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#8**EARNED INCOME TAX CREDIT (EITC): The Future State's Reliance on Online Tools Will Harm EITC Taxpayers****RESPONSIBLE OFFICIAL**

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**TAXPAYER RIGHTS IMPACTED<sup>1</sup>**

- *The Right to Be Informed*
- *The Right to Quality Service*
- *The Right to Pay No More Than the Correct Amount of Tax*
- *The Right to Challenge the IRS's Position and Be Heard*
- *The Right to Retain Representation*
- *The Right to a Fair and Just Tax System*

**DEFINITION OF PROBLEM**

The Earned Income Tax Credit (EITC) was enacted as a work incentive in the Tax Reduction Act of 1975.<sup>2</sup> It has become one of the government's largest means-tested anti-poverty programs.<sup>3</sup> In tax year (TY) 2014, 27.5 million taxpayers received about \$66.7 billion in EITC benefits.<sup>4</sup> Unlike traditional anti-poverty and welfare programs, the EITC was designed to have an easy "application" process by allowing an individual to claim the benefit on his or her tax return. This approach dramatically lowered administrative costs, since it did not require an infrastructure of case workers and local agencies to make eligibility determinations. However, the easy application process of the EITC is also associated with a high improper payment rate, which must be considered in any efforts to improve the EITC.<sup>5</sup>

The IRS recently announced its intention to pursue a "Future State" plan.<sup>6</sup> Major goals of the plan are to improve tax processing systems, increase electronic filing and payment options, and expand services available on irs.gov.<sup>7</sup> The IRS's Future State plans, which emphasize a reliance on technology and

1 See Taxpayer Bill of Rights (TBOR), [www.TaxpayerAdvocate.irs.gov/taxpayer-rights](http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights). The rights contained in the TBOR are now listed in the Internal Revenue Code (IRC). See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV, § 401(a) (2015) (codified at IRC § 7803(a)(3)).

2 Pub. L. No. 94-12, § 204, 89 Stat. 26 (1975).

3 Congressional Budget Office, *Federal Means-Tested Programs and Tax Credits – Infographic* (Feb. 11, 2013), <https://www.cbo.gov/publication/43935>.

4 IRS, *About EITC*, <https://www.eitc.irs.gov/EITC-Central/abouteitc> (last visited Dec. 31, 2016).

5 An improper payment is defined as "any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements" and "any payment to an ineligible recipient." Improper Payments Elimination and Recovery Act of 2010, Pub. L. No. 111-204, § 2(e) (2010) amending Improper Payments Information Act of 2002, Pub. L. No. 107-300 (2002) by striking § 2(f) and adding (f)(2). The IRS estimates that the 2015 Earned Income Tax Credit (EITC) improper payment rate is about 24 percent (which accounts for an estimated \$15.6 billion in improper payments). *Projected Improper Payments for Earned Income Tax Credit (EITC)*, <https://paymentaccuracy.gov/tabular-data/projected-by-program/420> (last visited Dec. 31, 2016).

6 IRS, *Future State Initiative*, <https://www.irs.gov/uac/newsroom/future-state-initiative> (last visited Dec. 31, 2016).

7 *Id.*

taxpayer self-help, as opposed to communication with the taxpayer, will do a disservice for many low income taxpayers by compounding existing obstacles facing this population.

The National Taxpayer Advocate has the following concerns with the Future State's reliance on online tools for EITC taxpayers:

- The Future State is not reflective of low income taxpayers' experiences;
- Recent legislative changes make unintentional EITC errors very harmful to taxpayers; and
- The IRS has proceeded with Future State plans without researching or addressing how it will affect low income taxpayers.

## ANALYSIS OF THE PROBLEM

### Background

The EITC is a complex area of law and most low income taxpayers require specialized assistance in order to claim the credit successfully.<sup>8</sup> However, the IRS primarily relies on the correspondence audit process in order to address questionable claims *after* a return has been filed. EITC audits make up approximately 36 percent of all IRS audits despite the fact that EITC returns account for only about 19 percent of all individual income tax returns filed.<sup>9</sup> Thus, the EITC involves a large segment of the individual taxpayer population and comprises a significant portion of the IRS workload.

