

The Earned Income and Child Tax Credits: The Federal Framework, Reform Efforts to Date, and Options for Future Change

Throughout U.S. history, the tax code has served as the foundation on which many of the nation’s most passionate debates, sweeping enactments, and fundamental reforms have occurred. Over the years, the tax code has been harnessed to bring about significant change in our country: whether following the initial need for revenue at the time of the Civil War, the first assessment of income tax through the 16th Amendment, or the empowerment of lower-income Americans to escape poverty and rise through society. At times, these debates have been divisive, as seen in recent years during the debate and enactment of the Tax Cuts and Jobs Act. At other times, discussion over the provisions of our tax code have resulted in broad, bipartisan, and enduring consensus.

As explored here, the federal Earned Income Tax Credit (“EITC”) and Child Tax Credit (“CTC”) are widely supported examples of how the tax code can be utilized to equip Americans with the resources they need to make ends meet and, ultimately, to succeed in our nation. Both credits reflect the prevailing view for much of our nation’s history that those with incomes falling below a certain minimum level should not be subject to federal income tax; likewise, both credits represent the popular notion that in addition to relief from income tax, lower-income working people deserve further tax benefit in order to offset payroll and sales taxes, encourage workforce participation, and stimulate the economy.

The EITC, a refundable, earned income-based tax credit available to lower income workers, is estimated to lift nearly 6 million people out of poverty each year.¹ The CTC, an income- and family size-based credit benefitting taxpayers with children relatively broadly across income

¹ POLICY BASICS: THE EARNED INCOME TAX CREDIT, CTR. ON BUDGET AND POLICY PRIORITIES 2 (2019) [hereinafter POLICY BASICS].

groups, assists more than 13 million people, including nearly 7 million children, each year.² Both federal credits have been imitated through similar enactments in many states, further expanding their reach and impact. Data makes clear that the EITC and CTC have been effective in achieving the goals of poverty reduction and incentivizing work, among others. Still, the issue remains whether there are ways to further strengthen the tax credits and to address certain shortcomings. Coming on the heels of 2017’s tax overhaul, the time is ripe for further consideration of the EITC and CTC at both the federal and state levels.

The following White Paper examines, in Part I: The Federal Framework, the historical context giving rise to the EITC and CTC as they operate today; for context, it then explores certain other provisions of the modern tax code intended to benefit American’s working families. In Part II: Reform Efforts to Date and the Pathway Forward, it provides an overview of the many state-level efforts to build upon the federal EITC and CTC; next, it analyzes the performance of the EITC and CTC after the enactment of the Tax Cuts and Jobs Act and compares that performance to the stated goals of each credit; finally, it examines the strengths and weaknesses of various proposals for reform of the credits to fulfill their intended purposes.

Part I: The Federal Framework

I. Historical Analysis: The Development and Expansion of the EITC and CTC

a. Founding Tax Principles

For nearly two centuries prior to the enactment of both the EITC and the CTC, it was an accepted notion that a portion of Americans’ income—roughly enough to afford the essentials for a basic livelihood—should be protected from taxation.³ Of course, from the time of the nation’s founding until the Civil War, the federal government’s primary source of revenue came from tariffs imposed on imports.⁴ Not until the onset of the War did a need arise for additional

² *Child Tax Credit*, TAX CREDITS FOR WORKERS AND THEIR FAMILIES, <http://www.taxcreditsforworkersandfamilies.org/federal-tax-credits/child-tax-credit/> (last visited Nov. 26, 2019).

³ See MICHAEL EVANS, “*SKIN IN THE GAME*”: *THE FEDERAL TAX SYSTEM, TAX REFORM AND POOR FAMILIES*, MARGUERITE CASEY FOUND. 2 (2012).

⁴ LILLIAN DORIS & MORTIMER M. CAPLAN, *THE AMERICAN WAY IN TAXATION: INTERNAL REVENUE, 1862-1963* 16-17 (1963).

government revenue in the form of a tax imposed on Americans' income. With the Revenue Act of 1862, Congress imposed a limited-term 3 percent tax on incomes between \$600 and \$10,000, and a 5 percent tax on incomes above \$10,000; income under \$600 (today, the equivalent of roughly \$15,000 in income) was exempt from the tax.⁵ In arguing for the legislation's passage, House Ways and Means Committee Chairman Thaddeus Stevens cheered the tax's exemption of a basic income amount, saying that "While the rich and the thrifty will be obliged to contribute largely from the abundance of their means...no burdens have been imposed on the industrious laborer and mechanic."⁶

Congress did not impose an income tax again until 1913, shortly after the ratification of the 16th Amendment. The Revenue Act of 1913 imposed an income tax on joint incomes above \$4,000 (today, the equivalent of roughly \$103,000 in income), with increasing tax rates applicable to higher income amounts. Still, just four percent of Americans at the time were subject to the income tax.⁷ That changed during World War II, when the federal government's reliance on the income tax grew and the tax base expanded from just eight million taxpayers to nearly 60 million.⁸ Throughout the income tax's expansion, Congress' commitment to exempting from taxation a certain basic amount of income remained, and it repeatedly adjusted the personal exemption and standard deduction amounts to ensure that, as described in a 1964 House report, those with minimal incomes were not impacted by the income tax.⁹ For example, while the personal exemption was set at \$600 in 1944, by 1979, Congress had expanded it to \$1,000. Likewise, while the standard deduction amounted to a 10 percent deduction of income with a ceiling of \$500 for single filers in 1944, by 1969, the standard deduction had increased to 16 percent of income with a ceiling of \$2,000.¹⁰

b. The EITC

i. "Family Assistance Plan" and "Work Bonus" Proposals

⁵ *Id.* at 19.

⁶ CONG. GLOBE, 37TH CONG., 2ND SESS. 1576-77 (1862).

⁷ See generally Steven A. Bank, *Federal Income Tax of 1913* (Sept. 26, 2011).

⁸ DORIS & CAPLAN, *supra* note [XX], at 28.

⁹ H.R. REP. NO. 88-749, at 1333 (1964).

¹⁰ DORIS & CAPLAN, *supra* note [XX], at 28.

In the late 1960s, in addition to the maintenance of the personal exemption and the standard deduction, support began to build for additional efforts to benefit the working poor. At the root of the support for such a credit was growing concern with the rapidly expanding enrollment in the Aid to Families with Dependent Children (“AFDC”) program.¹¹ Between 1964 and 1973, the number of families receiving the AFDC ballooned from under 1 million to 3.1 million.¹² Amidst growing concern over American’s dependency on welfare, President Richard Nixon proposed a “family assistance plan” (“FAP”)¹³ that “would have helped working-poor families with children by means of a federal minimum cash guarantee.”¹⁴

While there was some initial enthusiasm for President Nixon’s FAP approach, the plan soon met criticism from multiple angles. On the one hand, welfare advocates argued that the proposed FAP assistance was insufficient.¹⁵ On the other hand, welfare opponents such as Senate Finance Chairman Russell Long argued that the plan amounted to “paying people not to work” since the largest benefit of the FAP would go to those without earnings.¹⁶ Instead, Senator Long voiced support for an alternative approach: a tax credit for low-income workers which he referred to as a “work bonus.” In Senator Long’s view, such an approach represented a “dignified” way to help lower-income Americans and would “prevent the social security tax from taking away from the poor and low-income earners the money they need for support of their families.”¹⁷

ii. Initial Formulation

After a multi-year effort, the “work bonus” plan was renamed the EITC and enacted into law, albeit on a temporary basis, via the Tax Reduction Act of 1975. As initially formulated, the EITC amounted to a fully refundable credit for taxpayers with at least one child equal to 10 percent of

¹¹ See Dennis J. Ventry, *The Collision of Tax and Welfare Politics: The Political History of the EITC, 1969-1999*, 53 NAT’L TAX J. 4, 988 (2000).

¹² MARGOT L. CRANDALL-HOLLICK, CONG. RESEARCH SERV., R44825, THE EARNED INCOME TAX CREDIT (EITC): A BRIEF LEGISLATIVE HISTORY 2 (2018) [hereinafter A BRIEF LEGISLATIVE HISTORY].

¹³ See generally ROBERT J. LAMPMAN, INST. FOR RESEARCH ON POVERTY, NIXON’S FAMILY ASSISTANCE PLAN (1969).

¹⁴ JAMES R. STOREY, CONG. RESEARCH SERV., 95542, THE EARNED INCOME TAX CREDIT: A GROWING FORM OF AID TO LOW-INCOME WORKERS 2 (1995).

¹⁵ Ventry, *supra* note [XX], at 989

¹⁶ *Id.*; see also V. Joseph Hotz & John Karl Scholz, *The Earned Income Tax Credit, in MEANS-TESTED TRANSFER PROGRAMS IN THE UNITED STATES* (Robert A. Moffitt, ed., 2003).

¹⁷ 118 CONG. REC. S33010 (daily ed. Sep. 30, 1972) (statement of Sen. Russell Long).

earned income up to \$4,000, for a maximum credit of \$400. The credit phased out for those with earned income amounts between \$4,000 and \$8,000.¹⁸

The Senate Finance Committee Report accompanying the Tax Reduction Act of 1975 listed at least four separate rationales for the credit's enactment.¹⁹ First, the credit would “provide relief to families who currently pay little or no income tax” and who had been “hurt the most by rising food and energy costs.” Second, it would provide an offset for the “social security payroll tax on their earnings.” Third, the new credit would “increase their after-tax earnings,” meaning that it would provide “an added bonus or incentive for low-income people to work [thus] inducing individual with families receiving Federal assistance to support themselves.” Finally, it was anticipated that the credit would “stimulat[e] the economy because the low-income people are expected to spend a large fraction of their disposable incomes.”²⁰

iii. Expansions for Family Size and for the Childless

The credit was extended multiple times and eventually made permanent by the Revenue Act of 1978, a law that also increased the maximum value of the credit to \$500.²¹ In summarizing the law, the Joint Committee on Taxation reiterated the rationales first articulated by the Senate Finance Committee in 1975: “Congress believed that the earned income credit is an effective way to provide work incentives and relief from income and Social Security taxes to low-income families who might otherwise need large welfare payments.”²² The amount of the credit was again increased in 1984²³ and adjusted for inflation by the Tax Reform Act of 1986.²⁴ In calling for the 1986 law, President Ronald Reagan emphasized the importance of the EITC, stating to Congress that the credit “serves as an offset to social security and income taxes” and “provides work incentives for many low-income families with dependents” but that “inflation has reduced

¹⁸ Tax Reduction Act of 1975, Pub. L. No. 94-12 § 204 (1975) (codified as amended at 26 U.S.C. § 32).

¹⁹ S. REP. NO. 94-36 (1975).

²⁰ *Id.* at 11.

²¹ Revenue Act of 1978, Pub. L. No. 95-600 § 103 (1978) (codified as amended at 26 U.S.C. § 32). Prior to being made permanent, the credit was extended by three separate laws. *See* Revenue Adjustment Act of 1975, Pub. L. No. 94-164 (1975); Tax Reform Act of 1976, Pub. L. No. 94-455 (1976); Tax Reduction and Simplification Act of 1977, Pub. L. No. 95-30 (1977).

²² STAFF OF J. COMM. ON TAXATION, 95TH CONG., GENERAL EXPLANATION OF THE REVENUE ACT OF 1978 51 (JCS-7-79).

²³ Deficit Reduction Act of 1984, Pub. L. No. 98-369 § 1042 (1984) (codified as amended at 26 U.S.C. § 32).

²⁴ Tax Reform Act of 1986, Pub. L. No. 99-514 § 111 (1986) (codified as amended at 26 U.S.C. § 32).

the value of the credit.”²⁵ Upon final passage, President Reagan said that the new law would enable “millions of working poor [to be] dropped from the tax rolls altogether.”²⁶

As the 1990s approached, legislators began to see as attainable via the EITC another long-held objective: poverty reduction. In fact, the credit was described in 1989 as the “antipoverty tool of choice” among prominent figures on both the left and right sides of the political spectrum, both due to demonstrated effectiveness at lifting Americans from poverty and administration by an already-existing government agency, the IRS.²⁷ With the enactment of the Omnibus Reconciliation Act of 1990, the size of the credit was increased. For the first time, the legislation also enacted a larger benefit for families with two or more children; previously, the size of the credit had remained the same regardless of family size.²⁸ Via the Omnibus Reconciliation Act of 1993, the size of the credit was further enhanced, and—in order to offset the cost of a gasoline tax increase—a small credit was implemented for childless workers aged 25 to 64, with an initial maximum value of \$323.²⁹ Calling for the legislation, President Bill Clinton focused on the poverty-alleviating impact for families with children, saying that it marked “the first time in the history of our country when we’ll be able to say that if you work 40 hours a week and you have children in your home, you will be lifted out of poverty.”³⁰

iv. Fine-Tuning and Refinement

In the late 1990s and 2000s, further fine-tuning amendments were made to the EITC to expand the credit and address various compliance issues. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and the Taxpayer Relief Act of 1997 took various steps to ensure that higher-income individuals could not qualify for the credit, including expanding the definition of “investment income” that, above a certain level, disqualifies individuals from the

²⁵ President Ronald Reagan, State of the Union Address (Jan. 25, 1984).

