



Volume 18 (2020) | ISSN 1932-1821 (print) 1932-1996 (online)
DOI 10.5195/taxreview.2020.121 | <http://taxreview.law.pitt.edu>

HUMANIZING THE TAX SYSTEM:
WHAT NATIONAL TAXPAYER ADVOCATE NINA E. OLSON
DID FOR AMERICA'S KIDS AND THEIR FAMILIES

Francine J. Lipman



This work is licensed under a Creative Commons Attribution-NonCommercial-No Derivative Works 3.0 United States License.



This journal is published by the [University Library System](#) of the [University of Pittsburgh](#) as part of its [D-Scribe Digital Publishing Program](#), and is cosponsored by the [University of Pittsburgh Press](#).

HUMANIZING THE TAX SYSTEM:
WHAT NATIONAL TAXPAYER ADVOCATE NINA E. OLSON
DID FOR AMERICA’S KIDS AND THEIR FAMILIES

*Francine J. Lipman**

At their core, taxpayer rights are *human* rights. They are about our inherent *humanity*.

—Nina E. Olson¹

Introduction

The federal income tax system does not exist for statutes, regulations, codes, enforcement, assessments, collection, redistribution, procedures, publications, liens, levies, refunds, liabilities, litigation, compliance, or even revenue. At its core, the federal income tax system exists for people. People like you, me, and all our loved ones including spouses, partners, parents, kids, brothers, sisters, nieces, nephews, grandparents, grandkids, friends, and neighbors. The people who eat at our tables and sleep under our roofs. The tax system is about current and future generations who live and work in America, and even those who don’t but have the coveted prize of U.S. citizenship. It is about our shared vision of ensuring the well-being of all people, young, old, Black, Brown, White, Asian, Native, multiracial, religious, atheist, agnostic, male, female, transgender, straight, queer, or nonconforming. It is about ensuring that the people of and in America have what they need to survive and thrive, especially those who are vulnerable for any reason or no reason at all. Tax systems, like other government institutions, should be designed and administered to make life better for everyone. Because “we the people” are America, the beautiful, the federal tax system serves us. This is the truth that Nina E. Olson laid bare during her

* William S. Boyd Professor of Law, William S. Boyd School of Law, University of Nevada, Las Vegas.

¹ Nina Olson, *A Brave New World: The Taxpayer Experience in a Post-Sequester IRS*, 139 TAX NOTES 1189, 1190 (2013) (describing federal tax administration as treating taxpayers like system servants rather than as individuals with rights who deserve respect, dignity, and attention to their concerns, goals, and requests for timely delivery of certain statutory benefits in addition to professional and responsive management of their obligations).

eighteen years of service as the longest-serving National Taxpayer Advocate (NTA).

Nina Olson flipped the traditional script that Americans are beholden to tax systems; rather, she insisted that the tax system must serve people, treating them with dignity and respect. NTA Olson not only led the Taxpayer Advocate Service (TAS) to serve and protect individual taxpayers, but developed systems to shape recommendations and implement procedures to serve the greater good of humanity. Through her leadership at TAS, Nina Olson designed, organized, implemented, directed, motivated, inspired, and charged a team of “passion warriors” inside and outside of the Internal Revenue Service (IRS) to deliver tax justice every single minute of every single day of her eighteen years of service. For 9,460,800 minutes, Olson, TAS, and countless pro bono tax lawyers delivered taxpayer rights to hundreds of millions of taxpayers and their families.² NTA Olson served

² *Season of Taxpayer Rights*, words rewritten by Francine J. Lipman (to the tune of the song *Season of Love* from *Rent* by Jonathan D. Larson):

Nine million, four sixty thousand, eight hundred minutes.
 Nine million, four sixty thousand, eight hundred moments in a career.
 Nine million, four sixty thousand, eight hundred minutes.
 How do you measure.
 Measure NTA Olson’s career?

In tax refunds?
 In blog posts?
 In reports to Congress?
 In reforms, in speeches, in analytics?
 In nine million, four sixty thousand, eight hundred minutes.
 How do you measure eighteen years of a stellar career?

How about taxpayers?
 How about LTAs?
 How about LITCs?
 Measure in rights . . .
 Seasons of taxpayer rights . . .
 Seasons of taxpayer rights . . .

Nine million, four sixty thousand, eight hundred minutes.
 Nine million, four sixty thousand, eight hundred words in her plans.
 Nine million, four sixty thousand, eight hundred minutes.
 How do you measure a career of a woman so grand?

In truths that we learned,
 Or in times that she heard?
 In bridges that she built,

taxpayers “from the lakes of Minnesota, to the hills of Tennessee, across the plains of Texas, from sea to shining sea, from Detroit down to Houston and New York to LA,” through town hall visits and local TAS offices to ensure access to tax justice across America.³ Together with her team, TAS produced an extensive library of authoritative publications, including targeted research and detailed data in annual reports, testimony before Congress, surveys, studies, and deep-dive analysis. In addition, they have produced a comprehensive collection of legislative recommendations, as well as administrative guidance and a road map to navigate an obviously complex tax system. TAS’s extensive materials are readily accessible online at the exceptional and up-to-date TAS website, which includes an NTA blog, a myriad of videos, and other creative and innovative tools to provide unlimited access to tax justice.⁴

Using this flipped lens, Olson humanized the federal tax system. Simply put, under Nina’s leadership, TAS focused on how the tax system can better serve taxpayers. This mission resulted in profound institutional changes and, in time, compelled the IRS to adopt her proposed Taxpayer Bill of Rights (TBOR) in 2014. In 2015, Congress codified TBOR and President Obama

Or the respect that she earned?

It’s time now to sing out,
though public service never ends.
Let’s celebrate eighteen years of advocacy we must commend.

Remember passion . . .
(Oh, you’ve got to you’ve got to remember taxpayer rights)
Remember tax maps . . .
(You know the rights are a gift from Congress)
Remember tireless service
and tax vans
(Share rights, give rights, protect rights, measure Nina’s career in rights)
Seasons of taxpayer rights . . .
Seasons of taxpayer rights . . .

Francine J. Lipman, *Seasons of Love: Seasons of Taxpayer Rights*, PROCEDURALLY TAXING (July 18, 2019), <https://procedurallytaxing.com/?s=Seasons+of+love>.

³ LEE GREENWOOD, GOD BLESS THE USA (MCA Records 1984).

⁴ See TAXPAYER ADVOC. SERV., <https://taxpayeradvocate.irs.gov> (last visited Oct. 13, 2020) (containing TAS publications and reports).

signed it into law.⁵ TBOR groups existing rights in the tax system into ten fundamental rights and describes them in precise, succinct, accessible statutory provisions.

While these rights have been in place in the tax system for decades, Olson packaged, broadcast, and emboldened these rights as action items with a specific mandate that IRS leadership educate, inform, instruct, and implement.⁶ Nowhere is this action more profound than in her work on refundable tax credits for working poor families.

Taxpayer Rights to Antipoverty Relief

One person can change the world.

