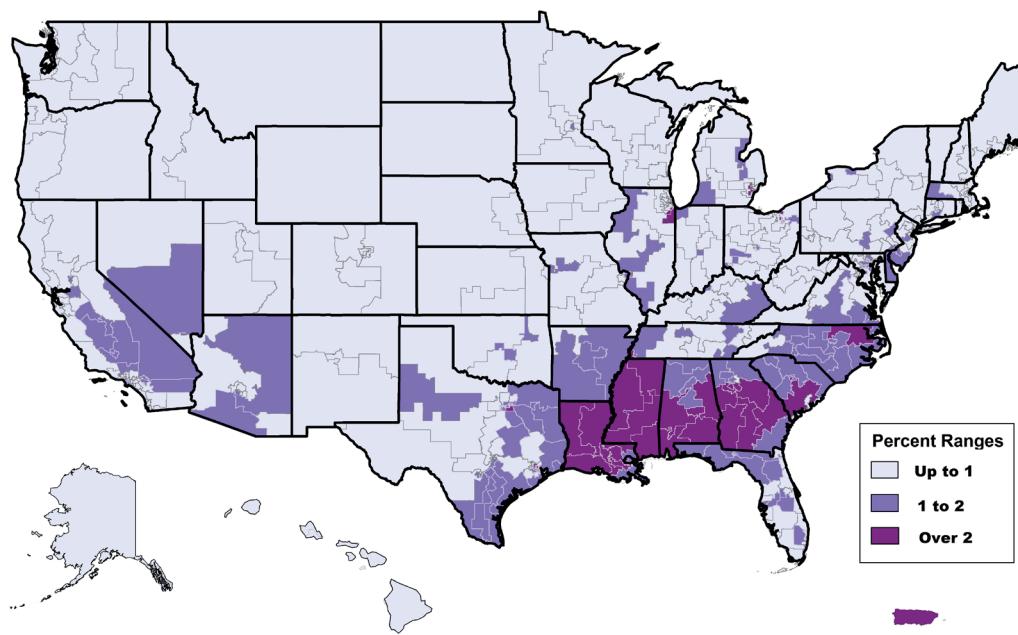
Source: IRS, CDW, IRTF as of Cycle 201913 and Return Preparers and Providers Database (May 2019).

\* Sanitized to prevent inadvertent disclosure.

**FIGURE A.16, EITC Returns Subject to Audit by Audit Type in FY 2018**

Type of Audit	Count	Percent	Average Cycle Days
Correspondence Audit	327,791	99.88%	241
Field Audit	94	0.03%	585
Office Audit	297	0.09%	485
<b>Total</b>	<b>328,182</b>	<b>100.00%</b>	

Source: IRS, CDW, Audit Information Management System Closed Case Database for FY 2018 (May 2019).

**FIGURE A.17, EITC Audits by Percentage of EITC Returns Filed and Congressional District**

Source: IRS, CDW, IRTF for returns filed in calendar year 2017 and Automated Information Management System (AIMS) for EITC audits closed in FY 2018 (June 2019). EITC after math error processing.

**FIGURE A.18, Dispositions for EITC Audit Closure, FY 2018**

Audit Closure	Count	Percent	Average Cycle Days
No Change	42,622	13%	189
Agreed	54,121	16%	194
Default	85,264	26%	320
Non-response	141,790	43%	228
Appealed	22	0%	283
Petitioned	1,788	1%	314
Other	2,575	1%	218
<b>Total</b>	<b>328,182</b>	<b>100%</b>	

Source: IRS, CDW, Audit Information Management System Closed Case Database for FY 2018 (May 2019).

**FIGURE A.19, EITC Summary Assessment Procedures Tax Year 2017**

Summary Assessment Procedure	Count (TY 2017)
1. Number of Notices	197,154
a. EIC math error Issued (not including Taxpayer Notice Code 284 (IRS figured the EITC amount), but no change from claimed to IRS computed EIC amt.)	16,391
b. Only Taxpayer Notice Code 284 issued (because IRS figured EITC amount)	5,545
c. EIC math error notice issued (Not including Taxpayer Notice 284),and IRS computed amt. of EITC differs from taxpayer amt.	175,175
d. Had both Taxpayer Notice Code 284 and another EITC math error	43
2. Number of Reversed Math Errorred Tax Returns	36,324
3. Number of Returns Adjusted Subsequent to the 60 Day Abatement Period	17,921
4. Number of SNODs Issued*	242
5. Number of Petitions to Tax Court	3

Source: IRS, CDW, IRTF and Individual Master File (IMF) as of cycle 201913 (June 2019).

\* An additional 124 taxpayers agreed to the audit results prior to the issuance of a SNOD and 27 agreed to the adjustment after the SNOD was issued.

**FIGURE A.20. Types of Notices Issued to EITC Taxpayers Under Summary Assessment Authority, Tax Year 2017**

IRC Code Text: The term “mathematical or clerical error” means—	Taxpayer Notice Code	Content of Corresponding Paragraph	Sufficient Explanation?	Number of Taxpayers Receiving this Notice	Total Amount Abated for this Notice Code
6213(g)(2) Section					
A	An error in addition, subtraction, multiplication, or division shown on any return,	284 We computed your Earned Income Credit for you.  285 We changed the amount claimed as Earned Income Credit (EIC) on your tax return. The amount claimed as EIC was figured or entered incorrectly on your tax return.  286 We computed your Earned Income Credit for you on your tax return. The child or children listed on your tax return may qualify you for a larger credit. If they qualify, you may complete a Schedule EIC, Earned Income Credit, and file it with a Form 1040X, Amended U.S. Individual Income Tax Return.	N (lack of specificity)  N (lack of specificity)  We didn't allow the amount claimed as Earned Income Credit (EIC) on your tax return. You're not eligible to claim EIC because your filing status is Married Filing Separately.	5,588  60,573  500	144  5,030  42
B	An incorrect use of any table provided by the Internal Revenue Service with respect to any return if such incorrect use is apparent from the existence of other information on the return,	540  751  291	We didn't allow the amount claimed as Earned Income Credit on your tax return. Information on your tax return indicates that you don't qualify for this credit.  We didn't allow part or all the amount claimed as Earned Income Credit on your tax return. The information you provided on Schedule EIC, Earned Income Credit, shows one or more of the qualifying children didn't meet the relationship requirement for the credit.  We didn't allow the amount claimed as Earned Income Credit on your tax return because your investment income was more than the amount allowed for this credit.	604  203  N (as reported on line on the return)	50  38  523
C	An entry on a return of an item which is inconsistent with another entry of the same or another item on such return,	287	We didn't allow the amount claimed as Earned Income Credit on your tax return. Your earned income or adjusted gross income is more than the amount allowed to qualify for the credit.	N (don't know if consequence of adjustment in income)	4,995  462

continued

IRC Code Text: The term “mathematical or clerical error” means—	Taxpayer Notice Code	Content of Corresponding Paragraph	Sufficient Explanation?	Number of Taxpayers Receiving this Notice	Number of Taxpayers with Abatements	Total Amount Abated for this Notice Code
6213(g)(2) Section	C	We didn’t allow the amount claimed as Earned Income Credit on your tax return because you indicated you were claimed as a dependent on another person’s tax return.	Y	4,018	161	\$64,039
		We changed the amount claimed as Prior Year Earned Income or Additional Child Tax Credit Prior Year Income on your return. When you elect to use Prior Year Earned Income to compute Earned Income Credit and Additional Child Tax Credit you must use that same amount for both credits.	N (need more explanation as to what this means)	6	1	\$2,123
		We didn’t allow part or all the amount claimed as earned income credit on page 2 of your tax return because your Form(s) W-2 didn’t match the entry for wages.	Y	1,604	195	\$551,772
		We didn’t allow part or all the amount claimed for Earned Income Credit on your tax return. The information you provided on Schedule EIC, Earned Income Credit, shows one or more of the qualifying children didn’t meet the age requirement for the credit.	N (lack of specificity)	1,960	423	\$923,660

*continued*

	IRC Code Text: The term “mathematical or clerical error” means—	Taxpayer Notice Code	Content of Corresponding Paragraph	Sufficient Explanation?	Number of Taxpayers Receiving this Notice	Number of Taxpayers with Abatements	Total Amount Abated for this Notice Code
D		288	We didn’t allow the amount claimed as Earned Income Credit on your tax return. You must report earned income on your tax return to qualify for the credit.	N	3,493	478	\$803,310
D	An omission of information which is required to be supplied on the return to substantiate an entry on the return	585	We didn’t allow the amount claimed as earned income credit on your tax return because Schedule EIC, Earned Income Credit, was incomplete or not attached to your tax return.	N (was it incomplete? How was it incomplete? Should issue a separate notice if not attached)	10,795	3,275	\$10,379,362
D		653	We didn’t allow the amount claimed as Earned Income Credit, Child Tax Credit, Additional Child Tax Credit, Credit for Other Dependents, and/or American Opportunity Tax Credit on your tax return. We have no record of receiving Form 8862, Information to Claim Certain Credits After Disallowance. You must submit a completed Form 8862 to recertify your eligibility for any of the credits claimed.	N	20,132	5,330	\$18,402,698
D		760	We did not allow part or all the amount you claimed for the Earned Income Credit. You didn’t provide support for the statutory wages you reported and we didn’t consider those wages in figuring the credit.	Y	203	58	\$213,555

continued

IRC Code Text: The term “mathematical or clerical error” means—  6213(g)(2) Section	Taxpayer Notice Code  D, F	Content of Corresponding Paragraph  We didn’t allow the exemption for one or more of the dependents who have a missing Social Security Number that are identified on your return as being born and died during the tax period of the return. In order to claim a dependent as an exemption their must be proof of a live birth shown on an official document such as a birth certificate attached to the return.  This change may effect your taxable income, tax, or any of the following credits: ◆ Credit for Child and Dependent Care Expenses ◆ Child Tax Credit ◆ Additional Child Tax Credit ◆ Earned Income Credit  Note: This change may also affect the Credit for Child and Dependent Care Expenses and Earned Income Credit regardless of whether an exemption was claimed for that dependent.  See above for (D) and below for (F)	Sufficient Explanation?  N (which dependent is the notice referring to?)	Number of Taxpayers Receiving this Notice  264	Number of Taxpayers with Abatements  29	Total Amount Abated for this Notice Code  \$70,632