²⁶ President Ronald Reagan, Remarks on Signing the Tax Reform Act of 1986 (Oct. 22, 1986).

²⁷ David Wessel, *Expanded Earned-Income Tax Credit Emerges as the Anti-Poverty Program of Choice for Many*, WALL ST. J., July 13, 1989, at A16.

²⁸ Omnibus Reconciliation Act of 1990, Pub. L. No. 101-508 Title XI, Part II (1990) (codified as amended at 26 U.S.C. § 32).

²⁹ Omnibus Reconciliation Act of 1993, Pub. L. No. 103-66 § 13131 (1993) (codified as amended at 26 U.S.C. § 32); JAMES R. STOREY, CONG. RESEARCH SERV., CRS ISSUE BRIEF, EITC: SHOULD IT BE INCREASED TO END POVERTY FOR THE WORKING POOR? (1993).

³⁰ President William J. Clinton, Remarks by the President at EITC Event (July 29, 1993).

credit; created penalties for fraudulent EITC claims; and required that a social security number be provided for individuals (and spouses and children) claiming the credit.³¹

In response to bipartisan concern about provisions of the tax code that created so-called “marriage penalties”—i.e., when the tax benefit afforded a married couple is less than the collective benefit for two individuals filing separately—the Economic Growth and Tax Reconciliation Relief Act of 2001 enacted an increased phase-out level for married couples in order to lessen the penalty.³² The American Recovery and Reinvestment Act, enacted in 2009, further expanded this marriage penalty relief, and for the first time, expanded the size of the EITC for families with three or more children (via an increase in the credit rate for such families from 40 percent to 45 percent).³³ The changes made by the American Recovery and Reinvestment Act were extended in 2012 by the American Taxpayer Relief Act and eventually made permanent in 2015 by the Protecting Americans from Tax Hikes Act.³⁴

v. The Tax Cuts and Jobs Act and Current Law

The Tax Cuts and Jobs Act, comprehensive tax reform enacted at the end of 2017, made no direct changes to the EITC.³⁵ The new law did, however, enact a new measure of inflation that over time will have an impact on the EITC.³⁶ Prior to the law, the parameters of the EITC indexed to inflation (including its phase-in and phase-out thresholds) were adjusted according to the consumer price index for urban consumers (“CPI-U”); the law put into place a new measure of inflation termed the chained CPI-U. Over time, the chained CPI-U is expected to increase at a

³¹ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193 §§ 451, 909, 910 (1996) (codified as amended at 26 U.S.C. § 32); Taxpayer Relief Act of 1997, Pub. L. No. 105-34 § 1085 (1997) (codified as amended at 26 U.S.C. § 32).

³² CRANDALL-HOLLICK, A BRIEF LEGISLATIVE HISTORY, *supra* note [XX], at 9-10; Economic Growth and Tax Reconciliation Relief Act of 2001, Pub. L. No. 107-16 § 303 (2001) (codified as amended at 26 U.S.C. § 32).

³³ American Recovery and Reinvestment Act, Pub. L. No. 111-5 § 1002 (2009) (codified as amended at 26 U.S.C. § 32).

³⁴ American Taxpayer Relief Act, Pub. L. No. 112-240 § 103 (2012) (codified as amended at 26 U.S.C. § 32); Protecting Americans from Tax Hikes Act, Pub. L. No. 114-113, Division Q (2015) (codified as amended at 26 U.S.C. § 32).

³⁵ To provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, Pub. L. 115-97 (2017) [hereinafter Tax Cuts and Jobs Act].

³⁶ Tax Cuts and Jobs Act, Pub. L. 115-97 § 11002 (2017).

slower pace than the CPI-U, meaning that various aspects of the EITC, such as its phase-out threshold, are likely to grow more slowly.³⁷

Under current law, therefore, eight EITC calculation formulas exist: for both unmarried filers and married filers, there is a formula for childless filers, and for filers with one, two, and three or more children.³⁸ The varying benefit of the EITC depending on one’s filing status and family size is visible in the following example. For unmarried, childless filers, the EITC increases by roughly 8 cents for every additional dollar of income up to an earned income amount of \$6,920, for a maximum credit of \$529. The credit size remains consistent up to an income of \$8,650, at which point it begins to decrease at the same rate—roughly 8 cents for every additional dollar of income—until it phases out entirely at the income level of \$15,570. In contrast, for a married tax filer with three or more children, the credit increases by 45 cents for every additional dollar of earned income up to the level of \$14,571, for a maximum credit of \$6,557. The maximum credit amount holds steady until the earned income amount of \$24,817, at which point it decreases by roughly 21 cents for each additional dollar of income until the income level of \$55,952 at which point the credit phases out entirely.³⁹ As discussed, the EITC is fully refundable, meaning that filers receive the full benefit for which they are eligible regardless of tax liability.

c. *The CTC*

i. *National Commission on Children and Enactment*

In December 1987, Congress established the National Commission on Children, to be comprised of 34 bipartisan members appointed by the President, with the “mandated task [] to assess the status of children and families in the United States and propose new directions for policy and program development.”⁴⁰ In 1991, following two-and-a-half years of research and investigation, the Commission proposed the enactment of a \$1,000 refundable CTC; the impetus for the new credit, according to the Commission, was the increased financial burden of child-rearing for

³⁷ CRANDALL-HOLLICK, A BRIEF LEGISLATIVE HISTORY, *supra* note [XX], at 1.

³⁸ *Id.* at 12.

³⁹ See *2019 EITC Income Limits, Maximum Credit Amounts and Tax Law Updates*, IRS, <https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit/eitc-income-limits-maximum-credit-amounts-next-year> (last visited Nov. 26, 2019).

⁴⁰ Omnibus Budget Reconciliation Act of 1987, Pub. L. No. 100-203 § 9136 (1987); NAT’L COMM’N ON CHILDREN, *BEYOND RHETORIC: A NEW AMERICAN AGENDA FOR CHILDREN AND FAMILIES* viii (1991).

many American families, brought on by lagging wage growth and increased costs of living, among other factors.⁴¹ While the Commission acknowledged that the tax code’s personal exemption was already intended to benefit families raising children, it pointed to the personal exemption’s real value decline and lack of benefit for lower and middle class families as reasons to establish a separate, refundable credit specifically for the benefit of families raising children.⁴²

Over the next several years, multiple bills in Congress included CTC proposals, and President Bill Clinton put forward his own version of such a credit in 1995.⁴³ However, agreement between Congress and the White House was not reached regarding the specific parameters of the credit until the Taxpayer Relief Act of 1997.⁴⁴ That law enacted, for the first time, a \$500 nonrefundable tax credit for children under the age of 17. The credit began to phase out at the adjusted gross income level of \$75,000 for head of household filers and \$110,000 for married joint filers, diminishing at a rate of \$50 for every \$1,000 of additional income. As enacted, neither the amount of the credit nor the phase out thresholds were indexed for inflation.⁴⁵

ii. Expansion and Refundability

Between enactment and 2017’s Tax Cuts and Jobs Act, a number of revisions were made to both expand the CTC and change its applicability. In 2001, the Economic Growth and Tax Relief Reconciliation Act increased the amount of the credit through several scheduled incremental expansions, eventually reaching a level of \$1,000 per child in 2010. The law also made the credit refundable for the first time, equal to 10 percent of income in excess of \$10,000 for 2001 through 2004, and equal to 15 percent of income in excess of that amount for 2005 through 2010.⁴⁶ Over the course of the next several years, the refundability threshold of \$10,000 was significantly reduced: first, to \$8,500 by the Emergency Economic Stabilization Act of 2009, then to \$3,000 on a temporary basis by the American Recovery and Reinvestment Act of 2009, and finally to

⁴¹ *Id.* at 81-84, 94.

⁴² *Id.* at 94.

⁴³ MARGOT L. CRANDALL-HOLLICK, CONG. RESEARCH SERV., R45124, THE CHILD TAX CREDIT: LEGISLATIVE HISTORY 3 (2018).

⁴⁴ Taxpayer Relief Act of 1997, Pub. L. No. 105-34 § 101 (1997) (codified as amended at 26 U.S.C. § 24).

⁴⁵ *Id.*

⁴⁶ Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16 § 201 (2001).

\$3,000 permanently by the Protecting Americans from Tax Hikes Act of 2015 (“PATH Act”).⁴⁷ The PATH Act also implemented an identification requirement, in the form of a valid Taxpayer Identification Number (“TIN”) for each child for whom the CTC is claimed.⁴⁸ TINs include social security numbers, individual taxpayer identification numbers, and adoption taxpayer identification numbers.⁴⁹

iii. Tax Cuts and Jobs Act

The CTC was not further reformed until the Tax Cuts and Jobs Act of 2017, which put in place a number of temporary reforms to the credit through 2025. First, the law doubled the size of the maximum tax credit per child from \$1,000 to \$2,000. Second, the law increased the maximum refundability of the credit from \$1,000 per child to \$1,400, to be adjusted for inflation (via rounding down to the nearest \$100 increment) according to the chained CPI-U measure of inflation while the law is in effect. Further, the law reduced the refundability threshold of the credit from \$3,000 to \$2,500, and drastically increased the phase out threshold, from \$75,000 for head of household filers to \$200,000 and from \$110,000 for married joint filers to \$400,000. Finally, the Tax Cuts and Jobs Act made the identification requirement for children for whom the credit is claimed more restrictive, for the first time mandating that a social security number, issued before the due date of the tax return, be reported for each child.⁵⁰ Because individual taxpayer identification numbers are no longer sufficient under the 2017 law, noncitizen children otherwise eligible for the credit but ineligible to receive a social security number can no longer benefit from the CTC.⁵¹ If the Tax Cuts and Jobs Act’s changes to the CTC are not extended, the amount, refundability, and applicability of the credit will return on January 1, 2026 to their previous levels.

⁴⁷ Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343 § 501 (2008) (codified as amended at 26 U.S.C. § 24); American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 § 1003 (2009) (codified as amended at 26 U.S.C. § 24); Protecting Americans from Tax Hikes Act of 2015, Pub. L. 114-113, Division Q (2015) (codified as amended at 26 U.S.C. § 24).

⁴⁸ *Id.*

⁴⁹ *Taxpayer Identification Numbers (TIN)*, IRS, <https://www.irs.gov/individuals/international-taxpayers/taxpayer-identification-numbers-tin> (last visited Nov. 26, 2019).

⁵⁰ Tax Cuts and Jobs Act, Pub. L. 115-97 § 11022 (2017) (codified as amended at 26 U.S.C. § 24).

⁵¹ See *Taxpayer Identification Numbers (TIN)*, *supra* note [XX].

According to report language and committee markup transcripts during the consideration of the 2017 tax overhaul, accurately capturing the modern-day cost of childrearing weighed heavily on the minds of legislators in reforming the CTC. Under the House Ways and Means Committee-reported version of the bill, the CTC would have been expanded to \$1,600 per child and the credit's phase out thresholds would have been significantly enhanced, though not to the extent that they ultimately were.⁵² In the report accompanying the House version of the bill, the Committee wrote that it “believes that it is important to provide an increased tax benefit for families raising children” and that “an expanded CTC [is] an equitable means of achieving this goal.”⁵³

Those in support of the Senate version of the tax reform law expressed a similar rationale for their bill, which expanded the credit amount to \$2,000 per child and increased its refundability by indexing the maximum refundability to inflation.⁵⁴ Senate Finance Committee Chairman Orrin Hatch (R-UT) argued that the expansion of the credit would “allow[] more parents to claim the credit, and giv[e] additional tax relief to middle-class families.”⁵⁵ Senator Tim Scott (R-SC) stated that the reasoning behind the increased credit amount was that “we know in America...it is getting harder and harder for everyday Americans, the typical American household[,] to make ends meet.”⁵⁶ Ultimately, during conference, the House and Senate versions of the legislation were reconciled, resulting in a CTC with the parameters set out above.⁵⁷

d. EITC and CTC: Purposes and Enduring Bipartisanship

⁵² An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, H.R. 1, 115th Cong. § 1101 (as reported by H. Comm. on Ways and Means, Nov. 13, 2017).

⁵³ H.R. REP. NO.115-409, at 136 (2017).

⁵⁴ An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, H.R. 1, 115th Cong. § 11022 (as passed by Senate, Dec. 2, 2017).

⁵⁵ *Open Exec. Session to Consider an Original Bill Entitled the Tax Cuts and Jobs Act Before the S. Comm. on Fin.*, 115th Cong. 5 (2017) [hereinafter *Open Exec. Session*] (Statement of Sen. Orrin Hatch, Chairman of the Sen. Comm. on Fin.).

⁵⁶ *Continuation of the Open Exec. Session to Consider an Original Bill Entitled the Tax Cuts and Jobs Act Before the S. Comm. on Fin.*, 115th Cong. 5 (2017) [hereinafter *Continuation of the Open Exec. Session*] (Statement of Sen. Tim Scott).

⁵⁷ An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, H.R. 1, 115th Cong. (as reported by Conference Committee, Dec. 15, 2017).