—Rosa Parks⁷

This essay will use Olson’s exceptional advocacy reshaping the Earned Income Tax Credit (EITC) to describe how empowering taxpayer rights has helped to lift millions of children and their families out of poverty. These efforts are especially critical because the EITC lifts more children out of poverty each year than any other government program. As a result, Ms. Olson’s eighteen years of advocacy have helped to enrich countless lives⁸—a generation of children and, in many cases, their parents,

⁵ Protecting Americans from Tax Hikes Act of 2015, § 401, Pub. L. No. 114-113, 129 Stat. 3040, 3117 (codified at I.R.C. § 7803(a)(3)) (setting forth the obligation of the IRS commissioner to ensure that employees of the Internal Revenue Service are familiar with and act in accord with taxpayer rights as afforded by other provisions of this title).

⁶ Peter L. Faber, *Using Taxpayer Bill of Rights Laws*, 80 STATE TAX NOTES 947 (2017) (describing that forty-three states have TBORs that should be tapped when representing taxpayers in state tax matters).

⁷ “I want to be remembered as a person who stood up to injustice, who wanted a better world for young people.” Rosa Louise McCauley Parks was a tireless civil rights activist from Tuskegee, Alabama, who changed the course of history through her peaceful protests for civil rights. “People always say that I didn’t give up my seat because I was tired, but that isn’t true. I was not tired physically, or no more tired than I usually was at the end of a working day. I was not old, although some people have an image of me as being old then. I was forty-two. No, the only tired I was, was tired of giving in.” Parks’s leadership and activism led to change throughout America including the integration of public transportation in Montgomery as well as a ripple effect of progress for African American civil rights. In 1999, Rosa Parks was awarded the Congressional Medal of Honor. To learn more about Ms. Rosa Parks, see ROSA PARKS, QUIET STRENGTH: THE FAITH, THE HOPE, AND THE HEART OF A WOMAN WHO CHANGED A NATION (2000).

⁸ 3 NAT’L TAXPAYER ADVOCATE, SPECIAL REPORT TO CONGRESS: EARNED INCOME TAX CREDIT 50 fig.A.2. (2019) (setting forth the number of EITC returns, dollars distributed, and average EITC benefit for every year from 1996 to 2017).

grandparents, aunts, uncles, and a second generation of the children's children, have been spared from the abyss of poverty. Nina Olson has changed each of their worlds for the better and, in turn, all of ours.

Ensuring Lifesaving Benefits of the EITC

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

—Nina Olson⁹

Two generations of American families were born, attended high school, some college, wed, had families, divorced, fell ill, and buried loved ones since the EITC was enacted. Each year since its enactment, the EITC has increased the incomes of struggling families. In 2018, the EITC, together with the refundable portion of the Child Tax Credit, “lift[ed] 10.6 million people above the poverty line and ma[de] 17.5 million others less poor.”¹⁰ Almost 12 million children are included in these figures, 5.5 million of whom escaped poverty and 6.4 million of whom were made less poor.¹¹ While these numbers are significant, researchers have found that the number of people lifted out of poverty from the EITC may be twice as large given the significant effect the EITC has on increased employment.¹² Increased income infused into vulnerable households saves lives, especially those of young

⁹ *Id.* at vii.

¹⁰ Sam Washington, *Child Tax Credit and Earned Income Tax Credit Lifted 10.6 Million People Out of Poverty in 2018*, CTR. ON BUDGET & POL'Y PRIORITIES: BLOG (Oct. 31, 2019, 1:30 PM), <https://www.cbpp.org/blog/child-tax-credit-and-earned-income-tax-credit-lifted-106-million-people-out-of-poverty-in-2018> (analyzing Census data); *see also* LIANA FOX, CENSUS BUREAU, P60-268 (RV), SUPPLEMENTAL POVERTY MEASURE: 2018, at 11 (2019) (setting forth the demographics of individuals who are lifted out of poverty during 2018 as a result of various antipoverty relief).

¹¹ Washington, *supra* note 10.

¹² “If this employment effect were included in census estimates of poverty reduction (rather than just the dollars transferred through the credit), the number of people lifted out of poverty would be much greater.” *Tax Policy Center Briefing Book: Key Elements of the U.S. Tax System*, TAX POL'Y CTR., <https://www.taxpolicycenter.org/briefing-book/how-does-earned-income-tax-credit-affect-poor-families> (last visited Oct. 15, 2020) [hereinafter *Briefing Book*] (citing Hilary Hoynes & Ankur J. Patel, *Effective Policy for Reducing Inequality?* (Nat'l Bureau of Econ. Research, Working Paper No. 21340, 2015)).

children, from the ravaging effect of poverty. Each individual life saved from the physical, mental, psychological, educational, and lifelong toxic consequences of living in or near poverty matters. When multiplied by eighteen years of service, and considering the interconnectedness of our lives, NTA Nina Olson and TAS have made most American lives better. This service to humanity can only be described as Herculean.

Poverty in America

Overcoming poverty is not a gesture of charity. It is the protection of a fundamental human right, the right to dignity and a decent life.

—Nelson Mandela¹³

Mitigation of poverty is a fundamental prerequisite for social justice. Under conditions of poverty, engagement in and access to basic education, employment, and health and safety services are demonstrably curtailed. From the perspective of social justice, prevention of childhood poverty is paramount because of the profound way it undermines equality of life in the present and future. A society that deprives children of the opportunity to participate in fundamental activities will self-destruct. “More than 12 million American children live in poverty, including 5 million kids who live in extreme poverty.”¹⁴ Because of generations of oppression and racism, poverty statistics skyrocket for children of color. African American children suffer a poverty rate of 33%, and 25% of Latinx children live in poverty.¹⁵ “Our youngest children, those who are under five years old, whose brains and bodies are developing, suffer the highest rate of poverty of any age group in America. While this snapshot of data is devastating, the problem is even deeper and broader across lifetimes.”¹⁶ “Nearly 40 percent of all children in America spend at least a year in poverty, and more than 10 percent spend at least one-half of their childhoods in poverty.”¹⁷ A 2011 survey found that 45% of all individuals residing in America (including 55% of all children)

¹³ Nelson Mandela, Remarks at the Amnesty International Ambassador of Conscience Award (Nov. 1, 2006) (transcript available at <https://atom.nelsonmandela.org/index.php/za-com-mr-s-748>).

