

## **Concerns with Senate Finance Committee Proposal to Make Certain Immigrants Ineligible for the EITC**

March 2005

### ■ **Background**

The Earned Income Tax Credit (EITC) is a critical tax credit for low-income workers. The EITC provides tax relief for low-wage workers and helps ensure that families that include a parent who works full-time for the entire year in low-wage jobs do not live in poverty. Taxpayers apply for the EITC by providing information about themselves and, if applicable, their qualifying spouse and children. The EITC is of particular importance to immigrant families: immigrant workers disproportionately fill lower-wage jobs, and their families are less likely to have access to income supports beyond the EITC due to immigration status-based restrictions in many public benefits programs.

On March 8, the Finance Committee of the U.S. Senate approved a plan to finance increased child care funding under a re-authorized Temporary Assistance for Needy Families (TANF) program by eliminating EITC eligibility for certain families that include immigrant parents or children. The proposal would disqualify many families from the EITC unless all members of the family possess Social Security numbers (SSNs) that are valid for employment.<sup>1</sup> At first blush, the proposal may seem like a common-sense, technical fix. However, further analysis reveals that the proposed change in law is substantive: it would harm many hard-working immigrant families in which all of the members are lawfully present under immigration statuses that permit employment (including some families in which the income-earner is a U.S. citizen). Strong policy considerations support the current eligibility rules, which provide tax relief and help ensure that full-time working families don't live in poverty. Alternative solutions are available to fix any problems in the administration of EITC benefits to immigrants whose SSNs were issued for nonwork purposes.

### ■ **Current Law**

In 1996, under Section 451 of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), Congress changed the rules governing eligibility for EITC, requiring that adult taxpayers seeking the EITC and any qualifying spouse or children included as part of the EITC application possess either (1) an SSN valid for employment or (2) an SSN issued validly by the Social Security Administration (SSA) for nonwork purposes, provided that the immigrant's status does not prohibit him or her from engaging in employment. In either of these instances, the SSA issues the card only to immigrants who are lawfully residing in the U.S.<sup>2</sup>

<sup>1</sup> A description of the proposal is contained on p. 89 of the Dept. of the Treasury's "General Explanations of the Administration's Fiscal Year 2005 Revenue Proposals (Feb. 2004), available at [www.treas.gov/offices/tax-policy/library/bluebk04.pdf](http://www.treas.gov/offices/tax-policy/library/bluebk04.pdf).

<sup>2</sup> See 26 USC § 32 (m), referencing 42 USC § 405(c)(2)(B)(i)(I-III). Under earlier Internal Revenue Service (IRS) guidelines and procedures, immigrants who did not have an SSN were able to file a tax return and claim the EITC by writing in the words "applied for" or "section 503(c)" in lieu of providing an SSN. Beginning with the 1994 tax year,



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Congress thereby made a clear distinction between those persons whose *immigration status permits employment* (such persons remained eligible under PRWORA for EITC) and those whose *immigration status prohibits employment* (such persons became ineligible under PRWORA for EITC).

This is different from the rule in the new proposal, which distinguishes between people whose *Social Security card authorizes employment* and those whose *Social Security card is not valid for employment*.

### ■ Examples of the Impact of the New Proposal

The new proposal would harm immigrants lawfully present in the U.S. whose status permits them to be employed here but who obtained an SSN for nonwork purposes. Consider, for example, an immigrant family with two parents and two young children. All four family members were granted entry into the U.S. for humanitarian reasons as “public interest parolees.” The parents work and have regular Social Security cards that are valid for employment. In order to meet the requirements of a state-funded health program, the children must apply for SSNs. Under SSA rules, the agency will not issue an SSN valid for employment unless the applicant presents employment authorization from the U.S. Dept of Homeland Security. The current application fee for employment authorization is \$175 per person. Since the children have no need for a work permit, they each apply for a “nonwork” SSN. They are issued a Social Security card marked “not valid for employment.” Were the current proposal passed into law, the family could not qualify for the EITC without spending \$350 to obtain two employment authorization cards that are otherwise unnecessary and useless to the children.