In sum, while the purposes behind both the EITC and CTC have shifted somewhat over their history, both provisions have continued to attract bipartisan support—that was true at their enactment, and it can be seen through more contemporaneous examples of bipartisanship as well.

In enacting the EITC, Congress sought to support lower-income parents via a form of government assistance that would require beneficiaries to work, rather than serving only as a no-strings-attached government cash assistance program.⁵⁸ Over time, Congress came to view the credit as a tool to achieve a slightly expanded purpose: poverty reduction.⁵⁹ Eventually, Congress expanded the EITC’s purpose further, aiming to benefit childless workers as well.⁶⁰ In enacting the CTC, Congress hoped to assist American families with the increased financial burden of child-rearing and to specifically account for lagging wage growth and ever-increasing costs of living.⁶¹ While the CTC’s refundable portion has come to depend over time on one’s earned income, the rationale for the credit has generally remained consistent, with Congress acting in 2017 to adjust the value of the credit to accurately reflect further increased child-rearing costs.⁶²

Throughout, changes to both credits have often attracted bipartisan consensus—not only decades ago when first put into law, but in more recent times as well. For instance, during the latter years of the Obama Administration, then-House Budget Committee Chairman Paul Ryan (R-WI) in 2014 released a report concluding “that the EITC was effective at increasing labor force participation, rewarding work, and raising millions out of poverty.”⁶³ The same year, Treasury Secretary Jack Lew said that “the EITC is a valuable program that lifts millions of families above the poverty line each year” and encouraged expansion of the credit.⁶⁴ Later, in 2016, once Congressman Paul Ryan became Speaker of the House, the Wall Street Journal reported that “both [President Obama and Speaker Ryan] support a plan to increase the earned income tax

⁵⁸ Ventry, *supra* note [XX], at 989; Hotz & Scholz, *supra* note [XX]; 118 CONG. REC. S33010 (daily ed. Sep. 30, 1972) (statement of Sen. Russell Long).

⁵⁹ Wessel, *supra* note [XX].

⁶⁰ Omnibus Reconciliation Act of 1993, Pub. L. No. 103-66 § 13131 (1993) (codified as amended at 26 U.S.C. § 32).

⁶¹ NAT’L COMM’N ON CHILDREN, *supra* note [XX], at 81-84, 94.

⁶² Tax Cuts and Jobs Act, Pub. L. 115-97 § 11022 (2017) (codified as amended at 26 U.S.C. § 24); H. Rep. No. 115-409, at 136 (2017); *Open Exec. Session*, *supra* note [XX]; *Continuation of the Open Exec. Session*, *supra* note [XX].

⁶³ MAJORITY STAFF OF H. COMM. ON THE BUDGET, 113TH CON., THE WAR ON POVERTY: 50 YEARS LATER (Comm. Print 2014); *EITC Attracts Bipartisan Praise and Proposals*, COMM. FOR A RESPONSIBLE FED. BUDGET (Mar. 10, 2014), <http://www.crfb.org/blogs/eitc-attracts-bipartisan-praise-and-proposals>.

⁶⁴ *Id.*

credit, or EITC, that childless workers receive.”⁶⁵ During that same time period, Senator Chuck Grassley, now the Republican chairman of the Senate Finance Committee, remarked on the merits of the EITC:

The EITC is an anti-poverty program that uses the federal tax code as a vehicle to put cash benefits directly into the pockets of the working poor. Unlike other government spending programs where assistance for poor and low-income families is filtered through layers of bureaucracy, the EITC encourages people to get and keep a job. It is intended to foster personal responsibility by giving those on the lowest rungs of the labor pool an extra incentive to jump in and stay in the workforce. By bumping up the value of a paycheck, this policy aims to bump people from the public welfare rolls to an employer’s payrolls. The EITC helps lower-income breadwinners who work hard to stretch their paychecks and yet still find it hard to get ahead. Eligible taxpayers who earn a living through wages, salary or self-employment may qualify for “cash back” through the federal tax credit to help make ends meet. Unlike other forms of federal welfare programs that distribute public assistance through food stamps or housing subsidies, the EITC is based on a simple principle, to reward those who work hard and play by the rules.⁶⁶

While legislation was never passed during the Obama Administration, the agreement regarding the tax credit expansion between President Obama and Speaker Ryan, two leaders who seemingly agreed on little else, is a testament to the way in which the tax credits have unified the parties.

e. The Chained Consumer Price Index (“Chained CPI-U”)

In one of the farthest-reaching—but perhaps least discussed—reforms of 2017’s Tax Cuts and Jobs Act, the new law puts into place, on a permanent basis, a new measure of inflation termed the “Chained Consumer Price Index for All Urban Consumers” (“chained CPI-U”). As touched upon briefly above, the Bureau of Labor Statistics-designed chained CPI-U replaces the

⁶⁵ Richard Rubin & Eric Morath, *Obama, Ryan See Potential for a Tax-Policy Compromise*, WALL. ST. J., Feb. 2, 2016, <https://www.wsj.com/articles/obama-ryan-see-potential-for-a-tax-policy-compromise-1454417318>.

⁶⁶ Chuck Grassley, Q&A: Earned Income Tax Credit (Mar. 13, 2015), <https://www.grassley.senate.gov/news/commentary/qa-earned-income-tax-credit>

Department of Labor’s CPI-U for a host of provisions of the tax code, including the regular income tax brackets, the standard deduction, and relevant here, the phase-in and phase-out thresholds for the EITC.⁶⁷ In addition, because the Tax Cuts and Jobs Act adjusts the CTC’s temporary \$1,400 maximum refundability amount to inflation, the chained CPI-U will also have an impact on the benefit offered by that credit through at least 2025.

i. CPI-U vs. Chained CPI-U

Under the formerly employed CPI-U inflation measure, inflation is measured according to the changes in the prices paid over time by urban consumers for a fixed sampling of goods and services.⁶⁸ Many economists, however, have long argued that CPI-U is inaccurate and has the effect of overstating the rate of inflation.⁶⁹ Specifically, economists argue that the CPI-U fails to take into account changes in consumer behavior in response to changes in the price of goods and services. For instance, if the cost of one good increases at a faster rate than the cost of a similar good, the CPI-U may not adequately adjust for the fact that consumer may purchase the more expensive good less often and instead begin to purchase the cheaper good more.⁷⁰ In addition, economists argue that CPI-U does not take into account cost-related changes in the outlets at which consumers shop and likewise does not have an adequate sample size to truly capture the extent of inflation.⁷¹ For these reasons, many economists believe that CPI-U exaggerates the effect of inflation actually felt by consumers.

In contrast, economists generally believe that chained CPI-U corrects these shortcomings, resulting in a more accurate measure of inflation. According to the House Committee report accompanying the Tax Cuts and Jobs Act, the chained CPI-U “allow[s] for consumer substitution between item categories in the markets basket of consumer goods and services that make up the index, while the CPI-U only allows for modest substitution within item categories.”⁷² While the practical differences between the two inflation measures appear minimal when viewed over a limited window of time, over the course of a decade or longer, a noticeable difference emerges.

⁶⁷ H.R. REP. NO. 115-466, at 204-205 (2017).

⁶⁸ DONALD J. MARPLES, CONG. RESEARCH SERV., R43347, BUDGETARY AND DISTRIBUTIONAL EFFECTS OF ADOPTING THE CHAINED CPI 3 (2014).

⁶⁹ *Id.* at 4.

⁷⁰ *Id.* at 4-5.

⁷¹ *Id.* at 5.

⁷² H.R. REP. NO. 115-409, at 122 (2017).

According to a Congressional Research Service analysis, for the period 2000 to 2012, CPI-U increased at an average rate of 0.27 percent faster per year than chained CPI-U. Over the course of the twelve year period, that amounts to difference of over three percent.⁷³

When applied to the tax code, that results in income tax brackets that grow at a slower pace than under previous law. Over time, that can result in taxpayers facing larger tax liability—especially if employers continue to increase wages year-over-year according to a different measure, such as CPI-U. In the context of tax credits, that results in the relative value of credits increasing more slowly over time than would otherwise be the case. Of course, increased tax liability and slower tax credit growth has a budgetary impact as well: according to the Joint Committee on Taxation, the Tax Cuts and Jobs Act’s switch to chained CPI-U was expected to generate \$133.5 billion in additional tax revenue over the first decade following the law’s enactment.⁷⁴

ii. Rationale for the Change

There is limited Tax Cuts and Jobs Act legislative history regarding the rationale for the change. According to the House Report accompanying an earlier version of the law, the House Ways and Means Committee believed that “the cost-of-living adjustments provided throughout the code can be improved by indexing with [chained CPI-U], which is designed by the Bureau of Labor Statistics to be a closer approximation of a cost-of-living index than other CPI measures.”⁷⁵ On the other side of Capitol Hill, there was little to no discussion of the change by its proponents; to the contrary, most of the discussion came from Democrats opposed to the change. During markup of the legislation, Senator Debbie Stabenow (D-MI) referred to the inflation adjustment change as “a sneaky provision...that does not go away” and that has the long-term effect of “slowly rais[ing] everybody’s taxes...Chained CPI is bad in this context for families.”⁷⁶ Likewise, Senate Finance Committee Ranking Member Ron Wyden argued during markup that “because of the inflation adjustment, which is less, [families] could end up falling further behind.”⁷⁷ Despite concern on the part of some Democrats at the practical repercussions of the

⁷³ MARPLES, *supra* note [XX], at 3-4.

⁷⁴ JOINT COMM. ON TAXATION, ESTIMATED BUDGET EFFECTS OF THE CONFERENCE AGREEMENT FOR H.R. 1, (THE “TAX CUTS AND JOBS ACT”) (JCX-67-17) (Dec. 18, 2017).

⁷⁵ H.R. REP. NO. 115-409, at 120 (2017).

⁷⁶ *Open Exec. Session, supra* note [XX], at 31-32 (statement of Sen. Debbie Stabenow).

⁷⁷ *Id.* at 115 (statement of Sen. Ron Wyden, Ranking Member, Joint Comm. on Taxation).

change, including for the EITC and CTC, the Tax Cuts and Jobs Act employs the chained CPI-U measure across the tax code on a permanent basis. Because the change has a significant positive budgetary effect, it is unlikely to be repealed by Congress in the future, due to the high revenue impact doing so would entail.

II. Other Provisions of the Tax Code Designed to Benefit America's Working Families

Before a Part II examination of state-level efforts to build upon the federal EITC and CTC, a look at the effectiveness of the federal credits, and an evaluation of options for change, it is important to gain a broader perspective regarding the other provisions of the tax code enacted in order to benefit working families. These provisions include the standard deduction, the currently-suspended personal exemption, the child and dependent care tax credit, the adoption credit, and the newly enacted family credit.

a. Standard Deduction and Personal Exemption

As previously explored, for much of American history, a prevailing view has existed that a basic amount of income for all citizens should be protected from taxation. Likewise, the viewpoint has long been held by many that those with incomes falling below a certain minimum level should not be subject to federal income tax at all.⁷⁸ Perhaps more than any other provisions of the modern tax code, the standard deduction and now-suspended personal exemption reflect both notions. For tax year 2019, the inflation-adjusted standard deduction—the amount taxpayers who choose not to itemize their deductions may subtract from their adjusted gross income in order to arrive at their final tax liability—will amount to \$12,200 for individual, \$24,400 for those married filing jointly, and \$18,350 for heads of household.⁷⁹ The deduction applies at a uniform level regardless of income, and was expanded significantly by 2017's Tax Cuts and Jobs Act; unless extended, in 2026, the deduction will return to a level roughly half the temporary amount under the tax reform law. The personal exemption, prior to its suspension from 2018 to 2025 by the Tax Cuts and Jobs Act, allowed taxpayers to exclude from taxable income a set amount

⁷⁸ See Michael Evans, “*Skin in the Game*”: *The Federal Tax System, Tax Reform and Poor Families*, Marguerite Casey Foundation 2 (2012), https://caseygrants.org/wp-content/uploads/2018/03/Skin_in_the_game41.pdf.