¹⁴ Francine J. Lipman & James. E. Williamson, *Taxing Poor Kids*, 44 HUM. RTS. 2, 2 (2019).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

live in households that lack economic security.¹⁸ In one of the richest countries on earth, 30 million children are living in or on the precipice of poverty.¹⁹

In addition to being immoral, poverty is expensive. Every year that poverty tears away at bodies, minds, hearts, souls, families, and communities, it costs America \$700 billion.²⁰ Experts have affirmed through detailed studies that children who experience housing and food insecurity are more likely to suffer chronic health problems and violence.²¹ “The more toxic childhood experiences a person endures, the greater their likelihood of physical and mental disabilities in adulthood, including heart disease, hypertension, diabetes, substance abuse, and depression.”²² “Exposure to financial adversity over a prolonged period can trigger toxic stress that rewires children’s brains, disrupts their social development, and undermines the ability to learn and succeed.”²³ “Research shows this stress increases the likelihood of low educational achievement, unstable employment, adult poverty, and involvement in the criminal justice system.”²⁴ “Ninety percent of children who have never experienced poverty graduate from high school, while only 62 percent of children who spend at least one-half of their lives in poverty complete high school by age 20.”²⁵ This low graduation rate is a direct consequence of the circumstances of poverty including that these children are more likely to evince compromised social and cognitive

¹⁸ Motoko Rich, *Economic Insecurity*, N.Y. TIMES: ECONOMIC (Nov. 22, 2011, 6:30 AM), <https://economix.blogs.nytimes.com/2011/11/22/economic-insecurity> (describing the details of a Wider Opportunities for Women economic survey that found that 45% of households did not have enough income to pay basic expenses and save for foreseeable expected (e.g., higher education) and unexpected (e.g., extraordinary health care) expenses).

¹⁹ HEATHER KOBALL & YANG JIANG, NAT’L CTR. FOR CHILDREN IN POVERTY, BASIC FACTS ABOUT LOW-INCOME CHILDREN 1–3 (2018), http://www.nccp.org/wp-content/uploads/2018/01/text_1194.pdf.

²⁰ Lipman & Williamson, *supra* note 14, at 2.

²¹ *Id.*

²² *Id.* at 3.

²³ *Id.* at 2.

²⁴ *Id.*

²⁵ *Id.*

development and be chronically absent and tardy, resulting in higher rates of suspensions, expulsions, and drop-outs. Early societal disadvantages can be overcome if the cycle of poverty is disrupted.

“Given the devastating consequences of poverty, individuals who experienced poverty at any point during childhood are more than three times as likely to be poor at age 30 than those who were never poor as children.”²⁶ “The longer a child suffers in poverty, the greater her risk of suffering from poverty as an adult. A 2017 study found that 80 percent of children who spend at least one-half their childhoods in poverty were neither in school nor consistently working in their 20s.”²⁷ Long-term poverty and scarcity in children can cause cognitive deficiencies in the brain that undermine their ability as adults to problem solve, manage time, and multiprocess navigational tasks.²⁸ Poverty can wire the brain to render a mindset that perpetuates poverty.

²⁶ *Id.* at 2–3.

²⁷ *Id.* at 3.

²⁸ For more on the implications of scarcity, see SENDHIL MULLAINATHAN & ELDAR SHAFIR, SCARCITY: WHY HAVING TOO LITTLE MEANS SO MUCH (2017).

Antipoverty Power of the EITC

There is nothing new about poverty. What is new, however, is that we have the resources to get rid of it.

—Reverend Dr. Martin Luther King Jr.²⁹

Fortunately, we can meaningfully mitigate poverty by investing presently available resources in vulnerable families. Researchers analyzing antipoverty programs found a consistent pattern of better academic results for low-income children in programs that provided supplemental income. Investments in vulnerable populations produce permanent gains in health and well-being, social-emotional skills, intellect, education, income and wealth equality, and current and future economic stability. “The cost of inaction is a tragic loss of human and economic potential that we cannot afford.”³⁰ The EITC is an example of a successful antipoverty program that together with the refundable portion of the Child Tax Credit lifts more children (and their working-age families) out of poverty than any other social benefits program every year.³¹

The antipoverty relief of the EITC is broad, deep, and intergenerational. The EITC encourages work and has been found to significantly increase employment, especially among single-parent female households.³² Women who benefited from EITC expansions experienced higher wage growth in subsequent years and, as a result, their households will enjoy higher Social Security benefits at retirement.³³ Thus, the EITC can reduce poverty both during the year of receipt and in the future. Notably, with increased employment, wages, retirement benefits, etc., households pay more in state,

²⁹ Martin Luther King Jr., Acceptance Speech at Nobel Peace Prize Award Ceremony (Dec. 10, 1964) (transcript available at <https://www.nobelprize.org/prizes/peace/1964/king/26142-martin-luther-king-jr-acceptance-speech-1964/>).

³⁰ JAMES J. HECKMAN, THE HECKMAN EQUATION: THERE’S MORE TO GAIN BY TAKING A COMPREHENSIVE APPROACH TO EARLY CHILDHOOD DEVELOPMENT 2 (2016), https://heckmanequation.org/www/assets/2017/01/F_Heckman_CBAOnePager_120516.pdf.

³¹ *Briefing Book*, *supra* note 12.

³² *Id.*

³³ CHUCK MARR ET AL., CTR. ON BUDGET & POL’Y PRIORITIES, EITC AND CHILD TAX CREDIT PROMOTE WORK, REDUCE POVERTY, AND SUPPORT CHILDREN’S DEVELOPMENT, RESEARCH FINDS 1 (2015), <https://www.cbpp.org/sites/default/files/atoms/files/6-26-12tax.pdf>.

local, and federal taxes and rely less on social benefits over time. This dynamic has been studied by scholars who have determined that the EITC effectively self-funds a substantial percentage of its out-of-pocket costs.³⁴

The EITC has also been found to improve the health and education of children, and even to some extent the health and well-being of their mothers. Infants born to EITC recipients had higher birth weights and fewer suffered premature births.³⁵ Similarly, mothers who received EITC benefits had improvements in their health indicators, including decreased alcohol and tobacco use.³⁶ As a result, more of these families avoid the early onset of disabilities and other illnesses associated with poverty, which further enhances their earning ability as adults. Moreover, research suggests that income from the EITC leads to improved school attendance, test scores, and overall educational outcomes for children in low-income households.³⁷ Children whose families receive the EITC are likelier to graduate from high school, attend college, and earn more as adults.³⁸ Thus, EITC benefits can increase household income in the current year and for future generations.

The EITC is a “safety net” rather than a “crutch” as recipients claim the credit temporarily when a job disruption or another significant event, like the birth of children, reduces their ability to earn income. Most EITC recipients, over 60%, only receive it for one or two years.³⁹ Nevertheless, about 50% of all families with children will receive the EITC at some point in their lifecycle.⁴⁰ Thus, the reach of the EITC across America is broad and deep. The power of the EITC is not only experienced in families but also in their

³⁴ Jacob E. Bastian & Maggie R. Jones, Do EITC Expansions Pay for Themselves? Effects on Tax Revenue and Public Assistance Spending 31 (July 1, 2020) (unpublished manuscript), <https://drive.google.com/file/d/1GbBeeQzfGH9fF9Y1u5rS55Sn3eStBWE7/view> (noting that while the EITC is one of the most successful and expansive antipoverty programs, it is the least expensive public program).

³⁵ MARR ET AL., *supra* note 33, at 1.

³⁶ *Id.* at 2, 8.

³⁷ *Id.* at 8–9.

