# REFORMING THE EITC AND CTC TO PROVIDE GREATER INCOME STABILITY—AN ALTERNATIVE TO UBI

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## INTRODUCTION

Universal Basic Income (UBI) has gained increasing popularity, promising income stability to millions of Americans. However, such a program would require an overhaul of our entire welfare system and come with an estimated $3.75 trillion per year price tag. During the current COVID-19 crisis, we are witnessing first-hand what a world with basic income could look like through the economic impact payments distributed through the IRS. However, unlike a true UBI program which would provide permanent periodic funds, the economic impact payments are a one-time fix. A sustainable, truly long-run UBI program would need to be revenue neutral and would likely require raising taxes to support the cost. While it may at one point become politically desirable to implement a true UBI program, it may be possible to realize some of the benefits of a UBI program without completely overhauling our government spending programs and drastically increasing taxes.

Reforms of the current Earned Income Tax Credit (EITC) and Child Tax Credit (CTC) may be used as a way to transition from the current system to UBI. All three programs share similarities in that they pay beneficiaries in cash and are not experienced as stigmatizing by recipients. However, the EITC and CTC can provide benefits at a lower cost compared to UBI because they specifically target people who stand to benefit most from government aid. Significant administrative and structural reforms can be made to the EITC and CTC to improve their ability to provide income stability to Americans. Namely, the IRS should administer the credits like a benefit as opposed to a tax, the credits should be available at no cost, the credits should be available periodically, part of the credits should be available to those who are not working, and extra aid should be available through the program during recessionary periods.

This Note will begin by exploring what exactly UBI is, how it could be funded, and the barriers to implementation. This Note will then move to discuss

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possible reforms to the EITC and CTC and whether or not they should be implemented. Finally, this Note will discuss how reforms to the EITC and CTC can provide income stability benefits similar to those of a UBI program.

## I. UNIVERSAL BASIC INCOME (UBI)

### *A. What Is Universal Basic Income?*

Although Universal Basic Income (UBI) proposals have been getting a lot of attention lately, there is little agreement on an exact definition of what constitutes a UBI.[1] Two terms are central to the definition: "basic income" and "universal."[2] "Basic income" means individuals would be provided with an amount of money sufficient to live on with no other earnings such that an individual would be at or above the poverty threshold,[3] which is about $12,000 per year for a single person household in the United States.[4] "Universal" means that the amount of the benefit would be available to everyone living in a polity, citizens and legal permanent residents, on an equal basis regardless of deservedness or need.[5] Combining these definitions would mean that a truly universal basic income would provide an equal amount of income to young and old, to poor and rich, and to sick and healthy regardless of whether or not they work. Such a program would cost roughly $3.75 trillion in the United States and make the government spending-to-GDP ratio of the country the highest in the world.[6]

1. Hilary W. Hoynes & Jesse Rothstein, *Universal Basic Income in the U.S. and Advanced Countries* 1 (Nat'l Bureau Econ. Rsch., Working Paper No. 25538, Feb. 2019).

2. *Id.* at 5.

3. *Id.* at 1.

4. *Poverty Guidelines*, OFF. ASSISTANT SEC'Y FOR PLAN. & EVALUATION, DEP'T HEALTH & HUM. SERV. (Jan. 8, 2020), https://aspe.hhs.gov/poverty-guidelines.

5. Miranda Perry Fleischer & Daniel Hemel, *Architecture of a Basic Income*, 87 U. CHI. L. REV. 625, 634 (2020). While excluding undocumented workers and temporary lawful residents pervades the definition of universal, there needs to be a systematic way of identifying who 'everyone living within a polity' includes. Limiting UBI payments to citizens and lawful permanent residents is in line with those persons over whom the United States exercises residence country taxing jurisdiction.

6. To arrive at an estimated cost for a UBI program which provides $12,000 per year to every citizen and permanent resident in the United States, this note uses a population statistic for U.S. citizens and permanent residents of 312.6 million. *Snapshot of U.S. Immigration 2019*, NAT'L CONF. STATE LEGISLATURES (Mar. 29, 2019), https://www.ncsl.org/research/immigration/snapshot-of-u-s-immigration-2017.aspx. To put this in perspective, government spending in the United States for 2017 was $7.38 trillion with a government spending-to-GDP ratio of 37.9 %. *General Government Spending,* ORG. ECON. COOP. & DEV., https://data.oecd.org/gga/general-government-spending.htm (last visited Sept. 21, 2020). A UBI of $1,000 per month would increase the US government spending-to-GDP ratio to 57%, ahead of France (56.3%), Finland (53.7%), Belgium (52%). *Id.*; *Gross Domestic Product*, ORG. ECON. COOP. & DEV., https://stats.oecd.org/index.aspx?queryid=60702.

Political candidates, such as Andrew Yang, have gained popularity by advocating for such a UBI program. Mr. Yang's UBI proposal, called the "Freedom Dividend," consisted of paying every American adult over the age of eighteen $1,000 per month, or $12,000 per year, for an indefinite period of time.[7] While the cost of Mr. Yang's proposal would be slightly less than a true UBI given that it would not include children, Mr. Yang's proposal would still cost roughly $3 trillion per year.[8] However innovative Mr. Yang's "Freedom Dividend" and the concept of a UBI may seem, the reality is that the structure, principle, and reasoning behind a UBI program has been debated and discussed for over 500 years under the guise of many different names—including a "basic income guarantee," a "citizen's income," a "negative income tax," and a "social dividend"—since Sir Thomas More suggested the concept in *Utopia*.[9]

### *B. Methods of Funding a Universal Basic Income Program*

The effect that a true UBI program would have on the country would depend on the method used to fund the program. Not surprisingly, this is also the area in which proponents of a UBI most differ. Some proponents, such as economist Milton Friedman, see UBI as a much-needed overhaul and simplification to the current welfare system.[10] Funding UBI through the elimination of the current welfare system would have a regressive effect, in that it would impose the costs of implementing the program on those who are the least able to pay and who need government aid the most. Proponents of this regressive method of funding UBI stress the efficiency of such an overhaul and the dignity such a proposal would provide to recipients by allowing them the

7. *The Freedom Dividend, Defined*, YANG 2020, https://www.yang2020.com/what-is-freedom-dividend-faq/ (last visited Feb. 29, 2020).

8. Spencer Bokat-Lindell, *Should the Government Give Everyone $1,000 a Month?*, N.Y. TIMES (Sept. 12, 2019), https://www.nytimes.com/2019/09/12/opinion/yang-universal-basic-income.html. *See also* Hoynes & Rothstein, *supra* note 1, at 6.

9. Fleischer & Hemel, *supra* note 5, at 634; Martin Sandbu, *Universal Basic Income: Renaissance for a 500-Year-Old Idea,* FIN. TIMES (Dec. 8, 2017), ft.com/content/3b7938e6-c569-11e7-b30e-a7c1c7c13aab. *See also* CAROL PATEMAN & MATTHEW C. MURRAY, *Introduction* to BASIC INCOME WORLDWIDE: HORIZONS OF Reform 1, 2 (Matthew C. Murray & Carole Pateman, eds., 2012); SIR THOMAS MORE, UTOPIA (Ralph Robinson & Gilbert Burnet trans., Columbian Publ'g Co. 1891) (1551).