### *The Future State Is Not Reflective of Low Income Taxpayers' Experiences*

To illustrate its plans for the Future State, the IRS has published “vignettes” of different taxpayers' experiences interacting with the IRS of the future. These vignettes are the most detailed representations to date of the IRS vision of its Future State.” One vignette sets forth an example of what a taxpayer may experience when he or she claims the EITC.<sup>10</sup> The example tells the story of Jane, a taxpayer who has a 19 year-old son and who has recently returned to the workforce. The example illustrates that Jane created an online IRS account and filed her tax return claiming her son. After filing, the IRS sent Jane a digital message saying that she may not qualify for the EITC because it did not have information to show that Jane's son is a full-time student. At this point, Jane talked to her son and determined that, in fact, he was not a full-time student. Jane then logged into her account to resubmit her return, this time without claiming the EITC. The vignette is reproduced in Figures 1.8.1 and 1.8.2.

8 National Taxpayer 2015 Annual Report to Congress 240-47.

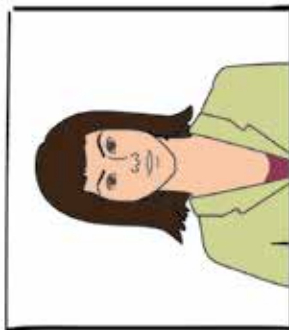
9 IRS, *2015 Data Book*, table 9a (comparing the number of EITC returns filed and the number of EITC audits in footnote 5 of the same table). There were a total of 146,861,217 individual returns filed, of which 28,308,931 claimed the EITC (this number differs from the data referenced in footnote 4, *supra*, because it reports on EITC returns in calendar year 2014 (primarily tax year 2013) and includes all EITC claims, not just recipients). There were 445,594 EITC audits and 1,228,117 total individual audits. In footnote 4, *supra*, it is reported that 27.5 million taxpayers received the EITC in 2014.

10 IRS, *Individual Taxpayer Experience of the Future*, <https://www.irs.gov/pub/newsroom/irs-individual-vignette-version-a.pdf>.

FIGURE 1.8.1

# INDIVIDUAL

Taxpayer Experience of the Future



**JANE**  
TEACHER,  
LOCAL MIDDLE SCHOOL

## BACKGROUND

Jane just rejoined the work force as a middle school math teacher. Having no previous teaching experience, Jane's income is low. Jane's son turned 19 years old this tax year and lives with her part-time.

Jane has historically used a tax preparer to file her taxes, but this year she is switching to a third-party web application that her new neighbor recommended. Since Jane is filing her own taxes for the first time, she is unfamiliar with many tax laws.

