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THE EARNED INCOME TAX CREDIT: THOU GOEST WHITHER?

A CRITIQUE OF EXISTING PROPOSALS TO REFORM THE EARNED INCOME TAX CREDIT

*Regina T. Jefferson**

INTRODUCTION

The Earned Income Tax Credit ("EITC") is a longstanding and expansive anti-poverty program.¹ The program was adopted to benefit the working poor by means of a refundable tax credit² which reduces their federal income tax burden and offsets the Social Security payroll taxes that they pay.³ Additionally, the EITC was established to provide a subsidy to low-income work-

* Assistant Professor of Law, Catholic University Columbus School of Law. I gratefully acknowledge Professor J. Clifton Fleming, Jr. for the opportunity to present the ideas leading to this article at the May 1994 meeting of the American Bar Association, Taxation Section, Committee on Teaching Taxation, which he chaired. I also thank Professors Daniel I. Halperin and William J. Wagner for their helpful comments on earlier drafts. Additionally, I wish to thank Lauren Bradbury for her very valuable research assistance.

1. I.R.C. § 32 (1994). The EITC was adopted as part of the Tax Reduction Act of 1975. Pub. L. No. 94-12, § 204, 89 Stat. 26, 30-32 (codified as amended at 26 U.S.C. § 43 (1975)). Since 1975, the scope of the program's coverage and the amount of benefits provided under it have expanded. The most recent expansion of the program occurred with the Revenue Reconciliation Act of 1993, which was signed into law on August 10, 1993. Revenue Reconciliation Act of 1993, Pub. L. No. 103-66, § 13131, 107 Stat. 312, 433-35.

2. § 13131, 107 Stat. at 433-35. After 1995, when an expanded version of the EITC becomes effective, a taxpayer with two qualifying children will receive a 40% credit for each dollar of earned income up to \$8425 for a maximum credit of \$3370. This amount will remain constant until either earned income or adjusted gross income exceeds \$11,000. At that point, the credit will be phased out at a rate of \$0.2106 for each additional dollar of income, until it is completely phased out at an income level of \$27,000. Francine J. Lipman & James E. Williamson, *Recent Proposals To Redesign the EITC: A Reply to an Economist's Response*, 62 TAX NOTES 1175, 1177 (1994). See *infra* notes 59-69 for additional discussion of the expanded program.

The refundable tax credit has sometimes been called a "negative income tax." A negative income tax is a system of cash grants to families where the amount of the grant is inversely related to the taxpayer's income. Supporters of the negative income tax maintain that a negative income tax system is more efficient than existing non-cash assistance programs such as public housing and food stamps. Similar in operation to a negative income tax, the refundable credit allows eligible individuals who have little or no income tax liability to receive cash payments equal to the amount of the credit less any tax liability. See MILTON FRIEDMAN, *CAPITALISM AND FREEDOM* 174-75 (1962) (additional discussion on the negative income tax); see also CHRISTOPHER GREEN, *NEGATIVE TAXES AND THE POVERTY PROBLEM passim* (1967) (direct assistance to low-income households is extension of progressive tax rates into lowest brackets); Earl Rolph, *The Case for a Negative Income Tax Device*, 6 INDUS. REL. L.J. *passim* 155 (1967) (credit income tax program should be implemented to increase tax system's benefit to poor).

3. S. REP. NO. 36, 94th Cong., 1st Sess. 33 (1975); S. REP. NO. 313, 99th Cong., 2d Sess. 43 (1986).

ers for their child and health care expenses and to provide work incentives for individuals on welfare.⁴ Finally, the EITC was designed to decrease overall regressivity in the federal tax system.⁵

Under the current structure of the EITC program, there are substantial trade-offs. On the one hand, the program must ensure that the maximum number of qualified individuals receives the credit; on the other, it must reduce the number of illegitimate claims.⁶ In its administration of the EITC program, the Internal Revenue Service has consistently had difficulty balancing these competing interests.⁷ As a result, both politicians and commentators have introduced numerous proposals to improve the effectiveness of the program.⁸

This article places issues concerning reformation of the EITC in perspective and critiques existing proposals to change the program. This article focuses on proposals advanced by Professors Yin and Forman which range from improving the administration of the existing EITC to completely restructuring the entire program.⁹ Specifically, this article analyzes and re-

4. S. REP. NO. 36; S. REP. NO. 313; *see also* Lipman & Williamson, *supra* note 2, at 1176 ("In the case of individuals earning the minimum wage, the more they work, the more EITC is received, enhancing the minimum hourly wage rate . . .").

5. *See Explanatory Material Concerning Committee on Finance 1990 Reconciliation Statement*, 136 CONG. REC. S15,684-85 (daily ed. Oct. 18, 1990) (purpose of EITC is to improve overall progressivity of federal tax system).

6. *See* George K. Yin et al., *Improving the Delivery of Benefits to the Working Poor: Proposals To Reform the Earned Income Tax Credit Program*, 11 AM. J. TAX POL'Y 225 *passim* (1994) (describing results of study commissioned by American Tax Policy Institute to develop proposals for improving delivery of benefits from EITC); *see also* George K. Yin & Jonathan B. Forman, *Redesigning the Earned Income Tax Credit Program To Provide More Effective Assistance for the Working Poor*, 59 TAX NOTES 951, 957-60 (1993) (identifying defects in current income tax credit and proposing alternative method of assisting working poor); Jonathan B. Forman, *Beyond President Bush's Child Tax Credit Proposal: Towards a Comprehensive System of Tax Credits To Help Low-Income Families with Children*, 38 EMORY L.J. 661, 670-72 (1989) (evaluating President Bush's child tax credit proposal and suggesting alternative approach); Jonathan B. Forman, *Improving the Earned Income Credit: Transition to a Wage Subsidy Credit for the Working Poor*, 16 FLA. ST. U. L. REV. 41, 43-76 (1988) (exploring history of EITC and suggesting methods for improving tax credit to serve working poor).

7. *See* Yin et al., *supra* note 6, at 236-53 (discussing statistics on participation and compliance in general).

8. *See* Robert L. Moore, *Recent Proposals To Redesign the EITC: An Economist's Response*, 93 TAX NOTES TODAY 105-15 (1993) (summarizing and discussing (1) Clinton's proposal to expand EITC; (2) Williamson and Lipman's proposal to rebate employee FICA taxes combined with a wage subsidy; (3) Forman's proposals, which include increasing size of credit and adjusting phase-out range for family size, or shifting EITC to wage subsidy credit; and (4) Yin and Forman's proposal to split EITC into benefit for working poor and family allowance benefit).

9. *See* Yin et al., *supra* note 6, at 261-63 (citing articles which describe proposals). The authors advance proposals for improving the administration of the existing EITC program, such as eliminating Schedule EIC and resuming the former IRS practice of awarding the credit to taxpayers who appear eligible for it, but fail to claim it. *Id.* The article also outlines possible changes in the law, such as limiting "earned income" to taxable items only and simplifying the definition of "qualifying child" in order to improve the program. *Id.* at 266-74. The authors additionally advance proposals which completely restructure the existing EITC. *Id.* at 280-94.

sponds to their proposals to (1) redesign the Earned Income Tax Credit by creating a system that uses a rebate of employee Social Security payroll taxes in conjunction with a family allowance benefit,¹⁰ and (2) institute an employer credit program as a substitute for the Earned Income Tax Credit.¹¹

In order to more completely understand and evaluate the feasibility of the Yin and Forman proposals to modify the EITC, it is useful to examine the effectiveness of the existing EITC program. Accordingly, part I of this article discusses the limitations of the current EITC program. Part II briefly describes the effects of recent changes to the EITC program under the Omnibus Budget Reconciliation Act of 1993 ("the 1993 Act"). Part III explores two of the Yin and Forman proposals to redesign the EITC and analyzes the policy and equity concerns which these proposals raise. Part IV contains a brief conclusion.