*continued*

IRC Code Text: The term “mathematical or clerical error” means—  6213(g)(2) Section	Taxpayer Notice Code  F	Content of Corresponding Paragraph  607  An omission of a correct taxpayer identification number required under section 32 (relating to the earned income credit) to be included on a return	Sufficient Explanation?  Y  We didn't allow the exemption for the primary taxpayer claimed on your tax return. We compared the Social Security Number of the primary taxpayer shown on your tax return with records from the Social Security Administration. According to these records, the Social Security Number belongs to a deceased person. You must contact the Social Security Administration if this information is incorrect. This change may affect your taxable income, tax, or any of the following credits: ◆ Credit for Child and Dependent Care Expenses ◆ Child Tax Credit ◆ Additional Child Tax Credit ◆ Earned Income Credit	Number of Taxpayers Receiving this Notice  113	Number of Taxpayers with Abatements  13	Total Amount Abated for this Notice Code  \$20,001

*continued*

	IRC Code Text: The term “mathematical or clerical error” means—	Taxpayer Notice Code	Content of Corresponding Paragraph	Sufficient Explanation?	Number of Taxpayers Receiving this Notice	Number of Taxpayers with Abatements	Total Amount Abated for this Notice Code
6213(g)(2) Section			<p>We didn’t allow the exemption for one or more of the dependents claimed on your tax return. We compared the Social Security Number of each dependent claimed on your tax return with records from the Social Security Administration. According to these records, one or more of the dependents claimed on your tax return have a Social Security Number that matches a deceased person. You must contact the Social Security Administration if this information is incorrect. This change may affect your taxable income, tax, or any of the following credits:</p> <ul style="list-style-type: none"> <li>◆ Credit for Child and Dependent Care Expenses</li> <li>◆ Child Tax Credit</li> <li>◆ Additional Child Tax Credit</li> <li>◆ Earned Income Credit</li> </ul> <p>Note: This change may also affect the Credit for Child and Dependent Care Expenses and Earned Income Credit regardless of whether an exemption was claimed for that dependent.</p>	N (which dependent is supposedly dead?)	701	30	\$65,012
	(continued)		<p>An omission of a correct taxpayer identification number required under section 32 (relating to the earned income credit) to be included on a return</p>	Y	1,493	227	\$569,100
F			<p>We didn’t allow your spouse’s personal exemption and Earned Income Credit (EIC) on your tax return. Your spouse’s Social Security Number (SSN) was missing or the last name provided doesn’t match our records or the records provided by the Social Security Administration. Note: To be eligible for EIC, you, your spouse, and qualifying child or children must use a correct name and SSN issued by the Social Security Administration.</p>	Y	702		\$454,811
F			<p>We didn’t allow the amount claimed as Earned Income Credit (EIC) on your tax return. The individual taxpayer identification number you gave us for yourself and/or spouse was issued by the Internal Revenue Service and does not qualify you for the credit. Note: To be eligible for EIC, you, your spouse, and qualifying child or children must use a correct name and SSN issued by the Social Security Administration.</p>	Y	3,121	145	\$454,811

continued

IRC Code Text: The term “mathematical or clerical error” means— 6213(g)(2) Section	Taxpayer Notice Code F	Content of Corresponding Paragraph 704	Sufficient Explanation? Your or your spouse’s Social Security number (SSN) or individual taxpayer identification number (ITIN) was missing or the last name provided doesn’t match our records or the records provided by the Social Security Administration. As a result, we disallowed certain credits claimed on your return. This change may affect any of the following credits: ◆ Education credits ◆ Child tax credit ◆ Credit for other dependents ◆ Additional child tax credit ◆ Earned income credit	Number of Taxpayers Receiving this Notice 34	Number of Taxpayers with Abatements -	Total Amount Abated for this Notice Code \$-
	(continued) An omission of a correct taxpayer identification number required under section 32 (relating to the earned income credit) to be included on a return F	705	Each dependent listed on your tax return must have a valid Social Security number (SSN) or individual taxpayer identification number (ITIN). For one or more of your dependents, the SSN or ITIN was missing or the last name provided doesn’t match our records or the records provided by the Social Security Administration. As a result, we disallowed certain credits claimed on your return. This change may affect any of the following credits: ◆ Credit for child and dependent care expenses ◆ Education credits ◆ Child tax credit ◆ Credit for other dependents ◆ Additional child tax credit ◆ Earned income credit	N (lack of specificity) 149	7	\$16,336
		706	We compared the Social Security numbers (SSN) shown on your tax return with records from the Social Security Administration. According to these records, the SSN shown on your tax return for you, your spouse, or one or more of the dependents belongs to a deceased person. You must contact the Social Security Administration if this information is incorrect. As a result, we disallowed certain credits claimed on your return. This change may affect any of the following credits: ◆ Credit for child and dependent care expenses ◆ Child tax credit ◆ Credit for other dependents ◆ Additional child tax credit ◆ Earned income credit ◆ Education credits	N (lack of specificity) 1	-	\$-

continued

IRC Code Text: The term “mathematical or clerical error” means—	Taxpayer Notice Code	Content of Corresponding Paragraph	Sufficient Explanation?	Number of Taxpayers Receiving this Notice	Number of Taxpayers with Abatements	Total Amount Abated for this Notice Code	
F	6213(g)(2) Section	You, your spouse, or one or more of the dependents listed on your return didn't have an assigned taxpayer identification number by the due date of the tax return. As a result, we disallowed certain credits claimed on your return. This change may affect any of the following credits: ◆ Credit for other dependents ◆ Child tax credit ◆ Additional child tax credit ◆ American opportunity credit ◆ Earned income credit	N (lack of specificity)	898	24	\$62,713	
	(continued)						
F	An omission of a correct taxpayer identification number required under section 32 (relating to the earned income credit) to be included on a return	711	We didn't allow part or all the amount claimed as Earned Income Credit (EIC) on your tax return. For one or more of the children listed on your Schedule EIC, Earned Income Credit: ◆ The Social Security Number was missing. ◆ The last name doesn't match our records or the records provided by the Social Security Administration.	N (lack of specificity)	34,355	17,953	
F		743	We didn't allow part or all the amount claimed as Earned Income Credit (EIC) on your tax return. For one or more of the children listed on your Schedule EIC, Earned Income Credit, must have a valid Social Security Number issued by the Social Security Administration to qualify for the credit. The Individual Taxpayer Identification Number you provided for your child or children was issued by the Internal Revenue Service and doesn't qualify you for EIC.	N (lack of specificity)	431	41	\$37,872.158
F		745	We didn't allow your personal exemption and Earned Income Credit (EIC) on your tax return. Your Social Security Number (SSN) or last name doesn't match our records or the records provided by the Social Security Administration. Note: To be eligible for EIC, you, your spouse, and qualifying child or children must use a correct name and SSN issued by the Social Security Administration.	Y	2,960	463	\$1,094,498

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IRC Code Text: The term “mathematical or clerical error” means—  6213(g)(2) Section	(continued)  F	Taxpayer Notice Code  An omission of a correct taxpayer identification number required under section 32 (relating to the earned income credit) to be included on a return	Content of Corresponding Paragraph  You, your spouse, or one or more of your dependents claimed on your return didn’t have an assigned taxpayer identification number by the due date of the tax return. As a result, we disallowed certain credits claimed on your return. This change may affect any of the following credits: ◆ American opportunity credit ◆ Child tax credit ◆ Additional child tax credit ◆ Earned income credit	Sufficient Explanation?  N (lack of specificity)	Number of Taxpayers Receiving this Notice  810	Number of Taxpayers with Abatements  322	Total Amount Abated for this Notice Code  \$943,916
IRC Code Text: The term “mathematical or clerical error” means—  6213(g)(2) Section	(continued)  G	Taxpayer Notice Code  An entry on a return claiming the credit under section 32 with respect to net earnings from self-employment described in section 32(c)(2)(A) to the extent the tax imposed by section 1401 (relating to self-employment tax) on such net earnings has not been paid	Content of Corresponding Paragraph  We computed self-employment tax on your tax return for the self-employment income you reported. Since you included self-employment income in computing your Earned Income Credit (EIC), you must pay self-employment tax to receive EIC.	Sufficient Explanation?  Y	Number of Taxpayers Receiving this Notice  580	Number of Taxpayers with Abatements  75	Total Amount Abated for this Notice Code  \$48,931

continued

IRC Code Text: The term “mathematical or clerical error” means—	Taxpayer Notice Code	Content of Corresponding Paragraph	Sufficient Explanation?	Number of Taxpayers Receiving this Notice	Number of Taxpayers with Abatements	Total Amount Abated for this Notice Code
K	An omission required by section 32(k)(2) (relating to taxpayers making improper prior claims of earned income credit) or an entry on the return claiming the credit under section 32 for a taxable year for which the credit is disallowed under subsection (k)(1) thereof	We disallowed the amount claimed as earned income credit on your tax return. Our records indicate that we've banned you from claiming earned income credit for two tax years.	N (lack of specificity)	224	14	\$52,795
K		We disallowed the amount claimed as earned income credit on your tax return. Our records indicate that we've banned you from claiming earned income credit for this tax year.	N (lack of specificity)	745	135	\$325,056
K		We disallowed the amount claimed as earned income credit on your tax return. Our records indicate that we've banned you from claiming earned income credit for ten years.	N (lack of specificity)	27	1	\$4,090
L	The inclusion on a return of a TIN required to be included on the return under section 21, 24, or 32 if— (i) such TIN is of an individual whose age affects the amount of the credit under such section, and (ii) the computation of the credit on the return reflects the treatment of such individual as being of an age different from the individual's age based on such TIN	One or more of the dependents listed on your tax return was born after December 31st of the tax year for the return you filed. As a result, we disallowed certain credits claimed on your return. This change may affect any of the following credits: ◆ Credit for child and dependent care expenses ◆ Child tax credit ◆ Credit for other dependents ◆ Additional child tax credit ◆ Earned income credit	N (lack of specificity)	3	-	\$-
L		We didn't allow part or all the amount claimed as Earned Income Credit (EIC) on your tax return. The date of birth shown on your Schedule EIC, Earned Income Credit, for your qualifying child or children doesn't match the date or dates provided by the Social Security Administration. Their records showed your child or children doesn't meet the age requirement.	N (lack of specificity)	696	183	\$416,371
L		We did not allow your Earned Income Credit on your tax return. We could not verify you or your spouse's age and we could not determine the eligibility of any child claimed for the credit.	N (lack of specificity)	7	1	\$2,287
L(i)		We didn't allow the amount claimed as Earned Income Credit on your tax return. You or your spouse must be at least age 25, but less than age 65, on December 31st of the tax year for which the tax return is being filed.	Y	18,512	766	\$1,518,326