10. MILTON FRIEDMAN & ROSE D. FRIEDMAN, FREE TO CHOOSE: A PERSONAL STATEMENT 120 (1990) ("[F]irst, reform the present welfare system by replacing the ragbag of specific programs with a single comprehensive program of income supplements in cash—negative income tax linked to the positive income tax; second, gradually unwind Social Security while meeting present commitments and gradually requiring people to make their own arrangements for their own retirement. Such a comprehensive reform would do more efficiently and humanely what our present welfare system does so inefficiently and inhumanely. It would provide an assured minimum to all persons in need regardless of the reasons for their need while doing as little harm as possible to their character, their independence, or their incentive to better their own condition.").

freedom to choose how to spend government funds.[11] However, if UBI is intended to substitute the entirety of the current welfare system, the reality of a $1,000 per month UBI will be that many people served under the current system will be worse off, especially if UBI is provided in lieu of Social Security where the average monthly benefit is $1,500.[12]

An alternative method of funding a UBI, lauded by proponents such as Andrew Yang, would pay for UBI with a value-added tax (VAT) and an income tax on top earners, leaving the current welfare system intact.[13] A VAT is a flat tax on consumption, rather than income.[14] It disproportionately affects those with lower incomes who generally spend all of their money to satisfy their current consumption needs.[15] Therefore, while a UBI would increase the income of all citizens and permanent residents, the VAT implemented to pay for the program would increase the prices of all goods and services. However, proponents of this type of tax laud UBI as a way to create a new economy where people come first.[16] They claim that the UBI money would go directly to spur communities through the consumer economy, that it would lead to savings on incarceration, homelessness services, and emergency room healthcare due to having a stronger, healthier, and mentally healthier population, and that it would allow people "the freedom to switch jobs, move, innovate, and contribute to society."[17] While proponents of this method of funding UBI recognize that technology is rapidly changing and many people may need to be retrained to do different jobs, these proponents still envision a world where, except in periods of transition, the vast majority of Americans would be working in addition to receiving their monthly UBI.

A third method of funding UBI is based on the premise that the robots are coming to take all the jobs. Those who subscribe to this vision of the future, such as Tesla CEO Elon Musk and Microsoft Founder Bill Gates, envision a UBI funded through a tax on robots and other forms of automation that take

11. Ari Glogower & Clint Wallace, *Shades of Basic Income*, 70 N.Y.U. ANN. CONF. ON LAB. 1, 13 (2017) ("[C]ash grants . . . prevent the government from dictating what individuals do with government support, thus preserving individual choice by providing aid in the form most useful to the beneficiaries . . . minimiz[ing] both deadweight loss associated with preference frustration, and administrative costs . . . .").

12. Emily Brandon, *How Much You Will Get from Social Security*, U.S. NEWS & WORLD REP. (Jan. 21, 2020), https://money.usnews.com/money/retirement/social-security/articles/how-much-you-will-get-from-social-security#:~:text=Consider%20the%20Average%20Social%20Security,per%20month%20in%20January%202020.

13. YANG 2020, *supra* note 7.

14. Michael J. Graetz & David R. Henderson, *Should the U.S. Adopt a Value-Added Tax?*, WALL ST. J. (Feb. 28, 2016), https://www.wsj.com/articles/should-the-u-s-adopt-a-value-added-tax-1456715703.

15. *Id.*

16. YANG 2020, *supra* note 7.

17. *Id.*

people's jobs.[18] They envision an automated world where "the primary economic concern will be figuring out income (re-)distribution schemes that enable the vast group of displaced workers to maintain their quality of life and subsistence."[19] The reasoning behind this method of funding a UBI resonates with seventeenth century philosopher John Locke's justification for a UBI based on property rights. Locke justified a UBI saying, "individuals can justly acquire property rights by mixing their labor with unowned natural resources so long as 'enough, and as good' is left for others."[20] Locke believed that a small tax should be paid by resource owners to everyone else to compensate them for their loss of access to that resource.[21] This Lockean argument can be applied in the case of automation. Automation allows for an increase in the productivity and wealth of a few companies and people at the expense of massive job loss among the vast majority of Americans. Imposing a tax on robots and other forms of automation could ensure that the individuals who lost their current jobs or lost the opportunity to get a job relative to prior generations are compensated for this loss of a scarce resource.[22] While redistribution schemes in the form of UBI would ensure that everyone benefited from gains to the economy caused by these new robot and automation technologies, this method of funding UBI recognizes what may be viewed as the dark side of UBI— "what would happen to people's sense of purpose if they had less of a need—or no need—to work."[23]

While the costs of UBI may seem enormous and there is little agreement over how such a program would be funded, it is certainly an attractive idea in this new economy with ever-growing income inequality. Whether or not robots truly are replacing people in the workforce, many Americans, particularly less-skilled workers, are experiencing stagnation in job opportunities and wages.[24] Income inequality is at a high, with ten percent of people holding seventy-seven

18. *See* Arjun Kharpal, *Bill Gates Wants to Tax Robots, But the EU Says, 'No Way, No Way*,*'* CNBC (June 2, 2017), https://www.cnbc.com/2017/06/02/bill-gates-robot-tax-eu.html; Chris Weller, *Elon Musk Doubles Down on Universal Basic Income: 'It's Going to Be Necessary*,*'* BUS. INSIDER (Feb. 13, 2017), https://www.businessinsider.com/elon-musk-universal-basic-income-2017-2. It is not just tech moguls who envision a world where robots outperform people. New York Times and international bestselling author, Mark Manson, predicts that robots and AI will become the final religion with AI 'gods' controlling people's fates when the day comes that AI can write better AI software than people and spawn better versions of itself all without the interference of people. Mark Manson, EVERYTHING IS FUCKED: A BOOK ABOUT HOPE 218 (2019).

19. Hoynes & Rothstein, *supra* note 1, at 3.

20. Fleischer & Hemel, *supra* note 5, at 647 (quoting JOHN LOCKE, SECOND TREATISE OF GOVERNMENT 21 (C.B. Macpherson ed., Hackett Publ'g Co. 1980) (1690)).

21. *Id.* at 648.

22. Another rationale for a "robot tax" is to supplement government revenues where payroll taxes necessarily decline due to fewer workers and lower payrolls. Richard Rubin, *The 'Robot Tax' Debate Heats Up*, WALL ST. J. (Jan. 8, 2020), https://www.wsj.com/articles/the-robot-tax-debate-heats-up-11578495608.

23. Weller, *supra* note 18.

24. Hoynes & Rothstein, *supra* note 1, at 4.

percent of the nation's wealth.[25] In a way, some may say the robots are already here and a UBI could be seen as a response which would "transfer a portion of national income from capital owners to workers (and non-workers), allowing them to live better lives than low market wages can support."[26] UBI could be structured such that the amount received would increase as the economy grows, guaranteeing everyone a portion of the gains, even if economic growth is highly concentrated.[27] In this way, the rising tides of gains in the U.S. economy would raise all boats, giving everyone a stake in the economy and an interest in supporting pro-growth policies.[28] Some countries, including Brazil, Finland, the Netherlands, Italy, Kenya, Uganda, and Canada, have even launched large-scale experimental UBI programs.[29] In the U.S., pilot studies are being planned and UBI-like payments have been made for many years in Eastern Cherokee Native American tribes financed by casino revenues, and, more recently, a UBI-style payment is being used as a response to the COVID-19 epidemic.[30] Although many of the UBI experiments and programs do not offer a basic income that is sufficient to live on given no other earnings and instead provide people only with a modest universal stipend,[31] UBI has the potential to offer

25. CHAD STONE ET AL., A GUIDE TO STATISTICS ON HISTORICAL TRENDS IN INCOME INEQUALITY, CTR. BUDGET & POL'Y PRIORITIES, https://www.cbpp.org/research/poverty-and-inequality/a-guide-to-statistics-on-historical-trends-in-income-inequality (last updated Jan. 13, 2020).