I. LIMITATIONS OF THE EITC PROGRAM

Two goals of the EITC program are to provide a tax credit to reduce the taxes of the working poor and to provide a subsidy to offset the cost they incur in connection with their children.¹² In order to evaluate the success of the EITC program, it is necessary to determine, first, whether the program is accomplishing its intended goal and, second, whether it is doing so efficiently. The "rate of participation," which is defined as the percentage of eligible individuals who actually receive the Earned Income Tax Credit,¹³ and the "rate of compliance," which is defined as the percentage of those receiving the benefit who are actually eligible to receive it,¹⁴ are useful in determining whether the EITC is achieving its goals. In other words, the EITC program is successful only if the working poor are receiving its benefits and only if the recipients of the program are limited to the working poor.

A. Participation

Data from the 1990 Survey of Income and Program Participation ("SIPP"), in conjunction with information from selected individual income tax returns, indicates that the rate of participation in the EITC program is between 75% and 86%.¹⁵ These figures suggest that between 1.4 and 2.5

10. *Id.* at 279-86.

11. *Id.* at 286-94.

12. See *supra* note 3 and accompanying text for a discussion of the reduction of the federal income tax burden intended to offset the Social Security payroll tax.

13. Yin et al., *supra* note 6, at 235. In addition to introducing their own proposals, Forman and Yin have also gathered data that is relevant to, and useful in, the description of the goals and cost of the Earned Income Tax Credit Program. See generally Jonathan B. Forman, *Expanding the Earned Income Tax Credit: Clinton Style*, 58 TAX NOTES 231 (1993) (EITC should be expanded to make up difference between family earning level and poverty line).

14. Yin et al., *supra* note 6, at 235-36.

15. See John K. Scholz, *The Earned Income Tax Credit: Participation, Compliance, and Anti-poverty Effectiveness* 57 NAT'L TAX J. 63, 71 (1994) (participation rates are considerably higher than other programs directed toward low income population). The two sets of data were linked

million families who were eligible for the credit in 1990 failed to claim it.¹⁶ The low participation rate can be explained by several factors. First, the complexity of the claims process creates a substantial barrier.¹⁷ A separate two-page form, called the Schedule EIC, must be completed to claim the credit. Completion of this schedule requires wading through several pages of instructions and tables. The complexity of the claims process would prove challenging for any individual. However, this complexity may be particularly challenging for the average individual in a household eligible for the EITC. Statistical analysis of EITC participants shows that 31% of the households eligible for the credit are headed by persons with less than a high school diploma.¹⁸ Another 46% of the eligible population have obtained no more than a high school diploma.¹⁹ For many eligible persons, this minimal level of education makes the complexity of the EITC even more difficult to overcome and arguably contributes to the EITC's low participation rate. If an individual obtains and pays for assistance in the filing process, the value of the benefit is obviously reduced. Thus, the individual is less likely to claim the credit.

Another barrier to participation is the program's dependence on self-identification.²⁰ Accordingly, people who are unaware of the program are excluded. Also excluded are people who, because of the complexity of the program, are unaware that they qualify for its benefits. An additional category of people excluded are those who consciously decide not to partici-

by Social Security number to the 1990 SIPP data. See also Yin et al., *supra* note 6, at 235-36 & n.35 ("The 1990 SIPP is a random sample of 22,994 households which, when weighted, represent the civilian, non-institutionalized U.S. population. Each of four staggered rotation groups is interviewed every four months about monthly labor market behavior, income sources, and household composition. The 1990 file aggregates 1990 household information and fixes family composition as of January 1, 1991. See Thomas B. Jabine, *SIPP Quality Profile*, U.S. Bureau of the Census, Washington, D.C., May 1990.").

16. See Scholz, *supra* note 15, at 71. Note that these estimates do not differentiate between various reasons for EITC ineligibility. For example, a married couple that does not file a joint tax return is considered ineligible and therefore not counted in the estimates, even though they may meet all other eligibility standards. See I.R.C. § 32(d) (1994) (if individual is married, § 32 shall apply only if joint return is filed for taxable year).

17. Yin et al., *supra* note 6, at 254-56. "To obtain the credit, an individual first must determine from the rules that he or she qualifies and then complete the necessary paperwork to submit a claim." *Id.* at 254; see generally J. Andrew Hoerner, *SOS on the EITC: Complex Rules Likely To Thwart Low-Income Filers*, 52 TAX NOTES 1336 (1991) (due to complexity of form and instructions, millions of poor taxpayers who qualify for refundable credit will not receive it); James E. Williamson & Francine J. Lipman, *The New Earned Income Tax Credit: Too Complex for the Targeted Taxpayers?*, 57 TAX NOTES 789 (1992) (EITC is too complex for targeted taxpayer).

18. Yin et al., *supra* note 6, at 250. See also John K. Scholz, *The Earned Income Tax Credit: Participation, Compliance, and Anti-Poverty Effectiveness*, Institute for Research on Poverty Discussion Paper No. 1020-93, University of Wisconsin-Madison (1993) (detailed description of how characteristics were determined).

19. Yin et al., *supra* note 6, at 250. Additionally, the profile shows that in 1990 the typical household eligible for the credit had wages of \$10,808. *Id.*

20. *Id.* at 253-54.

pate.²¹ The decision not to file can be attributed to various considerations, such as the belief that the benefit is not worth the trouble of filing, the erroneous belief that receipt of the benefit may jeopardize other government subsidies, or the belief that the EITC is like welfare and, therefore, receiving its benefit would stigmatize its beneficiaries.²² In short, the EITC's participation rate indicates that the program has had limited success in providing benefits to the working poor.

B. Compliance

The rate of compliance is another variable in the effectiveness of the program. To the extent that ineligible individuals receive the EITC, the program is unsuccessful. Data from the Internal Revenue Service shows that the noncompliance rate has historically been substantial.²³ In 1982, approximately 37% of the individuals who filed for the EITC filed for a credit larger than that to which they were entitled, and approximately 29% of the individuals who filed for the credit were not entitled to a credit at all.²⁴ The dollar amount of inappropriately filed credits was \$513 million,²⁵ or approximately 29% of the total benefits paid under the program in that year.²⁶ Statistics indicate that noncompliance is generally increasing. For example, in 1985, approximately 46% of the individuals who filed for the credit claimed a credit that was too large and approximately 40% of those who claimed a benefit were not entitled to a credit at all.²⁷ As a result, approximately \$766 million, or 37%, of the \$2.1 billion claimed under the EITC program in 1985 was claimed illegitimately.²⁸ Likewise, in 1988, approximately 42% of the individuals filing for a credit filed for too high a credit, and about 32% of those who filed were not entitled to a benefit at all.²⁹ Moreover, of the \$5.6 billion actually awarded in 1988, approximately \$1.9 billion, or 34%, was erroneously awarded.³⁰

21. *Id.* at 256-57. Voluntary nonparticipation may also be the result of fear of the IRS, or the desire for anonymity and possible tax avoidance. Yin and Forman's findings that "eligible nonparticipants are more likely to have greater amounts of education, have a greater proportion of self-employment income, and be employed by private households than the average eligible family all may support voluntary nonparticipation as one basis for the delivery problems." *Id.* at 257 n.110.

22. *Id.* at 258; see also Robert Moffitt, *An Economic Model of Welfare Stigma*, 73 AM. ECON. REV. 1023 (1983) (fear of stigmatizing oneself in eyes of others may be key factor in low participation rate of welfare-type programs).

23. Yin et al., *supra* note 6, at 247-48.

24. *Id.* at 247.

25. *Id.*

26. *Id.* Total benefits paid in 1982 were \$1.749 billion. *Id.*

27. *Id.* at 247-48.

28. *Id.* at 248.

29. *Id.*

30. *Id.*

The high noncompliance rate can be attributed to both the complexity of the program as well as to deliberate abuse.³¹ In order to calculate the credit correctly, an eligible individual must understand the filing process as well as the complex requirements of the program. This is no small task. For example, the definition of "income" is not at all obvious. For purposes of the EITC, earned income includes some items ordinarily excluded from gross income and excludes other items ordinarily included in the definition of "income" for other tax purposes.³² Another example of the complexity of the program is found in its definition of "qualifying child." This definition is quite complex and vastly differs from the definition of "dependent child" used for other taxation purposes.³³ The different definitions of common tax terms would prove confusing to anyone. However, these terms may be especially confusing to individuals applying for the EITC, who on average have obtained only a minimal level of education.³⁴ Thus, these definitions arguably contribute to the high rate of noncompliance.