## EXPERIENCE EXPECTATIONS

Secure Consistent Transparent  
Easily Accessible Fast



## TAXPAYER JOURNEY

PRE-FILING

FILING

POST-FILING

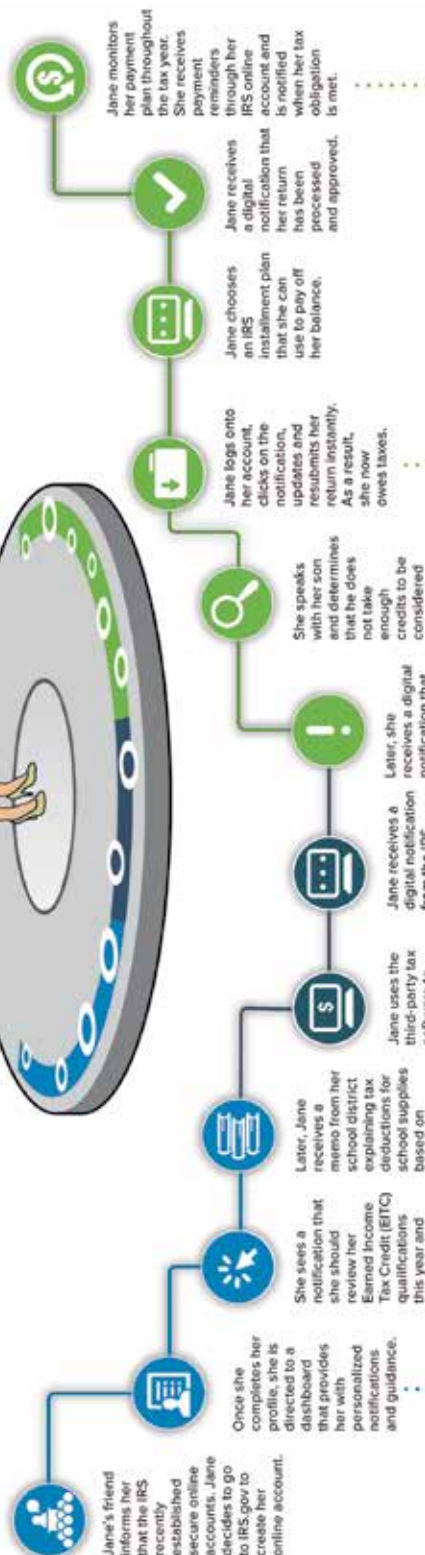
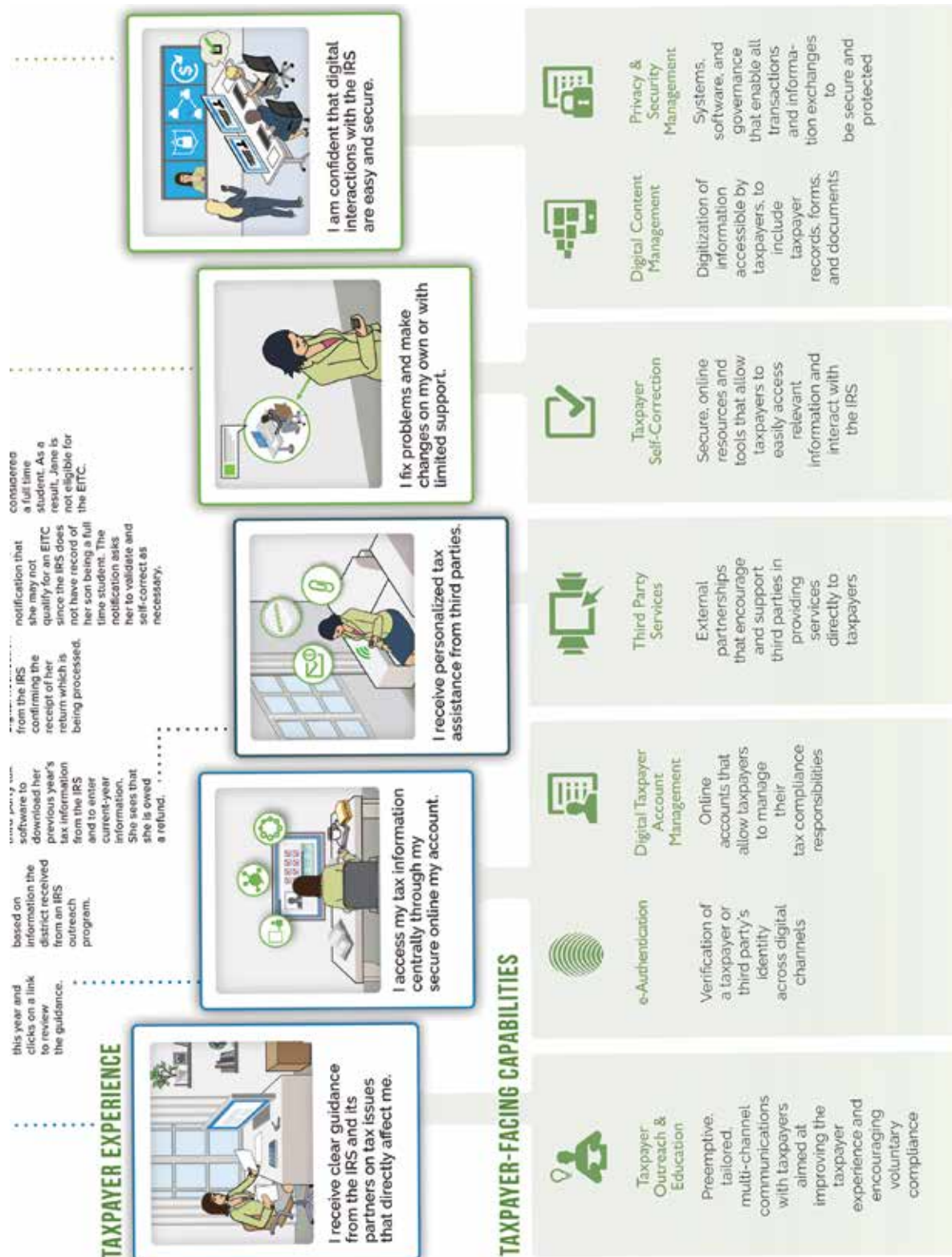


FIGURE 1.8.2



The facts in an Earned Income Tax Credit case are often complex and fluid, since they involve the personal lives of taxpayers. These are not the kind of cases that can be resolved with a one-stop online experience.