26. Hoynes & Rothstein, *supra* note 1, at 4.

27. LEONARD E. BURMAN, TAX POL'Y CTR., A UNIVERSAL EITC: SHARING THE GAINS FROM ECONOMIC GROWTH, ENCOURAGING WORK, AND SUPPORTING FAMILIES 8 (2019).

28. *Id.*

29. Fleischer & Hemel, *supra* note 5, at 627; Brian Bergstein, *Basic Income Could Work—If You Do It Canada-Style*, MIT TECH. REV. (June 20, 2018), https://www.technologyreview.com/s/611418/basic-income-could-work-if-you-do-it-canada-style/.

30. Hoynes & Rothstein, *supra* note 1, at 18; *Economic Impact Payments*, INTERNAL REVENUE SERV., https://www.irs.gov/coronavirus/economic-impact-payments (last updated Apr. 23, 2020). Under the economic impact payment program, each eligible individual will receive $1,200 with an additional $500 provided for each qualifying child. *Id*. Eligible individuals are US citizens and permanent residents with Social Security numbers, who are not claimed as a dependent on somebody else's return. *Id.* There are income phase outs for the amount of the credit received that depend on household status and the number of qualifying children, so in this way the payments are not universal. *Id.* The economic impact payment is seen as a refundable credit for 2020 in the eyes of the tax code. Tanza Loudenback, *You Won't Have to Pay Back Your Stimulus Check, Even if You Get Too Much*, BUS. INSIDER (Apr. 15, 2020), https://www.businessinsider.com/personal-finance/will-we-have-to-pay-back-stimulus-check-2020-4. This early administered credit is being implemented in the light most favorable to the taxpayer such that if a taxpayer did not receive the full amount of the credit for which he qualified, the taxpayer can claim the additional credit on his 2020 tax return. *Id.* Furthermore, if the taxpayer received too large an amount in his stimulus check, he doesn't have to pay it back and can keep the excess. *Id.*

31. *Id.*

everyone "a strong safety net with fewer holes" than the current government welfare system provides.[32]

### *C. Barriers to Implementing a UBI Program*

Two main barriers must be faced before a UBI program can actually be implemented. First, the high cost of $3.75 trillion per year required to fund a UBI program, and second, the American mentality that only those deserving should receive government funding.[33]

The $3.75 trillion yearly price tag accompanying the implementation of a true UBI program would have to be funded by increasing taxes, decreasing government spending, or more likely a combination of the two. Eliminating all government transfer programs, including Social Security, Medicare, and Medicaid, would only raise $2.34 trillion per year, requiring an increase in taxes to fund the remaining $1.66 trillion.[34] Furthermore, few Americans support cuts to government programs, especially when it comes to Social Security and Medicare.[35] Any decrease in Social Security and Medicare spending is especially unpopular given that voter turnout is highest among people age sixty-five and older.[36] If government spending cuts excluded Social Security and Medicare, they would hardly make a dent in the costs of administering a true UBI program and the remainder would need to be funded by increasing taxes, which brings about the second barrier.[37]

The second barrier to UBI exists because of an American mentality that government aid should be given only to those who are deserving. The group of deserving individuals includes children who are not seen as at fault for their circumstances, the disabled who are seen as unable to help themselves, and the working poor who are seen as putting in the effort to better their lives. Notably, those who can work but choose not to are excluded from the deserving. It is difficult to raise support for taxes to fund a UBI when some of the money is seen as benefitting this 'lazy' class at the expense of hardworking Americans. A UBI program would likely become more favorable if the wealthy were to shoulder the burden of the costs. A recent GALLUP poll shows the majority of

32. Fleischer & Hemel, *supra* note 5, at 706.

33. Kevin Conley, *Should the Federal Government Give Everyone a Monthly Check? The Latest Push for Universal Income*, TIME: SPECIAL DAVOS ISSUE (Jan. 16, 2019), https://time.com/collection/davos-2019/5504509/behind-the-issue/. We are assuming that we want a UBI program to be budget neutral, so that the costs of the program are not pushed onto future generations.

34. Hoynes & Rothstein, *supra* note 1, at tbl.3.

35. John Gramlich, *Few Americans Support Cuts to Most Government Programs, Including Medicaid*, PEW RSCH. CTR. (May 26, 2017), https://www.pewresearch.org/fact-tank/2017/05/26/few-americans-support-cuts-to-most-government-programs-including-medicaid/.

36. Jordan Misra, *Voter Turnout Rates Among All Voting Age and Major Racial and Ethnic Groups Were Higher Than in 2014*, U.S. CENSUS BUREAU (Apr. 23, 2019), https://www.census.gov/library/stories/2019/04/behind-2018-united-states-midterm-election-turnout.html.

37. Hoynes & Rothstein, *supra* note 1, at tbl.3.

Americans believe middle and low-income people are either paying too much tax or their fair share, whereas upper income people are seen as paying too little tax.[38] However, placing the tax burden on upper income individuals might not increase tax revenues as much as desired since these individuals also have greater resources to expend on tax advisors who can find loopholes in the tax code.[39] When UBI was last contemplated by Congress in the 1970s, it was passed over in favor of the EITC, a program which supports the working poor and continues to garner strong bipartisan and popular support.[40] Before a true UBI program could be implemented, the mentality behind government funding would need to shift such that income would be delinked from labor.[41] Such a delinking allows the allocation of government funds to be provided on a universal basis, regardless of deservedness, including to those who can work but choose not to work. However, this delinking may have the negative consequence of discouraging work, as the opportunity cost of choosing leisure over work decreases.

While it may at one point become politically desirable to implement a true UBI program, it may be possible to achieve some of the benefit of a UBI program without having to completely overhaul our government spending programs, drastically increase taxes, or shift the current mentality behind our welfare system.

## II. REFORMING THE EARNED INCOME TAX CREDIT (EITC)

Reforms of the current Earned Income Tax Credit (EITC) and Child Tax Credit (CTC) may be used as a way to transition from the current system to the UBI. These three programs share similarities in that they are all paid in cash and not experienced as stigmatizing by recipients.[42] A major difference, however, is that the EITC and CTC are currently only available to those who earn income. Furthermore, the EITC and CTC are only provided in significant amounts to families with children. That being said, reforms to the EITC and CTC could achieve some of the income stability benefits offered by a UBI at a lower price tag by specifically targeting those viewed as deserving within the current American mentality.[43]

38. *In Depth: Topics A to Z–Taxes*, GALLUP (2020), https://news.gallup.com/poll/1714/taxes.aspx.

39. Paul Sullivan, *Raise Billions from Billionaires? Tax Experts Say It's Not that Simple*, N.Y. TIMES (Nov. 15, 2019), https://www.nytimes.com/2019/11/15/your-money/wealth-tax-warren-sanders.html.

40. *See* YANG 2020, *supra* note 7; Margot L. Crandall-Hollick, *The Earned Income Tax Credit (EITC): A Brief Legislative History*, CONG. RSCH. SERV. (Mar. 20, 2018), https://fas.org/sgp/crs/misc/R44825.pdf.

41. Benjamin M. Leff, *EITC for All: A Universal Basic Income Compromise Proposal*, 25 WASH. & LEE J. C.R. & SOC. JUST. 85, 91 (2019).