Deliberate misrepresentation cannot be ruled out.³⁵ Prior to the Tax Reform Act of 1986 ("TRA 1986"), taxpayers filing income tax returns were not required to provide Social Security numbers for the dependents they claimed. In TRA 1986, however, Congress responded to this potentially abusive situation by requiring taxpayers to provide Social Security numbers for all dependents over the age of five years in order to deter individuals from reporting fictitious dependents.³⁶ In the year following the addition of this requirement, seven million fewer dependents were claimed.³⁷ This signifi-

31. *Id.* at 254-60; *see also* Desiree French, *Expert Followed Pattern To Scam*, USA TODAY, June 15, 1992, at 3B (fraudulent claims of dependents made to qualify for EITC).

32. Department of Treasury, I.R.S. Publication No. 596, *Earned Income Credit* (1993), at 10. "For the purposes of the EITC, earned income includes not only wage, salary, farm, and self-employment income, but sources such as housing allowances or the rental value of a parsonage for the clergy, excludable employer-provided dependent care benefits, nontaxable military quarters and subsistence benefits, voluntary salary reduction amounts (e.g., deductions to 401(k) plans), and anything else of value (money, goods, or services) received from someone for services performed even if it is not taxable (IRS Publication 596)." *Id.*; *see also* Scholz, *supra* note 15, at 81 n.8.

Interest income and dividend income would normally be included in gross income under I.R.C. § 61, but they are not included in the definition of "earned income" for purposes of the EITC. I.R.C. § 32(c)(2) (1994).

33. I.R.C. § 32(c)(3) (1994). In general, a "qualifying child" is an individual who passes the specified relationship test, has the same principal place of abode, meets age requirements, and meets identification requirements. *Id.* In contrast, a taxpayer who claims a dependency exemption for another individual must show that more than one-half of the support for that individual was provided by the taxpayer. I.R.C. § 152(a) (1994).

34. *See supra* notes 18-19 and accompanying text for a discussion of the statistics relating to the lack of education among the working poor.

35. Yin et al., *supra* note 6, at 258-60.

36. The requirement currently applies to dependents age one and over. I.R.C. § 6109(e) (1994).

37. Yin et al., *supra* note 6, at 248-50. This was approximately a 10% decline. *See also Missing Children*, FORBES, Feb. 19, 1990, at 74 (normal demographic factors only accounted for

cant decline suggests that many taxpayers, including those filing for the EITC, were using ineligible dependents.³⁸

Deliberate misrepresentation cannot be ruled out for another reason. The EITC is structured so that individuals in certain income ranges have incentives to report fictitious amounts of earned income in order to receive larger credits.³⁹ The EITC is available to individuals with earned income less than a certain amount at differing rates. If an eligible individual's earned income is less than a certain amount, the EITC is increased by a specified percentage for each additional dollar earned. This range of income is referred to as the phase-in range. The phase-in range is followed by a stationary-range in which the credit remains the same regardless of increased earnings. The final category applies when an eligible individual's earned income exceeds a certain amount and the credit is phased-out by a specified percentage of the excess.⁴⁰ Thus, the structure of the EITC is problematic in the phase-in range where an eligible family receives a credit equal to the phase-in rate for each dollar of additional earnings. Therefore, both the confusing definitions which the EITC program assigns to common tax terms and the structure of the EITC contribute to the EITC's high rate of non-compliance.⁴¹

C. *The Timing of the Earned Income Tax Credit*

The timing of the EITC benefit presents another difficulty. Most individuals who receive the Earned Income Tax Credit receive it at the end of the tax year in one lump sum.⁴² The EITC program, however, allows participants to select an Advanced Payment Option which permits individuals to receive benefits incrementally over the course of the year in the form of bigger paychecks.⁴³ This option arguably increases the effectiveness of the program by providing participants with a steady stream of benefits.⁴⁴ The Advanced Payment Option is more consistent with the underlying policy of the EITC for two reasons. First, it offsets the steady stream of Social Security

one-half million, others must have been due to social security regulation). The age has since been lowered from five to one. I.R.C. § 6109(e).

38. Yin et al., *supra* note 6, at 248.

39. *Id.* at 259; see Robert L. Moore, *Recent Proposals To Redesign the EITC: An Economist's Response*, 60 TAX NOTES 105, 106 (1993) ("substitution" effect at certain income levels provides incentive not to work). In their research, Yin and Forman found that those ineligible families who fraudulently obtained the benefit had less wage income and more self-employment income than the average family eligible for the EITC. Yin et al., *supra* note 6, at 259.

40. This is the final category referred to as the phase-out range. Within this range there is obviously no incentive to overstate earned income. The phase-out continues until the family's income reaches a level at which the entire credit is eliminated.

41. Yin et al., *supra* note 6, at 249.

42. See U.S. GENERAL ACCOUNTING OFFICE, REP. NO. GGD-92-96, EARNED INCOME TAX CREDIT: ADVANCE PAYMENT OPTION IS NOT WIDELY KNOWN OR UNDERSTOOD BY THE PUBLIC 3 (1992) [hereinafter ADVANCE PAYMENT OPTION] (less than 1% of earned income credit recipients receive credit in advance each year).

43. I.R.C. § 32(g) (1994).

44. See S. REP. NO. 1263, 95th Cong., 2d Sess. 52 (1978).

payroll taxes the participant pays out. Second, it provides an income supplement throughout the year rather than simply providing a windfall at the end of the year.⁴⁵

The Advanced Payment Option, however, has been largely ineffective in accomplishing its goal. A GAO study indicates that in 1989 less than 1% of the eligible population received an advanced credit.⁴⁶ This figure represents a total of only 40,000 participating families.⁴⁷

The same GAO study also shows that compliance is low.⁴⁸ Forty-nine percent of the individuals who received an advanced payment failed to report the credit on their income tax return and, therefore, appeared eligible to collect the credit again at the end of the year.⁴⁹ Low participation in the Advanced Payment Option can be attributed to several factors. First, individuals may fear overpayment, which means that they would have to pay the overpayment back at the end of the year.⁵⁰ Second, they may want to avoid the awkwardness of asking an employer to comply with the administrative requirements of the Advanced Payment Option.⁵¹ Third, the complexity of the requirements may result in eligible individuals not being aware of the option or finding it too difficult to understand the procedure to choose this option.⁵² Fourth, some individuals may simply have a preference for a lump sum payment, rather than a benefit paid incrementally over the year.⁵³

D. Target Problems

An additional concern raised in connection with the EITC is that it does not target the working poor as well as it should. Certain wealthy taxpayers

45. Under the EITC program as it existed before the 1993 Act, the basic credit could be received under the Advanced Payment Option, but the supplemental benefits could not. To choose the Advanced Payment Option, an individual is required to file IRS Form W-5 with her employer, which certifies that the individual reasonably expects to be eligible for the credit and that she has not filed for the Advanced Payment Option with another employer.

46. ADVANCE PAYMENT OPTION, *supra* note 42, at 3; *see also* text accompanying *supra* note 42.

47. ADVANCE PAYMENT OPTION, *supra* note 42, at 3; *see also* text accompanying *supra* note 42.

48. Yin et al., *supra* note 6, at 247-48.

49. ADVANCE PAYMENT OPTION, *supra* note 42, at 24.

50. Yin et al., *supra* note 6, at 258.

51. "The employee must obtain and accurately complete Form W-5, not a simple task. The employer, in turn, must know what to do with the form upon its receipt, a matter that requires several pages of explanation and several more pages of tables in IRS Circular E, the Employer's Tax Guide." *Id.* (footnote omitted).

52. *See* ADVANCE PAYMENT OPTION, *supra* note 42, at 2, 14. The Revenue Reconciliation Act of 1993 requires additional efforts by the IRS to notify eligible persons about the option. I.R.C. § 3507(f) (1994).