continued

IRC Code Text: The term “mathematical or clerical error” means—	Taxpayer Notice Code	Content of Corresponding Paragraph	Sufficient Explanation?	Number of Taxpayers Receiving this Notice	Number of Taxpayers with Abatements	Total Amount Abated for this Notice Code
6213(g)(2) Section	M	The entry on the return claiming the credit under section 32 with respect to a child if, according to the Federal Case Registry of Child Support Orders established under section 453(h) of the Social Security Act, the taxpayer is a noncustodial parent of such child	We didn’t allow part or all the amount claimed as Earned Income Credit on page 2 of your tax return. The information you provided on Schedule EIC, Earned Income Credit, shows one or more of the qualifying children didn’t live with you for more than half the year.	752	365	85

Source: IRS, CDW, IRTF and IMF as of cycle 201913 (June 2019)  
EITC after math error processing.

**FIGURE A.21. Number of Taxpayers Subject to a Two- or Ten-Year Ban by Year**

Tax Year (TY)	Number of Taxpayers with 2 or 10 Year Bans
2016	2,888
2015	3,536
2014	2,184
2013	2,867
2012	8,456

Source: IRS, CDW, IMF as of cycle 201913 and AIMS Closed Case Database (June 2019).

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## ENSURE LOW INCOME TAXPAYERS HAVE DUE PROCESS PROTECTIONS COMPARABLE TO PROTECTIONS OF OTHER TAXPAYERS: THE BAN UNDER IRC § 32(k)

**Bob Probasco**, *The EITC Ban – It's Worse Than You Realized*, PROCEDURALLY TAXING (Dec. 4, 2018),  
<https://procedurallytaxing.com/the-eitc-ban-its-worse-than-you-realized/>.

**Leslie Book**, *Tax Court Opinion in Ballard Highlights Fundamental Uncertainty of its Jurisdiction to Rule on the IRS Power to Ban Taxpayers From Claiming Refundable Credits*, PROCEDURALLY TAXING (Feb. 19, 2016),  
<https://procedurallytaxing.com/tax-court-opinion-in-ballard-highlights-fundamental-uncertainty-of-its-jurisdiction-to-rule-on-the-irs-power-to-ban-taxpayers-from-claiming-refundable-credits/>.

**William Schmidt**, *Tax Court Jurisdiction and the EITC Ban*, PROCEDURALLY TAXING (Sept. 7, 2018),  
<https://procedurallytaxing.com/tax-court-jurisdiction-and-the-eitc-ban/>.

## APPENDIX 3: EITC Literature Review

1. **Andrew T. Hayashi**, *The Effects of Refund Anticipation Loans on the Use of Paid Preparers and EITC Take-up* (Va. L. & Econ., Research Paper No. 2016-9, 2016).

As the author notes in the article's abstract, this paper discusses refund anticipation loans (RALs) and the effect that regulation on RALs has "on a variety of outcomes, including demand for paid tax preparation, EITC (Earned Income Tax Credit) take-up, and demand for other financial products, to explore the source of RAL demand and the relationship between RALs and tax compliance." The paper found that strict regulation of RALs reduced the demand for paid tax preparation, as well as EITC take-up, while increasing the demand for alternative products. The author believes that this "suggests that lack of access to the payment system may be an important driver of RAL demand and that even present-biased individuals may benefit from RALs."

2. **Anne L. Alstott**, *The Earned Income Tax Credit and the Limitations of Tax-Based Welfare Reform*, 108 HARV. L. REV. 533 (1995).

This article argues that the case for the EITC has been oversimplified in two main ways. 1) People arguing for and against the EITC are overly concerned with whether it discourages work and marriage. 2) The EITC is a tax-based program to transfer income, which creates certain difficulties and constraints that do not exist in more traditional welfare programs. Reforms to the programs could improve them, but would require major changes to our federal income tax system.

3. **Anne L. Alstott**, *Why the EITC Doesn't Make Work Pay*, 73 LAW & CONTEMP. PROBS. 285 (2010).

This paper explores whether the EITC actually "makes work pay." The paper finds that the EITC only modestly reduces poverty, and gaps in other welfare programs can harm low income taxpayers, especially when they have gaps in their employment and the EITC doesn't pay them. This exposes low income taxpayers to difficulties when they are involuntarily unemployed, which is common among many low income workers.

4. **Austin Nichols & Jesse Rothstein**, *The Earned Income Tax Credit (EITC)* (Nat'l Bureau of Econ. Res., Working Paper No. 21211, 2015).

"We review research on the Earned Income Tax Credit (EITC) ... Recent work has confirmed earlier findings that labor supply effects are positive for single mothers, smaller and negative for married mothers, and essentially nonexistent for men. Where earlier estimates indicated that all responses were on the extensive margin, some recent studies find evidence of non-zero, but small, intensive margin effects. We also review research on the incidence of the credit, suggesting that employers capture some of the program benefits through lower wages; on the large impact of the program on poverty rates and on children's outcomes; and on families' apparent preferences for lump-sum refunds over smaller payments distributed throughout the year. We present new evidence regarding the accuracy of EITC imputations in the Current Population Survey. We discuss proposals for reform, including a more generous childless credit, and argue that the EITC may be complementary to the minimum wage, rather than an alternative."

5. **Benjamin M. Leff**, *EITC for All: A Universal Basic Income Compromise Proposal*, 25 WASH. & LEE J. CIV. RTS. & SOC. JUST. (forthcoming 2019).

This article considers Universal Basic Income (UBI) if it were comprised of a number of reforms to the EITC. Reforms such as removing the EITC phaseout (no means testing), applying the EITC on an individual basis, and paying beneficiaries throughout the year, instead of in a lump sum tax refund could demonstrate that a UBI-like program is possible. The biggest compromise would be the work-conditional nature of the EITC, whereas many UBI payment models are not conditional on working.

6. **Cass R. Sunstein**, *Sludge and Ordeals*, 63 DUKE L.J. 1843 (2019).

Paperwork burdens that the U.S. government imposes on its people, which this article refers to as “sludge,” may lead people to not take up beneficial programs that are available to them. The costs of sludge may lead to the effective denial of the benefits available to people who need them. The article briefly discusses EITC, including how, in the name of program integrity, agencies may impose considerable burdens that may prevent some eligible people from receiving a benefit they are entitled to receive. The article suggests a careful review of sludge across programs and agencies. To that end, the article proposes that a deregulatory effort must be undertaken to reduce sludge (for example, through automatic enrollment, simpler forms, and reminders) balanced against the legitimate goals that it may promote (such as denying benefits to those who are not entitled to them).

7. **Danshera Cords**, *Paid Tax Preparers, Used Car Dealers, Refund Anticipation Loans, and the Earned Income Tax Credit: The Need to Regulate Tax Return Preparers and Provide More Free Alternatives*, 59 CASE WES. L. REV. 351 (2009).

Many taxpayers in the U.S. use paid return preparers to complete their tax returns. The vast majority of those claiming the EITC use paid preparers. Taxpayers pay billions a year for their returns to be prepared. However, the industry of return preparation is largely unregulated. As the title suggests, used car dealers and other nontax-related businesses can and do prepare tax returns for pay. Preparation businesses offer a host of financial products such as refund anticipation loans and checks. Many preparers are unenrolled and are not CPAs or attorneys. The article advocates for increased regulation and disclosure of tax return preparers as a way to improve compliance, and protect taxpayers.

8. **David A. Super**, *Privatization, Policy Paralysis, and the Poor*, 96 CAL. L. REV. 393, 403–405 (2008).

While not an EITC paper, David Super’s article divides the function of delivering benefits into distinct activities, including the following:

- Prospective claimants require some assistance in applying for the program;
- Someone must set eligibility criteria and procedures;
- Someone must determine whether each claimant meets those eligibility criteria and procedural requirements;
- Someone must keep records of those eligibility decisions;
- Someone must issue benefits to claimants found eligible;
- Someone must resolve disputes with claimants concerning eligibility and issuance;
- Someone must review performance at each of these steps to protect the program integrity.

9. **David A. Weisbach & Jacob Nussim**, *The Integration of Tax and Spending Programs*, 113 YALE L. REV 955 (2004).

The authors explain in the article's abstract that “[t]his paper provides a theory for deciding when a spending program should be implemented through the tax system.” While normally based on considerations of tax policy, this paper argues that the decision should be made based on organizational design, to group like activities together. This would produce better results. The paper then applies its theory to the tax and spending problem and analyzes Supplemental Nutrition Assistance Program (SNAP) and EITC through this lens, to determine if these programs would be better suited as part of the tax system or not.

10. **David T. Ellwood**, *The Impact of the Earned Income Tax Credit and Social Policy Reforms on Work, Marriage, and Living Arrangements*, 53 NAT'L TAX J. 1063 (2000).