⁷⁹ Kelly Phillips Erb, *IRS Announces 2019 Tax Rates, Standard Deduction Amounts and More*, FORBES (Nov. 15, 2018), <https://www.forbes.com/sites/kellyphillipserb/2018/11/15/irs-announces-2019-tax-rates-standard-deduction-amounts-and-more/#ae676f420814>.

depending on family size; in 2017, the personal exemption amounted to \$4,050 for both taxpayers and dependents.⁸⁰

At the outset of tax reform in 2017, Republican members of Congress stated among their legislative priorities the simplification of what they viewed to be an overly complex tax code.⁸¹ Many targeted the similar aims of the standard deduction and personal exemption as one area where simplification would be attained, and sought to capture the effect of both provisions, while still protecting a basic income amount from taxation, by eliminating the personal exemption and significantly increasing the standard deduction. Indeed, in the report accompanying the House version of the Tax Cuts and Jobs Act, the House Ways and Means Committee stated its belief that “consolidating the basic standard deduction...personal exemption, and other tax benefits for taxpayer and spouse into a larger standard deduction simplifies the tax code while allowing a minimum level of income to be exempt from Federal income taxation.”⁸²

b. Child and Dependent Care Tax Credit

In 1976, in order to support parents paying for child care while working or actively searching for employment, Congress created the Child and Dependent Care Tax Credit.⁸³ Today, the nonrefundable credit allows taxpayers with one qualifying individual a credit of up to \$3,000 and taxpayers with two or more qualifying individuals a credit of up to \$6,000 for care expenses, subject to significant limitations.⁸⁴ Under the credit, qualifying children are those under 13 years of age when the care is provided; qualifying spouses are those incapable of self-care and that lived with the taxpayer for more than half the year; and other qualifying individuals are those incapable of self-care, that lived with the taxpayer for more than half the year, and that are a dependent of the taxpayer or could have been notwithstanding certain disqualifiers.⁸⁵ The credit amounts to 35 percent of care expenses paid, with the percentage gradually declining from 35 to

⁸⁰ MOLLY F. SHERLOCK & DONALD J. MARPLES, CONG. RESEARCH SERV., IF10796, COMPARING KEY ELEMENTS OF H.R. 1 TO 2017 TAX LAW 1 (2017).

⁸¹ Danny Vinik, *Simpler taxes under the GOP plan? Don't count on it.*, POLITICO (Nov. 2, 2017, 5:28 AM), <https://www.politico.com/agenda/story/2017/11/02/trump-republican-tax-plan-not-simple-000569>.

⁸² H.R. REP. NO. 115-409, at 123-25 (2017).

⁸³ Tax Reform Act of 1976, Pub. L. No. 94-455.

⁸⁴ 26 U.S.C. § 21 (2019).

⁸⁵ *Topic No. 602 Child and Dependent Care Credit*, IRS, <https://www.irs.gov/taxtopics/tc602> (last visited Nov. 25, 2019).

20 percent between the income levels of \$15,000 and \$43,000. The credit was unchanged by the Tax Cuts and Jobs Act.⁸⁶

c. Adoption Tax Credit

In order to offset certain expenses associated with adoption, the adoption tax credit provides a credit of up to \$13,810 (for tax year 2018) to partially cover the cost of all adoptions, with the exception of that of a spouse’s child. The credit begins to phase out at the income level of \$207,140, and phases out entirely for those with more than \$247,140 in income.⁸⁷ While the credit is nonrefundable, the amount of the credit can be carried forward for up to five years after it is initially applicable in cases where the amount claimed in any one year is limited by the taxpayer’s income level.⁸⁸ In enacting the credit in 1996, Congress believed it could encourage more adoptions by alleviating some of the financial burden associated with the process, and the credit was later expanded based on Congress’ belief that the initial credit had been effective at “reducing the after-tax cost of adoption.”⁸⁹ The credit was unchanged by the Tax Cuts and Jobs Act.

d. Family Credit

While the Tax Cuts and Jobs Act eliminated one provision—the personal exemption—aimed toward benefit for working families, it put into place for the first time a “family credit” (or “credit for other dependents”) to assist with costs associated with supporting dependents who do not qualify for the CTC.⁹⁰ As explored above in brief, under the Tax Cuts and Jobs Act, in order for the CTC to be claimed, qualifying children must have valid social security numbers issued before the date of the tax return.⁹¹ Other qualification requirements also apply, including that children to be claimed for the CTC cannot provide more than half of their own support during the tax year in question.⁹² If a dependent child does not qualify for the CTC for any reason,

⁸⁶ 26 U.S.C. § 21 (2019).

⁸⁷ *Id.* § 23; MARGOT L. CRANDALL-HOLLICK, CONG. RESEARCH SERV., R44745, ADOPTION TAX BENEFITS: AN OVERVIEW 3-4 (2018).

⁸⁸ CRANDALL-HOLLICK, ADOPTION TAX BENEFITS: AN OVERVIEW, *supra* note [XX], at 3-8.

⁸⁹ *Id.* at 12-15.

⁹⁰ 26 U.S.C. § 24(h)(4) (2019).

⁹¹ *Id.* § 24(h)(7).

⁹² *Id.* § 152(c).

they—along with older, non-child dependents—may be eligible for the \$500 family credit for other dependents. In order to qualify, those claimed must be U.S. citizens, U.S. nationals, or U.S. resident aliens.⁹³

In sum, the modern federal tax code contains a number of provisions, in addition to the EITC and CTC, aimed at shielding a basic income amount from taxation and aiding families in caring for children and other dependents. Despite these provisions, however, certain segments of the population continue to miss out on the tax benefit afforded others—and many of those that do benefit argue that code provisions remain outdated or otherwise lack effectiveness. As the remainder of this Paper will examine, state- and federal-level reformers have engaged to offer various approaches and ideas for overhaul of the tax system.

Part II: Reform Efforts to Date and Options for Future Change

I. State-Level Efforts to Build Upon the EITC and CTC

Since the federal enactment of the EITC and CTC, many states have made efforts to build upon the federal credits by putting into place their own, state-level versions of each credit, which often rely on federal eligibility and other requirements. State EITCs and CTCs have been enacted with many of the same motivations as those at the federal level: encouraging work, recognizing the growing cost of child-rearing, and stimulating the economy, among others. Because state and local taxes, often taking the form of sales, excise, and property taxes, weigh heaviest (as a percentage of income) on lower-income families, state-level earned income and CTCs, if refundable, also have the effect of offsetting regressive state and local taxes.⁹⁴

a. State-Level EITCs

In 1986, eleven years after the implementation of the federal EITC, Rhode Island became the first state to implement its own EITC.⁹⁵ Since then, numerous other states have followed suit,

⁹³ CRANDALL-HOLLICK, *THE CHILD TAX CREDIT: LEGISLATIVE HISTORY*, *supra* note [XX], at 8-9.

⁹⁴ SAMANTHA WAXMAN & ERICA WILLIAMS, *CTR. ON BUDGET AND POLICY PRIORITIES, STATES CAN ADOPT OR EXPAND EITCS TO BUILD A STRONGER FUTURE ECONOMY* [XX] (2018).

⁹⁵ *When Did Your State Enact its EITC?*, Institute on Taxation and Economic Policy (May 29, 2019), <https://itep.org/when-did-your-state-enact-its-eitc/>.

and today, 29 states and the District of Columbia have EITCs in operation.⁹⁶ While specific requirements vary, in many states, eligibility closely tracks that of the federal credit: the amount of the credit varies based on income, marital status, and the number of qualifying children of the taxpayer.⁹⁷ The majority of states offer a state-level credit that is simply a percentage of the federal credit taxpayers receive, ranging from 3 percent of the federal credit in Montana and 3.5 percent of it in Louisiana to 125 percent of the federal credit in South Carolina.⁹⁸ Like the federal credit, the EITCs offered by 23 states and the District of Columbia are refundable. In those states, the refundability of the credit has the effect of helping to offset the comparatively higher amount of income that lower-income households pays in state and local taxes, which often take the form of sales and property taxes.⁹⁹ In the table below, the state earned income tax credits as a percentage of the federal credit for tax year 2017 are listed, as well as whether the state-level credits are refundable.¹⁰⁰

State	Percentage of Federal Credit	Refundable
California	Uses different income levels and phase-out calculations than federal credit.	Yes
Colorado	10%	Yes
Connecticut	30%	Yes
Delaware	20%	No
District of Columbia	40%	Yes
Hawaii	20%	No
Illinois	10%	Yes
Indiana	9%	Yes

⁹⁶ Tax Credits for Working Families: EITC (EITC), National Conference of State Legislatures (March 25, 2019), <http://www.ncsl.org/research/labor-and-employment/earned-income-tax-credits-for-working-families.aspx>.

⁹⁷ Waxman & Williams, *supra* note [XX], at 6.

⁹⁸ *Tax Credits for Working Families: Earned Income Tax Credit (EITC)*, NAT'L CONFERENCE OF STATE LEGISLATURES (Mar. 25, 2019), <http://www.ncsl.org/research/labor-and-employment/earned-income-tax-credits-for-working-families.aspx> [hereinafter *Tax Credits for Working Families*]. South Carolina's EITC is being phased in over a six year period: in 2018, the credit will amount to 20.83% of the federal credit. The credit grows by 20.83% each year until it reaches 125 percent in tax year 2023.

⁹⁹ WAXMAN AND WILLIAMS, *supra* note [XX], at 7.

¹⁰⁰ Tax Credits for Working Families: EITC (EITC), National Conference of State Legislatures (March 25, 2019), <http://www.ncsl.org/research/labor-and-employment/earned-income-tax-credits-for-working-families.aspx>.

Iowa	15%	Yes
Kansas	17%	Yes
Louisiana	3.5%	Yes
Maine	12%	Yes
Maryland ¹⁰¹	25.5% 50%	Yes No
Massachusetts	23%	Yes
Michigan	6%	Yes
Minnesota	Based on income	Yes
Montana	3%	Yes
Nebraska	10%	Yes
New Jersey	35%	Yes
New Mexico	10%	Yes
New York	30%	Yes
Ohio	10%, with certain limitations	No
Oklahoma	5%	No
Oregon	8% 11% (for families with children under three years of age)	Yes
Rhode Island	15%	Yes
South Carolina	125%	No
Vermont	32%	Yes
Virginia	20%	No
Washington	10%	Yes
Wisconsin	4% - one child 11% - two children 34% - three children	Yes

¹⁰¹ Maryland offers taxpayers the option of a 25.5 percent refundable or 50 percent nonrefundable credit.

As Washington state has shown, even states without an income tax¹⁰² can enact state-level EITCs. There, legislators enacted an EITC equal to 5 percent of the federal credit, to increase to 10 percent over time, and to be administered through a data-sharing agreement with the IRS (since revenue departments in states without an income tax would generally not have the necessary income information needed to administer the credit).¹⁰³ Because of a budget shortfall, Washington State’s EITC has yet to be financed, but the enactment itself serves as a testament to what may be possible more broadly in the U.S. states that lack an income tax.

b. State-Level CTCs

While significantly less common than state-level EITCs, a limited number of states have also taken action to build upon the federal CTC. In both Oklahoma and New York, state legislatures have enacted credits that are tied directly to the federal CTC. Oklahoma’s credit is only applicable to those with incomes below \$100,000, and offers a choice between a nonrefundable credit worth five percent the value of the federal credit or a nonrefundable credit worth 20 percent the value of the federal child and dependent care tax credit. In New York, taxpayers are afforded a refundable credit of \$100 per qualifying child or 33 percent of the value of the federal credit prior to the enactment of the Tax Cuts and Jobs Act (thus, a maximum of \$330 per child, given the CTC’s \$1000 maximum value prior to the tax overhaul), whichever is greater. Various other states have put in place tax benefits with similar aims to the CTC without actually being linked to the federal credit. These states include Idaho, Maine, California, Colorado, Utah, and Wisconsin, with the tax benefit in question ranging from nonrefundable dependent credits to refundable credits for children under six years of age, or even to one-time tax rebates.¹⁰⁴

II. Are Tax Credits the Most Effective Tool to Reduce Poverty?

Any conversation regarding the path forward for enhancement of the earned income and CTCs must include a baseline discussion of at least two topics: first, the strengths and weakness of

¹⁰² Alaska, Florida, Nevada, New Hampshire, South Dakota, Tennessee, Texas, Washington, and Wyoming do not have state income tax. Sandra Block, *9 States with No Income Tax*, KIPLINGER (Feb. 25, 2019), <https://www.kiplinger.com/slideshow/taxes/T054-S001-states-that-don-t-tax-income/index.html>.

¹⁰³ WAXMAN & WILLIAMS, *supra* note [XX], at 12; *Tax Credits for Working Families*, *supra* note [XX].

¹⁰⁴ AIDAN DAVIS ET AL., *CTR. ON POVERTY & SOC. POLICY AT COLUMBIA UNIV. & INST. ON TAXATION AND ECON. POLICY, THE CASE FOR EXTENDING STATE-LEVEL CTCs TO THOSE LEFT OUT: A 50-STATE ANALYSIS* [XX] (2019).

using a tax credit to achieve poverty reduction, and second, an analysis of just how effective the EITC and CTC are in their current forms.

a. Strengths and Weaknesses of Using a Tax Credit

Among advocates committed to poverty reduction, there exists significant debate over the most effective route by which to do so. On the one hand, many believe that tax credit programs such as the EITC and the CTC lift more families from poverty. On the other hand, some advocates argue in favor of broader-based reforms, including minimum wage increases.