53. *See* ADVANCE PAYMENT OPTION, *supra* note 42, at 3; *see also* Stephen D. Holt, *Improvement of the Advance Payment Option of the Earned Income Credit*, 57 TAX NOTES 1583, 1584-85 (1992) (reviewing advance earned income credit and problems of limiting participation).

are eligible to receive benefits under the program.⁵⁴ This situation arises because benefits under the EITC program are based on the amount of earned income reported in the tax year, regardless of accumulated wealth.⁵⁵ As a result, individuals with substantial interest or dividend income are often recipients of the EITC.⁵⁶ To the extent that the program provides a benefit to such individuals, it overreaches. This inefficiency causes the cost of the program to escalate unduly. Thus, low participation, non-compliance, and timing contribute to the ineffectiveness of the existing EITC program, while an overly broad reach⁵⁷ contributes to the inefficiency of the program.⁵⁸

II. THE 1993 ACT—A NEWLY EXPANDED PROGRAM

In an effort to reduce poverty among the working poor, Congress, led by the Clinton administration, recently expanded the coverage of the EITC.⁵⁹ Historically, the program has not been available to childless taxpayers, but beginning in 1994 the program was extended to certain childless households.⁶⁰ Also, the maximum EITC benefit is scheduled to increase gradually to \$2040 by 1996. Over the same period of time, the maximum adjustment for family size will reach \$1330. Thus, by 1996 the maximum total EITC benefit will escalate to \$3370⁶¹ for families with two or more children, as compared to a maximum EITC benefit of \$2364 in 1993.⁶² Additionally, the

54. See Cherie J. O'Neil & Linda B. Nelsestuen, *The Earned Income Credit: The Need for a Wealth Restriction for Eligibility Determination*, 63 TAX NOTES 1189, 1190 (1994) (EITC benefits are based on amount of income reported in current tax year, regardless of accumulated wealth of household). There is currently a phase-out range which prevents extremely wealthy taxpayers with substantial dividend or interest income from receiving the EITC. See *infra* note 114 for a discussion of the phase-out range.

55. O'Neil & Nelsestuen, *supra* note 54, at 1190.

56. To remedy this situation, Professors Yin and Forman propose a wealth restriction on eligible individuals. They estimate that a wealth restriction of \$1200 in portfolio income would eliminate 5% of the expected additional cost of the expanded EITC, for a tax savings of over \$1 billion between 1994 and 1998. *Id.* at 1200. See *supra* note 54.

57. Yin et al., *supra* note 6, at 252-60.

58. There are still other criticisms and concerns about the effectiveness of the EITC program. For example, with respect to its connection to welfare reform, there is concern that the EITC creates disincentives to work beyond the phase-in range. There are also concerns that the current structure of the credit imposes a marriage penalty. See Lipman & Williamson, *supra* note 2, at 1176 (due to lack of information and choices, targeted taxpayers may not react to EITC in way economic models predict). However, these issues, while relevant and important in evaluating the existing EITC program, are beyond the scope of this article.

59. Revenue Reconciliation Act of 1993, Pub. L. No. 103-66, § 13131, 107 Stat. 312, 433-35.

60. I.R.C. § 32(b) (1994). Childless workers between the ages of 25 and 65 are now eligible for a benefit that equals 7.65% of every dollar earned up to \$4000. The benefit decreases at the same rate for each dollar earned between \$5000 and \$9000. The maximum annual benefit that such individuals can receive is \$306. *Id.*

61. Figures are in 1994 dollars, unadjusted for possible inflation beyond that time. Yin et al., *supra* note 6, at 232 n.14; I.R.C. § 32.

62. I.R.C. § 32. In 1993, the maximum EITC benefit was \$1434. However, the EITC program also provided three supplemental benefits to adjust for family size and special need. Specifically, the program furnished adjustments for families with two or more children, families with newborn infants, and families who incurred health insurance costs for their qualifying children.

1993 Act increases the level of eligible earned income. By 1996, for families with two or more qualifying children, eligible income will be extended to \$27,000, as compared to \$23,050 in 1993.⁶³

Notwithstanding recent changes, the 1993 Act retains the basic structure of the EITC program.⁶⁴ It attempts to simplify the program and expand its scope in order to increase participation and to reach a greater number of working poor.⁶⁵ As a result, the EITC program will cost more, but will be available to more needy taxpayers.⁶⁶ The cost of the expanded EITC program has been estimated at an annual amount of \$24 billion by 1996.⁶⁷ Not surprisingly, in view of the increased coverage and cost of the program, concerns about the effectiveness of the EITC have recently increased. Some analysts worry that even if the program is effective in delivering benefits to the intended recipients, the costs of the program may outweigh any benefits that it conveys.⁶⁸ Also, skeptics of the program assert that the recent expansion of the EITC does not address most of the program's current problems; consequently, they believe that the expansion will simply exaggerate the program's shortcomings rather than remedy its existing deficiencies.⁶⁹ Therefore, in spite of the recent changes made to the EITC, there continues to be a need to consider alternatives which improve the effectiveness of the program.

III. ALTERNATIVES TO THE EXISTING EITC

Professors Yin and Forman have advanced several alternatives to the existing EITC.⁷⁰ They propose significant administrative changes designed to improve participation and compliance.⁷¹ For example, they propose the elimination of Schedule EIC to simplify the filing process so that participa-

The maximum family size adjustment was \$77, the maximum supplemental benefit for families with newborn infants was \$388, and the maximum health insurance credit \$465. Therefore, in 1993, a family with two or more qualifying children was able to obtain a maximum total benefit of \$2364. Yin et al., *supra* note 6, at 231.

63. In 1993, the maximum eligible income was \$23,050 with the phase-out beginning at \$12,200. I.R.C. § 32.

64. The act increased the size of the basic benefit and the family adjustment benefit. It eliminated the supplements for newborn children and health insurance costs. See Revenue Reconciliation Act of 1993, Pub. L. No. 103-66, § 13131, 107 Stat. 312, 433-35.

65. See *id.*

66. See Staff of U.S. Jt. Comm. on Tax'n, *Estimated Budget Effects of the Revenue Provisions of H.R. 2264 (to the Omnibus Budget Reconciliation Act of 1993), As Agreed to by the Conferees (JCX-11-93)*, 103d Cong., 1st Sess. (1993) (staff tabular estimates establishing FY94-FY98 spending levels for federal programs in order to meet reduction targets, as required by FY94 concurrent budget resolution).

67. *Id.*

68. See Jesse Malkin, *INVESTOR'S BUS. DAILY*, Sept. 30, 1993, at 1.

69. One frequent criticism of the EITC is that the phase-out range discourages work. As a result of the expansion, the program may actually reduce the overall incentive to work because there will be an even greater number of people in the phase-out range as compared to the phase-in range which encourages work. See *id.*

70. Yin et al., *supra* note 6, at 260.

71. *Id.*

tion among eligible individuals would increase.⁷² At the same time, however, they note that this would likely result in increased noncompliance because there would be less documentation, and ineligible individuals could more easily obtain benefits from the program.⁷³

Another simplification proposed by Professors Yin and Forman is to repeal the Advanced Payment Option.⁷⁴ They maintain that because the Advanced Payment Option is highly ineffective in accomplishing its goal of providing cash year-round to the working poor, it is inefficient to retain the complex option.⁷⁵ Of course, if Congress repealed the option with no substitute, the program would completely fail in its attempt to deliver benefits to the poor in a timely fashion.

These examples of proposed administrative changes show that, as long as the structure of the EITC program is confined to its existing framework, there will be difficult trade-offs.⁷⁶ On the one hand, if participation is encouraged by relaxing the filing process, it becomes easier for individuals who are not eligible for the benefits to obtain them.⁷⁷ On the other hand, if more stringent rules are introduced to eliminate ineligible individuals, the procedure becomes so complex that eligible individuals are deterred from filing.⁷⁸

It is worthwhile to explore ways of minimizing the tension between compliance and participation under the current structure. In fact, because these ideas do not require radical change to the current system, they are realistically, more likely to occur. Thus, such proposals are very important. However, the issue presented by such proposals is merely one of balance: more or less participation versus more or less compliance. Accordingly, such plans are not capable of providing net improvements. In order to find methods which may deliver benefits more effectively to the targeted population, it is necessary to look at models outside the basic structure of the EITC. For this reason, the remainder of this article will focus on the Yin and Forman proposals which substantially modify the existing program and raise not only balancing issues but enormous policy and equity concerns as well.

72. Most information required by the Schedule EIC could be obtained elsewhere on the face of the tax return. *Id.* at 261.