“This article examines the impact of the recent dramatic changes in the social policies, particularly the expansion of the EITC and Welfare reform on labor supply, marriage, and cohabitation. Altered policies have increased incentives to work or marry for some, diminished incentives for others. The results strongly indicate expanded work by single mothers and reductions of work by married mothers in accordance with their changed incentives. By contrast, estimated impacts on marriage are small and ambiguous, though modest changes in cohabitation in the predicted direction suggest that impact on family structure might become more apparent in the future.”

11. **Dayanand S. Manoli & Nicholas Turner**, *Cash-on-Hand & College Enrollment: Evidence From Population Tax Data and Policy Nonlinearities* (Nat'l Bureau of Econ. Res., Working Paper No. 19836, 2014).

“We estimate causal effects of cash-on-hand on college enrollment decisions of students from low-income families. Using population-level, administrative data from United States income tax returns, we exploit variation in tax refunds received in the spring of the high school senior year. The variation in tax refunds results from the kink point between the phase-in and maximum credit portions of the Earned Income Tax Credit schedule. The results suggest tax refunds received in the spring of the high school senior year have meaningful effects on college enrollment.”

12. **Dennis J. Ventry, Jr.**, *The Collision of Tax and Welfare Politics: The Political History of the Earned Income Tax Credit, 1969–99*, 53 NAT'L TAX J. 983 (2000).

“This paper uses the political history and pre-history of the EITC to describe how the politics of welfare reform influence tax policies that function as social policy. It suggests that the economic tradeoffs inherent in the formulation of tax-transfer programs are also political tradeoffs. It examines policy choices between costs and labor supply incentives, as well as those between ease of participation and compliance rates. This paper concludes that although economic analysis influenced the creation and development of the EITC, political factors, not economics, animated the history of the program.”

13. **Donald Moynihan, Pamela Herd & Hope Harvey**, *Administrative Burden: Learning, Psychological, and Compliance Costs in Citizen-State Interactions*, 25 J. PUB. ADMIN. RES. & THEORY 43 (2014).

This article provides two theories about how citizens interact with the state. It considers that administrative burden is “an important variable in understanding” citizen-state interactions. The article proposes that “[a]dministrative burden is conceptualized as a function of learning, psychological, and compliance costs that citizens experience in their interactions with government.” Additionally, the

article theorizes that how much administrative burden the citizens suffer is often a deliberate political decision.

14. **Dorothy A. Brown**, *Race and Class Matters in Tax Policy*, 107 COLUM. L. REV. 790 (2007).

This essay suggests that the EITC, at least in its current form, is disappearing. This is in part because of its high audit rate, caused by the EITC's "welfare taint." The author suggests that if the EITC is to survive, it, and the taxpayers that receive it, must be portrayed more sympathetically and positively, to move beyond the welfare taint. The author suggests that this may be done by using the race and class information about the EITC (its beneficiaries are majority white) to its benefit, and package it in such a way as to prevent the EITC's extinction.

15. **Dorothy A. Brown**, *Tax Law: Implicit Bias and the Earned Income Tax Credit*, in *IMPLICIT RACIAL BIAS ACROSS THE LAW* 164 (Justin D. Levison & Robert J. Smith eds., 2012).

This chapter examines the implicit racial bias present in the EITC, in how it may explain the high levels of enforcement to achieve compliance, instead of focusing on simplifying the EITC filing process to reduce the error rate. The chapter explores some of the impacts of implicit racial bias on the EITC and the tax system. The idea of what EITC taxpayers look like and how they behave is misguided (the typical EITC claimant is white, not black, and many are very hard working, not lazy). Congress's focus on EITC improper payments led to other non-EITC taxpayers being able to commit actual fraud without fear of reprisal. And despite the efforts of Congress and the IRS, the error rate is mostly the same.

16. **Dorothy A. Brown, Stacey Dickert-Conlin & Scott Houser**, *The Undeserving Poor?: Welfare, Tax Policy, and Political Discourse* (Wash. & Lee Pub. L. & Legal Theory, Working Paper No. 04–02, 2004).

This article argues that certain perceptions surrounding low income taxpayers, that they are disproportionately Black, make low income taxpayers and the credits that benefit them politically unpopular. However, this article provides that twice as many Whites are eligible for the EITC as Blacks. Additionally, low income tax benefits disadvantage Black families compared to middle income tax benefits. The article suggests tax reform to treat low income families like middle income families when it comes to tax benefits.

17. **Elaine Magg**, *Earned Income Tax Credit in the United States*, 22 J. SOC. SECURITY L. 20 (2015).

"In this article, the author explains the history, role and structure of the earned income tax credit (EITC) which is intended primarily to provide support for low income workers and their families, including its relationship with work incentives. The article offers critical analysis of the current system and proposals for future reform."

18. **Emmanuel Saez**, *Do Taxpayers Bunch at Kink Points?*, 2 AM. ECON. J. ECON. POL'Y 180 (2010).

"This paper uses tax return data to analyze bunching at the kink points of the US income tax schedule. We estimate the compensated elasticity of reported income with respect to (one minus) the marginal tax rate using bunching evidence. We find clear evidence of bunching around the first kink point of the Earned Income Tax Credit but concentrated solely among the self-employed. A simple tax evasion model can account for those results. We find evidence of bunching at the threshold of the first income tax bracket where tax liability starts but no evidence of bunching at any other kink point."

19. **Francine J. Lipman**, *The Working Poor Are Paying for Government Benefits: Fixing the Hole in the Anti-Poverty Purse*, 2003 Wis. L. Rev 461 (2003).

This article analyzes a study that found that approximately \$1.75 billion of the \$30 billion in 1999 EITC was shifted from targeted individuals to paid tax preparers and affiliated national banks. This demonstrates that low income taxpayers are paying for their tax benefits, and thus diminishing their intended benefit. The article provides several proposals to solve the problem and improve the EITC to better benefit its beneficiaries.

20. **Hilary Hoynes, Doug Miller & David Simon**, *Income, the Earned Income Tax Credit, and Infant Health*, 7 AM. ECON. J. ECON. POL'Y 172 (2015).

“This paper uses quasi-experimental variation from federal tax reform to evaluate the effect of the EITC on infant health outcomes. We find that the EITC reduces the incidence of low birth weight and increases mean birth weight: a \$1,000 treatment-on-the-treated leads to a 2 to 3 percent decline in low birth weight. Our results suggest that the candidate mechanisms include more prenatal care and less negative health behaviors (smoking). Additionally, we find a shift from public to private insurance coverage, and for some a reduction in insurance overall, indicating a potential change in the quality and perhaps quantity of coverage.”

21. **Jacob Goldin**, *Tax Benefit Complexity and Take-up: Lessons from the Earned Income Tax Credit*, TAX L. REV. (forthcoming 2019).

The complexity of the tax benefits system may prevent millions of low income Americans from claiming tax benefits they are eligible for. This article considers what may increase take-up of tax benefits by low income Americans. Some barriers to claiming tax benefits may be solved by using tax preparation software or a return preparer. The author argues that the most relevant complexities are solved by use of these assisted preparation methods. Other efforts to educate taxpayers about credits, like the EITC, or increase awareness are likely to be less successful. Therefore, the most successful reforms to increasing take-up may be those that appear to be unrelated to tax benefits.

22. **Janet Holtzblatt & Janet McCubbin**, *Issues Affecting Low-Income Filers*, in THE CRISIS IN TAX ADMINISTRATION 148 (Henry J. Aaron & Joel Slemrod eds., 2004).

There is much complexity in the tax code that affects filers of all incomes. However, some issues are especially felt by low income taxpayers. This book chapter takes an in-depth look at the many issues affecting these low income taxpayers. For example, compliance costs may especially burden low income taxpayers, from increased audit frequency to paying tax return preparers. The authors also propose some solutions for improving tax administration for low income filers, such as removing the EITC from the Income Tax System, which could reduce some compliance issues, as well as simplifying the credit.

23. **Jason DeBacker, Bradley T. Heim, Anh Tran & Alexander Yuskavage**, *The Effects of IRS Audits on EITC Claimants*, 71 NAT'L TAX J. 451 (2018).

“The Internal Revenue Service (IRS) devotes substantial resources to audit tax returns of Earned Income Tax Credits (EITC) claimants, but little is known about the deterrence effect of these audits. Our paper examines the impact of this tax enforcement on subsequent individual taxpaying among those who claimed an EITC. Studying randomized IRS audits during the 2006-2009 period, we find that EITC participants who are audited show much larger increases in reported income in subsequent years, both compared to a control group of EITC filers, and compared to audited filers who were not EITC

claimants. We find behavioral impacts on the extensive margin as well, with the probability of a filer claiming an EITC dropping by over 6 percentage points within 4 years following the audit, as well as changes in filing status and the number of dependents.”

24. **Jay A. Soled & Kathleen DeLaney Thomas**, *Regulating Tax Return Preparation*, 58 B.C. L. REV. 151 (2017).

Tax return preparers and tax return software dominate the preparation and submission of Form 1040. They are “vital intermediaries between the government and taxpayers.” However, there is very little congressional oversight of Tax return preparers and tax return software, despite the fact that the shortcomings of these two players (anyone can prepare returns for pay and few, if any, checks exist to test the accuracy of software) lead to millions of incorrect tax returns each year. These incorrect returns reduce government revenue, and may prevent some taxpayers from receiving tax benefits they are eligible for. This article proposes reforms to improve the current system.

25. **Jennifer Bird-Pollan**, *Who’s Afraid of Redistribution? An Analysis of the Earned Income Tax Credit*, 74 Mo. L. REV. 251 (2009).

In the article abstract, the author states, “Using the federal income tax system as a means of redistribution was a recurrent theme in last year’s presidential election. As part of his campaign, Barack Obama pledged to expand the reach of the EITC, and that expansion has begun with the 2009 Stimulus Bill. The thesis of my article is that the EITC, as currently administered through the United States federal income tax, is not a perfect system, but is certainly worth maintaining, and even expanding, as Congress and the President have already begun to do. The article begins with a brief history of the EITC, and then works through the mechanics of the credit. I then turn to an examination of some of the deepest criticisms of the EITC, and try to respond to those criticisms. My conclusion is that the EITC should remain as part of the federal income tax system, but that efforts must be made to ensure that all who are entitled to the credit are able to claim it, and that taxpayers who claim the credit do not fall victim to the predatory lending often affiliated with so-called ‘Refund Anticipation Loans.’”