Contrary to conventional wisdom, increases in the minimum wage, whether at the federal, state, or municipal level, while benefitting many millions of low-income workers who need it, do not actually reach a significant number of families living below the poverty line.¹⁰⁵ That is because many minimum wage workers are not actually members of families living in poverty. According to the Brookings Institution, roughly two-thirds of minimum wage workers live above 200 percent of the federal poverty line; only one-fifth of those working in minimum-wage positions are living in poverty.¹⁰⁶ To the contrary, most individuals living in poverty in the United States either do not work or work part-time, meaning that jobs that pay above minimum wage may still not suffice to lift these employees out of poverty.¹⁰⁷ According to the Census Bureau, nearly 40 percent of those who benefitted from the most recent increase in the minimum wage (in May 2007, to \$7.25 per hour) lived in homes with a parent or other relative—they were largely 16- to 19-year olds. Studies confirm these demographic observations. An award-winning Southern Economic Journal study of President Obama’s proposed minimum wage increase to \$9.50 per hour found that just 10.9 percent of the benefit of the proposed hike would go to those living in poverty.¹⁰⁸

Academic research into the impact of tax credits such as the EITC and CTC consistently concludes that such credits are just as—if not more—effective at reaching those living below the poverty line when compared with other proposals for reform.¹⁰⁹ In addition, the EITC and CTC

¹⁰⁹ BURKHAUSER, *supra* note [XX], at 6-7.

¹⁰⁹ BURKHAUSER, *supra* note [XX], at 6-7.

¹⁰⁹ BURKHAUSER, *supra* note [XX], at 6-7.

¹⁰⁹ BURKHAUSER, *supra* note [XX], at 6-7.

¹⁰⁹ BURKHAUSER, *supra* note [XX], at 6-7.

have a proven track record of lifting families from poverty.¹¹⁰ In 2019, for a married couple with no children, all of the benefit from the EITC will go to those with under \$21,370 of income, and has the highest value for those with between \$6,920 and \$14,450 in income. For a married couple with two children, all of the benefit will go to those with under \$52,493 in income, and will have the highest value for those with between \$14,570 and \$24,820 in income.¹¹¹ While the post-TCJA CTC now goes to a broader distribution of the population, the fact remains that both credits' income-dependent qualifications ensure that benefit is targeted toward low- and middle-income families, with no benefit accruing to individuals or families above certain phase-out levels. These examples represent that tax credits are a significantly targeted solution to provide economic assistance to families in need.¹¹²

b. How Effective Are the EITC and CTC?

While the evidence makes clear that tax credits can serve as an effective route to reducing poverty, the fact remains that the current-day EITC and CTC reach certain portions of the population more effectively than others. Prior to delving into proposals for reform, therefore, this section will explore the distribution of the EITC and CTC's economic benefit following the TCJA—and importantly, identify those Americans still most in need of assistance.

i. EITC

Today, the EITC is claimed by nearly 30 million tax filers, claiming a total of nearly \$70 billion in benefit, meaning that the EITC is the largest “need-tested antipoverty cash assistance program” in the nation.¹¹³ However, those benefits—and the credit's lifting of Americans from poverty—differ widely based on whether one has children (and how many) and whether one is

¹¹⁰ *Id.*

¹¹¹ POLICY BASICS, *supra* note [XX], at 4.

¹¹² EITC VS. MINIMUM WAGE: WHERE SHOULD ADVOCATES PLACE THEIR BETS?, <https://www.epionline.org/oped/o201/> (last visited Aug. 19, 2019); RICHARD V. BURKHAUSER, THE MINIMUM WAGE VERSUS THE EITC FOR REDUCING POVERTY 3-5 (2015); EITC VS. MINIMUM WAGE, *supra* note 92; RAISING THE MINIMUM WAGE *supra* note 90; BETTER THAN A MINIMUM WAGE HIKE, <https://www.uschamber.com/series/above-the-fold/better-minimum-wage-hike> (last visited Aug. 19, 2019).

¹¹³ MARGOT L. CRANDALL-HOLLICK, CONG. RESEARCH SERV., R43805, THE EARNED INCOME TAX CREDIT (EITC): AN OVERVIEW [XX] (2018).

married. According to the Congressional Research Service, for tax year 2018, for both unmarried and married tax filers with children with pre-tax income equal to the federal poverty level (and thus, post-tax, pre-EITC income below the federal poverty level), the EITC had the effect of lifting taxpayers' post-EITC income above the federal poverty level—that is, the EITC succeeds in lifting these taxpayers from poverty. In contrast, for both married and unmarried childless workers making pre-tax income equal to the federal poverty level, the EITC is insufficient to account for payroll tax liability, meaning that these workers remain in poverty even after the credit is applied.¹¹⁴ Census data from 2016 paints a similar picture: the EITC affords significant benefit to those with children, while leaving childless workers behind by comparison. For that year, the EITC lifted just 1.5 percent of unmarried childless individuals from poverty, while, by comparison, lifting 20.5 percent of unmarried individuals with three children from poverty.¹¹⁵

Study of relative tax burdens (that is, families with the same standard of living) based on family structure confirms that after application of the EITC, significant inequity exists. For a \$10,000 “reference income” for tax year 2018, married filers with two children will have an effective tax rate of -37.46 percent (that is, they will receive a refund worth more than a third of their original income). In contrast, married filers with no children at the same reference income will have an effective tax rate of -5.20 percent, a nearly insignificant (by comparison) tax refund. The results are similar when comparing the same filers at the higher reference income level of \$25,000.¹¹⁶

While, as discussed, the EITC is shown to enhance workforce participation, some additional detail is needed to fully gain perspective of just *who* the credit is helping. For unmarried workers, and most especially for single mothers, the EITC has been consistently shown to positively impact workforce participation.¹¹⁷ For example, one study found that over the period 1993 to 1999, 34 percent of the increase in the employment rate of single mothers was due to legislative

¹¹⁴ MARGOT L. CRANDALL-HOLLIICK, CONG. RESEARCH SERV., R44057, THE EARNED INCOME TAX CREDIT (EITC): AN ECONOMIC ANALYSIS 14-15 (2018) [hereinafter AN ECONOMIC ANALYSIS].

¹¹⁵ *Id.* at 16-17.

¹¹⁶ *Id.* at 22-25.

¹¹⁷ Nada Eissa & Hilary Hoynes, *Behavioral Responses to Taxes: Lessons from the EITC and Labor Supply*, 20 TAX POLICY AND THE ECON. 72, 73-110 (2006).

expansion of the EITC.¹¹⁸ Other studies have confirmed that finding, as well as the finding that EITC expansion in the 1990s actually reduced new entries into the cash welfare system.¹¹⁹

For married workers, however, the data is less clear.¹²⁰ At least one study has found that the 1993 EITC expansion “led to a one percentage point reduction in the participation rate of married mothers,” but more recent findings suggest that the EITC has little to no impact on the workforce participation of secondary earners.¹²¹ As a related matter, the EITC still contains a marriage penalty (despite efforts to lessen its effect), meaning that taxpayers may hypothetically be discouraged to marry because of the credit due to its current structure, or if already married, some of the second earner’s motivation to continue working may no longer exist.¹²² Further elimination of the marriage penalty could therefore potentially help the workforce participation of second earners. As for childless workers, there has not been significant study of whether the EITC encourages workforce participation. Given, however, that a full time, childless, minimum wage worker in 2018 would receive an EITC of just \$59, it seems highly unlikely that the credit would motivate significant workforce participation among the group.¹²³

Similar data has been used to make a case that over the long run, ending the EITC altogether (as well as other anti-poverty programs that likely have a significant disincentive for work), would be better for low-wage earners. For example, an analysis by the CATO institute argues that while the EITC was created in large part to combat the disincentives created by payroll taxes and some welfare programs, its own problems, noted above, such as fraud, error, and distortions in some areas of the phaseout ranges, and the disincentives the cost may create for those who pay

¹¹⁸ Jeffrey Grogger, *The Effects of Time Limits, the EITC, and Other Policy Changes on Welfare Use, Work, and Income among Female-Head Families*, REV. OF ECON. AND STATISTICS, May 2003, at 405.

¹¹⁹ Bruce D. Meyer, *Labor Supply at the Extensive and Intensive Margins: The EITC, Welfare and Hours Worked*, 92 AM. ECON. REV. 373, 373-379 (2002); Eissa & Hoynes, *supra* note [XX], at [XX]; Jeffrey Grogger, *Welfare Transitions in the 1990s: The Economy, Welfare Policy, and the EITC*, 23 J. OF POLICY ANALYSIS AND MGMT. 671, 671-695 (2004).

¹²⁰ CRANDALL-HOLLICK, AN ECONOMIC ANALYSIS, *supra* note [XX], at 9.

¹²¹ Eissa & Hoynes, *supra* note [XX], at [XX]; Bradley T. Heim, *The Impact of the EITC on the Labor Supply of Married Couples: A Structural Estimation* 22 (U.S. Dep’t of the Treasury: Office of Tax Analysis, Working Paper, 2010).

¹²² CRANDALL-HOLLICK, AN ECONOMIC ANALYSIS, *supra* note [XX], at 12.

¹²³ *Id.* at 13.

for it through higher taxes, may crowd out the benefits it creates for some low income workers.¹²⁴

ii. CTC

The Joint Committee on Taxation has estimated that following the enactment of the Tax Cuts and Jobs Act, the CTC will result in an average of \$64 billion per year in tax expenditures.¹²⁵ But just as with the EITC, that benefit does not reach the population equally. For tax year 2018, it was estimated that roughly one-third of all CTC benefit went to taxpayers with between \$100,000 and \$200,000 in income, with just 26.5 percent of the total benefit going to taxpayers with under \$50,000 in income. Similarly, for 2018, nearly all taxpayers (more than 90 percent) with children with income levels between \$40,000 and \$500,000 will receive some CTC, while only half (51 percent) of those with children with incomes below \$10,000 will benefit. Finally, data on the average credit amount per income level paints a similar image: while taxpayers with children with incomes between \$100,000 and \$200,000 were to receive an average credit of \$3,100, taxpayers with incomes below \$20,000 were set to see an average credit of under \$1,000.¹²⁶

Much of the explanation for the CTC's inequitable benefit levels owes to the formula Congress has enacted to determine its amount: for starters, families must make at least \$2,500 in income in order to be eligible for the credit at all. And because the refundable credit amount only equals 15 percent of income earned in excess of that \$2,500 threshold, to receive the full refundable credit of \$1,400 per child—money lower-income households raising children could surely put to good use—a taxpayer with two children in tax year 2018 would need to earn at least \$21,160.¹²⁷ Simply put, if the CTC's purpose remains to compensate for the increased cost of child-rearing

¹²⁴ Chris Edwards and Veronique de Rugay, *Earned Income Tax Credit: Small Benefit, Large Costs*, Cato Institute, Tax and Budget Bulletin No. 73 (Oct. 14, 2015).

¹²⁵ MARGOT L. CRANDALL-HOLLICK, CONG. RESEARCH SERV., R41873, *THE CHILD TAX CREDIT: CURRENT LAW AND LEGISLATIVE HISTORY 14-15* (2018) [hereinafter *THE CHILD TAX CREDIT: CURRENT LAW*].

¹²⁶ *T18-0033 - Tax Expenditure of CTC; Baseline: Current Law; Distribution of Federal Tax Change by Expanded Cash Income Level*, TAX POLICY CTR., URBAN INST. & BROOKINGS INST. (Apr. 11, 2018), <https://www.taxpolicycenter.org/model-estimates/options-expand-additional-child-tax-credit-april-2018/t18-0033-tax-expenditure-child>.

¹²⁷ Amelia Josephson, *All About Child Tax Credits*, SMARTASSET (Feb. 1, 2019), <https://smartasset.com/taxes/all-about-child-tax-credits>.

in modern American, it would seem to be performing less than adequately, especially for lower-income taxpayers.

c. Takeaways: Those Not Yet Reached by the Credits

In sum, then, efforts to enhance the effectiveness of these credits may focus on the following areas moving forward, among others. For the EITC, it is clear that lower income, childless workers have not felt the credit's poverty-alleviating effects; simultaneously, because of the inadequate size of the credit for this group, individuals within it have continued to pay an inequitable share of the tax burden. In addition, certain lower-income taxpayers continue to suffer from an EITC marriage penalty that may discourage potential second earners from entering the workforce. For the CTC, it is apparent that the credit is failing to assist lower income families with their childrearing costs, while much more adequately serving those making more than \$100,000 per year. Likewise, for families raising children that do not have social security numbers, the CTC is providing no assistance whatsoever—to the tune of roughly \$3 billion per year in lost benefits.¹²⁸

Post-TCJA analyses of the interaction between the two credits, while limited, have confirmed these findings. According to an Urban Institute analysis entitled “Understanding the Intersection of the EITC and CTC at the Household Level,” even after the tax reform law, the credits fail to reach households at the very lowest levels of the income scale; the same is true of low-income workers without custodial children. According to the analysis, “[p]olicymakers could consider further reforms to the CTC aimed at very low-income families and families with young children” along with reforms to the EITC “to better align it with the credit available to families with children.”¹²⁹ Moreover, given consistent findings that income inequality in the United States has reached an all-time high,¹³⁰ there are arguments to be made that the timing may be right for even broader expansion of the two income-based credits, already proven to lift Americans from poverty in the more limited form they exist today.

¹²⁸ CRANDALL-HOLLYCK, *THE CHILD TAX CREDIT: CURRENT LAW*, *supra* note [XX], at 7.

¹²⁹ Elaine Maag, *Who Benefits from Expanding the EITC or CTC?*, TAX POLICY CTR., URBAN INST. & BROOKINGS INST. (July 30, 2018), <https://www.taxpolicycenter.org/publications/who-benefits-expanding-eitc-or-ctc/full>.