42. *Id.* at 117.

43. *Id.* at 88–91.

### *A. The Current State of the EITC and CTC*

The EITC and CTC, some of the most effective anti-poverty measures, are tax credits available on a yearly basis to low- and middle-income families and individuals who live in the United States.[44] As tax credits, the EITC and CTC reduce an individual's tax liability dollar for dollar. Like traditional welfare, these programs cost the government money in the form of lost tax revenues.[45] However, unlike traditional welfare programs, they provide aid to low- and middle-income families in the form of unrestricted transfers of money which are not experienced as stigmatizing. While the EITC and CTC are both tax credits, they have different forms and eligibility requirements.

The EITC is a refundable tax credit which means it results in a tax refund for every dollar that the credit reduces an individual's tax liability below zero.[46] The EITC is available only to taxpayers who earn income.[47] At low income levels, the EITC phases in with increases in income until it meets the maximum credit amount, but at higher levels of income, the EITC begins to phase out.[48] The amount of the maximum credit and phase-in and phase-out ranges, which are annually adjusted for inflation, vary based on a taxpayer's filing status and the number of children a taxpayer is eligible to claim.[49] Evidence shows the EITC is more beneficial to low-income families than the minimum wage.[50] However, the phase-out of the credit can create marginal tax rates as high as 36 percent for taxpayers on the higher end of the low-income scale and disincentivize them from earning more money—discouraging these taxpayers trying to climb out of poverty.[51]

44. *See* LESLIE BOOK ET AL., INTERNAL REVENUE SERV., NAT'L TAXPAYER ADVOC. SPECIAL REP. TO CONG., EARNED INCOME TAX CREDIT: MAKING THE EITC WORK FOR TAXPAYERS AND THE GOVERNMENT, IMPROVING ADMINISTRATION AND PROTECTING TAXPAYER RIGHTS (2020).

45. *What Are Tax Expenditures and How Are They Structured?*, *in* THE TAX POLICY CENTER'S BRIEFING BOOK, THE TAX POL'Y CTR., https://www.taxpolicycenter.org/briefing-book/what-are-tax-expenditures-and-how-are-they-structured (last visited Mar. 2, 2020).

46. *See Policy Basics: The Earned Income Tax Credit*, CTR. BUDGET & POL'Y PRIORITIES, https://www.cbpp.org/research/federal-tax/policy-basics-the-earned-income-tax-credit (last updated Dec. 10, 2019).

47. Earned income for the purpose of this statute means "wages, salaries, tips, and other employee compensation" plus the amount of net earnings from self-employment for the taxable year. I.R.C. § 32(c)(2)(A).

48. *Id.*

49. *Id.*

50. David Neumark & William Wascher, *Using the EITC to Help Poor Families: New Evidence and a Comparison with the Minimum Wage* 26 (Nat'l Bureau Econ. Rsch., Working Paper No. 7599, 2000) ("[T]here is strong evidence that the EITC raises earnings by inducing labor market entry among families that initially do not have any adults in the work force").

51. Thomas L. Hungerford & Rebecca Thiess, *The Earned Income Tax Credit and the Child Tax Credit: History, Purpose, Goals, and Effectiveness*, ECON. POL'Y INST. (Sept. 25, 2013), https://www.epi.org/publication/ib370-earned-income-tax-credit-and-the-child-tax-credit-history-purpose-goals-and-effectiveness/. The disincentive to work is highest among secondary earners.

The EITC credit amount, when claimed without children, is very limited.[52] In 2019, the maximum amount of the credit for unmarried taxpayers with no children was $529, which completely phased in at $6,920 of earned income and began to phase out at $8,650 of earned income, with the credit completely phasing out at $15,570 of earned income.[53]

For taxpayers claiming the EITC with one or more children, the credit is more substantial. However, the credit is largely determined on the basis of family status, which creates some complications around marriage and child custody.[54] Married taxpayers must file jointly to be eligible to claim the benefit,[55] and there is a marriage penalty associated with the structure of the benefit—the aggregate benefit received by two single people can exceed the benefit by the same married couple.[56] In 2019, the maximum amount of the credit for unmarried taxpayers with one child was $3,526, which completely phased in at $10,370 of earned income and began to phase out at $19,030 of earned income, with the credit completely phasing out at $41,094 of earned income.[57] In 2019, these parameters largely stayed the same for married taxpayers with one child with the exception of the phase-out range which was slightly higher and began at $24,820 of earned income and completely phasing out at $46,884 of earned income.[58] However, where the married couple together could receive a maximum credit of $3,526, a single taxpayer living together with another single taxpayer and one child could claim a combined maximum credit of $4,055.[59]

Arguably the most complicated requirements surrounding eligibility for the EITC are those which must be met for a taxpayer to claim someone as a child. In order to claim a child for the purposes of the EITC three tests must be met—relationship, age, and abode.[60] If under these tests more than one taxpayer

David R. Francis, *The Earned Income Tax Credit Raises Employment*, NAT'L BUREAU ECON. RSCH., https://www.nber.org/digest/aug06/w11729.html (last visited Mar. 16, 2020). The EITC is based on family status therefore if the primary earner places the family in the phase out range, there is little boost in the family's earning by the secondary earner entering the labor force. *Id.*

52. *Id.*

53. CTR. BUDGET & POL'Y PRIORITIES, *supra* note 46. Dollar figures are adjusted yearly for inflation.

54. Leff, *supra* note 41, at 107. *See also* Elaine Maag, *Earned Income Tax Credit in the United States*, TAX POLICY CENTER (Apr. 9, 2015), https://www.taxpolicycenter.org/publications/earned-income-tax-credit-united-states ("This has led to an unusually high error rate and an opportunity for unscrupulous individuals preparing tax returns to commit fraud.").

55. I.R.C. §32(d).

56. *Id.*; I.R.C. § 32(d).

57. CTR. BUDGET & POL'Y PRIORITIES, *supra* note 46.

58. *Id.*

59. $4,055 is arrived at by adding the maximum credit for a single person with one child $3,526 to the maximum credit for a single person with no child $529. Note that the marriage penalty is even large for a married couple with two children.

60. I.R.C. § 32(c)(1)(A)(i) & (3)(A), 152(c).

is eligible to claim a child, there are tie-breaker provisions.[61] To meet the relationship test, a child must be either a child, stepchild, adopted child, or eligible foster child of the taxpayer or their descendant, or the brother, sister, stepbrother, stepsister of the taxpayer, or descendant of such brother, sister, stepbrother, or stepsister.[62] To meet the age test, the potential dependent generally must be permanently and totally disabled, less than nineteen years old, or fewer than twenty four years old if he or she is a full-time student.[63] The abode test is more complicated to apply and is a factual inquiry as to whether the child resides with the taxpayer for more than half the year.[64] The problem with these requirements is that they are not encompassing of the modern family, especially when it comes to low-income taxpayers where it is typical to encounter multi-generational households.[65]

The CTC is a partially refundable credit for taxpayers with qualifying children who receive more than $2,500 of earned income.[66] The credit amount for 2018 to 2025 is $2,000 per qualifying child, which is not adjusted for inflation.[67] However, of the $2,000 credit, $1,400 of this is refundable and the refundable amount is adjusted for inflation.[68] There is a phase out of the Child Tax Credit at higher income levels beginning at $200,000.[69] In order for a taxpayer to receive the CTC, a dependent must meet several tests in addition to those for qualifying as a child for purposes of the EITC. First, the child must be younger than seventeen years old, and second, the qualifying child must live within the United States, and third, the child must not provide more than half of his own support.[70] If a dependent is a qualifying child under the EITC that does not provide more than half of his own support, but he does not qualify for the CTC, the taxpayer will receive a $500 credit which is non-refundable.[71]