³⁸ Jacob Bastian, *The Earned Income Tax Credit: Helping Families at a Surprisingly Low Cost*, COUNCIL ON ECON. POLICIES: BLOG (Nov. 29, 2018), <https://www.cepweb.org/the-earned-income-tax-credit-helping-families-at-a-surprisingly-low-cost/> (finding that the EITC increases economic mobility and diminishes the intergenerational transmission of poverty for millions of Americans).

³⁹ MARR ET AL., *supra* note 33, at 16.

⁴⁰ *Id.*

state and local communities. These jurisdictions are increasingly recognizing the enormous economic investment power of the EITC. The EITC has a targeted multiplier effect especially in financially insecure communities where these refunds are spent as soon as they are received.⁴¹ More dollars are invested in communities, especially urban areas, annually through the EITC than through many traditional federal spending programs. The EITC saves lives, families, neighborhoods, and communities. Given this exponential impact as well as increases in employment, the EITC is increasingly self-financed. With one analysis determining a net cost of only 17%, the EITC is one of the least expensive antipoverty programs in America despite its significant reach and impact.⁴²

While the benefits of the EITC are far-reaching and profound, taxpayers must prepare, file, and successfully claim the credit to receive even one penny of EITC benefits. Therefore, successfully navigating the tax system is a dispositive link to EITC antipoverty relief. Taxpayers who qualify for the EITC share a unique set of attributes compared to other taxpayers. Low-income taxpayers are more likely to have limited English proficiency, minimal computer access, low literacy rates and education levels, higher rates of disabilities, and are unlikely to have bank accounts or records.⁴³ These families are more transitory and financially insecure than the general U.S. population. Almost 80% of taxpayers who claim the EITC (or Child Tax Credit) have reported a financial hardship.⁴⁴

⁴¹ *See id.* at 15–16.

⁴² Bastian & Jones, *supra* note 34, at 1, 31.

⁴³ *See* 1 NAT'L TAXPAYER ADVOCATE, 2009 ANNUAL REPORT TO CONGRESS, at 110–33 (2009); *see also* 1 NAT'L TAXPAYER ADVOCATE, 2011 ANNUAL REPORT TO CONGRESS, at 273–83 (2011); CECILE MURRAY & ELIZABETH KNEEBONE, BROOKINGS, THE EARNED INCOME TAX CREDIT AND THE WHITE WORKING CLASS (2017) (noting that 86% of EITC recipients do not have a college degree and more than 50% have no more than a high school degree).

⁴⁴ ELAINE MAAG ET AL., TAX POL'Y CTR., DELAYING TAX REFUND FOR EARNED INCOME TAX CREDIT AND ADDITIONAL CHILD TAX CREDIT CLAIMANTS 4 (2016), https://www.taxpolicycenter.org/sites/default/files/publication/137051/2001018-delaying-tax-refunds-for-earned-income-tax-credit-and-additional-child-tax-credit-claimants_12.pdf (citing a recent study by the Tax Policy Center finding that almost 80% of households claiming the EITC or child tax credit face economic insecurities).

Reshaping the EITC to Better Serve Taxpayers

Never doubt that a small group of thoughtful, committed citizens can change the world. Indeed, it is the only thing that ever has.

—Margaret Mead⁴⁵

Despite these consistent demographics of EITC-eligible taxpayers, the credit is notoriously complicated. TAS, IRS, the Center on Budget and Policy Priorities, the Tax Policy Center, the Urban Institute, and countless academics, including this author,⁴⁶ have documented how the EITC’s complexity burdens taxpayers. Since her first *Annual Report to Congress* in 2001, Nina Olson has recommended significant simplifications for both the tax system generally and the EITC specifically, including many that have been enacted by Congress.⁴⁷

Given the complicated and opaque design of the EITC’s phase-ins and phaseouts and intricate qualifying child requirements, the IRS commissioner carries the heavy burden of ensuring that low-income taxpayers are informed or “know [what] they need to do to comply with the tax laws.”⁴⁸ In the IRS’s attempts to provide “clear explanations of the laws and IRS procedures in all tax forms, instructions, [and] publications” regarding the EITC, they have produced hundreds of pages of written explanations including flowcharts, road maps, interactive questions and answers, videos, and a myriad of resources and outreach tools intended to educate and inform taxpayers.

⁴⁵ Margaret Mead was an anthropologist and perennial bestselling author, with a range of evocative books including *COMING OF AGE IN SAMOA* (1928), and *A RAP ON RACE* (1971) with James Baldwin. In 1979, President Jimmy Carter bestowed the Presidential Medal of Freedom on her posthumously. *Medal of Freedom Awards by President Carter 1977–1981*, JIMMY CARTER PRESIDENTIAL LIBR. & MUSEUM, https://www.jimmycarterlibrary.gov/about_us/medal_of_freedom_awards (last visited Oct. 15, 2020).

⁴⁶ “Congress has created an extensive anti-poverty program, which is almost impossible for the targeted families to obtain without professional assistance because it is too complicated to comprehend and claim.” Francine J. Lipman, *The Working Poor Are Paying for Government Benefits: Fixing the Hole in the Anti-Poverty Purse*, 2003 WIS. L. REV. 461, 464; see also James E. Williamson & Francine J. Lipman, *The New Earned Income Tax Credit: Too Complex for the Targeted Taxpayers?*, 57 TAX NOTES 789 (1992).

⁴⁷ NAT’L TAXPAYER ADVOCATE, FY 2001 ANNUAL REPORT TO CONGRESS, at 76–127 (2001) (discussing recommendations to simplify the definition of a qualifying child, resulting in the enactment of a “Uniform Definition of a Child” in the Working Families Tax Relief Act of 2004, §§ 201–208, Pub. L. No. 108-311, 118 Stat. 1166, 1169–78).

⁴⁸ I.R.C. § 7803(a)(3)(A).

Olson has noted that “EITC noncompliance can be almost completely explained by the characteristics of the EITC beneficiary population.”⁴⁹ Nevertheless, all taxpayers have the statutory right to be informed.⁵⁰

The Right to Be Informed

Taxpayers have the right to know what they need to do to comply with the tax laws. They are entitled to clear explanations of the laws and IRS procedures in all tax forms, instructions, publications, notices, and correspondence. They have the right to be informed of IRS decisions about their tax accounts and to receive clear explanations of the outcomes.⁵¹

To address this and related concerns, the NTA has recommended that Congress have an affirmative responsibility to taxpayers and the IRS to consider the administrability of tax provisions as a meaningful part of the legislative process. “When a tax provision is difficult for the IRS to administer, it can be more prone to improper payments, and ultimately subject certain taxpayers to additional scrutiny. This additional scrutiny can be particularly burdensome for low income taxpayers.”⁵² Taxpayers have the statutory right to be informed, but Congress must ensure that tax laws are designed to be effective, accessible, and administrable. Vulnerable Americans need an engaged Congress that thinks critically about tax administration to ensure that promulgated social benefits are delivered consistently with congressional goals and policies. Congress must not only pass antipoverty relief but must ensure that it is being effectively and efficiently delivered to working families. This requires regular IRS oversight including a forum for Congress to hear directly from experts, including low-

⁴⁹ Nina E. Olson, *Procedural Justice for All: A Taxpayer Rights Analysis of IRS Earned Income Credit Compliance Strategy*, 22 *ADVANCES IN TAX’N* 1, 11 (2015); NAT’L TAXPAYER ADVOCATE, *supra* note 8, at 47 n.202 (“Treasury and IRS acknowledge a central cause of EITC improper payments is the complexity of the rules and the errors.” (quoting 1 NAT’L TAXPAYER ADVOCATE, 2018 ANNUAL REPORT TO CONGRESS, at 97 (2018))).