The National Taxpayer Advocate does not believe the vignette is illustrative of the normal experience for EITC taxpayers but instead assumes an idealized EITC taxpayer that is far-divorced from reality.<sup>11</sup> As for all taxpayers, the extent to which Jane would be entitled to EITC depends, among other things, on the amount of her adjusted gross income (AGI), whether she filed a joint return, and how many “qualifying children” she has.<sup>12</sup> The vignette describes Jane as a middle school math teacher with no previous teaching experience and with one qualifying child. The vignette notes that “Jane’s income is low.”

Figure 1.8.3 shows the entry-level salaries for middle school math teachers in the 11 cities in which a National Taxpayer Advocate Public Forum was held. The figure also shows the income limitations for claiming EITC in 2014-2016 for taxpayers with one qualifying child who did not file a joint return.<sup>13</sup>

11 National Taxpayer Advocate Fiscal Year 2017 Objectives Report to Congress, vol. 2, 150.

12 IRC § 32. A “qualifying child” is a person who among other things meets age requirements, bears a specified relationship to the taxpayer, and has the same principal residence as the taxpayer for more than half the year. IRC §§ 32(c)(3), 152(c). Married taxpayers can claim EITC only if they file a joint return. IRC § 32(d).

13 For taxpayers with one qualifying child who do not file a joint return, the income limitations for claiming EITC that applied in 2014, 2015, and 2016 were \$38,511, \$39,131, and \$39,296, respectively. Internal Revenue Manual (IRM) 21.6.3.4.2.7.6, *Adjusted Gross Income* (Oct. 1, 2016). Sources for salary data: *North Carolina Public School Salary Schedules*, [www.ncpublicschools.org/fbs/finance/salary/](http://www.ncpublicschools.org/fbs/finance/salary/); *Teacher Elementary School Salaries in San Antonio, Texas*, <http://www1.salary.com/TX/San-Antonio/Teacher-Elementary-School-Salary.html>; National Council on Teacher Quality, *District Policy: Portland Public Schools, OR, Oregon*, <http://www.nctq.org/districtPolicy/contractDatabase/district.do?id=89>; *Red Oak Independent School District 2016-2017 Salary Schedules*, [http://images.pcmac.org/Uploads/RedOakISD/RedOakISD/SubDepartments/DocumentsCategories/Documents/2016-17\\_Teacher\\_Step\\_Pay-n-Salary\\_Structure-071916.pdf](http://images.pcmac.org/Uploads/RedOakISD/RedOakISD/SubDepartments/DocumentsCategories/Documents/2016-17_Teacher_Step_Pay-n-Salary_Structure-071916.pdf); *Public School Teacher Salaries in Harrisburg, Pennsylvania*, <http://www1.salary.com/PA/Harrisburg/Public-School-Teacher-salary.html>; *Parma City Average Teacher Salary & How to Become a Teacher*, <http://www.teachersalaryinfo.com/ohio/teacher-salary-in-parma-city/>; 2012-2016 Teachers’ Agreement Between Glen Ellyn School District 41 Board of Education and Glen Ellyn Education Association, [http://www.d41.org/cms/lib010/IL01904672/Centricity/Domain/429/2012-2016\\_teacher\\_agreement.pdf](http://www.d41.org/cms/lib010/IL01904672/Centricity/Domain/429/2012-2016_teacher_agreement.pdf); National Council on Teacher Quality, *District Policy: Baltimore City Public School System, Maryland*, <http://www.nctq.org/districtPolicy/contractDatabase/district.do?id=34>; New York Office of Salary Services, <http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0ahUKEwjEg4n4-oLRAhVlbSYKHfAsB1lQFgghMAE&url=http%3A%2F%2Fschools.nyc.gov%2Fnr%2Frdonlyres%2Ffeddb658c-be7f-4314-85c0-03f5a00b8a0b%2F0%2Fsalary.pdf&usg=AFQjCNEKJwoPeoWQIIzYX5WbiGudAIMdmw&bvm=bv.142059868,d.eWE>; Los Angeles Unified School District Board of Education, *2015-2016 Salaries for Teachers with Regular Credentials (T) C Basis (2%)*; District of Columbia Public Schools, *Compensation and Benefits for Teachers*, <http://dcps.dc.gov/page/compensation-and-benefits-teachers>.