The EITC and CTC in their current state serve as an inadequate safety net for many Americans who live paycheck to paycheck. The complexity of the eligibility requirements caused by the variance in the definition of who can qualify as a child makes it difficult and sometimes costly for low-income taxpayers to claim these credits. Incorrectly claiming the credits can trigger a tax audit, and taxpayers are left to their own devices in determining the reason for the audit and how to resolve it. The unreliable IRS website and busy IRS

61. I.R.C. § 152(c)(4).

62. I.R.C. § 152(c)(1)(A), (c)(2), (f).

63. I.R.C § 152(c)(1)(C) & (c)(3).

64. I.R.C. § 152(c)(1)(B).

65. BOOK ET AL., *supra* note 44, at 13 ("Low income children were more likely to live with either a single parent, in a multigenerational household, a cohabiting household, or in a family with at least one non-biological child in comparison to their higher income peers.").

66. I.R.C. § 24(d), (h)(6).

67. I.R.C. § 24(h).

68. *Id.*

69. I.R.C. § 24(b)(2)(B), (h)(3).

70. *Id.*; I.R.C. § 152(c)(1)(D).

71. I.R.C. § 24(h)(4).

phone lines only open during business hours make it such that taxpayers are often faced with the choice of dealing with their tax issue or attending work. Furthermore, since the EITC and CTC are annual stipends, they are unable to support taxpayers through minor emergencies which occur throughout the year and can throw a family into poverty. When earned income disappears, the EITC, in particular, can become a source of income instability. In order to make the EITC and CTC more comparable to a UBI such that they provide income stability for low- and middle-income families both administrative and structural changes must be made.

### *B. Administrative Reform*

Currently, the EITC and CTC are administered in the same manner as an income tax. First, those hoping to claim the benefit must file a tax return each year which requires them to compile a significant amount of information and find a trusted third party to prepare and file their return with the government. Then, they must wait for the government to file and process their return and issue the refund which can take months. Oftentimes, they must pay tax return preparer fees out this refund. Assuming this process goes smoothly the taxpayer will receive a modest refund; however, if the taxpayer is audited, their refund can be frozen, and the taxpayer will incur further expenses and risk possible liability for improperly claimed credits. This process can be detrimental to low-income families and stands in stark contrast to UBI—implemented as a periodic benefit with no consequences associated with claiming the benefit.

Three administrative reforms can be made to EITC and CTC administration to make it more similar to how a UBI would be administered. First, the IRS could change its mission statement to encompass its role as a benefits administrator—placing the focus on helping the taxpayer as opposed to reaching the right tax result. Second, the IRS could eliminate third-party fees often associated with claiming these credits by either providing a credit for tax preparation, improving Free File, or creating its own tax preparation service. Finally, the IRS could further explore ways to distribute the EITC and CTC periodically rather than in one lump sum. Administering the EITC and CTC like UBI would increase the income stability these programs are able to offer by reducing the negative consequences associated with claiming these credits, eliminating the barrier to claiming these credits, and making the credits available to smooth out income variation throughout the year.

#### 1. Change the Mission of the IRS to Encompass its Role as a Benefits Administrator

There are efficiency gains to be achieved by implementing spending programs through the IRS, especially in regard to the programs like EITC and the CTC.[72] However, in order for these spending programs to be administered like a UBI, the IRS must recognize its role not only of a revenue collector, but

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

also of a benefit administrator as Congress intended when it placed these spending provisions into the Internal Revenue Code.[73] Such a change would not be purely cosmetic. How the IRS chooses to portray itself matters in terms of how IRS employees view themselves, who the IRS chooses to hire, how taxpayers view the IRS, how interactions are structured between taxpayers and the IRS, and how the IRS implements the tax law.[74]

Changing the IRS's mission statement to encompass its new role as a benefits administrator would shift the way the IRS implements programs such as the EITC and CTC from the punitive-style enforcement currently used to "non-coercive compliance" where the IRS works with rather than against taxpayers.[75] Small internal changes such as assigning specific IRS employees to each audit would allow IRS employees to become more familiar with specific taxpayers' issues and better able to help these taxpayers determine their eligibility for credits.[76] While the initial cost of reorganizing a portion of the IRS to function as a benefits administrator may be hundreds of millions of dollars, the cost of IRS maintaining its role as a benefits administrator once set up would be very low. Transforming the IRS to recognize its role as a benefits administrator would lay the groundwork for further reforms aimed at creating more income stability through the EITC and CTC, capturing a benefit similar to that offered by a UBI.

2. Ensure the Total Amount of the EITC and CTC is Being Captured by Low-Income Taxpayers, not Third Parties

Unlike a UBI which would be free for Americans to claim and receive, taxpayers must often pay third parties when claiming the EITC and CTC, undermining the purpose and effectiveness of these credits.[77] For many low-income families "who have limited literacy, fear of and anxiety over the tax system, or do not speak or read English," the EITC and CTC are too complicated to understand and claim without assistance.[78] As it stands, in the aggregate, EITC and CTC claimants lose more than $1.75 billion annually to third parties—tax preparers, cashing outlets, refund anticipation loans.[79] Often times, these third parties, specifically tax preparers, deduct their service fees directly from tax refunds, hiding their fees from the taxpayer and capturing the benefits

73. BOOK ET AL., *supra* note 44, at 5. In fact, Congress specifically stated in the law that it wanted the IRS to "restate its mission to place a greater emphasis on serving the public and meeting taxpayers' needs." Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, § 1002, 112 Stat. 685, 690 (1998).

74. BOOK ET AL., *supra* note 44, at 5.

75. *Id.*

76. As an added bonus, personal engagement between the IRS employees and taxpayers helps to build trust in the tax system. *Id.* at 6–7.

77. Francine J. Lipman, *The Working Poor Are Paying for Government Benefits: Fixing the Hole in the Anti-Poverty Purse*, 2003 WIS. L. REV. 461, 467 (2003).

78. *Id.* at 464.

79. *Id.* at 474.

of the credits for themselves. Third-party costs create an 'application fee' to claim the EITC and CTC and transfer the benefits of the credits away from their intended beneficiaries.

One way the IRS has tried to reduce filing costs, especially for low-income taxpayers, is the creation of Free File—a tax return preparer software managed and operated by a group of commercial tax services businesses called the Free File Alliance that allows taxpayers to e-file their tax returns for free.[80] This program was first made available to taxpayers at the end of 2002 and was supposed to offer free online tax preparation and filing services to 70% of taxpayers.[81] However, usage rates of Free File have consistently been low. In 2018, only 1.7% of taxpayers used the Free File program to file their taxes.[82] Recently, the program has been subject to allegations "that some program participants used code to prevent consumers from accessing their Free File option through an internet search," contributing to the low usage rates.[83] In 2019, in an attempt to prevent the Free File option from being hidden from taxpayers, the IRS entered into a new Free File agreement meant to strengthen the program and benefit taxpayers, specifically preventing the exclusion of the Free File landing page from an organic search.[84] However, a major member, H&R Block recently left the program as a result of these changes, and the reality remains that the members of the Free File Alliance would not offer this service that directly takes away from their business unless they had something to gain.[85] Here, Alliance members likely see gain from Free File serving as a "loss leader"—taxpayers get familiar with a member's software through the Free File program when they are low-income and they continue to use it at higher levels of income when the software is no longer free.[86] Furthermore, taxpayers may see Alliance members' connection to the IRS as a signal that the services or products they offer in addition to the free filing service are required or fairly priced.[87]

Should the Free File usage rates continue to be low, the IRS should consider alternative solutions to reducing filing costs. One such solution could be offering a tax credit to low-income taxpayers to cover tax preparation costs.