¹³⁰ Gina Heeb, *US income inequality jumps to highest level ever recorded*, MARKETSINSIDER (Sept. 27, 2019), <https://markets.businessinsider.com/news/stocks/income-inequality-reached-highest-level-ever-recorded-in-2018-2019-9-1028559996>.

One additional point deserves consideration: beyond the distributional effects of both credits, the effectiveness of the EITC and CTC continue to be inhibited by their complexity, as well as by their ongoing underutilization by populations that stand to see significant benefit. For fiscal year 2018, for instance, the IRS estimated that 25 percent of the EITC credits it paid out were improper.¹³¹ Previously, in 2015, Congress sought to stem the issue of improper EITC and CTC payments by requiring, via the Protecting Americans from Tax Hikes Act, that the IRS annually hold income tax returns until at least February 15 in cases in which the EITC or CTC refund were claimed in order to allow for more W-2 data to be furnished to the IRS for verification purposes.¹³² And on the other end of the spectrum, according to an April 2018 Treasury Inspector for Tax Administration report, “for every dollar of EITC improper payments, 40 cents of the EITC went unclaimed by taxpayers who appear to be eligible for the credit.”¹³³ In other words, because of the administrative burden associated with filing one’s taxes, as well as the complexity of the EITC and CTC, both credits continue to partially benefit the wrong individuals and fail to benefit deserving ones.

III. Options for Future Change

At both the federal and state levels, there are various options for enhancements and expansions to both the EITC and CTC. In light of the identified shortcomings of the credits, the following reform efforts may be most promising.

a. EITC

EITC reform efforts in at least three areas merit consideration: first, on efforts to expand the credit’s reach to new populations, including those identified here that thus far have not felt the credit’s benefit; second, on efforts to modernize the credit to ensure that those in need can access

¹³¹ IRS, TAXPAYER ADVOCATE SERVICE — 2018 ANNUAL REPORT TO CONGRESS, 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 91-104 (2018) [hereinafter IMPROPER EARNED INCOME TAX CREDIT PAYMENTS].

¹³² Protecting Americans from Tax Hikes Act of 2015, Pub. L. 114-113, Division Q (2015) (codified as amended at 26 U.S.C. § 24); *Refund Timing for Earned Income Tax Credit and Additional Child Tax Credit Filers*, IRS, <https://www.irs.gov/individuals/refund-timing> (last visited Nov. 26, 2019).

¹³³ IMPROPER EARNED INCOME TAX CREDIT PAYMENTS, *supra* note [XX].

the credit timely and efficiently; and third, on efforts to improve other aspects of the credit, including its formula, uptake, and enforcement.

i. Expansion to Unreached Populations

1. Expansion for Childless Workers

First, it may be worthwhile to target enhancement of the credit for low-income, childless workers. For tax year 2019, the maximum EITC for these individuals—just \$529—is only available to those making between \$6,920 and \$8,650. As discussed, the credit then rapidly phases out, resulting in a full-time, minimum wage employee in 2019 with yearly income of \$14,500 receiving a credit of just \$80.¹³⁴

For the first two decades following the EITC’s enactment, childless workers were not eligible for the credit. That changed in 1993, when Congress created a credit for childless workers, putting it into place with a phase-in and phase-out rate of 7.65 percent. Because of Congress’ selection of that precise rate, the same rate as employees’ share of payroll taxes, it is thought that policymakers had the offsetting of payroll taxes at least partially in mind in enacting the credit.¹³⁵ But if that is the case, then the credit for childless workers may be especially deserving of reform, given that it is generally accepted among economists that both the employer and employee portions of payroll taxes are ultimately borne by employees.¹³⁶

Thus, increasing the phase-in of the credit for childless workers to 15.3 percent—or more—would be enough to cover both portions of payroll taxes and would represent a significant step forward for childless credit recipients. Not only would such an expansion greatly expand the poverty-alleviating effects of the EITC to childless workers, but given the empirical evidence that the EITC has increased employment among those with children, it is widely believed by researchers that “substantially expanding the childless workers’ credit would increase labor force

¹³⁴ POLICY BASICS, *supra* note [XX], at 4.

¹³⁵ *The Earned Income Tax Credit: Analysis and Proposals for Reform*, MARGARET CASEY FOUND., 109 Tax Notes 1669, 1669-86 (2005).

¹³⁶ *See generally* Meeting of July 20, 2005, Staff Presentation on Distribution Tables, Appendix; Robert Greenstein, SHOULD THE EITC FOR WORKERS WITHOUT CHILDREN BE ABOLISHED, MAINTAINED, OR EXPANDED?, CTR. ON BUDGET AND POLICY PRIORITIES 5 (2000).

participation among low-skilled childless workers.”¹³⁷ This may be especially true for one-half of the childless population: there is significant evidence that single men (and especially African-American single men), as opposed to single mothers, have yet to be fully incentivized to enter the workforce. As Robert Greenstein of the Center for Budget and Policy Priorities has put it, “[i]f enlarging the EITC for workers not raising minor children induced an increase in employment...as increases in the EITC for families with children have done among single mothers -- expanding the EITC for childless workers would be particularly beneficial.”¹³⁸

2. Broadening the Eligibility Age

Second, many have suggested reform to expand the EITC to all adults in need of assistance working in low-wage positions, regardless of whether those individuals fall within an arbitrary age range. Under current law, childless workers must be between the ages of 25 and 64 to receive the EITC; for childless married couples, just one partner must meet the age requirement. There is no such requirement for parents to receive the credit. Over the years, reformers have put forward a number of sound proposals that would broaden the eligibility to receive the EITC—either by increasing or removing the maximum age or by decreasing the minimum age—and thereby more broadly incentivizing work and lifting more of the population from poverty.

Elaine Maag of the Tax Policy Center has argued that Congress should make the EITC available to older workers, arguing that Congress’ move in the 1980s to raise the eligibility age for full social security benefits while not also raising the maximum age to receive the EITC has left many seniors living below the poverty line. At present, the full retirement age for the purposes of receiving Social Security benefits is 66; that is set to increase to 67 for individuals born in 1960 or later. Therefore, there is a one-year gap—and soon to be a two-year gap—between when many seniors are no longer eligible for the EITC but are not yet receiving Social Security benefits. While the benefit for these workers may not be more than several hundred dollars a year, those dollars could assist significantly the 4.2 million seniors over 65 who were living below the poverty line in 2015. To take aim at solving the problem, Maag suggests that Congress could either tie the EITC maximum age to the increases in the age of full Social Security

¹³⁷ Chuck Marr et al., *Strengthening the EITC for Childless Workers Would Promote Work and Reduce Poverty*, CTR. ON BUDGET AND POLICY PRIORITIES (April 11, 2016), https://www.cbpp.org/research/federal-tax/strengthening-the-eitc-for-childless-workers-would-promote-work-and-reduce#_ftnref3.

¹³⁸ Greenstein, *supra* note [XX].

eligibility, or remove the maximum age altogether. The Tax Policy Center has concluded that the vast majority of the benefit of raising the maximum EITC age would go to seniors in the bottom two-fifths of the income distribution.¹³⁹

Others have proposed lowering the age of eligibility for the credit, either to 21, 19, or all the way to 18. Former Speaker of the House Paul Ryan and President Barack Obama were among these; each of their proposals for reform of the EITC, discussed in brief already, would have lowered the eligibility age from 25 to 21.¹⁴⁰ In arguing for his proposal—which, in addition to lowering the age of eligibility, expanded the credit for childless workers—Speaker Ryan told the American Enterprise Institute that “we should make sure that in this country it always pays to work.”¹⁴¹ Still other reformers have proposed even broader expansion, including by lowering the age of EITC eligibility to 19, as the Center on Budget and Policy Priorities has supported, or even 18, as the Tax Policy Center has posited.¹⁴² In its 2019 report, “Expanding the Earned Income Tax Credit: The Economic Security Project’s Cost-of-Living Refund,” the Tax Policy Center argued in favor of a minimum eligibility age of 18 in order to provide an “avenue for students with earnings to be eligible for the credit.”¹⁴³ Indeed, while more expensive than more modest eligibility expansions, a reduction in the age of eligibility, whether to 21 or even further, would ensure that many full-time students working part-time jobs could see benefit from the credit at a time when funds may otherwise be limited.

3. *Redefining Work to Reach Beyond Wage-Earners*

¹³⁹ Elaine Maag, *Congress Should Make the EITC Available to Older Workers*, TAX POLICY CTR., URBAN INST. & BROOKINGS INST. (Jan. 13, 2019), <https://www.taxpolicycenter.org/taxvox/congress-should-make-eitc-available-older-workers>.

¹⁴⁰ Chuck Marr, *EITC Could Be Important Win for Obama and Ryan*, CTR. ON BUDGET AND POLICY PRIORITIES (Nov. 16, 2015), <https://www.cbpp.org/blog/eitc-could-be-important-win-for-obama-and-ryan>.

¹⁴¹ Natalie Goodnow, *Expanding opportunity in America: Paul Ryan’s new policy reforms for reducing poverty*, AM. ENTER. INST. (July 24, 2014), <https://www.aei.org/economics/expanding-opportunity-in-america-paul-ryans-new-policy-reforms-for-reducing-poverty/>.

¹⁴² Chuck Marr & Yixuan Huang, *Childless Adults Are Lone Group Taxed Into Poverty* (June 10, 2019) <https://www.cbpp.org/research/federal-tax/childless-adults-are-lone-group-taxed-into-poverty>; ELAINE MAGG ET AL., TAX POLICY CTR., URBAN INST. & BROOKINGS INST., *EXPANDING THE EARNED INCOME TAX CREDIT: THE ECONOMIC SECURITY PROJECT’S COST-OF-LIVING REFUND 7* (2019) [hereinafter *EXPANDING THE EARNED INCOME TAX CREDIT*].

¹⁴³ *Id.*

Third, in addition to broadening the age range of those eligible for EITC benefit, the very definition of work associated with the credit could be reformed. For instance, eligibility for the credit could be expanded to recognize that certain individuals—such as full-time students and dependent caregivers—are no less valuable to society or worthy of assistance, despite lacking “earned income” under a traditional wage-based understanding of the term.

The Tax Policy Center, as part of its Cost-of-Living Refund proposal, has suggested that post-secondary education and caregiving are “work-like” and “ultimately benefit society” such that delivering EITC benefit to individuals engaged in those activities is a preferred method of increasing the Code’s progressivity.¹⁴⁴ Under such a proposal, eligible students could be those attending post-secondary school, not claimed as a dependent for tax purposes, and who are deemed low-income via either Pell grant eligibility or family income below a certain level. Such students could automatically qualify for a pre-established EITC benefit—or perhaps the maximum benefit—with the caveat that income from a job or other source could result in a phase-out of benefits according to the standard formula.¹⁴⁵

A similar approach could be used to deliver EITC benefit to caregivers. The Tax Policy Center has also proposed doing so as part of its Cost-of-Living Refund. Under such a proposal, qualifying caregivers could receive a pre-established EITC benefit amount—or again, the maximum benefit—subject to the traditional phase-out formula in the case of income generated from another source. Qualifying caregivers could be determined according to definitions already enshrined in law. For instance, eligible caregivers could be those caring for children or relatives under age six or caring for children who are disabled and qualify for “credit for other dependents,” enacted by the Tax Cuts and Jobs Act and explored in detail above. Likewise, those caring for individuals who qualify for the child and dependent care tax credit, such as a disabled spouse, could also qualify.¹⁴⁶

4. *Expansion for Taxpayer Identification Number (“TIN”) Filers*

¹⁴⁴ *Id.* at 17.

¹⁴⁵ *Id.* at 7.

¹⁴⁶ *Id.* at 6-7.

Finally, eligibility could be expanded for the EITC to those filers who either lack a social security number (“SSN”) themselves, or have children who lack a SSN. As described above, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 required that a SSN be provided for individuals (and spouses and children) claiming the EITC. Prior to that law, a valid TIN was all that was required for individuals (and spouses and children) claiming the credit.¹⁴⁷ As set out above, TINs include SSNs, individual taxpayer identification numbers, and adoption taxpayer identification. Individual taxpayer identification numbers (“ITIN”) are issued to “certain nonresident and resident aliens, their spouses, and dependents”; adoption taxpayer identification numbers (“ATIN”) are issued to individuals “who are in the process of legally adopting...but who cannot get an SSN for that child in time...”¹⁴⁸ Today, neither group is eligible to receive the EITC, despite the tax dollars paid and other economic contributions made by ITIN filers and the obvious costs of child-rearing—many of which have already begun prior to the finalization of an adoption—for ATIN filers.