**FIGURE 1.8.3, Entry-Level Salaries for Middle School Teachers in Selected Cities Compared to Income Limitations for Claiming EITC in 2014-2016 for Taxpayers With One Qualifying Child Who Did Not File a Joint Return<sup>14</sup>**

Forum Location	Year	Entry-Level Salary, Middle School Teacher
Parma, OH	2016-2017	\$33,290
Hendersonville, SC	2015-2016	\$35,000
Portland, OR	2015-2016	\$38,921
Earned income must be below		\$38,511 (2014) \$39,131 (2015) \$39,296 (2016)
Red Oak, IA	2016-2017	\$44,000
Harrisburg, PA	2016-2017	\$45,997
Glen Ellyn, IL	2014-2015	\$47,262
Baltimore, MD	2016-2017	\$48,430
San Antonio, TX	2016-2017	\$50,000
Los Angeles, CA	2016-2017	\$50,368
Washington, DC	2016-2017	\$51,359
Bronx, NY	2016-2017	\$51,650

Thus, in eight of the 11 National Taxpayer Advocate Public Forum venues, a middle school teacher earning an entry level salary like Jane would not be eligible to claim the EITC. In the three venues in which entry level salaries for middle school teachers like Jane did not exceed the income limitations for claiming EITC, the teacher would be eligible for EITC, but the most she could receive would be less than \$1,000 — far below the \$3,400 maximum amount of credit available in 2016.<sup>15</sup> For 2014, the most recent year for which data is available, the average amount of EITC paid out was more than \$2,400.<sup>16</sup> Thus, neither actual middle school math teachers nor actual average EITC claimants would be likely to recognize themselves in this vignette.

The vignette goes on to describe how the IRS notifies Jane, via her online account, that she may not qualify for EITC. The reason for the proposed adjustment is not because Jane's income disqualifies her for claiming the EITC, but because Jane's 19-year old son does not appear to be a full-time student, and this, according to the IRS, prevents him from being her qualifying child. Nothing in the vignette allows for the possibility that additional information would change the analysis of whether Jane is entitled to EITC. For example, Jane *would* be eligible for the EITC if her son is permanently disabled, no matter how old he is, and whether or not he is a full-time student.<sup>17</sup>

14 The cities in Figure 1.8.3 were selected because they each served as a venue for the National Taxpayer Advocate Public Forums in 2016.

15 See IRS Form 1040A Instructions *Earned Income Credit (EIC) Table* (assuming Jane's salary as a middle school teacher was her only source of income). The maximum amount of EITC available to taxpayers with one qualifying child who did not file a joint return was \$3,359 in 2015 and \$3,373 in 2016. IRS, *2016 EITC Income Limits, Maximum Credit Amounts and Tax Law Updates*, <https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit/eitc-income-limits-maximum-credit-amounts> (last visited Dec. 31, 2016).

16 IRS, *About EITC*, <https://www.eitc.irs.gov/EITC-Central/abouteitc> (last visited Dec. 31, 2016).

17 See IRC §§ 32(a)(3)(C); 152(c)(3)(B).

Nevertheless, in the vignette, Jane ultimately (and seamlessly) uses her online account to “resubmit” her return.<sup>18</sup> The online account in its present form does not give Jane this option. Currently, Jane could only view her balance due and make a payment.<sup>19</sup> When the first release of the technology is complete, Jane would still be able do only four things via her online account:

- View her balance due;
- Make a payment;
- See payments that have been made; and
- Obtain a transcript of her account.<sup>20</sup>

There is no option for Jane to indicate she does not believe she owes the tax. There are no buttons Jane could click to learn, for example, how to file a protest, how to seek audit reconsideration or penalty abatement, how to file a refund claim, or how to file for “innocent spouse” relief. The National Taxpayer Advocate has urged the IRS to add these features to the online account pages.<sup>21</sup>

The facts in an EITC case are often complex and fluid, since they involve the personal lives of taxpayers. These are not the kind of cases that can be resolved with a one-stop online experience. In fact, the National Taxpayer Advocate has argued consistently that low income taxpayers need the opposite of what the Future State offers, which are customer service approaches fine-tuned to their specific needs and preferences, with an emphasis on communication and education.<sup>22</sup> This is because low income taxpayers, generally speaking, often share a unique set of attributes that may prevent them from navigating the audit process successfully on their own. These attributes include having lower levels of education, being more likely to speak English as a second language, being less likely to have a bank account, and having a higher rate of relocation.<sup>23</sup> The vignette also does not capture taxpayers’ actual experiences when the IRS audits their EITC return.<sup>24</sup>