⁵⁰ I.R.C. § 7803(a)(3)(A).

⁵¹ See INTERNAL REVENUE SERV., *YOUR RIGHTS AS A TAXPAYER* (2017), <https://www.irs.gov/pub/irs-pdf/p1.pdf>.

⁵² NAT’L TAXPAYER ADVOCATE, *supra* note 8, at 9 (discussing general recommendation number 2). See generally 1 NAT’L TAXPAYER ADVOCATE, 2014 ANNUAL REPORT TO CONGRESS, at 108–11 (2014).

income taxpayer clinics (LITCs), return preparers, and targeted taxpayers who can recount specifically how the system is working or not working.⁵³

Restructuring the EITC into Two Distinct Benefits: Per-Worker Credit and Child Benefit

In a 2019 special report to Congress on the EITC, the NTA together with a team of experts again proposed restructuring the EITC into two separate credits: a refundable individual worker credit and a refundable child benefit that would replace the Child Tax Credit and dependency exemptions.⁵⁴ In addition to the redesign of the EITC, the report suggests reframing the qualification for the child benefit into a more relevant and contemporary “caregiver” analysis rather than the current dated requirement for certain familial relationships, residency periods, and financial support analysis.⁵⁵ These restructuring designs should mitigate inherent “qualifying child” complexity in the current EITC.

The report suggests that if these or similar modifications are not administrable by the IRS, Congress should consider whether another government institution like the Social Security Administration would be a more effective administrator of a universal child benefit. Given the long-term mission and mindset of the IRS as a revenue collector versus a benefits administrator, the time may be ripe for delegation of child-benefit administration to an institution that has as its core-focus service with a facilitator rather than a disallowance mindset.⁵⁶ As Olson notes, the Social

⁵³ NAT’L TAXPAYER ADVOCATE, *supra* note 8, at 9 (discussing general recommendation number 3).

⁵⁴ *See id.* at 13; 1 NAT’L TAXPAYER ADVOCATE, 2016 ANNUAL REPORT TO CONGRESS, at 325–40 (2016).

⁵⁵ TAS has suggested in prior reports to Congress that the credit be claimed by the primary caregiver. *See generally* NAT’L TAXPAYER ADVOCATE, *supra* note 54, at 339.

⁵⁶ While Olson notes in her introduction to the Special EITC Report that “*the EITC is a low-cost, effective, and efficient method of delivering tens of billions of dollars in assistance to families and individuals who are working in low-paying jobs*,” NAT’L TAXPAYER ADVOCATE, *supra* note 8, at vii, she has repeatedly suggested in her reports that, given Congress is increasingly charging the IRS with the administration and delivery of significant social benefits, the IRS’s mission statement, employee training and management, and budget should be modified to provide it with the tools it needs to successfully accomplish this unique and different responsibility from revenue collection. *See generally* NAT’L TAXPAYER ADVOCATE, *supra* note 54, at 277–79 (suggesting changes to the IRS that would enhance its ability to deliver social benefits rather than deny them).

Security Administration already administers benefits for qualifying children of retired and deceased Social Security beneficiaries.

Regulation of Paid Preparers and Tax Software Providers

Given the many challenges inherent in receiving EITC benefits, it is not surprising that almost 70% of EITC taxpayers use paid preparers and 94% of EITC returns are filed electronically with tax software. About 75% of these paid preparers are unregulated. Unregulated paid preparers are not required to be licensed or have any level of education, competency, or any type of external (or even internal) review. A TAS survey documented that a significant percentage of these preparers did not satisfy basic and very limited statutory requirements for commercial return preparation such as signing prepared tax returns or providing taxpayers with copies of their own tax returns.⁵⁷ Similarly, there is no meaningful federal testing or oversight of tax software programs or other ancillary tax product providers.

Unfortunately, there is significant evidence that unregulated tax preparers routinely prepare inaccurate returns. For example, an IRS study determined that these preparers had “the highest frequency and percentage of EITC overclaims.”⁵⁸ The study also found that the erroneous overclaims were significant, averaging between 33% and 40%, and were broadly distributed, covering about 50% of all EITC returns.⁵⁹ This high error rate not only undermines the integrity of the tax system, including its administration, but also significantly harms lower-income working families who suffer as innocent victims of the resulting financial consequences.

Olson and TAS consistently tried to work with the IRS and EITC recipients to ensure these families receive their antipoverty benefits in a timely and efficient manner. In response to the challenges of unscrupulous tax preparers, since 2002 NTA has recommended repeatedly that Congress authorize the IRS to conduct preparer oversight. While these proposals have received broad support from members of Congress, they have not been implemented to date. In her last report to Congress, Olson again

⁵⁷ I.R.C. § 6695(a), (b).

⁵⁸ NAT'L TAXPAYER ADVOCATE, *supra* note 8, at 27 (quoting I.R.S. Pub. No. 5162, Compliance Estimates for the Earned Income Tax Credit Claimed on 2006–2008 Returns, at 24–26 (2014)).

⁵⁹ *Id.*

“recommend[ed] that Congress provide the IRS with the authority to establish minimum competency and other standards for paid preparers and software providers.”⁶⁰ The imposition of standards on paid preparers and software providers should mitigate the significant consequences (i.e., refund abatement, audits, assessments of tax deficiencies, including interest and penalties) working families suffer from incomplete, error-ridden, inaccurate returns, including material misrepresentations committed by unscrupulous paid preparers. Regulation of paid preparers and software providers will better ensure that all taxpayers have the right to pay no more than the correct amount of tax.⁶¹

The Right to Pay No More Than the Correct Amount of Tax

Taxpayers have the right to pay only the amount of tax legally due, including interest and penalties, and to have the IRS apply all tax payments properly.⁶²

The tax system should not create opportunities for the abuse of financially vulnerable families, but rather it should provide relief from being financially vulnerable. Tragically, the current unregulated tax compliance structure favors scammers rather than victims. All taxpayers have the right to a fair and just tax system.⁶³ Regulation of paid preparers and software providers will better ensure that the IRS commissioner is able to deliver tax justice.

The Right to a Fair & Just Tax System

Taxpayers have the right to expect the tax system to consider facts and circumstances that might affect their underlying liabilities, ability to pay, or ability to provide information timely. Taxpayers have the right to receive assistance from the Taxpayer Advocate Service if they are experiencing financial difficulty or if the IRS has not resolved their tax issues properly and timely through its normal channels.⁶⁴

⁶⁰ *Id.* at 30.