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80. *See id.* at 468; IRS' Intent to Enter into an Agreement with Free File Alliance LLC (i.e., Free File Alliance), 67 Fed. Reg. 67247 (Nov. 4, 2002).

81. *About*, FREEFILE, https://freefilealliance.org/about/ (last visited Sept. 23, 2020).

82. INTERNAL REVENUE SERV., 2018 INTERNAL REVENUE SERVICE DATABOOK 2 (2018), https://www.irs.gov/pub/irs-prior/p55b—2019.pdf.

83. BOOK ET AL., *supra* note 44, at 29; *The TurboTax Trap*, PROPUBLICA, https://www.propublica.org/series/the-turbotax-trap (last visited Apr. 30, 2020).

84. *New Free File Agreement Signed to Strengthen Program, Help Taxpayers*, INTERNAL REVENUE SERV. (Dec. 30, 2019), https://www.irs.gov/newsroom/new-free-file-agreement-signed-to-strengthen-program-help-taxpayers.

85. Allison Versprille, *IRS's Free File Partners Moving Forward Without H&R Block*, BLOOMBERG TAX (Jun. 18, 2020), https://news.bloombergtax.com/daily-tax-report/irss-free-file-partners-moving-forward-without-h-r-block.

86. PROPUBLICA, *supra* note 83.

87. *Id.*; Lipman, *supra* note 77, at 484.

While this would provide a subsidy to tax return preparers, the IRS could limit the credit's availability to qualifying tax assistance, allowing the IRS to set uniform qualifications for tax return preparers to ensure competency and protect low-income taxpayers.[88] As one of the qualifications, the IRS could require tax assistance be provided at no initial cost to low-income taxpayers with costs of the assistance limited to the tax preparation credit and deducted directly from the refund. This would discourage preparers from raising their fees in response to the credit because raising fees above the credit amount would make the preparer ineligible for purposes of the credit, leaving intact the full amount of the EITC and CTC refund for the benefit of the taxpayer. Such a credit would encourage low-income families to seek out qualified tax assistance and reduce the risk that their tax return will undergo the stressful audit process as tax return preparers would be encouraged to provide high quality service with low audit percentages in order to build their customer base and capture a larger percentage of the subsidy.[89] Implementing such a credit would require Congress to pass appropriate legislation authorizing the credit. However, the cost of the credit, while upwards of $9.8 billion, is significantly less than the cost of UBI.[90]

Another alternative to Free File would be a free online tax preparation and tax-filing service created by the IRS for all taxpayers.[91] This idea has gained increasing popularity from politicians, like presidential candidate and Senator Elizabeth Warren, especially after the underutilization of the Free File program.[92] Proponents of this program claim that it will allow more people to claim tax refunds like the EITC and CTC by eliminating the credits' application fees.[93] Proponents also laud the security benefits of preventing third parties

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88. *Id.* at 478. A federal appellate court ruled that the IRS lacks any statutory authority to set regulatory controls—including registration, competency testing, and continuing education—on the tax return preparation industry. Loving v. IRS, 742 F.3d 1013 (D.C. Cir. 2014). In the wake of this decision, the IRS has been attempting to create incentives to encourage tax return preparers to engage in a voluntary program to ensure competency of tax return preparers. BOOK ET AL., *supra* note 44, at 23–31. While these voluntary programs are controversial, they are a step in the right direction to ensure competency among tax return preparers until Congress enacts legislation that allows industry wide regulation.

89. BOOK ET AL., *supra* note 44, at 27 ("[S]tudies have found that non-credentialed tax return preparers routinely prepare inaccurate returns, which has the effect of harming both taxpayers and tax administration.").

90. Cost calculated assuming seventy percent of taxpayers would be eligible to receive the credit and the average amount of the credit would be one hundred dollars. In 2019, more than 141 million individuals filed income tax returns. TREASURY INSPECTOR FOR TAX ADMIN., RESULTS OF THE 2019 FILING SEASON (Jan. 22, 2020), https://www.treasury.gov/tigta/auditreports/2020reports/202044007fr.pdf.

91. See *also* Lipman, *supra* note 77, at 469.

92. Press Release, Senator Elizabeth Warren, Senator Warren Leads Colleagues in Reintroducing Legislation to Simplify and Decrease the Costs of Tax Preparation and Filing (Apr. 12, 2019), https://www.warren.senate.gov/newsroom/press-releases/senator-warren-leads-colleagues-in-reintroducing-legislation-to-simplify-and-decrease-the-costs-of-tax-preparation-and-filing.

93. *Id.*

from accessing taxpayers' information.[94] Furthermore, IRS provided tax preparation service promises to cost hundreds of millions of dollars in initial startup fees with minimal yearly costs for maintenance and customer support, less than the yearly tax return preparer credit and paling in comparison to the cost of UBI.[95] However, there is strong political pushback against the idea from tax return preparation companies like Intuit and H&R Block, who in 2019 nearly generated enough bipartisan support to ban the US government from offering its own online tax filing service.[96] Even if not implemented, the threat of the US government offering its own filing service serves as an important bargaining chip for the IRS when negotiating the terms of the Free File program with private tax return preparation companies, which may successfully improve Free File such that low-income individuals would be able to claim the EITC and CTC without having to pay an "application fee."[97]

3. Periodic Payment

Many Americans are just one shock event away from poverty, paying the EITC and CTC out periodically, like the UBI, could serve to smooth out the shocks in consumption, increasing income stability.[98] Examples of shock events can include something as small as a car repair or something as large as COVID-19 driven mass layoffs.[99] Because the tax refunds are only provided once a year, they cannot be used to weather these shock events unless the shock occurs during refund season.[100] A qualitative study found that most families who claim the EITC turn to credit cards to cope with shock events, using the EITC to pay off some or all of their credit card debt.[101] Participants in the study preferred using credit cards to cope with most shock events because they are "fast, easy, and stigma-free."[102] However, by the time the taxpayer receives their tax refund, late fees and interest have already accumulated on the credit card debt.[103] While credit cards may help people stay afloat in the short-run,

94. *Id.*

95. Lipman, *supra* note 77, at 485.

96. Justin Elliott, *Congress Is About to Ban the Government From Offering Free Online Tax Filing. Thank TurboTax.*, PROPUBLICA (Apr. 9, 2019), https://www.propublica.org/article/congress-is-about-to-ban-the-government-from-offering-free-online-tax-filing-thank-turbotax. Congress did not in fact ban the IRS from doing so as the title of the article suggests. Indeed, the provision banning the government from offering free online tax filing was removed from the most recent memorandum of understanding between Free File and the IRS.

97. *Id.*

98. Sara Sternberg Greene, *The Broken Safety Net: A Study of Earned Income Tax Credit Recipients and a Proposal for Repair*, 88 N.Y.U. L. REV. 515, 544 (2013).

99. *Id.*

100. *Id.* at 547.

101. *Id.*

102. *Id.* at 549 (internal quotations omitted).