The National Taxpayer Advocate’s concerns with the vignette were backed up time and time again by practitioners at the recent Public Forums held by the National Taxpayer Advocate. For instance, a tax controversy attorney commented that perhaps Jane’s problem could have been avoided altogether if there

18 This type of self-correction raises additional concerns. See National Taxpayer Advocate 2015 Annual Report to Congress 56, 62 (Most Serious Problem: *As the IRS Develops an Online Account System, It May Do Less to Address the Service Needs of Taxpayers Who Wish to Speak With an IRS Employee Due to Preference or Lack of Internet Access or Who Have Issues That Are Not Conducive to Resolution Online*).

19 The online account is accessed from the payments page on IRS.gov. See *Finding How Much You Owe*, <https://www.irs.gov/payments/finding-out-how-much-you-owe> (last visited Dec. 31, 2016).

20 IRS, *View Your Tax Account Online* (Nov. 21, 2016), <http://win.web.irs.gov/articles/2016/View-your-tax-account-online.htm>.

21 See Most Serious Problem: *Online Accounts: Research Into Taxpayer and Practitioner Needs and Preferences Is Critical As the IRS Develops an Online Taxpayer Account System*, *supra*.

22 National Taxpayer Advocate 2015 Annual Report to Congress 245; National Taxpayer Advocate 2012 Annual Report to Congress 103-15; National Taxpayer Advocate 2011 Annual Report to Congress 296-312 (Most Serious Problem: *The IRS Should Reevaluate Earned Income Tax Credit Compliance Measures and Take Steps to Improve Both Service and Compliance*); National Taxpayer Advocate 2008 Annual Report to Congress 227-42 (Most Serious Problem: *Suitability of the Examination Process*); National Taxpayer Advocate 2007 Annual Report to Congress 222-41 (Most Serious Problem: *EITC Examinations and the Impact of Taxpayer Representation*); National Taxpayer Advocate 2005 Annual Report to Congress 94-122 (Most Serious Problem: *Earned Income Tax Credit Exam Issues*); National Taxpayer Advocate 2004 Annual Report to Congress, vol. 2, 8-45 (*Earned Income Tax Credit (EITC) Audit Reconsideration Study*).

23 National Taxpayer Advocate 2015 Annual Report to Congress 235-39.

24 For a full discussion of how the Future State does not reflect taxpayers’ EITC audit experiences, see Most Serious Problem: *Worldwide Taxpayer Service: The IRS Has Not Adopted “Best-in-Class” Taxpayer Service Despite Facing Many of the Same Challenges as Other Tax Administrations*, *supra*.

had been more interactive contact either by person-to-person or telephone contact.<sup>25</sup> An attorney from a Low Income Taxpayer Clinic surmised that the IRS's Future State is “more idealized fantasy than accurate portrayal” because it “envisions a simple, self-explanatory experience, where the taxpayer is both informed and up-to-date about tax rules and regulations, and is tech-savvy enough to navigate a revised online interface.”<sup>26</sup>

### *Recent Legislative Changes Make Unintentional EITC Errors Very Harmful to Taxpayers*

The Future State plans are not designed to accommodate a legally and factually complex law like the EITC, particularly when any error, whether understood by the taxpayer or not, can affect subsequent years. For instance, Internal Revenue Code (IRC) § 32(k) authorizes the IRS to ban a taxpayer from claiming the EITC for two years if the IRS determines the taxpayer claimed the credit improperly due to reckless or intentional disregard of rules and regulations.<sup>27</sup> Previously, the National Taxpayer Advocate drew attention to the harmful IRS practice of imposing the ban even when the IRS had no interaction with the taxpayer. In particular, a TAS review of the IRC § 32(k) ban showed that the IRS imposed the ban on taxpayers with whom it had had no interaction 49 percent of the time in 2009, 44 percent of the time in 2010, and 39 percent in 2011.<sup>28</sup>