⁶¹ I.R.C. § 7803(a)(3)(C).

⁶² INTERNAL REVENUE SERV., *supra* note 51.

⁶³ I.R.C. § 7803(a)(3)(J).

⁶⁴ INTERNAL REVENUE SERV., *supra* note 51.

Enabling EITC Audits

In addition to having to navigate tax-return-preparation and filing challenges, EITC recipients—who are by definition lower-income households—are disproportionately audited. Even though EITC returns in 2018 only represented about 18% of all individual returns, 43% of all returns that were audited included an EITC, and 37% of all returns that were audited were targeted because of the EITC.⁶⁵ These lower-income households that already are challenged are more likely to be audited than any other category of taxpayer other than those at the highest income level.⁶⁶ Notably, 99.9% of EITC audits are through the U.S. mail service as correspondence audits.⁶⁷ EITC taxpayers, who are disproportionately transient and housing insecure, may never receive their audit notice and, therefore, will not be informed about their tax situation until it is likely too late to effectively respond.

When families do receive their EITC notice, TAS has found that more than 25% of them did not understand that the IRS was auditing their return.⁶⁸ Less than one-third of EITC-audited taxpayers thought the IRS audit notification letter was easy to understand, and only about half of the respondents felt that they knew what they needed to do in response to the audit letter.⁶⁹ As a result of these and other issues, 43% of taxpayers in 2018 never responded to their EITC audit notice and only 26% partially responded.⁷⁰ Thus, 69% of audited EITC recipients were denied 100% of their EITC benefits without an affirmative determination that they did not qualify. TAS research studies indicate that about 43% of EITC audited taxpayers who fail or are late to respond to audit correspondence were in fact eligible for 96% of originally claimed EITC benefits. An analysis of 30% of all EITC correspondence audits from 2008–2015 found that 75% had all of

⁶⁵ NAT'L TAXPAYER ADVOCATE, *supra* note 8, at 1.

⁶⁶ Olson, *supra* note 49, at 16; NAT'L TAXPAYER ADVOCATE, *supra* note 8, at 36.

⁶⁷ NAT'L TAXPAYER ADVOCATE, *supra* note 8, at 36.

⁶⁸ 2 NAT'L TAXPAYER ADVOCATE, 2007 ANNUAL REPORT TO CONGRESS, at 103–04 (2007).

⁶⁹ *Id.* at 104.

⁷⁰ NAT'L TAXPAYER ADVOCATE, *supra* note 8, at 6. “For comparison, among the field and office audits of non-EITC returns that were closed in FY 2018, the non-response rate was five percent and the default assessment rate (the taxpayer stopped responding) was ten percent.” *Id.* n.29.

their EITC benefits disallowed due to undelivered mail, nonresponse, or insufficient response.⁷¹ Therefore, a meaningful percentage of EITC audited taxpayers most likely are denied their statutory rights to be informed,⁷² to receive quality service,⁷³ and to pay no more than the correct amount of tax⁷⁴ under TBOR.

The Right to Quality Service

Taxpayers have the right to receive prompt, courteous, and professional assistance in their dealings with the IRS, to be spoken to in a way they can easily understand, to receive clear and easily understandable communications from the IRS, and to speak to a supervisor about inadequate service.⁷⁵

In response to these issues, TAS has made countless specific suggestions, including encouraging clarifying correspondence and providing more specific, detailed and taxpayer-focused (rather than boiler-plate) descriptions and adding more language options (in addition to English and Spanish), including Braille.⁷⁶ The IRS has expanded the languages that are available for various tax forms as well as for the TBOR.⁷⁷ TAS has also suggested that, consistent with the design of the EITC as a social benefit, audit correspondence should include the name and contact information (i.e., mailing address, fax and voice telephone number) of a specific IRS employee who would work with the audited taxpayer to navigate the entire procedural process from start to finish.⁷⁸ This will not only ensure a more effective and timely audit process but should also better ensure taxpayers' rights to

⁷¹ John Guyton et al., *The Effects of EITC Correspondence Audits on Low-Income Earners* (Nat'l Bureau of Econ. Research, Working Paper No. 24465, 2019) (finding that real economic activity decreases after an EITC audit and "qualifying children" are often claimed on other taxpayers' tax returns).

⁷² I.R.C. § 7803(a)(3)(A).

⁷³ *Id.* § 7803(a)(3)(B).

⁷⁴ *Id.* § 7803(a)(3)(C).

⁷⁵ INTERNAL REVENUE SERV., *supra* note 51.

⁷⁶ *Id.*; see *IRS Tax Publications (in Braille and Text Formats)*, INTERNAL REVENUE SERV., <https://www.irs.gov/forms-pubs/irs-tax-publications-in-braille-and-text-formats> (last updated July 14, 2020).

⁷⁷ The IRS offers I.R.S. Pub. No. 1, *Your Rights as a Taxpayer*, in several languages including English, Spanish, Chinese, Korean, Russian, and Vietnamese at <https://www.irs.gov/taxpayer-bill-of-rights>.

⁷⁸ NAT'L TAXPAYER ADVOCATE, *supra* note 68, at 116.

privacy⁷⁹ and confidentiality.⁸⁰ EITC audits necessarily involve personal, family, and relationship matters that can be riddled with intimate details of living situations and cohabitation that taxpayers understandably may not want to share more often or broadly than absolutely necessary. With one person involved from start to finish in the audit process, taxpayers will be better assured that the examination is “no more intrusive than necessary”⁸¹ and that their private details are kept confidential in accordance with taxpayers’ rights under TBOR.

The Right to Privacy

Taxpayers have the right to expect that any IRS inquiry, examination, or enforcement action will comply with the law and be no more intrusive than necessary, and will respect all due process rights, including search and seizure protections, and will provide, where applicable, a collection due process hearing.⁸²

The Right to Confidentiality

Taxpayers have the right to expect that any information they provide to the IRS will not be disclosed unless authorized by the taxpayer or by law. Taxpayers have the right to expect appropriate action will be taken against employees, return preparers, and others who wrongfully use or disclose taxpayer return information.⁸³

Moreover, given that EITC audits are time sensitive and due date driven, if a taxpayer is able to communicate directly with one person this should not only assist taxpayers in understanding the audit process timeline and critical deadlines, but will likely also shorten the otherwise lengthy and unnecessarily drawn out audit process. The historically slow EITC audit process, often in excess of 200 days, is frustrating for most taxpayers, but it can be catastrophic for EITC taxpayers. Taxpayers have the right “to expect that the IRS will consider their *timely* objections and documentation promptly and fairly, and to receive a response.”⁸⁴ A specifically assigned IRS

⁷⁹ I.R.C. § 7803(a)(3)(G).

⁸⁰ *Id.* § 7803(a)(3)(H).

⁸¹ INTERNAL REVENUE SERV., *supra* note 51.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.* (emphasis added).

auditor should help the IRS commissioner ensure that taxpayers have the “right to challenge the IRS’s position and be heard”⁸⁵ under TBOR.