Similar inequities would fall upon a family that includes one working parent and a spouse who is lawfully residing in the U.S. but who has no need for a work-authorized SSN. For example, suppose the spouse has a disability and is unable to work. Under current law, the family may be eligible for the EITC if the immigrant with disabilities has a nonwork SSN and an immigration status that does not prohibit employment. The current proposal would disqualify the disabled spouse and, because of this, the entire family would lose access to the EITC.

Another large category of families losing EITC eligibility would be those that include immigrants who originally obtained their valid nonwork SSN before they were authorized to work. Some of these families eventually would be able to obtain the EITC under the new proposal, but only after the delays and expenses associated with changing their records. Many others would not understand the reason for the denial nor how to correct the problem and would therefore be deterred from receiving the EITC benefit.

There is no principled policy reason for establishing rules that will deter or deny these lawfully present low-wage working families from receiving EITC benefits. The restriction is particularly onerous because a single lawfully present immigrant without a work-authorized SSN could disqualify an entire family from obtaining the EITC, even if all other family members are U.S. citizens.

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the IRS required each taxpayer, spouse, dependent, and EITC-qualifying child to provide a valid number, or be subject to delays and penalties. The practice varied, however, depending on the particular IRS office processing the claim. Under PRWORA in 1996, Congress deleted an EITC eligibility category that had permitted nonwork SSNs for the sole purpose of meeting a requirement of a federally funded benefit. Some undocumented persons and immigrants with temporary statuses prohibiting employment had been eligible under this now-eliminated category.

### ■ **Treasury Department Report Recommends Better Coordination in Administering EITC**

In Sept. 2001, the Treasury inspector general issued a report<sup>3</sup> finding that the IRS lacked an effective process to prevent EITC payments to the groups of immigrants that Congress had targeted for exclusion under the 1996 changes: immigrants whose status prohibited them from being employed in the U.S. and who were issued SSNs for the sole purpose of meeting a requirement of a federally-funded benefit. According to the report, the primary source of the problem is that the IRS does not receive data from the SSA that enables the IRS to distinguish effectively between different kinds of non-work-authorized SSNs: nonwork SSNs issued under the pre-1996 law solely so the person to whom they were issued could obtain federal benefits (ineligible for the EITC) and nonwork SSNs issued to lawfully residing immigrants whose status does not prevent them from being lawfully employed in the U.S. so they could obtain state or local benefits (eligible for the EITC). It is notable that in describing the legal background of the rules, the Treasury inspector general did not once suggest that the 1996 reform was incoherent, contradictory, or in need of a statutory fix, technical or otherwise. Rather, the inspector general issued a series of recommendations to the IRS aimed at fixing the problem. The IRS disputed that the problem was as prevalent as characterized by the inspector general and rejected a key recommendation: to coordinate better with the SSA in order to obtain needed information about nonwork SSNs.

It would be inappropriate to change the law in ways that cause real hardship to low-income immigrant workers and their families based on speculation about a problem that may be far less prevalent than feared, and one for which there are alternative solutions that could avoid harm. This is particularly important given the underlying goal of EITC—to reward hard-working but modest-income taxpayers by augmenting their family wages.

### ■ **Welfare Reform Savings on the Backs of Immigrants: Take Two**

It is ironic that as Congress attempts to revisit the welfare reforms of 1996, it again seeks to find savings by imposing new restrictions on immigrant families. The bulk of savings under PRWORA came from cutting lawfully present immigrants from critical safety-net programs. As the impact of these cuts became clear, most in Congress came to regret them, and in subsequent years many of the cuts were repealed. Now some are proposing once again to “rob Pedro to pay Paul.” It is unacceptable to return to the 1996 law and further tighten its restrictions on immigrant eligibility for the EITC, a proposal that will deter or deny lawfully present, tax-paying immigrant families from securing a critical work support.

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<sup>3</sup> Treasury Inspector General for Tax Administration, “Letter Report: Substantial Earned Income Credit is Paid to Non-Entitled Individuals Who Use Not Valid for Work Social Security Numbers,” Reference Number 2001-40-185 (Sept. 2001).