Because repeal of the Personal Responsibility and Work Opportunity Reconciliation Act’s SSN requirement would have a negative budgetary effect, it is unlikely to be considered soon at the federal level, where such a proposal could immediately present the need for a significant and accompanying revenue-generating measure. Therefore, reformers hoping to expand the EITC’s benefit to TIN filers may need to focus their efforts at the state level. In 2019, California nearly became the first state to expand its state-level EITC to ITIN filers; however, following negotiations between Governor Gavin Newsom and the state legislature, the provision was removed from the budget, largely for unknown reasons. Still, the proposal has strong support in the both chambers of the state legislature, so advocates in California plan a strong push in 2020.¹⁴⁹

ii. *Modernization of the Credit*

The EITC, enacted via the Tax Reduction Act of 1975, has been reformed and expanded numerous times. Still, claiming the credit adds significant complexity to filing one’s taxes, and

¹⁴⁷ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193 §§ 451 (1996) (codified as amended at 26 U.S.C. § 32).

¹⁴⁸ *Taxpayer Identification Numbers (TIN)*, *supra* note [XX].

¹⁴⁹ Kalena Thomhave, *How California Left Undocumented Immigrants Out of Its EITC Expansion*, THE AM. PROSPECT (Aug. 2, 2019), <https://prospect.org/economy/california-left-undocumented-immigrants-eitc-expansion/>.

the soonest the EITC is paid out to taxpayers is in late February following the year in which the income was earned qualifying one for the credit. To fully modernize the EITC, the following policy changes could be considered.

1. Pre-population of Tax Returns

First, in order to simplify the process of receiving the EITC and to increase its uptake among those eligible, the IRS and state tax agencies could work to offer filers tax forms pre-populated with the information necessary to claim the credit. As Politico has described in a report on the topic, “[t]he IRS already knows from the W-2 filed by your employer how much you make in wages, and it already knows from forms filed by your financial service providers how much you earn in interest, dividends and capital gains—as well as how much you contribute to your individual retirement account.”¹⁵⁰ For those eligible to claim the EITC—individuals who may be the least likely to have discretionary funds with which to hire a tax preparer—pre-population would mean that “[i]f a taxpayer agrees with tax agency’s calculation, she can submit the pre-populated form electronically as a final return.”¹⁵¹ Simplifying the process in this way would surely help to tackle the issue of inadequate EITC uptake, reducing the estimated statistic that roughly 20 percent of those eligible for the EITC do not receive it each year.¹⁵²

More than 20 countries and the state of California offer such pre-population to at least a portion of tax filers. California’s pilot program, launched in 2005 and dubbed “ReadyReturn,” received favorable reviews from 98 percent of participants, who said they would use the program again.¹⁵³ At the state and local level, pre-population to receive the EITC has even been proposed retroactively: in the February 2019 Chicago Resilient Families Task Force Report (a group created by Chicago’s Mayor), the organization called for “an initiative to identify Chicagoans who are eligible for the Earned Income Tax Credit (EITC) in prior years and use that information to fill out and mail amended tax returns so people could claim their credits.” The Task Force cited the New York City Department of Finance as a model, saying that the agency had analyzed

¹⁵⁰ Joseph Bankman et al., *Why filing taxes isn’t easy*, POLITICO (July 18, 2018), <https://www.politico.com/agenda/story/2018/07/18/tax-filing-congress-irs-000683>.

¹⁵¹ *Id.*

¹⁵² Dylan Matthews, *Here’s an amazingly simple way to cut poverty*, VOX (Dec. 14, 2015), <https://www.vox.com/policy-and-politics/2015/12/14/10111732/eitc-mailing-study-experiment>.

¹⁵³ Bankman, *supra* note [XX].

federal tax information “to identify New Yorkers who were eligible for the Earned Income Tax Credit (EITC) in prior years and used that information to fill out and mail amended tax returns so people could claim their credits.” According to the report, Maryland, Virginia, and Kansas are working on similar initiatives. More states—and the IRS—could follow their lead to ensure those eligible for the EITC are capable of receiving it.¹⁵⁴

2. *Periodic Payments*

Second, payment of benefits could be made on a periodic basis to deliver the benefit when eligible filers most need it. Under current law, tax refunds for EITC filers begin to be paid on February 15, meaning that taxpayers do not experience the benefit of the credit until months after they earned the income making them eligible for it.¹⁵⁵ For many low- to moderate-income EITC households, that time frame is critical, making it more likely that families may rely on predatory lending and enter a cycle of debt in order to make ends meet during the year.¹⁵⁶ Not surprisingly, for many EITC recipients, the credit represents their largest single financial transaction of the year, and surveys have shown that in many cases, low-income individuals have a stronger desire for income stability than for additional income.¹⁵⁷ Indeed, studies have shown that a strong majority of low-income families experience at least one month per year where income drops at least a quarter below their average monthly income; just under half of such households have irregular income (either higher or lower than average) at least six months a year.¹⁵⁸

The Tax Policy Center has proposed such a framework: under its Cost-of-Living Refund, “[b]eneficiaries would document their income and estimate their [tax credit] benefits. They would then have the option to receive at least part of their benefit in advance, which could help smooth incomes over the course of the year, potentially easing the stress of sudden drops in income from other sources.”¹⁵⁹ There is evidence that such an approach can help households in

¹⁵⁴ CHICAGO RESILIENT FAMILIES TASK FORCE REPORT, *BIG SHOULDERS, BOLD SOLUTIONS: ECONOMIC SECURITY FOR CHICAGOANS* 36 (2019) [hereinafter *BIG SHOULDERS, BOLD SOLUTIONS*].

¹⁵⁵ Protecting Americans from Tax Hikes Act of 2015, Pub. L. 114-113, Division Q (2015) (codified as amended at 26 U.S.C. § 24); *Refund Timing for Earned Income Tax Credit and Additional Child Tax Credit Filers*, IRS, <https://www.irs.gov/individuals/refund-timing> (last visited Nov. 26, 2019).

¹⁵⁶ *BIG SHOULDERS, BOLD SOLUTIONS*, *supra* note [XX], at 32-33.

¹⁵⁷ *EXPANDING THE EARNED INCOME TAX CREDIT*, *supra* note [XX], at 18.

¹⁵⁸ *Id.* at 19.

¹⁵⁹ *Id.*

need to afford necessities; according to a Chicago-based analysis of individuals who were advanced the EITC on a quarterly basis, recipients “were more likely to be able to afford child care and education” and “to pay rent and basic bills when due” as compared to previous years when the credit was distributed at once.¹⁶⁰

3. *Guarding Against Error and Fraud*

Over one quarter of the annual cost of the EITC can be traced to erroneous claims for benefits.¹⁶¹ Thus, while expansions of eligibility or uptake in the EITC (or the CTC for that matter) are contemplated, it is important to simultaneously contemplate how to guard against error and fraud. As a matter of logic, such increased efforts would increase targeting of benefit and lower costs (and/or allow for more benefit to be appropriately targeted). In addition, creating additional confidence in the efficacy of these tax credits would likely have a political benefit helpful to additional reform.

In a sweeping proposal to limit waste in the EITC and CTC,¹⁶² a report published by the Heritage Foundation suggests that requiring the IRS to confirm income data prior to releasing benefits as well as gaming both credits through “residence fraud,” amounted to the most of the overpayment.¹⁶³ Although this report suggests these problems should be remedied by the IRS holding back benefit until sufficient documentation is received and limiting eligibility to parents with legal custody, such remedies could come into conflict with other suggested reforms to expand eligibility and access to these credits.¹⁶⁴ Indeed, other sources have shown that data suggest much of the error that is claimed as fraud is unintentional and likely due to complexity of the credit and filing process.¹⁶⁵ Nonetheless, the report suggests increased enforcement could be

¹⁶⁰ *Id.*

¹⁶¹ Robert Rector and Jaime Bryan Hall, The Heritage Foundation, REFORMING THE EARNED INCOME TAX CREDIT AND THE ADDITIONAL CHILD TAX CREDIT TO END WASTE, FRAUD AND ABUSE AND STRENGTHEN MARRIAGE, Nov. 16, 2016.

¹⁶² Notably, this report was created before passage of the TCJA, thus it discussed the EITC and the Additional Child Tax Credit, a refundable adjunct to the old CTC that was essentially subsumed by the CTC in the TCJA.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ See generally, TAX POLICY CTR., *What are error rates for refundable credits and what causes them?*, URBAN INST. & BROOKINGS INST., <https://www.taxpolicycenter.org/briefing-book/what-are-error-rates-refundable-credits->

generally achieved through changes in penalties, more efficient data management, and investment in IRS enforcement mechanisms, as noted below. As such remedies are contemplated, it should be noted that overall savings and efficiencies are likely much larger than the federal numbers contained herein as state revenue agencies could also benefit through cooperation with the IRS.

iii. Other Proposed Reforms

Beyond expanding the EITC to new populations and modernizing the credit for the 21st century, reform efforts could also focus proposals that would enhance the credit in three distinct manners: first, by increasing its amount and refundability; second, by improving its structure and the formula by which it is determined; and third, by enhancing its enforcement and the support offered to filers who are eligible to claim it.

1. Increasing the EITC's Amount and Refundability

First, in order to benefit those at the lowest levels of the income scale, federal policymakers could significantly increase the EITC's phase-in rate. Under current law, the phase-in rate for the credit ranges based on the number of one's children: 7.65 cents per dollar for those without children to 45 cents per dollar for those with three or more children.¹⁶⁶ Given this rate structure and the fact that the phase-in rate “is the key driver determining whether and how much working people with the lowest incomes benefit from a refundable credit,” in 2019, nearly 17 million individuals lived in households making too little to qualify for the maximum EITC benefit. Therefore, in order to deliver EITC benefit to those most in need, policymakers may want to act

[and-what-causes-them](#) (Errors can stem from intentional fraud or innocent mistakes made by taxpayers—the latter, a likely result of complex rules associated with the EITC. Studies by Treasury analysts indicate that only a minority of improper payments stem from fraudulent actions . . . A 2004 study by the Taxpayer Advocate found that, in 2002, among 67,000 people who sought reconsideration of their audit results, 43 percent were owed the entire or almost entire EITC claim that had initially been denied.)(internal citations omitted).

¹⁶⁶ *EITC Parameters*, TAX POLICY CTR., URBAN INST. & BROOKINGS INST. (Nov. 20, 2019), <https://www.taxpolicycenter.org/statistics/eitc-parameters>.

to amend the credit's phase-in rate. Under a proposal put forward by the Tax Policy Center, the EITC would phase-in dollar-for-dollar with filers' income, regardless of the number of one's children.¹⁶⁷ For instance, for tax year 2019, such a reform would allow a single filer with one child to claim the full benefit of the credit with income of just \$3,526; under current law, that same filer would need to earn \$10,370 to receive the full benefit.¹⁶⁸ Phase-in rate reform "would be highly concentrated among those with the lowest incomes and would provide more benefits to workers in deep poverty."¹⁶⁹

Because many state EITCs are tied directly to the federal formula, federal phase-in rate reform would, without additional limiting legislation from the states, likewise bolster state-level EITC benefit for those with the lowest incomes. But it is also imperative that state-level EITCs be refundable; after all, those with the lowest incomes often face no tax liability, meaning that without full refundability, the filers may experience little to no benefit. As explored above, the majority of states with an EITC have acted to ensure refundability, but several lag behind. Fortunately, efforts are underway in many to make the EITC refundable.¹⁷⁰ In Virginia, for instance, organizations like The Commonwealth Institute are working toward refundability, pointing out that such reform is needed, among other arguments, because "state and local taxes take a larger share of [low-wage workers'] incomes than that of high-income and wealthy households."¹⁷¹ Of course, the need for refundability is of little concern in the states still lacking their own EITC; in these jurisdictions, reformers may first need to focus their efforts on enacting a state-level credit, before later pushing to expand benefit via refundability.

2. *Improving the EITC's Structure and Formula*

¹⁶⁷ EXPANDING THE EARNED INCOME TAX CREDIT, *supra* note [XX], at 5.

¹⁶⁸ *EITC Parameters*, *supra* note [XX].

¹⁶⁹ EXPANDING THE EARNED INCOME TAX CREDIT, *supra* note [XX], at 5.

¹⁷⁰ Kalitha Williams, *Coalition calls for refundable state EITC*, POLICY MATTERS OH. (Apr. 15, 2019), <https://www.policymattersohio.org/press-room/2019/04/15/coalition-calls-for-refundable-state-eitc/>; *It's time to make Hawaii's Earned Income Tax Credit refundable*, HAW. BUDGET & POLICY CTR., <https://hibudget.org/2019/06/make-hawaii-earned-income-tax-credit-refundable/> (last visited Nov. 26, 2019).

¹⁷¹ Chris Wodicka, *A Targeted Economic Boost: An Expanded Working Families Tax Credit in Virginia Would Strengthen Communities and Families*, THE COMMONWEALTH INST. (July 9, 2018), <https://www.thecommonwealthinstitute.org/2018/07/09/a-targeted-economic-boost-an-expanded-working-families-tax-credit-in-virginia-would-strengthen-communities-and-families/>.

Second, reformers may want to prioritize policy changes that would work at the margins to correct inefficiencies that currently exist in the EITC, created by the numerous benefit formulas related to marital status and family size. For instance, the EITC still contains a marriage penalty that affects some couples, including those with lower incomes. A single individual with one child and \$15,000 in income will receive an EITC of \$3,526. A second single individual with no children and \$15,000 in income will receive an EITC of \$42. If those two individuals were to become a couple but not marry, they would receive a combined EITC of \$3,568. However, once married, their EITC would fall nearly one thousand dollars to \$2,696.¹⁷² Hypothetically, this can have the effect of incentivizing couples not to become married or, alternatively, for potential second earners in already married households not to enter the workforce.