73. *Id.* The Schedule EIC was mandated by Congress in 1990, and the IRS believes it has significantly decreased the number of taxpayer errors. See *Hearing Before the U.S. House Ways & Means Subcomm. on Select Revenue Measures and Human Resources on Selected Aspects of Welfare Reform*, 103d Cong., 1st Sess. (1993) (statement of Jennie S. Stathis, Director, Tax Policy and Administrative Issues, General Government Division, U.S. General Accounting Office), reprinted in 93 TAX NOTES TODAY 72-53 (Mar. 31, 1993) (EITC is complex and most employers and recipients are unaware of Advanced Payment Option).

74. Yin et al., *supra* note 6, at 274.

75. Only about 0.5% of EITC recipients elect to utilize the advanced payment option. *Id.*

76. For example, liberalizing access to the Advanced Payment Option in order to increase its use by eligible participants may worsen noncompliance, because those who currently receive the advance payment only report it properly 50% of the time. *Id.* at 279; see also Steven Klepper et al., *Expert Intermediaries and Legal Compliance: The Case of Tax Preparers*, 34 J.L. & ECON. 205, 208-09 (1991) (discussing compliance-participation trade-off in different context).

77. Yin et al., *supra* note 6, at 279.

78. *Id.*

Professors Yin and Forman advance two proposals which fundamentally change the EITC program.⁷⁹ The first of these two proposals recommends splitting the current earned income credit into two principal components: (1) a benefit for the working poor; and (2) a family allowance benefit. The second proposal even more drastically redesigns the current EITC. It involves a shift from the Earned Income Tax Credit to an employer tax credit.⁸⁰

A. Social Security Exemption with Family Allowance Benefit

The Social Security Exemption with Family Allowance Benefit is an innovative proposal which overcomes the administrative difficulties of the current system and eliminates many of the compliance problems that result from difficult calculations.⁸¹ This proposal divides the current EITC into two critical parts. The first part of the benefit would be provided by exempting a base amount of wages⁸² from the employee portion of the Social Security payroll tax.⁸³ The second part of the benefit, the family allowance portion, would be furnished through a refundable income tax credit based on the number of children in the household, and would be available to all workers regardless of income.⁸⁴ The family allowance portion of the benefit is a substitute for the portion of the EITC that provided relief from certain child care and medical care expenses incurred by low-income workers with children.⁸⁵ Together, the Social Security Exemption and Family Allowance Benefit would theoretically satisfy the objectives of the EITC program.⁸⁶ However, unlike the current EITC, both the Social Security Exemption and the Family Allowance Benefit would be available to high-income households to the same extent that it would be available to low-income households.

Professors Yin and Forman's alternative to the EITC improves the present structure in four ways. First, the Social Security Exemption eliminates the problem of non-filers because it is not based on self-identification. Low-

79. These proposals could potentially enhance participation, compliance, and timeliness through much larger changes to the tax system. *Id.* at 280-94.

80. *Id.* at 286-94.

81. *Id.* at 280-86.

82. *Id.* at 281. The proposed exemption would not apply to the employer's portion of Social Security taxes. Therefore, the portion of Social Security taxes paid by the employer would not be affected by the proposed exemption.

83. *Id.* The authors maintain that a Social Security tax exemption available only to low income workers would result in little improvement in the administration of the benefit. Self-identification would be necessary and participants would need to identify themselves to their employers, increasing the possibility of stigmatization. Furthermore, a Social Security tax return might later need to be filed if persons benefitting are later found to be ineligible. *Id.*

84. *Id.* at 283. If the Family Allowance Benefit were substituted for the current dependency exemption, it would result in a shift of benefits in favor of lower-income families.

85. *Id.*

86. *Id.*; see also C. Eugene Steuerle, *Tax Credits for Low-Income Workers with Children*, 4 J. ECON. PERSP. 201, 206 (1990) (discussing equity and efficiency implications of four commonly stated purposes of credits: greater progressivity; adjustments for children; greater choice of goods and services; greater work incentives for low-income individuals).

wage individuals automatically receive the benefit.⁸⁷ Second, by directly providing a Social Security rebate, or income supplement, to the working poor, the Social Security Exemption accomplishes one of the specified goals of the EITC program by offsetting the costs incurred by the working poor in connection with certain expenses.⁸⁸ Third, this approach is more efficient than the existing program because the rebate is accomplished in one step as opposed to the current two-step process.⁸⁹ Fourth, it delivers the benefit in a timely manner because each paycheck reflects a portion of the annual benefit.⁹⁰

While the Social Security Exemption and Family Allowance Benefit alternative makes significant improvements to the current program, it achieves these improvements at a substantial cost. This proposal creates new problems by requiring additional funding. It also exacerbates current problems of over-inclusion and perception.

1. Funding the additional cost of the proposal

Yin and Forman propose to fund the Social Security Exemption and Family Allowance Benefit by either increasing the Social Security payroll taxes on wages in excess of the proposed exemption amount or raising the earnings cap for the Old Age Survivors and Disability Insurance portion (OASDI) of Social Security.⁹¹ These funding proposals suggest that the additional cost could be funded by increasing the payroll tax on earnings in excess of the proposed exemption amount but leaving the earnings cap unchanged, by raising the earnings cap without increasing the payroll tax, or by both raising the earnings cap and increasing the payroll tax rate on amounts in excess of the proposed exemption amount.

The Social Security payroll tax is a flat-rate tax paid on all employment wages up to a specified limit.⁹² This limit is referred to as the "earnings cap."⁹³ The earnings cap is increased every year to keep pace with wage growth.⁹⁴ In 1993, all earnings up to \$57,600 were subject to the 15.3% payroll tax, which is split evenly between the employer and the employee. The

87. The benefit is included in each paycheck. Yin et al., *supra* note 6, at 284.

88. This is consistent with the original rationales of the EITC program. *Id.* at 280-81.

89. *Id.* at 281. "The current system of first collecting such taxes and then refunding them by means of the EITC is administratively unwieldy. It would be simpler not to collect the Social Security taxes in the first instance." *Id.*

90. Delivered in this manner, the benefit is much more visible and the problem of nonparticipation is eliminated. *Id.* at 284.

91. *Id.* at 281-82. In 1993, wages above \$57,600 were not subject to the OASDI portions of the Social Security tax, and wages above \$135,000 were not subject to the Medicare portion of the tax. The Budget Reconciliation Act of 1993 removed the latter cap altogether, effective in 1994, but retained the former one. The earnings cap for 1994 was increased to \$60,600. Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 13207, 107 Stat. 312, 468 (1993).

92. C. Eugene Steuerle & Jon M. Bakija, *Basic Features of the Social Security System*, 62 TAX NOTES 1457, 1457 (1994).

93. *Id.*

94. *Id.*

earnings cap was increased to \$60,600 for 1994.⁹⁵ Wages above the earnings cap are not subject to the Social Security payroll tax at all.⁹⁶

Thus, the Social Security payroll tax, when viewed independently of benefits, is regressive because the earnings cap causes the tax to apply to a greater percentage of low-income wages than to high-income wages.⁹⁷ To illustrate, consider two workers. One has annual earnings of \$20,000 and the other \$200,000. Because the Social Security tax is comprised of both an employee portion equaling 7.65% of salary, as well as an employer portion equaling 7.65% of salary, the individual who earns \$20,000 pays 15.3% of her wages in payroll taxes.⁹⁸ In contrast, the higher income worker pays only

95. 1994 Cost-of-Living Increase and Other Determinations, 58 Fed. Reg. 58,004, 58,005-06 (1993).

96. Steuerle & Bakija, *supra* note 92, at 1457.

97. *Id.* at 1458. In contrast to the Social Security payroll tax, benefit distributions are progressive since they are not directly based on payroll tax contributions, but rather on earnings on which the taxes were paid. Therefore, low-income individuals who pay relatively smaller amounts in total payroll taxes receive a much larger percentage of wage replacement at retirement than high-income individuals. The Social Security replacement rate is calculated as a percentage of the individual's previous annual wages replaced by Social Security benefits. C. Eugene Steuerle & John M. Bakija, *How Social Security Redistributes Income*, 62 TAX NOTES 1763, 1765 (1994). Generally, replacement rates are expressed as a percentage of wages in the last year preceding retirement, or as a percentage of the average wage determined over the three highest-earnings years. *Id.*; see also *id.* at 1763-66 (further discussing calculation of real value of Social Security benefits).