103. *Id.* at 547.

they leave people drowning in debt in the long-run.[104] However, not using credit cards may set a family back further with shock events leading to homelessness, setting a family back for years.[105] Periodic payments of the EITC and CTC would be available to use towards shock events as they occur throughout the year, offering an alternative to credit card debt and homelessness.

One method of implementing periodic payments has already been tried in the United States before—the Advance EITC. The Advance EITC program allowed taxpayers the option to receive periodic amounts of their EITC for that year in advance in each paycheck from their employer.[106] However, this program had very low take-up rates.[107] Potential recipients of the Advanced EITC feared that if they took an advance on their EITC, they might end up owing money to the IRS at the end of the year which did sometimes prove to be the case for recipients of the Advanced EITC.[108] Potential recipients believed if they earned a little bit extra they would spend it immediately and the small amounts of the periodic payment felt negligible compared to the risk of owing money to the IRS at the end of the year.[109]

In order to make a periodic payment program of the EITC and CTC more favorable in the eyes of its recipients, there must be minimal risk that the taxpayer will end up owing money to the IRS at the end of the year. This could be achieved by basing the periodic EITC and CTC payments on the past year's tax return and not requiring the taxpayer to repay any negative difference calculated by subtracting the amount of the credit actually received from the amount the credit was supposed to be for the year. However, if there is a positive difference calculated by subtracting the amount of the credit the taxpayer actually received in periodic payments during the year from the amount of the credit the taxpayer should have received for a year, the taxpayer should be allowed to take the amount of such difference as a refundable credit on the year's tax return. Such an implementation method has already been used with great success by the IRS to distribute the Economic Impact Payments provided in response to the COVID-19 epidemic, one of the greatest shock events we have witnessed as a country.[110] Unlike the Advanced EITC, which acted more like a loan, this method of periodic distribution would provide the EITC and CTC payments to taxpayers in the form of a benefit which would be used to weather shock events without the associated fear of owing money to the IRS. While there would be very minimal administrative and time value of money costs associated with periodic distribution of the credit, the cost of not requiring repayment when actual EITC and CTC are less the advanced amount

104. *Id.* at 557.

105. *Id.*

106. Steve Holt, *Periodic Payment of the Earned Income Tax Credit Revisited*, BROOKINGS METRO. POL'Y PROGRAM, Dec. 2015, at 4–5.

107. *Id.*

108. Sternberg Greene, *supra* note 98, at 562.

109. *Id.*

110. INTERNAL REVENUE SERV., *supra* note 30.

would be significant. However, this cost would be less than the cost of a UBI because distributions would still be targeted towards low-income individuals based on actual wage and income data.

### *B. Structural Reform Options*

There are significant structural differences between UBI and the EITC and CTC. One significant difference is that UBI is simply structured, offering the same amount to everyone, whereas the EITC and CTC have complicated eligibility requirements offering different credit amounts based on family structure and income. Another significant difference is that an individual must work to earn the EITC and CTC, whereas an individual only has to be a citizen or resident to receive UBI. Maintaining these differences is what allows the EITC and the CTC to provide benefits at a lower cost than UBI; however, some structural reforms can be made to simplify the EITC and CTC, making the credits more widely available and easier to claim and administer, all while providing taxpayers with greater income stability.

The following reforms could be implemented together or separately. First, the EITC could be transformed from a credit for low-income families to a universal credit for all individuals who earn income. Second, the EITC and CTC could be combined and then restructured into two new credits—a worker credit and a child credit. Third, the EITC phase-in could be replaced with the maximum amount of the credit during recessionary periods.

#### 1. Universal EITC

Reforming the current EITC into a Universal EITC would be a drastic reform that would certainly simplify administration of the EITC, but it would come at great cost and not help those who need it most. Universal EITC shares one of the biggest downfalls of UBI, the high cost, because it is unable to specifically target a particular group of individuals. However, unlike UBI, a Universal EITC would only be available to those who work. Many proponents of a Universal EITC see this as its greatest advantage over UBI because it would provide a greater incentive to work and it falls in line with the American mentality that government aid should only be provided to those who are deserving, which includes workers, but not 'lazy' people who can work, but choose not to.[111]

Proponents of a Universal EITC, such as Leonard E. Burman, suggest eliminating the phase-out range making the amount of the credit larger for higher income individuals.[112] Eliminating the phase-out range would mean that "once a worker earned sufficient income to qualify for the maximum credit, they would receive it no matter how high their income got during the year."[113] Whereas in our current EITC program, a work disincentive is created in the

111. Leff, *supra* note 41, at 91.

112. *Id.* at 124–44. *See also* Burman, *supra* note 27, at 1.

113. Leff, *supra* note 41, at 125.

phase-out range as the marginal tax rate can be as high as thirty-six percent, a Universal EITC would eliminate this phase-out and eliminate this disincentive.[114] Proponents of this reform claim that the benefits are even greater when it is considered that "the majority of EITC claimants are in the phase-out range," working to climb their way out of poverty, and high marginal tax rates only make it more difficult for them to enter the middle-class.[115]

In terms of amount of the credit, one proponent of a Universal EITC suggests increasing the credit such that the credit amount would match earnings up to a maximum credit of $10,000 that would grow with gross domestic product (GDP).[116] This would reduce wage stagnation so that "[w]orkers at all income levels, rather than just the highest earners, would benefit from economic prosperity."[117]

Unfortunately, the Universal EITC leaves behind those who most need government assistance. For one, it leaves behind very low-income earners, as notably, proponents of Universal EITC do not suggest eliminating the phase-in range.[118] The negative effect on those who don't work and earn low-levels of income is compounded by the fact that some proponents of a Universal EITC, like those of a UBI, suggest introducing a VAT to pay for the costs of the program.[119] Burman suggests that a VAT of as high as eleven percent would be required to pay for Universal EITC.[120] Using a VAT to fund Universal EITC would end up being more regressive than using a VAT to fund UBI because the benefit funded by the VAT, Universal EITC, would not be available for those who make no income or very low income, and yet the VAT would still be imposed on these groups. Using a VAT to fund Universal EITC would leave the most disadvantaged groups, those without work and the very poor, disproportionately paying for benefits for those with some means. A Universal EITC would benefit the higher income individuals, at the expense of those who need government aid the most.

Alternatively, if income taxes are raised to pay for the Universal EITC, then the benefit of receiving this credit would be mitigated because the increase in taxes necessary to pay for the credit would likely offset or mitigate the benefits received.

### 2. Restructure the EITC and CTC into Two New Credits

Another option for reforming and simplifying the EITC and CTC would be to restructure them as two new refundable credits—a worker credit and a child credit.[121] In implementing such a reform the Taxpayer Advocate Service

114. Thomas L. Hungerford & Rebecca Thiess, *supra* note 51.
115. Leff, *supra* note 41, at 126.
116. Burman, *supra* note 27, 1.
117. *Id.* at 1–3.
118. *Contra id.* at 124–44; Burman, *supra* note 27, at 14.
119. Burman, *supra* note 27, at 1.
120. *Id.*
121. BOOK ET AL., *supra* note 44, at 13–16.

(TAS) suggests "restructuring the EITC [and CTC] into (1) a refundable worker credit based on *each individual worker's* earned income irrespective of the presence of a qualifying child, and (2) a refundable child benefit that would reflect the costs of caring for a child."[122] Such a reform would decouple the connection between support for children and the income of the person providing the support.