By further increasing the EITC's phase-out threshold, this effect could be lessened. For instance, for tax year 2019, the EITC amount of single tax filers with one child begins to phase out at \$19,030. For married couples with one child, the phase-out begins at \$24,820.¹⁷³ If that phase-out threshold were to be increased to \$30,000, then in the above example, the couple, once married, would experience a much smaller marriage penalty, still receiving an EITC of \$3,526. Alternatively, the maximum credit amount for married couples could be enhanced, or the phase-out rate for married couples could be lessened. However, as with other "marriage penalties" imposed by the tax code, it is worth keeping in mind that there is no simple solution to the problem: in a tax code that aims for progressive taxation while simultaneously treating married and unmarried couples equally, achieving one goal will often come at the expense of the other.¹⁷⁴

Another means of reducing the EITC's marriage penalty has been proposed by the Tax Policy Center. Rather than base the size of the credit on one's number of children, the Center's proposed reform would "be based on marital status rather than number of qualifying children. Married couples could receive a maximum benefit of \$8,000 a year; single filers would be eligible for up to \$4,000 a year." The proposal's credit for single individuals would begin to phase out at \$30,000 worth of income; for married couples, it would begin to phase out at \$50,000 worth of household income. Thus, under \$50,000 of combined income, there would be

¹⁷² Amir El-Sibaie, *Marriage Penalties and Bonuses under the Tax Cuts and Jobs Act*, Tax Foundation (Feb. 14, 2018), <https://taxfoundation.org/tax-cuts-and-jobs-act-marriage-penalty/>; POLICY BASICS, *supra* note [XX].

¹⁷³ *Id.*

¹⁷⁴ Amir El-Sibaie, *supra* note [XX].

no marriage penalty, significantly reducing the marriage penalty as compared to current law.¹⁷⁵ This proposal has an added benefit beyond the reduction of the marriage penalty: comprehensive simplification. In addition to the outreach and enforcement solutions discussed below, such streamlining efforts could help significantly to increase EITC participation and to reduce filing errors brought on by complexity regarding qualifying children for purposes of the credit.

3. *Enhancing the EITC's Uptake and Simultaneously Increasing Enforcement*

Another common proposed improvement is increasing the uptake and enforcement of the EITC. One way to ensure that more eligible filers take advantage of the credit is to work for additional funding for Volunteer Income Tax Assistance (“VITA”) sites. At VITA locations in all 50 states and the District of Columbia, IRS-certified volunteers provide tax preparation services for low- and moderate-income individuals at no charge, ensuring EITC-eligible people get the support they need while simultaneously limiting potential fraud and user error.¹⁷⁶ The VITA program is funded via state and local governments, as well as private funds, with the federal government providing matching funds.¹⁷⁷ Thus, reformers can focus on increasing funding for the program at the federal, state, and local levels. At the state level, reformers—like those in Arkansas with the group AR Advocates—can also push for state partnerships with programs like VITA “and investing in a coordinated, state-wide campaign” to raise awareness for free preparation services and the EITC.¹⁷⁸

As noted above, while proposals for expansion and increased uptake of the EITC are contemplated, policy changes should be considered that empower the IRS and state agencies to properly enforce the credit, thus limiting actual or perceived claims of fraud, waste and abuse. Inadequate congressional funding of the IRS has reportedly undercut the agency’s enforcement efforts considerably. It has been reported that inadequate funding has “hampered the IRS from using its expanded capability under the 2015 year-end tax legislation to match information

¹⁷⁵ EXPANDING THE EARNED INCOME TAX CREDIT, *supra* note [XX], at [XX].

¹⁷⁶ *Free Tax Return Preparation for Qualifying Taxpayers*, IRS, <https://www.irs.gov/individuals/free-tax-return-preparation-for-you-by-volunteers> (last visited Nov. 26, 2019).

¹⁷⁷ Joanna Ain, *Tell Congress We Need VITA Funded at \$30 Million*, PROSPERITY NOW (May 14, 2018), <https://prosperitynow.org/blog/tell-congress-we-need-vita-funded-30-million>.

¹⁷⁸ ELEANOR WHEELER, ARKANSAS ADVOCATES FOR CHILDREN AND FAMILIES, *A STATE EITC IN ARKANSAS: REINFORCING THE BRIDGE OUT OF POVERTY 3* (2016).

provided by employers and other institutions with information provided by filers before releasing filers' refunds."¹⁷⁹ Congress has the power to act not just to properly fund the IRS' enforcement efforts, but to give the agency the authority it needs to ensure compliance. In 2010, the agency "launched a major initiative to require [tax] preparers who lack professional to pass a competency examination to be certified to prepare tax returns," but the U.S. Court of Appeals for the District of Columbia found that the IRS lacked the statutory authority to complete the effort.¹⁸⁰ Given that "the majority of EITC errors occur on commercially prepared returns," allowing the IRS additional resources could likely significantly reduce such wasted, fraud, and abuse.¹⁸¹

b. CTC

As with the EITC, there are a number of options that prudent policymakers could consider to further enhance the CTC.

i. Permanence of TCJA Reforms and Full Refundability

At the federal level, these efforts can start with making permanent certain of the changes put into place by the Tax Cuts and Jobs Act. Because of so-called "Byrd Rule" restrictions associated with the budget reconciliation process by which the law was enacted, many of the individual provisions of the tax reform law, including the changes made to the CTC, will expire at the end of 2025 absent Congressional action.¹⁸² Therefore, a significant first step would be federal legislation to make permanent the expansion of the CTC to \$2,000 per child, up from the \$1,000 per child it is scheduled to return to in 2026.¹⁸³ Given that CTC expansions have generally been met with bipartisan support, a further step would be to further expand the CTC, whether by increasing the amount per child to more accurately reflect the ever-rising cost of child-rearing, or

¹⁷⁹ Robert Greenstein et al., *Reducing Overpayments in the Earned Income Tax Credit*, CTR. ON BUDGET AND POLICY PRIORITIES (Jan. 31, 2019), <https://www.cbpp.org/research/federal-tax/reducing-overpayments-in-the-earned-income-tax-credit>.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² BILL HENIFF JR., CONG. RESEARCH SERV., RL30862, THE BUDGET RECONCILIATION PROCESS: THE SENATE'S "BYRD RULE" XX (2016).

¹⁸³ Child Tax Credit, 26 U.S.C. § 24(h).

more simply by indexing the \$2,000 per child credit to inflation; under current law, the credit amount is not annually adjusted.¹⁸⁴

In addition, to benefit individuals left behind by the credit in its current form, Congress could act to make the credit fully refundable, up from the current level of \$1,400, and could likewise move to eliminate or reduce the \$2,500 refundability threshold currently in place, both of which prevent many of those most in need from realizing the full benefit of the credit.¹⁸⁵ Recently, legislation has been introduced in both the House and the Senate that would essentially increase the CTC benefit to \$3600 per year for all children under 6 years of age and to \$3000 per year for children under 17 years of age.¹⁸⁶

ii. State-Level Expansion

Meanwhile, regardless of Congressional action or inaction, states may take action to enhance the CTCs that a few already have on the books or pass legislation to enact such credits for the first time. In early 2019, the Institute for Taxation and Economic Policy and the Center on Poverty & Social Policy at Columbia University jointly recommended that states work to enact one of two forms of a state-level credit.¹⁸⁷ Under the first recommendation, states would enact a credit that piggybacks on the federal credit to ensure that all families, except those with incomes too high to qualify, receive a fully refundable credit worth \$2,000 per child. As the recommendation phrases it, “[f]or the very lowest-income families with children, a targeted state-level CTC could be an even more effective tool for poverty reduction than an expansion of state-level EITCs.”¹⁸⁸ Under the second recommended option, the same fully refundable, federal/state combination model would be followed, but the total credit amount would equal \$3,600 for children six and under and \$3,000 for older children.¹⁸⁹

Both recommendations would significantly reduce childhood poverty in the U.S., with the second of the two recommendations reducing childhood poverty in each state by at least 25

¹⁸⁴ *Id.* § 24.

¹⁸⁵ *Id.*

¹⁸⁶ American Family Act of 2019, S. 690, 116th Cong. (2019).

¹⁸⁷ DAVIS ET AL., *supra* note [XX].

¹⁸⁸ *Id.* at 10-12.

¹⁸⁹ *Id.* at 13-14.

percent, and by more than 45 percent in twenty-seven states. Even if enacted in a much more modest form, such state-level efforts can have a tremendous impact in reducing the 2017 figure that 11.5 million American children live in poverty.¹⁹⁰ Finally, as with the EITC, states enacting CTCs may want to put in place their own inflation measures, given that full reliance on the federal model will now, under the chained CPI approach, result in a credit that grows more slowly than before.

c. Hybrid Proposals

Rather than focusing on individual enhancements to either the EITC or CTC, some reform proposals have focused on combining the two credits alongside other provisions of the tax code such as the personal exemption.

Ideas of this sort are not new: in 2005, President George W. Bush established the President’s Advisory Panel on Federal Tax Reform, to propose solutions to both simplify and make the tax code more pro-growth.¹⁹¹ The Panel ultimately recommended that the CTC and EITC be combined into a “Work Credit” that would increase as a taxpayer’s income increases up to a ceiling, and then phase out as earnings continued to rise.¹⁹² Urban Institute economist Eugene Steuerle has proposed combining the EITC, CTC, and dependent exemption into a “Unified CTC” for child under age 19 that he has argued would allow “most families the same value of a combined, EITC, child credit, and dependent exemption they would receive under current law at nearly all income levels...”¹⁹³ Under a proposal put forward by Paul Weinstein of the Progressive Policy Institute, the EITC, CTC, and Child and Dependent Care Tax Credit would all be replaced with a unified “Family Tax Credit” (“FTC”).¹⁹⁴ The FTC would grant families a refundable credit equal to 50 percent of their income, up to a maximum credit amount depending on family size and filing status.¹⁹⁵ Most recently, outgoing IRS Taxpayer Advocate Nina Olson

¹⁹⁰ *Id.* at 10-14.

¹⁹¹ THE PRESIDENT’S ADVISORY PANEL ON FED. TAX REFORM, REPORT OF THE PRESIDENT’S ADVISORY PANEL ON FED. TAX REFORM, SIMPLE, FAIR, AND PRO-GROWTH: PROPOSALS TO FIX AMERICA’S TAX SYSTEM 68 (2005).

¹⁹² The Work Credit was to operate alongside a separate credit, termed the Family Credit. Qualification for the Work Credit would have involved a number of complex calculations and varying parameters, based on family size and filing status. *Id.*

¹⁹³ ADAM CARASSO ET AL., URBAN INST., A UNIFIED CHILDREN’S TAX CREDIT 2 (2005).

¹⁹⁴ PAUL WEINSTEIN JR., PROGRESSIVE POLICY INST., FAMILY-FRIENDLY TAX REFORM 4 (2005).

¹⁹⁵ *Id.* at 8.

recommended that the EITC be restructured into, first, “a refundable worker credit based on *each individual worker’s* earned income irrespective of the presence of a qualifying child,” and second, “a refundable child benefit that would reflect the costs of caring for a child,” which would also replace the CTC and dependent exemption.¹⁹⁶

Conclusion: Steps to Enhance Effectiveness

Throughout American history, a fundamental notion has prevailed that a basic amount of citizens’ income should be protected from taxation. Over the course of time, the analogous view emerged that low- and middle-income working people deserved additional tax benefit in order to offset payroll taxes, encourage workforce participation, and stimulate the economy. For decades, the EITC and CTC have served as enduring examples of bipartisan enactments proven to lift Americans from poverty and assist with the costs associated with childrearing. Both credits have evolved significantly over time, and today stand alongside a number of tax code provisions intended to aid working families. While highly effective, the fact remains that both credits help some Americans more than others; both could yet be improved to offer more uniform and holistic benefit.

Experts have proposed a number of options—ranging from the piecemeal to the sweeping—to further improve the EITC and CTC. No matter the specifics of the proposal, the common theme is that the EITC and CTC should be further expanded and that childless workers and those with the most modest incomes, in all too many cases, are still left behind. Whether changes occur via Congressional action or through state-level reforms, expansion and improvement of both credits will lift more Americans from poverty—enabling positive health and educational outcomes, improving life expectancies, and increasing lifetime earning potentials. Moreover, such changes will more fully encourage and reward work, therefore supporting community businesses and stimulating local economies. Finally, because EITC and CTC proposals have historically provided those across the political spectrum a chance to unify and achieve a diverse range of policy objectives, further changes may be a timely solution to the political gridlock now commonplace in D.C. and state capitals across the country.

¹⁹⁶ IRS, TAXPAYER ADVOCATE SERVICE, 3 SPECIAL REPORT TO CONG., EARNED INCOME TAX CREDIT: MAKING THE EITC WORK FOR TAXPAYERS AND THE GOVERNMENT 10-22 (2019).

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