The above analysis is based on the tax-transfer model of Social Security, which is one of three competing conceptual models. See Lawrence H. Thompson, *The Social Security Reform Debate*, 21 J. ECON. LITERATURE 1425, 1436-38 (1983). The tax-transfer model views Social Security as merely one of several government tax-transfer programs in which the benefits received by an individual need not bear any particular relationship to the taxes that that individual may have paid into the Social Security system. *Id.* at 1436. Thus, under this model, since the revenue and expenditure sides of the program are evaluated separately, the Social Security payroll tax is regressive. *Id.*

Another model is the insurance model, which maintains that the primary element of Social Security is the pooling among all workers of the risks of earnings losses due to retirement, death, or disability. *Id.* at 1437. Since all of these events are integral parts of the insurance program, this model maintains that the taxes and benefits cannot be separately analyzed. *Id.* Thus, under this model, the Social Security payroll tax would not be considered as regressive as under the tax-transfer model.

The third model is the annuity-welfare model. *Id.* In this model, the benefit structure is broken down into both a social adequacy component and an individual equity component. *Id.* Each of these components is analyzed separately. *Id.* The social adequacy component is analyzed as if it were a separate tax-transfer program, and the individual equity component is viewed as analogous to forced savings. *Id.* Again, under this model, the Social Security payroll tax is not considered as regressive as under the tax-transfer model.

The three different models result in contrasting insights about the fairness of benefit distributions, the costs of the Social Security system, and the degrees of regressivity in the Social Security payroll tax. *Id.* at 1438.

98. Many economists agree that practically all of the burden of the employer portion of the Social Security tax falls on the employee, who pays the employer's portion in the form of reduced wages. Steuerle & Bakija, *supra* note 92, at 1457; see also RICHARD A. MUSGRAVE & PEGGY B. MUSGRAVE, *PUBLIC FINANCE IN THEORY AND PRACTICE* 495-97 (4th ed. 1984) (demonstrating that employer and employee contributions to payroll tax produce the tax burden). In

4.4%⁹⁹ of her wages in payroll taxes. Therefore, when measured as a percentage of compensation, the payroll tax is extremely regressive. When the payroll tax is expressed as a percentage of total income, it is even more regressive since highly compensated individuals are more likely to have income from sources other than wages.¹⁰⁰

As stated earlier, one of the methods Yin and Forman propose to fund the additional cost of the Social Security Exemption and Family Allowance Benefit is by increasing the payroll tax on wages above the exempted amount without requiring the removal of the earnings cap.¹⁰¹ However, this funding method would further increase the regressivity of the Social Security payroll tax.¹⁰² Assume, for instance, that the earnings cap remained at \$60,600¹⁰³ and that the exemption amount was the first \$8840 of compensa-

a competitive market, an employer will pay a worker total compensation, including cash wages, contributions to Social Security, and employee benefits, commensurate with the value of output produced by the worker. Thus, if the amount of total compensation is fixed, an increase in the employer portion of the payroll tax would necessarily imply an equal decrease in some other form of compensation, such as cash wages. Steuerle & Bakija, *supra* note 92, at 1457-58.

99. The calculation is as follows: 15.3% of \$57,600 (earnings cap) is \$8813, \$8813 is 4.4% of \$200,000. In contrast, 15.3% of \$20,000 is \$3060, and \$3060 is 15.3% of \$20,000.

100. Steuerle & Bakija, *supra* note 92, at 1458. In addition to the fact that no taxes are collected above the earnings cap, two other features of the payroll tax contribute to its regressivity. First, Social Security retirement taxes are imposed on "covered earnings," which is a much narrower and more regressive tax base than the income tax base because the concept of covered earnings excludes items like interest and investment income. Second, unlike the income tax which provides standard deductions and personal exemptions, the Social Security payroll tax is imposed on the first dollars of covered earnings. Jonathan B. Forman, *Promoting Fairness in the Social Security Retirement Program: Partial Integration and a Credit for Dual-Earner Couples*, 45 TAX LAW. 915, 928-31 (1992).

101. Tax equity requires that persons with equal ability to pay taxes should pay equal amounts of tax. This theory is referred to as "horizontal equity." Tax equity also requires that individuals with greater ability to pay should have a greater tax burden. This theory is referred to as "vertical equity." MICHAEL J. GRAETZ, *FEDERAL INCOME TAXATION: PRINCIPLES AND POLICIES* 17 (2d ed. 1988). Accordingly, the removal of the earnings cap is necessary to ensure vertical equity in the tax system so that individuals with greater income pay more Social Security taxes.

102. Some increase in the payroll tax rate would be necessary to prevent taxpayers with wages above the exempted amount from experiencing an overall decrease in their payroll taxes. To illustrate, assume that the first \$8840 (minimum wage) of wages were exempted from the payroll tax and that there were no increase in the payroll tax rate. Individuals with income above the exempted amount would experience a decrease in payroll tax payments because the first \$8840 of their wages would escape the payroll tax. Thus, a rate increase calculated to offset the tax savings that an individual experienced with respect to the exempted amount would be necessary to prevent taxpayers who are not the intended beneficiaries of the exemption from enjoying an overall reduction in their payroll taxes.

103. Beginning in 1994, wages above \$60,600 are not subject to the OASDI portions of the Social Security tax. 1994 Cost-of-Living Increase and Other Determinations, 58 Fed. Reg. 58,004, 58,005-06 (1993). Additionally, the \$135,000 earnings cap on wages subject to the Medicare portion of the tax was entirely removed. Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 13207(a), (e), 107 Stat. 312, 468 (codified as amended at 26 U.S.C. § 312 (1988 & Supp. V 1993)).

tion, or the minimum wage annual salary.¹⁰⁴ If the Social Security tax rate were increased to pay for the Social Security exemption, and the earnings cap remained constant, individuals earning between \$8840 and \$60,600 would bear the full cost of the additional expense of the program. Of course, those same individuals would also experience some decrease in their payroll taxes because the first \$8840 of their compensation would be exempted from Social Security taxes. Consequently, it would be both appropriate and necessary to increase the rates by some factor in order to maintain the current tax rate structure for non-targeted individuals.¹⁰⁵ If the increased rate were calculated to offset the decrease in payroll tax payments resulting from the exempted wages, taxpayers in this group would be no better or worse off after a rate increase. However, a rate increase beyond this break-even point would present equity problems. Middle-income individuals would be forced to pay substantially higher taxes on amounts not exempted from the payroll tax; while individuals earning higher wages, who presumably would be better able to afford tax increases, would not be affected to the same degree because they would pay no Social Security tax on wages in excess of the \$60,600 earnings cap. Therefore, substantially increasing tax rates above the exemption amount without first removing the earnings cap would increase vertical inequities with respect to the payment of Social Security taxes. As a result, the Social Security payroll tax would be even more regressive than it is today.¹⁰⁶

This result is particularly inappropriate because it is inconsistent with one of the explicit purposes of the EITC program. As stated earlier, one goal of the Earned Income Tax Credit is to combat regressiveness in the federal tax system.¹⁰⁷ This proposed method of funding would not only fail to reduce regressivity but could actually increase regressivity in the tax system. Thus, from a policy standpoint, this approach to funding a program offered as a substitute for the EITC would be totally unacceptable.

Another method of funding the additional cost of the program would be to eliminate the earnings cap without raising the tax rate. However, because only a relatively small percentage of wages and salaries exceed the earnings cap, it is unlikely that this method would increase revenue sufficiently to off-

104. The calculation is as follows: \$4.25 per hour (minimum wage) x 40 hours per week x 52 weeks per year = \$8840.

105. This factor would be determined by calculating the rate increase necessary to offset the taxes not collected on the exempted amounts.