26. **Jennifer Sykes et. al.**, *Dignity and Dreams: What the Earned Income Tax Credit Means to Low Income Families*, 80 AM. SOC. REV. 243 (2015).

“Money has meaning that shapes its uses and social significance, including the monies low-income families draw on for survival: wages, welfare, and the Earned Income Tax Credit (EITC). This study, based on in-depth interviews with 115 low-wage EITC recipients, reveals the EITC is an unusual type of government transfer. Recipients of the EITC say they value the debt relief this government benefit brings. However, they also perceive it as a just reward for work, which legitimizes a temporary increase in consumption. Furthermore, unlike other means-tested government transfers, the credit is seen as a springboard for upward mobility. Thus, by conferring dignity and spurring dreams, the EITC enhances feelings of citizenship and social inclusion.”

27. **Jonathan Barry Forman**, *Improving the Earned Income Credit: Transition to a Wage Subsidy Credit for the Working Poor*, 16 FLA. ST. U. L. REV. 41 (2017).

An early review of the history of the EITC and policy proposals to improve the EITC by focusing on measures to address the economic needs of low income workers and their families.

28. **Jonathan P. Schneller**, *The Earned Income Tax Credit and the Administration of Tax Expenditures*, 90 N.C. L. REV. 719 (2012).

As the author notes in the article abstract, “This paper argues that in light of tax expenditures’ political popularity and consistent growth, tax expenditure analysis should shift its ambitions from the elimination of tax expenditures to their reform. One particularly promising avenue for reform is administrative, as the tax system provides a poor platform for the administration of complex programs with policy objectives unrelated to revenue collection. This paper argues that scholars and policymakers should borrow “hybrid” administrative practices from non-tax programs and apply them to tax expenditures as necessary to advance a given tax expenditure’s non-tax policy objectives. It explores this idea via an in-depth case study of the Earned Income Tax Credit.”

29. **Jonathan P. Schneller, Adam S. Chilton & Joshua L. Boehm**, *The Earned Income Tax Credit, Low-Income Workers, and the Legal Aid Community*, 3 COLUM. J. TAX L. 177 (2012).

This article examines the popularity of the EITC politically because of its low administrative costs and incentive to work. However, the article contemplates many of the EITCs flaws and suggests how to improve the EITC through a variety of reforms. The credit is overly complex, and taxpayers need additional advice and guidance to overcome that burden. The IRS can take certain actions to make the credit more accessible and reduce the error rate. The article also suggests that there are ways that legal aid can enhance its support of EITC recipients who are being audited or in Tax Court proceedings. The authors argue that EITC assistance needs greater funding and Congress should place a higher priority on it because it is larger than other wealth transfer welfare programs.

30. **Karie Davis-Nozemack**, *Unequal Burdens in EITC Compliance*, 31 LAW & INEQ. 37 (2013).

“Lower income means harsher treatment from the government for taxpayers who claim the Earned Income Tax Credit (EITC). EITC claimants are audited more often than any taxpayers other than the very wealthy. More concerning, however, is that the IRS audits EITC claimants by correspondence examination in a manner that unduly burdens access to this refundable tax credit: a credit that often keeps lower income workers out of poverty.

“Improper payment law brings increased scrutiny to federal programs that issue erroneous payments. Because the EITC is alleged to have substantial improper payments, it is subject to federal improper payment law, which adds administrative burdens in hopes of diminishing erroneous payments. While other scholars have noted the relationship between improper payment law and the EITC, this Article takes the unique view that improper payment law, instead of burdening EITC administration, can provide relief to the Service’s onerous EITC compliance methods.”

31. **Kerry A. Ryan**, *EITC as Income (In)Stability?*, 15 FLA. TAX REV. 583 (2014).

The EITC was enacted in part to incentivize poor single mothers to work. However, the article shows how the EITC may actually contribute to poverty in single-mother households during economic downturns. The article reasons that “[l]ost EITC benefits exacerbate recession-induced earnings losses,” which the article refers to as income destabilization. This can have an unintended negative effect on single-mother households, despite those households being a target of the credit. The article proposes a structural change to the EITC to prevent such income destabilization.

32. **Lawrence Zelenak**, *Redesigning the Earned Income Tax Credit as a Family Size Adjustment to the Minimum Wage*, 57 TAX L. REV. 301 (2004).

This article provides the author's view of what the EITC should be designed to accomplish. The article claims that the EITC "should be revised to function as an adjustment to the minimum wage based on family size, designed to ensure that no family headed by a working parent lives in poverty, regardless of the number of children in the family." The article discusses how to redesign and restructure the credit to achieve that desired result.

33. **Lawrence Zelenak**, *Tax or Welfare? The Administration of the Earned Income Tax Credit*, 52 UCLA L. REV. 1867 (2005).

This article compares the enforcement of the EITC with other welfare programs, and finds that it is more vigorously enforced than other welfare programs. The administration of the EITC also is unlike other welfare programs, and more in line with income tax (for example, eligibility is self-declared as opposed to determined prior to payment of the benefit). The article considers the reasons for these differences, and ultimately concludes that the administration of the EITC as tax-based makes it superior than other welfare programs.

34. **Len Burman & Elaine Maag**, *The War on Poverty Moves to the Tax Code* (2014).

This article briefly discusses how the benefits provided by anti-poverty programs have shifted slightly, with the EITC now delivering more assistance than TANF (welfare) and SNAP (food stamps). The article explains that refundable tax credits reduce poverty, and especially child poverty, more than traditional welfare programs do. While less targeted than traditional benefits programs, the tax system now provides some of the largest and most effective anti-poverty programs.

35. **Leslie Book, David Williams & Krista Holub**, *Insights From Behavioral Economics Can Improve Administration of the EITC*, 37 VA. TAX REV. 177 (2018).

The EITC delivers many social benefits to low income workers. However, the high level of noncompliance plagues the IRS. The authors propose that focusing on taxpayer characteristics may help to improve compliance. The authors suggest that the IRS could improve compliance by using insights from cognitive psychology research (for example, "that people may be more truthful when confronted with increasing psychological costs and a higher perceived likelihood of detection"). The article provides specific proposals in relation to these insights improving EITC compliance.

36. **Leslie Book**, *Preventing the Hybrid from Backfiring: Delivery of Benefits to the Working Poor through the Tax System*, 2006 WIS. L. REV. 1103 (2006).

This article examines the tax system and the EITC, which has been increasingly used like a more traditional welfare system to distribute wealth to the poor. It looks at the positives (cheaper and higher participation) and difficulties (higher rate of fraud and error) of administering a benefits system through the tax system. The article provides a framework for improving the EITC to reduce errors and fraud.

37. **Leslie Book**, *The Poor and Tax Compliance: One Size Does Not Fit All*, 51 KAN. L. REV. 1145 (2003).

This article examines the compliance issues with low income taxpayers and the EITC, as well as the IRS's efforts to reduce noncompliance surrounding the credit and low income taxpayers. The article further examines the possible reasons for the high level of noncompliance and its policy implications for low income taxpayers. The author suggests that the government has not focused its resources properly

to identify intentional abuse, which has led to more correspondence examination instead of traditional audits. The current policies are inadequately targeted to low income taxpayers and insufficient by the IRS's traditional deterrence measures.

38. **Michael B. Adamson**, *Earned Income Tax Credit: Path Dependence and the Blessing of Undertheorization*, 65 DUKE L.J. 1439 (2016).

“Some commentators have lamented that the Earned Income Tax Credit (EITC) is undertheorized—that its purpose is unclear—and that its design is therefore suboptimal. This Note explores the credit’s path-dependent past, which has resulted in a present-day EITC that manifests a diverse, uncoordinated assortment of policy purposes. Although the EITC’s ambiguity of purpose may yield policy inefficiencies, this Note argues that it also produces significant political benefits that would-be reformers who value the EITC’s many societal benefits should take into account before they attempt to enact any major overhaul.”

39. **Michelle Lyon Drumbl**, *Beyond polemics: Poverty, taxes, and noncompliance*, 14 E.J. TAX RES. 253 (2016).

Despite the many positive impacts, the EITC provides to children and families, it is hindered politically by its high improper payments rate. This article explains that improper payments are not the same as fraud (many improper payments may be due to unintentional mistakes). The article also critiques the IRS’s administration and enforcement of the EITC. It provides a proposal to address these issues, and balance the IRS’s need for sufficient information and documentation to limit improper payments without unduly burdening low income taxpayers. As explained in the article’s abstract, the author “concludes that increasing due diligence requirements at the time of filing, coupled with slowing down the refund process generally, is a reasonable way to improve administration of the EITC program without unduly burdening low-income taxpayers.”

40. **Michelle Lyon Drumbl**, *Tax Credits for the Working Poor: A Call for Reform* (forthcoming 2019).

This book explores the EITC, its history, its present, and how to make it better. The author explains the reasoning behind the EITC as a tax credit for the working poor and why the U.S. uses it to address poverty. The book further critiques the administration of the credit and reviews several case studies to examine how other countries have designed and administer similar programs.

41. **Michelle Lyon Drumbl**, *Those Who Know, Those Who Don’t, and Those Who Know Better: Balancing Complexity, Sophistication, and Accuracy on Tax Returns*, 11 PITT. TAX REV. 113 (2013).

“By statute, taxpayers have the right to contest the accuracy-related penalty by demonstrating that there was reasonable cause for the underlying error and the taxpayer acted in good faith. Treasury regulations provide that such a circumstance might include ‘an honest misunderstanding of fact or law that is reasonable in light of all the facts and circumstances, including the experience, knowledge, and education of the taxpayer.’ Yet for all of these reasons—lack of experience, lack of knowledge, and relative lack of education—the taxpayer is unlikely to have the knowledge or resources to raise the very defense that is meant to protect an unsophisticated taxpayer.