The Right to Challenge the IRS’s Position and Be Heard

Taxpayers have the right to raise objections and provide additional documentation in response to formal IRS actions or proposed actions, to expect that the IRS will consider their timely objections and documentation promptly and fairly, and to receive a response if the IRS does not agree with their position.⁸⁶

Even with the assignment of one person to manage each EITC audit, these taxpayers necessarily have limited resources and, therefore, are less likely to have access to transportation, technology, housing security, and childcare. As a result, basic activities are more time-consuming, expensive, and, in some cases, not possible. As the failure to respond to IRS correspondence statistics evince, these families may not be able to dedicate time to an EITC audit even if they have a legitimate claim. Fortunately, thanks to Olson, TAS, and Congress, there is targeted pro bono taxpayer assistance through LITCs available across America.⁸⁷ Taxpayers have a statutory “right to retain an authorized representative” under TBOR.⁸⁸

The Right to Retain Representation

Taxpayers have the right to retain an authorized representative of their choice to represent them in their dealings with the IRS. Taxpayers have the right to seek assistance from a Low-Income Taxpayer Clinic if they cannot afford representation.⁸⁹

To ensure that all taxpayers have access to representation, even those who cannot afford it, Congress provides up to \$100,000 in matching funding for qualifying LITCs to provide access to tax justice.⁹⁰ About 45% of all taxpayers reported incomes below 250% of the federal poverty level in 2013. Thus, the population of potential LITC-eligible taxpayers is significant. In

⁸⁵ *Id.*; see I.R.C. § 7803(a)(3)(D).

⁸⁶ INTERNAL REVENUE SERV., *supra* note 51.

⁸⁷ I.R.C. § 7526.

⁸⁸ *Id.* § 7803(a)(3)(I).

⁸⁹ INTERNAL REVENUE SERV., *supra* note 51.

⁹⁰ NAT’L TAXPAYER ADVOCATE, LOW INCOME TAXPAYER CLINICS: 2019 PROGRAM REPORT 1 (2019).

her 2007 Report to Congress, NTA Olson made several recommendations to ensure that taxpayers who are subject to EITC audits have current information about LITCs.⁹¹ These recommendations included ensuring that taxpayers subject to EITC audits were given written notification of the contact information of the geographically closest LITC.⁹² In 2019, LITCs secured \$4.7 million in tax refunds, represented or consulted with over 36,000 taxpayers, and brought over 7,000 taxpayers into filing or collection compliance.⁹³ These LITCs also corrected or mitigated over \$125 million in tax liabilities. Since 1999, LITCs together with TAS have served millions of American taxpayers and their families.

Not only are EITC audits burdensome and often overwhelming from a time and resource perspective for EITC recipients, but also about 75% of households with wages and 90% of households with self-employment income are audited before they receive their greatly anticipated EITC benefits.⁹⁴ As discussed above, the real-life consequences of going without antipoverty relief can be grave. Thus, the right to an efficient and timely audit process, or finality under the TBOR, is an acute human right.⁹⁵

The Right to Finality

Taxpayers have the right to know the maximum amount of time they have to challenge the IRS' position as well as the maximum amount of time the IRS has to audit a particular tax year or collect a tax debt. Taxpayers have the right to know when the IRS has finished an audit.⁹⁶

Prerefund taxpayer compliance reviews include EITC correspondence audits discussed above and the IRS's exercise of its summary assessment authority (SAA).⁹⁷ This special authority allows the IRS to assess a deficiency without the more traditional checks and balances, including due

⁹¹ NAT'L TAXPAYER ADVOCATE, *supra* note 68, at 94–118.

⁹² NAT'L TAXPAYER ADVOCATE, *supra* note 8, at 100.

⁹³ NAT'L TAXPAYER ADVOCATE, *supra* note 90, at 5.

⁹⁴ Guyton et al., *supra* note 71, at 8 (finding that a significant percentage of EITC audits are prerefund audits especially for self-employed individuals (90%)).

⁹⁵ I.R.C. § 7803(a)(3)(F).

⁹⁶ INTERNAL REVENUE SERV., *supra* note 51.

⁹⁷ NAT'L TAXPAYER ADVOCATE, *supra* note 8, at 32.

process inherent in the opportunities to object to a statutory notice of deficiency.⁹⁸ SAA was initially granted for math errors, but in the mid-1970s Congress extended it to include “clerical errors.”⁹⁹ Congress only approved this shortened procedural process where an error is “apparent” or “obvious.”¹⁰⁰ While the SAA process is less expensive for the IRS, the cost to low-income families can be substantial.¹⁰¹ Taxpayers are given only sixty days to respond.¹⁰² If they do not respond within this period, their only recourse is to pay the tax deficiency and file a refund claim in U.S. District Court or the U.S. Court of Federal Claims.¹⁰³ Most low-income families do not have the resources to meaningfully pursue this option.¹⁰⁴

TAS has demonstrated that the IRS has been using its SAA too broadly.¹⁰⁵ In 2009, TAS engaged in a study of certain summary assessments and determined that the IRS had erred in 55% of the EITC returns in which it had originally assessed additional tax under its “math error authority.”¹⁰⁶ To ensure that all taxpayers have a meaningful right to appeal an IRS decision in an independent forum,¹⁰⁷ Olson has recommended that Congress should limit SAA authority for EITC compliance consistently with its original intent.¹⁰⁸

The Right to Appeal an IRS Decision in an Independent Forum

Taxpayers are entitled to a fair and impartial administrative appeal of most IRS decisions, including many penalties, and have the right to receive a written

⁹⁸ *Id.* at 35–36.

⁹⁹ *Id.* at 32.

¹⁰⁰ H.R. REP. NO. 94-658, at 290 (1975).

¹⁰¹ NAT'L TAXPAYER ADVOCATE, *supra* note 8, at 36–37.

¹⁰² *Id.* at 37.

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 39–41.

¹⁰⁵ 2 NAT'L TAXPAYER ADVOCATE, 2011 ANNUAL REPORT TO CONGRESS, at 116–17 (2011).

¹⁰⁶ *Id.* at 117. For taxpayer Notice Code 743 (dealing with only EITC qualifying children), the IRS ended up abating all or part of the math error in 55% of the returns in which it originally assessed additional tax.

¹⁰⁷ I.R.C. § 7803(a)(3)(E).

¹⁰⁸ NAT'L TAXPAYER ADVOCATE, *supra* note 8, at 42–43.

response regarding the Office of Appeals' decision. Taxpayers generally have the right to take their cases to court.¹⁰⁹

The IRS should only be allowed to limit taxpayers' due process rights when there is an obvious error (e.g., a dependent's age is older than allowed for a claimed benefit) and the correct answer can be readily verified with objective, properly vetted, reliable, and regularly updated databases.