106. See *supra* note 97 and accompanying text for a discussion of regressivity in the tax system.

107. See *Explanatory Material Concerning Committee on Finance 1990 Reconciliation Submission Pursuant to House Concurrent Resolution*, 310 CONG. REC. S15685 (daily ed. Oct. 18, 1990) (stating that EITC provides important means for achieving progressivity in tax system); President William J. Clinton, Address Before a Joint Session of Congress on Administration Goals (Feb. 17, 1993), in 1 PUB. PAPERS 113, 117 (1993) (proposing expansion of EITC to combat poverty).

set the additional cost of the proposed program.¹⁰⁸ Estimates indicate that approximately 87% of wages fall below the earnings cap. These figures suggest that a complete elimination of the earnings cap would increase revenue by only approximately 12%. Thus, the amount of revenue that could be raised by removing the earnings cap is quite modest. Therefore, the approach for funding the additional cost of the proposal should require both removing the earnings cap and increasing the payroll tax rate, but not one or the other.¹⁰⁹

2. Targeting the poor

Professors Yin and Forman note that their proposal does not target the poor as well as the current EITC program because the Social Security Exemption and Family Allowance Benefit which they propose apply to all individuals regardless of income.¹¹⁰ However, in order to better target the working poor, they suggest that benefits from the Social Security Exemption be based on weekly wages as opposed to annual wages.¹¹¹ This method would prevent those seasonal employees who earn relatively low annual wages but relatively high weekly wages from enjoying the benefits of the Social Security Exemption.¹¹²

The use of hourly wages would be an even more effective device to eliminate such unintended beneficiaries. Hourly wages would also exclude individuals performing part-time services year-round who, on the basis of weekly wages, may benefit from the exemption. For example, college students who tutor three times a week at hourly rates of twenty dollars and above may qualify on a weekly basis, but would not qualify on an hourly basis. Typically, part-time workers, including students, are not sole supporters of their families and consequently would receive financial support from working spouses or other family members.¹¹³ Thus, it is appropriate that such individuals be

108. See C. Eugene Steuerle & Jon M. Bakija, *Options for Reforming the Social Security Payroll Tax*, 63 TAX NOTES 109, 114 (1994) (explaining that eliminating earnings cap would raise revenues one-ninth above current levels).

109. While the payment of Social Security taxes is regressive, the benefit structure is not. See *supra* note 97 and accompanying text for a discussion of regressivity in the tax system. Thus, the removal of the earnings cap may raise concerns about the structure of Social Security benefits. See *supra* notes 92-97 and accompanying text for a general discussion on Social Security payments and the structure of Social Security benefits.

110. Yin et al., *supra* note 6, at 285. "Workers with low annual wage income but high capital income could nevertheless benefit from the Social Security tax exemption without any recapture." *Id.*

111. For instance, the exemption could be limited to the first \$170 of wages per week (the minimum weekly wage). *Id.*

112. This approach would eliminate such people as affluent teenagers or college students who hold summer jobs, as well as low-wage or part-time workers who have wealthy spouses. *Id.*

113. Results from a survey conducted by the Bureau of Census on the work experience of wives supports this assertion. For example, the study shows that in 1992 there were 10,228,000 women who worked part-time in the work force; only 8,470,000 of their husbands worked full-time. This figure represents approximately 80% of the part-time workers studied. U.S. Bureau

excluded from receiving the benefits of a program designed for the working poor.

The hourly wage solution does not address the situation where an individual has high capital income and low wages, however.¹¹⁴ This individual, while not poor, would still benefit under the proposed program.¹¹⁵ Although the Social Security Exemption and Family Allowance Benefit does not remedy this problem, it does not create or exacerbate the problem either. The same problem exists today under the current EITC program because individuals who have substantial capital income but low wages are eligible to participate in the program.¹¹⁶

Thus, using a shorter period of time over which to measure compensation would alone remedy many problems of effectively targeting the working poor. However, remedying the targeting problem of Yin and Forman's proposal may be easier than remedying the funding problems discussed earlier and the perception problems discussed next.

3. Perception

In order for any program to be successful, it must not only accomplish its goals, but also must appear to do so. Perception is particularly important in determining the popularity of a poverty program.¹¹⁷ Perhaps the biggest problem that Yin and Forman's proposal will encounter is one of perception. Under Yin and Forman's Social Security Exemption and Family Allowance Benefit proposal, everybody enjoys the benefits regardless of income. This proposal is advantageous because it eliminates administrative difficulties.¹¹⁸ Specifically, there would be few, if any, problems with compliance or participation. However, this proposal may be disadvantageous because, by provid-

of Labor Statistics, Division of Labor Force Statistics, Study Conducted by the U.S. Bureau of Census for the Bureau of Labor Statistics, tbls. 21-22, at 2 (Mar. 1993) (unpublished).

114. In an attempt to restrict the EITC to low-wage workers, Congress instituted a phase-out range so that the maximum amount of the credit is reduced by a percentage of the taxpayer's adjusted gross income (earned income if it is higher) in excess of \$11,000. In the case of taxpayers who have no qualifying children, the maximum amount is reduced by a percentage of adjusted gross income in excess of \$5000. I.R.C. § 32(a)(2)(b) (Supp. V 1993). This limitation prevents extremely well-to-do people with substantial dividend and interest income from receiving the credit.

115. See *supra* notes 54-56 and accompanying text for a discussion of targeting the working poor.

116. O'Neil & Nelsestuen, *supra* note 54, at 1190; see also Jonathan B. Forman, *Expanding the Earned Income Credit To Help the Working Poor*, 40 TAX NOTES 851, 854 (1988) (stating that EITC would be fairer and more efficient if structured to benefit only hard-working, needy people). See *supra* note 114 for a discussion of the phase-out range which prevents extremely wealthy taxpayers with substantial dividend or interest income from receiving the EITC.

117. See generally JOEL F. HANDLER & YEHESEKEL HASENFELD, *THE MORAL CONSTRUCTION OF POVERTY: WELFARE REFORM IN AMERICA* (1991) (tracing historical development of political and cultural attitudes toward poor).

118. The universality of the benefit would eliminate the need for self-identification, improving the administration of the benefit. Yin et al., *supra* note 6, at 281, 284.

ing benefits to individuals high up the income tree, it strays from the EITC program's anti-poverty roots.

This apparent departure from the underlying policy of the EITC program is significant. One of the reasons given for the enduring popularity of the EITC program is that it is viewed as being fairly well-targeted, because only people with low incomes are eligible to receive its benefits.¹¹⁹ Support for the program presently crosses party lines and comes from a cross-section of the population.¹²⁰ However, the apparent deviation of the Social Security Exemption and Family Allowance Benefit from an anti-poverty objective could threaten political support for the program. Although the proposed program may be an improvement over the current EITC in many respects, the improvements may be achieved at the cost of creating perception problems. Because Yin and Forman's proposal may not appear to be limited to reducing poverty among the working poor, it may not inherit the EITC's political support.¹²¹

B. Employer Credit Program

As another alternative to the EITC program, Professors Yin and Forman propose a wage subsidy scheme implemented through a tax benefit directed to the employer rather than to the employee.¹²² Under this approach, employers of certain low-wage workers would receive a benefit in the form of a tax credit.¹²³ The credit would be determined as a percentage of salary paid to low-wage employees, presumably with some range of phase-in up to a certain point and some range of phase-out after another.¹²⁴ Theoretically, a benefit targeting the working poor, like the EITC, could be delivered more efficiently to the employer who would then pass on the benefit to the low-wage worker.¹²⁵

119. See Julie Kosterlitz, *Birth and Taxes*, 23 NAT'L J. 1857, 1859 (1991) (explaining that Democrats prefer tax credit because it provides more benefits to lower and middle-income people than expanded dependent's exemption favored by Republicans). At the same time, one reason people eligible for the EITC give for not applying for the benefit is the stigma attached to receiving what they perceive as welfare. See *supra* note 22 and accompanying text.

120. Democrats support the EITC program because it helps those at the bottom of the economic ladder without being welfare, while Republicans support the program as an alternative to increasing the minimum wage.

121. In contrast, the Social Security Exemption and Family Allowance Benefit may actually be more palatable than the EITC to the intended beneficiaries. See *supra* notes 22, 117, and accompanying text.

122. The theory is that the benefit to the worker would be the same, whether provided directly or indirectly. Yin et al., *supra* note 6, at 287. Cf. Sar A. Levitan & Frank Gallo, *The Targeted Jobs Tax Credit: An Uncertain and Unfinished Experiment*, 38 LABOR L.J. 641, 644-47 (1987) (discussing existing wage subsidy paid directly to employers that is meant to encourage the employment of certain disadvantaged groups, such as veterans, ex-convicts, and persons with physical or mental disabilities).