The wage credit could follow the same rate structure as the current EITC, such that non-workers and low hour workers would be incentivized to increase their participation in the workforce as the amount of the EITC phases in with earned income, reaches a maximum, and phases out at higher levels of income.[123] However, the wage credit would be uniform at each level of earned income regardless of family structure, number of children, and filing status.[124] Structuring the wage credit this way would simplify distribution of the credit and eliminate the disincentive for secondary earners to join the workforce when the primary earner is in the phase- out range.

The child credit would provide a fixed amount per child with no phase-in, recognizing both people with income and those without income need at least "a minimum amount of resources to adequately care for children."[125] While structuring the credit in such a way would make it available to a child's primary caregiver even if he or she does not earn any income, it would not offend the American mentality of distributing government aid because the credit is meant to help provide for children, members of the deserving class. As part of the reform, eligibility for the Child Tax Credit could also be based on a more modern definition of a qualifying child, in particular with regards to the relationship and abode portion of the qualifying child test, such that a primary caregiver of a child who meets the age requirements would be able to claim the credit.[126] Primary caregiver status would be assumed if a taxpayer is the only one to claim a child using the child's taxpayer identification number (TIN).[127] Furthermore, to account for the fact that a child may have more than one caregiver, the IRS could provide a check-the-box option to split the Child Tax Credit between two caregivers.[128] While this may require greater coordination between taxpayers, the taxpayers are in in a better position to determine who should receive the child credit to aid with the costs of raising a child with the IRS inserting itself only when the relationship between the parties is adversarial. It would likely be possible to restructure the EITC and CTC on a revenue neutral basis and allowing taxpayers to split and assign the child credit between themselves would reduce IRS audit costs.

122. *Id.* at 13.
123. *See id.*
124. *Id.*
125. *Id.* at 16.
126. *Id.*
127. *Id.* at 17.
128. *Id.* at 22.

### 3. Eliminate Phase-In During Recessionary Periods

A final option for reforming the EITC is to get rid of the EITC phase-in during recessionary periods and replace it with the maximum amount of the credit.[129] Such a reform would decrease the income instability the EITC causes low-income individuals and families when losses in income lead to a decrease or elimination of their EITC benefit.[130]

Generally, the income tax is a progressive tax, in that the tax rate increases as taxable income increases.[131] This means that during a recession the income tax has a built-in tool for income stability because as people earn less income, they have to pay a smaller percentage of their income in taxes, leaving them with a greater portion of their earned income to spend on personal expenditures.[132] During a recession, the United States' progressive income tax schedule automatically—without government intervention—provides aid to individuals and families affected by the change in economic conditions by stabilizing their income.[133] For many middle-class Americans, the EITC helps to provide even greater income stability in hard times when they are earning less income and they enter the phase-out zone or maximum credit range of the EITC.[134] However, for individuals who rely on the EITC on a yearly basis, loss of earned income during a recession could lead to even greater income instability as these families and individuals are losing their wages and government support at the same time as they enter the EITC phase in range.[135]

Getting rid of the EITC phase-in during recessionary periods would eliminate the income instability which affects low-income taxpayers when they lose both their job and EITC benefits at the same time and are unable to find another job quickly because of market conditions beyond their control.[136] Once the recession is over, the structure of the EITC would return to normal with the phase-in being reimplemented. In this way, such a reform to the EITC would not disrupt the American mentality of providing government aid or the typical structure of the EITC which effectively increases labor market participation by phasing in the credit amount based on earned income. Determining when a recessionary period has begun and ended for the purpose of suspending the EITC phase-in could be determined by using formula flexibility such that the EITC phase-out would automatically be suspended based on a formula built into the law to determine the beginning and end of a recessionary period.[137] This

129. Kerry A. Ryan, *EITC as Income (In)Stability?*, 15 FLA. TAX REV. 583, 638–47 (2014).

130. *Id.*

131. *Id.* at 606–13.

132. *Id.*

133. *Id.*

134. *Id.* at 626–31.

135. *Id.* at 637–38.

136. *Id.* at 638–47.

137. Ryan, *supra* note 129, at 643 ("Formula flexibility was seen by its advocates as an alternative to relying on 'discretionary fiscal policy' . . . to combat recessions. Discretionary fiscal

way the suspension of the phase in would occur immediately upon poor economic conditions, as determined by the formula within the law, without the need for the legislature or the National Bureau of Economic Research to be involved. This method also allows Congress to plan for a recession or shock when times are good such that when a recession or shock occurs there exists a system in place to take care of the large numbers of people losing their jobs or suffering from drastically reduced incomes. The cost of such a reform is difficult to determine in advance and would depend entirely on the character of the recession—the length of time the recession extends and the number of people whose incomes fall to within the phase-in period during the recession. However, during times of recession the government typically increases spending anyways to spur the economy and move the country out of a recession.

This reform could be used in conjunction with restructuring the EITC as two credits to achieve both simplicity benefits and benefits to potential wage earners who have fallen on hard times. If these reforms were implemented together, the phase-in suspension for recessionary periods would apply to the wage credit such that the wage credit phase-in would suspend during recessionary periods. However, restructuring the EITC as two credits has the added benefit of providing greater income stability to low-income families with children even during non-recessionary times when they lose their income because instead of losing the full amount of a credit based on family status and earned income, they will only lose the wage credit leaving the full amount of the child credit intact.

## CONCLUSION

The COVID-19 epidemic has demonstrated the significant faults in the current welfare system and made clear that significant reforms to our welfare and tax system are required. As millions of Americans lost their jobs at the same time, the current system was not prepared to support them through this mass shock event, and many went without any kind of income or support for months.

When considering what reforms to the welfare and tax system can be made, it is important to ensure that none of the current programs' intended beneficiaries are left worse-off. While UBI may at one point become desirable, currently, UBI's inability to effectively target individuals may well end up leaving many worse off and come with a high price tag of $3.75 trillion per year. At a lower cost, reforms to the EITC and CTC could provide much needed income stability to low-income families and a stronger safety net for all Americans.

Several reforms to the EITC and CTC would have initial startup costs associated with them; however, once put into place, these reforms could be maintained at little-to-no cost. One such reform is changing the mission statement of the IRS to recognize its role as a benefits administrator—this would

policy is not always effective because it requires (1) Congress to act and (2) to act in a timely manner.").

change the mentality at IRS and create an agency that works with taxpayers to help them determine their eligibility for entitlements located within the tax code. Another is finding a way to make tax filing free, especially for low-income individuals, which would eliminate the application fee associated with benefits provided through the tax code and ensure that the intended beneficiary is capturing the full amount of the credit. A third such reform is restructuring the EITC into two credits, a wage credit and a child credit, which would simplify administration and facilitate periodic payments of the credit.

Other reforms to the EITC and CTC come with a higher annual price tag. However, because of their ability to effectively target individuals in need they come with a lower price tag than UBI. One such reform is providing the EITC and CTC as periodic payments with no requirement to repay when the periodic payments received are larger than the amount that the taxpayer was supposed to receive based on his tax return. It is difficult to estimate the costs of such a program; however, it would certainly be significantly less than a UBI because the IRS receives wage and income data from employers and can reasonably estimate what periodic payments should be. Another such reform is suspending the wage credit phase-in range and replacing it with the maximum credit amount during recessionary periods, which would provide income stability during the worst times when jobs are hard to find. The cost of such a program would also be significant and difficult to estimate. This reform, however, would also cost significantly less than a UBI as it would only be available during recessionary periods rather than all the time.

While these reforms to the EITC and CTC will not be sufficient in the circumstance that no jobs are available, they are a good step in the direction of providing income stability to millions of Americans.