Taxpayer Rights Are Human Rights

Because annual EITC benefits are so critical to the health and well-being of children and their families, and in turn the welfare of our communities, a human-rights focus would encourage greater, not fewer, due process protections to ensure access to these benefits.¹¹⁰ For example, as Olson suggests in her special report to Congress on the EITC, if the EITC were separated into two credits—one for workers and one for child benefits—SAA should permit the IRS to proactively calculate the worker credit for taxpayers who neglected to include it on their tax return.¹¹¹ This use of SAA would be consistent with goals of objectively obvious and correct tax determinations and taxpayers' rights to pay the correct amount of tax, not to mention social justice.

In sharp contrast to a social justice framework, Congress has enacted a punitive provision that the IRS seems to be using to undercut delivery of antipoverty relief for low-income working families.¹¹² Under the EITC, the IRS has the power to deny EITC benefits to taxpayers who have engaged in reckless or intentional disregard of EITC rules for two years.¹¹³ If the behavior is fraudulent, then the ban is ten years.¹¹⁴ Given that significant EITC benefits are dependent upon the presence of children under a certain age in a taxpayer's household, a ten-year ban, or even a two-year ban, of 100% of EITC benefits can be catastrophic, relegating an entire household to

¹⁰⁹ INTERNAL REVENUE SERV., *supra* note 51.

¹¹⁰ NAT'L TAXPAYER ADVOCATE, *supra* note 8, at 11–22.

¹¹¹ *Id.* at 13–22.

¹¹² *Id.* at 46–47.

¹¹³ I.R.C. § 32(k)(1).

¹¹⁴ *Id.*

the hazards of poverty. At the end of the ban, if the taxpayer's children haven't aged out, the family has to affirmatively recertify to regain any EITC benefits.¹¹⁵ Redress against the ban is complicated to navigate for reasons including that the notices provided are neither cogent nor informative, the process itself is opaque, and the process is neither well-defined nor litigated.¹¹⁶ Audit reconsideration may or may not be a viable alternative, and given the general lack of resources for these targeted families, it could be a very heavy burden to carry.

TAS data suggests these are extremely financially challenged families with average adjusted gross income levels of about \$15,500 and disallowed EITC benefits of 24% of their household income, or just over \$3,700.¹¹⁷ Remarkably, TAS has determined after reviewing a sample of two-year-ban cases that the IRS imposed the ban *solely* because of a prior year EITC's disallowance in 90% of cases; in 69%, there was no IRS-required managerial approval; and in only 10% of the cases did taxpayers' responses suggest imposing the ban.¹¹⁸

The IRS's administration of this provision together with the substance of the provision enacted by Congress are an injustice. Typical taxpayer penalties are a percentage of the benefit provided, not a complete ban, especially when the benefits are intended to provide incentives to work and facilitate basic sustenance or food, housing, and potentially healthcare security for an entire family.¹¹⁹ At a minimum, the provision needs to be administered consistently with the statutory language and the IRS's own internal guidance (e.g., bans requiring managerial approval). In her final recommendation in her special EITC report, NTA Olson recommends that the administration of § 32(k) be consistent with checks and balances in social benefits programs respecting due process protections.¹²⁰ The IRS should work in concert with, rather than in conflict against, the targeted families'

¹¹⁵ *Id.* § 32(k)(2).

¹¹⁶ *See* 1 NAT'L TAXPAYER ADVOCATE, 2013 ANNUAL REPORT TO CONGRESS, at 103–15 (2013).

¹¹⁷ *Id.* at 106.

¹¹⁸ *Id.* at 104, 106.

¹¹⁹ NAT'L TAXPAYER ADVOCATE, *supra* note 8, at 47.

¹²⁰ *Id.* at 48.

immediate needs, goals, concerns, abilities, and disabilities.¹²¹ Nina Olson charges Congress and the IRS to protect taxpayers' rights to a fair and just tax system.¹²²

IRS Delivers Social Justice

Nina Olson has repeatedly recommended that given Congress's increasing push to deliver social benefits through the tax system, the IRS must accept its role as a benefits administrator in addition to an enforcement agency.¹²³ The evolution of the IRS's role of serving solely as a revenue collector to delivering social benefits has been no more obvious than during the 2020 global pandemic. Congress's targeted and unprecedented economic federal response to COVID-19 has been predominately delivered to households, including those without any tax return reporting obligations, by the IRS.¹²⁴

In hindsight, Olson's number one general recommendation in her 2019 special report to Congress on the EITC is perhaps her most visionary and prophetic:

The IRS must acknowledge its role as a benefits administrator and change its practices and processes to reflect this role. Congress must also provide additional funding so that the IRS can succeed in this role. Instead of acting purely as an enforcement agency, the IRS should strive to ensure that low income taxpayers are treated with respect and fairness and ensure that taxpayers receive the benefits they are eligible for.¹²⁵

Postscript: COVID-19

As I write this essay, Americans grieve more than 250,000 deaths from COVID-19. And despite enormous uncertainty about the future, no one

¹²¹ *Id.*

¹²² I.R.C. § 7803(a)(3)(J).

¹²³ NAT'L TAXPAYER ADVOCATE, *supra* note 54, at 325–40 (Legislative Recommendation: *Tax Reform: Restructure the Earned Income Tax Credit and Related Family Status Provisions to Improve Compliance and Minimize Taxpayer Burden*).

¹²⁴ U.S. DEP'T OF TREASURY, THE CARES ACT PROVIDES ASSISTANCE TO WORKERS AND THEIR FAMILIES (2020), <https://home.treasury.gov/policy-issues/cares/assistance-for-american-workers-and-families>.

¹²⁵ NAT'L TAXPAYER ADVOCATE, *supra* note 8, at v.

doubts that there will be more lives lost. While the loss of these lives is agonizing beyond any comprehensible measure, an unprecedented number of families are facing soul-breaking unemployment and soaring housing, food, and healthcare insecurity on par with the Great Depression. In response, Congress has once again called on the IRS to step in, step up, and deliver economic relief to all lower- and middle-income Americans, regardless of whether they participate in the federal income tax system or not. Although there have been some missteps, as of May 22, 2020,¹²⁶ among many other actions, the IRS has facilitated the delivery of more than 150 million advance economic impact payments (i.e., rebate recovery refundable tax credits)¹²⁷ since Congress passed the provision into law on March 27, 2020.¹²⁸ Never before has it become more self-evident that taxpayer rights are human rights and that the IRS exists to serve we the people. This is what NTA Nina E. Olson did for America's kids and their families.

¹²⁶ I.R.S. News Release, IR-2020-101 (May 22, 2020), <https://www.irs.gov/newsroom/treasury-irs-release-latest-state-by-state-economic-impact-payment-figures-for-may-22-2020>.

¹²⁷ I.R.C. § 6428 (setting forth the 2020 refundable tax credit that the Department of Treasury and IRS are calling the “economic impact payment”); *Economic Impact Payments*, INTERNAL REVENUE SERV. (Oct. 2, 2020), <https://www.irs.gov/coronavirus/economic-impact-payments>.

¹²⁸ Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-36, 134 Stat. 281 (2020).