“Drawing comparisons between refundable tax credits and social programs administered by other agencies, this article calls upon the IRS to better differentiate between inadvertent error (‘those who don’t know’) and intentional or fraudulent error (‘those who know better’). The article argues that the current accuracy-related penalty approach is unduly punitive. It concludes by proposing solutions that

the IRS might consider in light of Congress's desire for the Service to administer these social benefits through the Internal Revenue Code."

42. **Nina E. Olson**, *Procedural Justice for All: A Taxpayer Rights Analysis of IRS Earned Income Credit Compliance Strategy*, in ADVANCES IN TAXATION 1-35 (John Hasseldine ed., 2015).

This article discusses the tax system as a vehicle for delivering benefits to low income families. It looks at the system from a taxpayer rights perspective. The article especially analyzes how the IRS handles its EITC compliance strategy in the context of taxpayer rights.

43. **Raj Chetty, John N. Friedman & Emmanuel Saez**, *Using Differences in Knowledge Across Neighborhoods to Uncover the Impacts of the EITC on Earnings*, 103 AM. ECON. REV. 2683 (2013).

"We estimate the impacts of the Earned Income Tax Credit on labor supply using local variation in knowledge about the EITC schedule. We proxy for EITC knowledge in a Zip code with the fraction of individuals who manipulate reported self-employment income to maximize their EITC refund. This measure varies significantly across areas. We exploit changes in EITC eligibility at the birth of a child to estimate labor supply effects. Individuals in high-knowledge areas change wage earnings sharply to obtain larger EITC refunds relative to those in low-knowledge areas. These responses come primarily from intensive-margin earnings increases in the phase-in region."

44. **Raj Chetty, John N. Friedman & Jonah Rockoff**, *New Evidence of the Long-Term Impacts of Tax Credits* 31 (2011).

This piece analyzes the long term impacts of tax credits on child test scores and the impacts of those test scores on children's future potential achievements. The authors found that "a \$1,000 increase in tax credits raises students' test scores by 6% of a standard deviation, using our most conservative specification." The higher scores on average increase children's "probability of college attendance, raise earnings, reduce teenage birth rates, and improve the quality of the neighborhood in which their students live in adulthood." The authors suggest that these gains may in part offset the cost of providing certain tax credits.

45. **Sagit Leviner**, *The Role Tax Preparers Play in Taxpayer Compliance: An Empirical Investigation with Policy Implications*, 60 BUFF. L. REV. 1079 (2009).

This article investigated compliance trends and patterns, using software to look at tax return characteristics and how the return was prepared. The article concluded that there was a severe lack of data on preparers, and this has led to a system where decisions are made despite little information on the strength and weaknesses of preparers and tax preparation services. The author suggests that IRS standards and supervision of Enrolled Agents should be reexamined. The author found, however, that the compliant filing results for large national chains may suggest that industry self-regulation or guild standards may be a complimentary tool to ensure an enhanced preparation industry. Even so, external standards are likely to be more effective if properly applied and monitored.

46. **Sara Sternberg Greene**, *The Broken Safety Net: A Study of Earned Income Tax Credit Recipients and a Proposal for Repair*, 88 N.Y.U. L. REV. 515 (2013).

This article examines the EITC, looking at EITC recipients through in-depth qualitative interviews. The article explains that it fails to act as an effective safety net for low income families. It provides a once-a-year payment, despite low income families being the most vulnerable to financial instability

which may not overlap with tax season. Many families who are eligible for the EITC nevertheless may file for bankruptcy or become homeless. The article provides a suggestion for how to distribute the EITC to better serve low income families weathering financial instability.

47. **Steve Holt**, *Periodic Payment of the Earned Income Tax Credit Revisited* (2015).

This report reviews the author's original EITC periodic payment proposal, examines emerging alternatives and addresses issues like the administrative feasibility, benefits and demand for various ways to deliver benefits outside of an annual lump sum delivery.

48. **Steve Holt**, *The Role of the IRS as a Social Benefit Administrator* (2016).

This report examines the opportunities and obstacles associated with tax-administered assistance to low income families in the United States, with a particular focus on the EITC. It discusses compliance and administration challenges in light of its hybrid nature as both tax and social welfare program.

49. **Taylor Cranor, Jacob Goldin & Sarah Kotb**, *Does Informing Employees About Tax Benefits Increase Take-Up? Evidence from EITC Notification Laws* (Stan. L. & Econ., Olin Working Paper No. 530, 2019).

The authors explain in the article abstract that "Incomplete take-up of the Earned Income Tax Credit (EITC) is a source of persistent policy concern, with an estimated one-fifth of eligible households failing to claim the credit. To promote take-up, a growing number of jurisdictions require employers to provide EITC information to employees. We study the effect of these requirements, linking state and time variation in the adoption of the notification laws to administrative tax data. Our preferred specification yields precise null effects on EITC take-up, filing behavior, and labor force participation. The results cast doubt on the effectiveness of the notice requirements as implemented and suggest further research into other avenues for increasing tax benefit take-up."

50. **W. Edward Afield**, *A Market for Tax Compliance*, 62 CLEV. ST. L. REV. 315 (2014).

"This piece seeks to lay the framework for how such a voluntary compliance certification program would work and to discuss the benefits of such a system that are currently not being realized through the IRS's current regulation of paid preparers. Part II summarizes in brief the current regulatory landscape for paid preparers and illustrates that the current environment falls short in providing a mechanism to allow the government to better direct its enforcement resources and to incentivize a culture of compliance among tax preparers and their clients. Part III describes in general terms how a voluntary compliance certification system should be structured in order to achieve these benefits. Part IV describes in greater detail the compliance and related gains that can be achieved through a voluntary compliance certification system."

51. **William N. Evans & Craig L. Garthwaite**, *Giving Mom a Break: The Impact of Higher EITC Payments on Maternal Health*, 6 AM. ECON. J. ECON. POL'Y 258 (2014).

"The 1993 expansions of the Earned Income Tax Credit created the first meaningful separation in benefits between families containing two or more children and those with only one child. If income is protective of health, we should see improvements over time in the health for mothers eligible for these higher EITC benefits. Using data from the Behavioral Risk Factors Surveillance Survey, we find improvements in self-reported health for affected mothers. Using data from the National Health and Nutrition Examination Survey, we find reductions in the probability of having risky levels of biomarkers for these same women."

**ANNUAL REPORT TO CONGRESS (MOST SERIOUS PROBLEMS AND LEGISLATIVE RECOMMENDATIONS)**

Annual Report to Congress Piece	TAS Publication	Administrative	Legislative	TAS Recommendations
ETC Eligibility Determination Can Be Made Less Burdensome	NTA 2002 Annual Report 47-54	X		<p>The IRS needs a verification (examination) process to validate eligibility for the EITC and forms of documentation should be required, as appropriate.</p> <p>The IRS must understand and meet the needs of the increasingly diverse low income taxpayer community and adapt documentation requirements that assist eligible taxpayers in validating EITC claims.</p> <p>The IRS should seek to train employees to take a common sense approach when applying the intent of the law and to make eligibility decisions accordingly.</p> <p>The IRS should, during contacts, focus on educating low income taxpayers and their representatives.</p>
Procedures For Examining EITC Claims Cause Hardship and Infringe on Appeal Rights	NTA 2002 Annual Report 55-63	X		<p>The National Taxpayer Advocate strongly recommends that the IRS task force propose the release of the undisputed portion of the taxpayer refund during return processing and direct its efforts to immediate implementation.</p> <p>The IRS should devote additional resources to taxpayer outreach concerning the issue of taxpayers not responding to EITC examinations.</p> <p>The use of the "Combo" letter should be discontinued, and Publication 3498 should be rewritten to more clearly describe the appeals process.</p>
Lack of Response During ETC Exams	NTA 2002 Annual Report 64-68	X		<p>We suggest that the IRS take telephone numbers from taxpayers at any point in the examination process when they wish to be contacted by the examiner.</p> <p>Reviewing telephone activity reports in conjunction with local Quality Review staff assessments may help ensure compliance with RRA98.</p> <p>More emphasis should be placed on contacting third parties to validate EITC claims regarding eligibility determinations.</p>
IRS Oversight of EITC Return Preparers Can Be Improved	NTA 2002 Annual Report 69-74	X		<p>The IRS can place more emphasis on enforcing the requirements of IRC § 6695(g).</p> <p>The IRS must take the lead in assuring that paid preparers are adequately trained and updated on tax law changes and that unscrupulous preparers are not allowed to continue their unethical, illegal practices.</p> <p>The IRS must undertake a significant consumer education campaign so that low income taxpayers are able to make informed choices between tax preparers and tax preparation products.</p> <p>The National Taxpayer Advocate proposed a legislative certification scheme to establish standards and procedures to regulate and certify tax return preparers.</p> <p>Conduct research to better understand and address the reasons for a high "no response" rate in EITC audit process to increase taxpayer participation and improve audit results.</p>
The Length of EITC Audits Contributes to Taxpayer Concerns	NTA 2002 Annual Report 75-80	X		<p>If the results of the Federal Case Registry Study (evaluating data used in the Dependent Database) show that the states data is not reliable, the IRS should devise a backup plan that will reduce the timeframe for holding refunds.</p> <p>The National Taxpayer Advocate strongly supports the IRS implementing partial refund release during processing</p>