123. Yin et al., *supra* note 6, at 288.

124. *Id.*

125. *Id.* at 287-88.

Admittedly, this arrangement would be much easier to administer than the existing EITC program for several reasons. First, there are fewer employers than employees. Second, employers are likely to be more educated than their employees and may better understand the program and its administrative requirements. Third, employers are more likely to be generally familiar with the filing process.¹²⁶ However, this arrangement exacerbates the EITC's compliance problem and creates a perception problem.

1. Compliance

While it is true that the administration of the Employer Credit scheme would be relatively easy, the scheme may open the door to even greater compliance problems. Under the current EITC system, certain low-wage workers have incentives to overstate their incomes in order to obtain greater benefits.¹²⁷ If a low-wage worker in the phase-in range overstates her earned income, she receives a larger earned income tax credit.¹²⁸ But, because the regulations require the worker to provide documentation of her income, this abusive situation generally arises only in cases of self-employed individuals whose actual income is difficult to determine.¹²⁹ However, the Employer Credit scheme proposed by Professors Yin and Forman creates an incentive, as well as an opportunity, for many employers to overstate the hours worked by low-wage individuals in order to reduce the apparent hourly wage and obtain a larger credit.

For example, suppose an employer and an employee agree on annual compensation of \$10,000 and, for simplicity, that the maximum tax credit is available to employers of workers earning wages of \$5.00 per hour, with some range of phase-out thereafter. Further assume that the employee is required to work 1600 hours per year, which equals an hourly wage of \$6.25, or an hourly rate \$1.25 above the eligible salary range for the maximum employer credit. If the employer and employee agreed to report wages as \$5.00 per hour based upon 2000 hours rather than \$6.25 per hour based upon 1600 hours, the employer would be entitled to the maximum annual credit, while the employee's annual compensation remained at \$10,000.

While it may be unrealistic to assume that employers and their low-income workers would actually collude to obtain the employer credit, it is not unrealistic to imagine that an employer may condition employment on the low-wage worker's misrepresentation of the actual number of hours worked. In yet other circumstances, the low-wage worker may not even be aware of the overstated hours reported by the employer.

In a perfect market, where information is free-flowing, and everyone in the labor force has the power to manifest preferences, an employer would

126. *Id.*

127. *See supra* note 39 and accompanying text.

128. *See supra* note 39 and accompanying text.

129. Yin et al., *supra* note 6, at 259; *see also* James Aley, *A Tax Credit for Crooks?*, *FOR-TUNE*, Oct. 4, 1993, at 24 (explaining that EITC encourages over-reporting income).

eventually pass on the full value of the employer tax credit to the worker. While these assumptions may generally be true, they are not necessarily true for individuals targeted by the EITC program. Studies show that the typical individual eligible for the earned income tax credit has limited education.¹³⁰ As indicated earlier, 31% of the eligible population has less than a high-school education and another 46% has only a high-school education.¹³¹ This means that no more than 23% of the population eligible for the credit has post-high-school education. This lack of formal education is arguably one of the reasons many eligible individuals frequently do not understand the complicated rules and filing process for the credit and, as a result, fail to participate.¹³²

Surely, if lack of education renders a portion of the eligible population unable to understand the filing requirements for the EITC program, or unaware of a program that could provide them a cash benefit, it cannot realistically be assumed that this same population will have full information about a tax credit given to an employer on their behalf. As a result, many low-wage workers may not be able to demand the credit from the employer in the form of higher wages.

The studies also indicate that the average individual eligible for the Earned Income Tax Credit has annual wages of \$10,808.¹³³ This means that most of the targeted population earns slightly more than minimum wage.¹³⁴ Consequently, these individuals generally have no experience in negotiating wages, as they are paid only slightly more than the minimum that the law requires. Therefore, one must conclude that the population targeted by the EITC would not have sufficient information or bargaining power to demand that the employer credit be passed on to them in the form of higher wages. As a result, unlike burdens placed on an employer in a competitive market which generally pass to the employee in the form of commensurate decreases in compensation, the benefits given to employers may not pass to their intended beneficiaries in the form of higher wages.¹³⁵ Consequently, the employer credit could prove to be a benefit to the employer who hires low-wage workers, and not necessarily a benefit to the working poor.¹³⁶

130. See Scholz, *supra* note 18 and accompanying text; Yin et al., *supra* note 6, at 250.

131. See *supra* notes 18-19 and accompanying text.

132. See *supra* notes 15-19 and accompanying text.

133. Yin et al., *supra* note 6, at 297 tbl. 2.

134. Annual minimum wage salary equals \$8840. See *supra* note 104.

135. Steurle & Bakija, *supra* note 92, at 1457-58.

136. The underlying structure of this proposal is not new to the tax system. There have been other employer-based subsidies. For example, in 1978, the Targeted Jobs Tax Credit (TJTC) was enacted to encourage employers to hire certain impoverished youth. As in the case of the proposed wage subsidy scheme, Congress expected the TJTC to improve the situation of the targeted individuals. However, some policymakers believe that in large part the intent of Congress was subverted because the benefits of the program were not passed on to the targeted group, rendering the TJTC program substantially ineffective. See Levitan & Gallo, *supra* note 122, at 644-47 (assessing effectiveness of EITC); Yin et al., *supra* note 6, at 287 n.205 (discussing employer subsidy program). *But see* John Bishop, Targeted Jobs Tax Credit: Findings from Em-

2. Perception

As stated earlier, the EITC has been very successful because the public perceives it to be well-targeted and exclusively beneficial to the working poor.¹³⁷ The public may perceive the employer credit scheme as benefitting the wealthy employer rather than the low-income worker. Thus, even if one has complete confidence in the free market and believes that the employer eventually would be forced to pass on the employer credit in the form of higher wages to her employees, the problem of perception remains. A perception that wealthy employers were being unjustly enriched at the expense of the working poor could cause the program to lose its much needed political support and popularity.

CONCLUSION

In recent years, one of the most profound changes in America's fight against poverty has been the development of anti-welfare sentiment reflecting a desire to assist the working poor rather than the non-working poor. The recent expansion of the EITC exemplifies this trend. To this end, notwithstanding the practical and perception problems identified, the proposals made by Professors Yin and Forman are extremely exciting and innovative. By removing the stigma attached to traditional poverty programs, reducing the complexity of the program, and eliminating enforcement problems in the program, the Social Security Exemption and Family Allowance Benefit proposal makes a significant contribution to solving not only some of the participation and compliance problems unique to the EITC program, but also some of the more critical issues pertaining to social reform. While the Employer Credit scheme may be more problematic, it would seem that it too is useful to the extent that it stimulates and contributes to ongoing discussion and recent developments in welfare reform. Moreover, the Employer Credit introduces a different approach to the existing program and reorients the tax transfer system. However, both proposals may create serious problems if they are implemented exactly as proposed. The Social Security Exemption and Family Allowance Benefit creates funding and perception problems. The Employer Credit appears to assume a perfectly competitive market and to ignore realities about the very individuals to whom the benefit is targeted. Thus, policymakers intent on reforming the EITC must proceed cautiously. The possibility that in the near future the EITC is likely to be

ployer Survey, at 24-25, 30-31 (1985) (suggesting that the TJTC has had some impact in ameliorating labor market biases faced by targeted job seekers).

137. The recent anti-welfare backlash in America reflects the fear many people feel about the "morally corrupting influence" of a cash dole for nonworking, but able-bodied poor people. Many believe that welfare itself is at the root of the problem of intergenerational poverty. See Lucie E. White, *No Exit: Rethinking "Welfare Dependency" from a Different Ground*, 81 GEO. L.J. 1961, 1963 (1993) (recent anti-welfare concerns reflect longstanding, deeply entrenched fear about morally corrupting influence of cash dole for able-bodied, non-working poor). In contrast, the EITC enjoys popularity as an anti-poverty program because it encourages work in the phase-in range, since benefits increase with earned income. See Scholz, *supra* note 15, at 63.

used as a substitute for existing relief programs renders this caution even more necessary. If such a substitution is made, radical changes to the program would have far reaching consequences not only for the EITC program, but also for the overall transfer system. Therefore, all proposed changes to the EITC should be thoroughly and thoughtfully considered before they are implemented.