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Annual Report to Congress Piece	TAS Publication	Administrative	Legislative	TAS Recommendations
EITC Recertification Compounds Taxpayer Burden	NTA 2002 Annual Report 81-87			<p>The IRS Publication 596, Earned Income Credit, and the EITC instructions should contain a section entitled “What You May Have to Furnish the IRS if Your EITC Eligibility is Questioned.”</p> <p>Include Form 8862 in Form 1040 series tax packages for the particular taxpayers who are required to recertify, using the recertification indicator as a trigger. Alternatively, target a mailing of the form to the appropriate taxpayers.</p> <p>The IRS should consider generating to all taxpayers whose accounts have recertification indicator “1” a letter explaining the recertification process, including their right to appeal, and enclosing the blank Form 8862. The mailing should advise the taxpayer of the circumstances in which to attach the completed Form 8862 to the subsequent year tax return.</p> <p>The IRS should consider allowing the Service Center Error Resolution Function to correspond for missing Forms 8862 rather than to immediately disallow the EITC using the math error procedures.</p> <p>The IRS should require tax examiners to simultaneously address all open tax returns claiming EITC to prevent taxpayers having to submit some of the same information numerous times to different employees and to prevent various determinations being made.</p> <p>Removal of any expired or erroneous recertification indicators from a taxpayer’s account is critical to normal processing since failure to do so unnecessarily delays the refund. It is commendable that programming to alleviate the problem of erroneous indicators is scheduled for 2004. However, in the interim, we encourage the IRS to emphasize the importance of manually removing the indicators with IRS campuses based on monthly reports.</p> <p>Continue developing correspondence (including letters, publications, and document requests) that will lessen taxpayer confusion and generate a greater response from taxpayers during the examination process.</p> <p>Ensure that procedures are in place so that taxpayer correspondence is timely processed and acknowledged.</p> <p>Continue to develop research initiatives and recommendations to improve the administration of the EITC program, including the TAS study to evaluate the impact of representation on the outcome of EITC audits and the study to identify the most significant barriers taxpayers encounter during EITC audits.</p> <p>Ensure that all employees receive clear guidance and training on the application of the two and ten year EITC recertification bans.</p> <p>Continue developing new processes (such as the use of alternative methods of documentation, the decision support tool, and encouraging examiners to use judgment) that will ease the burden taxpayers encounter when trying to provide the IRS with the requested documentation during the exam process.</p> <p>Continue to train EITC examination employees, utilizing real case examples (including TAS cases), on the importance of using judgment when deciding whether to allow or deny an EITC claim.</p> <p>Use “universal access” in EITC cases to enable any Exam employee to access a taxpayer’s case and take the steps necessary to resolve the case, including consolidating all EITC issues pertaining to that taxpayer—examination, audit reconsideration, and recertification—and under one employee.</p>
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Annual Report to Congress Piece	TAS Publication	Administrative	Legislative	TAS Recommendations
EITC Examinations and the Impact of Taxpayer Representation	NTA 2007 Annual Report 222-241			<p>Conduct additional testing on the use of affidavits in examinations.</p> <p>Expand the use of the affidavit to all EITC examinations.</p> <p>Test other potential methods of proof in IRS examinations to determine which methods are most accurate and best suited for meeting IRS and taxpayer needs.</p> <p>Provide continual training to examiners on the topic of exercising “judgment” in taxpayer cases using real case examples.</p> <p>Make additional attempts to obtain taxpayer telephone numbers for follow up contact in resolving cases.</p> <p>Replace boilerplate language in correspondence with taxpayer-specific information explaining what that specific taxpayer needs to do to resolve his or her case.</p> <p>Make IRS correspondence, forms and publications available in languages besides English and Spanish.</p> <p>Expand the interpretation services available on the toll-free telephone lines.</p> <p>Increase publicity about the Alternative Media Center and taxpayers’ ability to obtain Braille copies of forms and publications.</p> <p>Give taxpayers the option of specifying that they would like to receive correspondence in Braille, particularly in the context of IRS compliance activity.</p> <p>Reexamine current guidance regarding the transfer of cases from the campus to field offices to ensure that in cases where a face-to-face meeting or local knowledge is helpful in resolving the case, taxpayer’s requests for a transfer are not ignored due to resource and statute of limitations issues.</p> <p>Identify additional publications and notices that would benefit from the inclusion of language related to the LITCs and TASs.</p> <p>Work with Field Assistance to determine when taxpayers should be referred to a TAC in cases where they may need assistance in obtaining documentation necessary to resolve their cases.</p>
The IRS Should Reevaluate Earned Income Tax Credit Compliance Measures and Take Steps to Improve Both Service and Compliance	NTA 2011 Annual Report 296-312			<p>Prepare and disclose a full report on its current and prior EITC noncompliance studies, similar to that reporting on 1999, among other things, this report should disclose assumptions within the methodology as well as data for continued update of the EITC improper payment estimate, which needs to become transparent in light of policies it may generate.</p> <p>Utilize external data only as an indicator for the risk of noncompliance, so that taxpayers retain their right to have an opportunity to present his or her own facts, a right not subject to compromise by an IRS business decision.</p> <p>Send correspondence in plain language by implementing the revised initial contact letter (letter 566) and beginning revision of the other high-volume letters used in correspondence examinations as discussed (in the 2011 MSP) by January 2013.</p>

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Annual Report to Congress Piece	TAS Publication	Administrative	Legislative	TAS Recommendations
Earned Income Tax Credit: The IRS Inappropriately Bans Many Taxpayers from Claiming EITC	NTA 2013 Annual Report 103-115	X		<p>Immediately suspend the application of IRM provisions (e.g., IRM 4.19.14.6.1.5) that permit automatic imposition of the two-year EITC ban or require the taxpayer to show why the ban should not be imposed.</p> <p>In collaboration and consultation with the National Taxpayer Advocate, include on the Treasury Guidance Priority List regulations that explain when the IRS should impose EITC bans.</p> <p>Revise, in consultation with the National Taxpayer Advocate, the IRM provisions on the two year ban to take into account what is reasonable to expect of taxpayers who claim EITC. At a minimum, before imposing the two-year ban, examiners should be required to: a. Attempt to speak with the taxpayer; b. Determine whether the substantiation the taxpayer submitted is probative of the EITC claim or shows a sincere effort to prove the elements of EITC, even if the documentation is not listed in the IRM as acceptable substantiation or the documentation is insufficient; and c. Consider the role, if any, of a paid preparer in claiming disallowed EITC.</p> <p>Conduct quality reviews of every case in which the IRS proposes to impose the two-year ban. One hundred percent quality reviews should continue for at least three years and until the IRS's failure to adhere to the terms of the statute and the IRM is corrected.</p>
Allocate to the IRS the Burden of Proving it Properly Imposed the Two-Year Ban on Claiming the Earned Income Tax Credit	NTA 2013 Annual Report 311-315	X		<p>The National Taxpayer Advocate recommends that Congress amend IRC § 32(k) to provide that the IRS has the burden of proof as to whether it is appropriate to impose the two-year ban on claiming EITC.</p> <p>Conduct a study along the lines of the UK experiment to determine how best to serve low income taxpayers. This study should include interviews with taxpayers, nonprofit organizations, and IRS employees, to learn about taxpayer needs and communication preferences.</p>

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Annual Report to Congress Piece	TAS Publication	Administrative	Legislative	TAS Recommendations
Earned Income Tax Credit (EITC): The IRS Is Not Adequately Using the EITC Examination Process As an Educational Tool and Is Not Auditing Returns With the Greatest Indirect Potential for Improving EITC Compliance	NTA 2015 Annual Report 248-260	X		<p>Conduct an EITC pilot with three different treatments: a regular correspondence examination, an office audit, and a correspondence examination with one auditor assigned. The pilot should measure the following: direct time on case, no response/drop-out rate, agreed to rate, audit reconsideration rate, and future compliance rate.</p> <p>When an EITC taxpayer calls the IRS with information in response to an audit, one employee should be assigned to the taxpayer's case until it is resolved. If the taxpayer calls back, he or she could have the option to speak to the next available employee or wait for the assigned employee to call back. The IRS should hire employees with a social work background or train existing auditors to conduct the audits.</p> <p>Use NRP data to design a formula for workload selection in addition to (or incorporated into) the DBs that will reach the audits with the most impact for taxpayer education and improvement to future compliance. This would include qualifying child errors that involve the residency test.</p> <p>Revise the IRM with the list of additional documentation listed in the TAS IGM, as well as IRM updates about accepting alternative EITC substantiating documentation.</p> <p>Publish and accept Form 8836, Third Party Affidavit, for purposes of substantiating the residency requirement for a qualifying child.</p> <p>Collaborate with TAS to draft IRM guidance requiring correspondence examiners to adjust accounts for the childless worker credit when the taxpayer is ineligible for the EITC with children. This should be done automatically without requiring the taxpayer to request the credit.</p> <p>Release the annual analysis for the EITC Return Preparer Strategy to the public, including the measures used to evaluate the effectiveness of the strategy.</p> <p>Include TAS as a member of the EITC Return Preparer Strategy team.</p> <p>In collaboration with TAS and other IRS functions, and based on this annual analysis, determine where to focus resources and how to measure success with a multiyear analysis.</p> <p>Incorporate preparer referrals, both from internal and external sources, and preparers who misuse PTINs, as a selection criterion for compliance treatment in the EITC Return Preparer Strategy.</p> <p>Use measures for evaluating the effectiveness of the strategy on an annual basis that are not limited to measuring protected dollars or return on investment, but also include a year-to-year analysis of the preparer's behavior following treatment.</p> <p>Tailor outreach specifically to the unenrolled preparer population that addresses due diligence requirements and is presented where these preparers operate. This outreach should incorporate TV and radio, as well as social media.</p> <p>Conduct a creative, geographic-based public education campaign in conjunction with other internal and external stakeholders including public service advertisements, videos, and tweets in order to educate taxpayers on how to select a competent preparer, what the rules of due diligence require, and the consequences of using an unskilled or unscrupulous preparer, including identity theft. Different marketing approaches should be tested and studied to track EITC compliance over the years.</p> <p>Amend Internal Revenue Manual 4.19.14.5.4, EITC Qualifying Child, to allow an IRS employee to use a state agency's determination that a taxpayer has qualified for Temporary Assistance for Needy Families, Section 8 or comparable benefits, as substantiation for EITC with a qualifying child.</p> <p>Hire or train employees with social work skillsets in order to meet the needs of taxpayers claiming the EITC.</p> <p>Postpone its planning of any EITC Future State technology until the TDC data is available. Instead, the IRS should invest its resources into person-to-person communication for EITC taxpayers, including a dedicated "Extra Help" line for EITC taxpayers.</p>
Earned Income Tax Credit (EITC): The IRS's EITC Return Preparer Strategy Does Not Adequately Address the Role of Preparers in EITC Noncompliance	NTA 2015 Annual Report 281-283	X		
Earned Income Tax Credit (EITC): The Future State's Reliance on Online Tools Will Harm EITC Taxpayers	NTA 2016 Annual Report 138-150	X		

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Annual Report to Congress Piece	TAS Publication	Administrative	Legislative	TAS Recommendations
	NTA 2016 Annual Report 325-357		X	<p>Require the IRS to revise its mission statement to re-emphasize a service-oriented, non-coercive approach to tax administration, recognize the dual roles of revenue collector and benefits administrator, and explicitly affirm the role of the Taxpayer Bill of Rights as the guiding principle for tax administration.</p> <p>Consolidate the numerous family status provisions into two: the refundable Family Credit, which would reflect the cost of maintaining a household and raising a family; and the refundable Earned Income Tax Credit, which would be awarded per individual worker and provide a work incentive and subsidy for low income workers.</p> <p>Repeal the personal and dependency exemptions, Child Tax Credit/Additional Child Tax Credit, Head of Household filing status, and the family-size differential of the EITC, all of which would be replaced by the Family Credit.</p> <p>Make the Family Credit available to all taxpayers regardless of income and refundable to low income taxpayers; the Family Credit would consist of a Personal Credit for taxpayer and spouse and a Child Credit available to eligible individuals claiming a “qualifying child” or “qualifying relative” (subject to tie-breaker rules).</p> <p>Amend the Qualifying Relative test of IRC § 152(d)(2)(H) to provide a child must share the same principal place of abode as the taxpayer and be a member of the taxpayer’s household for more than six months of the taxable year.</p> <p>Provide for certain add-on credits under the Family Credit for child and dependent care, disabled taxpayers or family members, and consider providing for noncustodial parents of qualifying children who pay substantially all child support legally due for that tax year.</p> <p>Amend IRC § 152(d)(1)(D) to provide the term “qualifying relative” includes an individual “who is not claimed as a qualifying child of such taxpayer or any other taxpayer for any taxable year in which such taxable year begins.”</p> <p>Amend IRC § 152(f) to provide a definition of “support” that excludes any means-tested federal, state, or local benefits paid on behalf of or for the benefit of the qualifying child or qualifying relative.</p> <p>Expand the eligibility age for the modified refundable EITC to include workers 18 years of age and older, with no age cap.</p> <p>Amend IRC § 7703(b) to permit taxpayers who have a legally binding separation agreement and who live apart on the last day of the tax year to be considered “not married” for purposes of filing status.</p> <p>Amend IRC § 6402 to limit offsets of refunds attributable to the Family Credit and EITC to 25 percent of the taxpayer’s refundable portion of these credits.</p> <p>Amend IRC § 6402 to authorize the IRS to calculate overpayments and make refunds with respect to the new per-worker EITC refundable credit, where the taxpayer’s reported income demonstrates eligibility and the taxpayer has not claimed the credit on his or her return.</p> <p>Mandate the IRS assign one employee to each audit involving a questionable Family Credit claim where the taxpayer has responded (by phone or in writing) to an IRS audit notice.</p> <p>Mandate the IRS establish a dedicated, year-round toll-free help line staffed by IRS personnel to respond to Family Credit questions.</p>

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Annual Report to Congress Piece	TAS Publication	Administrative	Legislative	TAS Recommendations
Earned Income Tax Credit (EITC): The IRS Continues to Make Progress to Improve Its Administration of the EITC, But It Has Not Adequately Incorporated Research Findings That Show Positive Impacts of Taxpayer Education on Compliance	NTA 2017 Annual Report 141-150	X		<p>Send out pre-filing season letters to taxpayers who break certain return filters. These letters should be written in plain language and be tailored to the taxpayer's particular needs.</p> <p>Provide a dedicated toll-free Help line for EITC taxpayers during the filing season.</p> <p>Expand the list of acceptable documentation under IRM 4.19.14-1 and train employees on the importance of this list.</p> <p>Continue to expand the use of third-party affidavits, thereby making them available to all EITC taxpayers.</p>
Improper Earned Income Tax Credit Payments: Measures the IRS Takes to Reduce Improper Earned Income Tax Credit Payments Are Not Sufficiently Proactive and May Unnecessarily Burden Taxpayers	NTA 2018 Annual Report 91-104	X		<p>Seek a permanent exemption from the requirement that the IRS include recovered EITC payments in the EITC improper payment estimate.</p> <p>Collaborate with TAS to identify a method of identifying taxpayers who do not claim EITC but are eligible for the childless worker EITC, and automatically award the childless worker credit to those taxpayers.</p> <p>Collaborate with TAS to identify the changes to Form 1040 that would be needed, and the data gathering techniques that could be employed, to award EITC to taxpayers who are eligible for EITC with respect to a qualifying child but do not claim it on their returns.</p> <p>Collaborate with TAS Research in designing and conducting the planned study to compare prior EITC audit results to audit results of taxpayers who used affidavits to establish that they met the residency requirement.</p> <p>Revise soft notices that are sent to taxpayers advising them they may have claimed EITC in error to explain the error the taxpayer appears to have made (e.g., not meeting the residency requirement or the relationship requirement, misreporting income or deductions).</p> <p>Establish a dedicated, year-round toll-free "help line" staffed by IRS personnel trained to respond to EITC and Child Tax Credit questions.</p> <p>In soft notices to taxpayers advising them that they may have claimed EITC in error, include the dedicated telephone "help line."</p>

**VOLUME 2 STUDIES**

Volume 2 Study	TAS Publication	TAS Recommendations
Earned Income Tax Credit (EITC) Audit Reconsideration Study	NTA 2004 Annual Report vol. 2 1-82	<p>Improve communication with taxpayers during the initial audit.</p> <p>Increase taxpayer awareness of the legal assistance available at LITCs.</p> <p>Ensure all correspondence during the EIC audit provides taxpayers with references for contacting a LITC.</p> <p>Inform taxpayers of the closest LITC. Since these locations change annually, taxpayers could be instructed to call TAS if the LITC is no longer participating in the program.</p> <p>If a taxpayer cannot provide all requested documentation to verify EIC eligibility, and the IRS has no information to dispute the EIC claim, allow the taxpayer to provide an affidavit from an IRS approved source to prove EIC eligibility.</p> <p>Assign one worker to each EIC audit. Provide the worker's name, phone number, and address in all correspondence with the taxpayer.</p> <p>Call taxpayers, whenever possible, to see if verbal communication can resolve any miscommunication.</p> <p>Revise EIC audit letters. Letters should be written to address the taxpayers' personal tax return and should specifically state that the taxpayers' tax return is being audited. The letters should clearly list the specific issues of the audit and explain what the taxpayer must do to resolve each issue, and should also explain how the documentation relates to the issue in question.</p> <p>Provide timely acknowledgements to all documentation and materials received from the taxpayer.</p> <p>Inform taxpayers of the right to a face-to-face audit and what steps must be taken to request the audit be changed to face-to-face.</p> <p>Provide a check sheet that taxpayers can use to guide them in securing the proper documents and steps needed to validate their eligibility.</p>
IRS Earned Income Credit Audits – A Challenge to Taxpayers	NTA 2007 Annual Report vol. 2 94-116	<p>NTA 2007 Annual Report vol. 2 118-136</p> <p>The National Taxpayer Advocate recommends that the IRS revise the IRM, incorporate rules similar to the interim guidance issued to TAS employees, and train Tax Examiners accordingly. Specifically, the IRS should train Tax Examiners to clearly explain to taxpayers why the IRS needs documents, to determine the type of records the taxpayer possesses that could corroborate the claim, and to consider whether alternative documentation might suffice when traditional records are not available.</p> <p>In cases in which two taxpayers claim the same qualifying child, the IRS should train examiners to consider allowing taxpayers more time to submit documents before issuing the statutory notice of deficiency.</p> <p>The National Taxpayer Advocate calls upon the IRS to recognize that the EITC is a very complex statute, such that its employees must be trained in the law, not just "if-then" scenarios. Therefore, she recommends that the IRS use higher-graded employees with higher education requirements to handle these cases.</p>
Simulating EITC Filing Behaviors: Validating Agent Based Simulation for IRS Analyses: The 2004 Hartford Case Study	NTA 2007 Annual Report vol. 2 118-136	

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## OBJECTIVES REPORT TO CONGRESS

Objectives Report to Congress Piece	TAS Publication
Advocacy Initiative: Earned Income Tax Credit	NTA 2004 Objectives Report 6-9
TAS Research Initiative: Earned Income Tax Credit (EITC) Audit Effectiveness	NTA 2011 Objectives Report 67-68
Area of Focus: TAS's Continued Advocacy Efforts to Improve the Earned Income Tax Credit Program	NTA 2012 Objectives Report 7-9
Case Advocacy: Improving Advocacy in TAS Earned Income Tax Credit Cases	NTA 2012 Objectives Report 7-9
TAS Research Initiative: Earned Income Tax Credit (EITC) Examination Effectiveness	NTA 2013 Objectives Report 56-57
Area of Focus: The Earned Income Tax Credit is an Effective Anti-Poverty Tool That Requires a Non-Traditional Compliance Approach by the IRS	NTA 2015 Objectives Report 123-128
Area of Focus: Earned Income Tax Credit Reform Could Reduce the EITC Improper Payment Rate Without Reducing Participation by Eligible Taxpayers	NTA 2017 Objectives Report 113-118
Area of Focus: TAS Continues to Pursue Improvements to the IRS's Administration of the Earned Income Tax Credit (EITC), Particularly With Recent Changes to the Law	NTA 2018 Objectives Report 61-69
Earned Income Tax Credit (EITC): The IRS Continues to Make Progress to Improve Its Administration of the EITC, But It Has Not Adequately Incorporated Research Findings That Show Positive Impacts of Taxpayer Education on Compliance	NTA 2019 Objectives Report vol. 2 120-124





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