However, when the audit process does not meet taxpayer needs, any EITC denied to the taxpayer (and subsequent bans on future claims) may reflect the taxpayer's inability to navigate the audit process rather than an improper payment.<sup>29</sup> The National Taxpayer Advocate has repeatedly recommended that the IRS hire employees with social work skillsets in order to meet the needs of taxpayers claiming the EITC.<sup>30</sup> At the very least, the IRS can train existing employees in these very skillsets, which will increase their effectiveness in communicating with and assisting this taxpayer population. Poor communication has significant consequences for taxpayers. For example, if a taxpayer who is not eligible for the EITC in the year of audit does not receive a clear explanation as to why she is ineligible, she will likely repeat the same error on her next return. This repetition of the mistake would trigger the two-year ban under IRC § 32(k), even if she becomes eligible in future years. In the Future State plans, the IRS may see more EITC errors as taxpayers are not able to navigate the online tools for self-help on top of an already confusing audit process; alternatively, eligible taxpayers may defer to IRS online tools and thus not receive the EITC benefits to which they are entitled.

The ramifications for taxpayers who make mistakes claiming the EITC are even higher since Congress recently granted IRS the ability to use math error authority in situations where the taxpayer has claimed the EITC during a time that he or she is barred from doing so under IRC §32(k).<sup>31</sup> Math error authority allows the IRS to correct mathematical errors and inconsistencies on a return which may result in a tax

25 Oral Statement of Elizabeth Atkinson, Attorney, National Taxpayer Advocate Public Forum 27 (May 13, 2016).

26 Oral Statement of Robert Hamilton, Attorney, National Taxpayer Advocate Public Forum 13 (Apr. 8, 2016).

27 IRC § 32(k)(1)(B)(ii) provides for a two-year “disallowance period” of “two taxable years after the most recent taxable year for which there was a final determination that the taxpayer’s claim of credit under this section was due to reckless or intentional disregard of rules and regulations.”

28 National Taxpayer Advocate 2013 Annual Report to Congress 105.

29 National Taxpayer Advocate 2011 Annual Report to Congress 301.

30 Special Focus: *IRS Future State: The National Taxpayer Advocate’s Vision for a Taxpayer-Centric 21st Century Tax Administration*, *supra*; National Taxpayer Advocate 2015 Annual Report to Congress 261; National Taxpayer Advocate 2010 Annual Report to Congress 15-27.

31 Protecting Americans from Tax Hikes (PATH Act) of 2015, Pub. L. No. 114-113, div. Q, title 2, § 208, 129 Stat. 3083.



increase or a tax decrease.<sup>32</sup> It is now possible that a taxpayer who made an error claiming the EITC but is eligible for it in the future, will be denied the credit in subsequent years by math error authority. With the EITC vignette described above, a taxpayer who continues to pursue his or her EITC claim despite the electronic notification from the IRS may be deemed to be exhibiting reckless behavior under IRC § 32(k).

Taxpayers who make mistakes claiming the EITC will also incur costs from penalty assessments. Prior to December 18, 2015, the Tax Court ruling in *Rand v. Commissioner* held that refundable credits (such as the EITC) could not reduce below zero the amount shown as tax by the taxpayer on a return.<sup>33</sup> The amount of tax shown by the taxpayer on a return is an important element in calculating an underpayment of tax, which in turn serves as the basis for the accuracy-related penalty under IRC § 6662.<sup>34</sup>

However, recently enacted law reversed the Tax Court's decision in *Rand v. Commissioner*, and amended IRC § 6664(a) to be consistent with the rule of IRC § 6211(b)(4), which will allow the IRS to calculate negative tax in computing the amount of underpayment for accuracy-related penalty purposes.<sup>35</sup> Thus, for returns filed after December 18, 2015, or for returns filed before that date for which the period of limitations on assessment under IRC § 6501 has not expired, a taxpayer can be subject to an underpayment penalty in IRC § 6662 based on an EITC claim which reduces tax below zero.

### *The IRS Has Proceeded With the Future State Plans Without Researching or Addressing How It Will Affect Low Income Taxpayers*

Given the harms that can befall a taxpayer claiming the EITC, this is a time when taxpayers need to have sufficient, one-on-one assistance with their initial EITC claims. The IRS needs to speak with and engage these taxpayers because EITC cases are complex. This is not a time to reduce assistance to low income taxpayers in the name of efficiency, especially since the IRS does not know what impact the Future State will have on low income taxpayers.

TAS is conducting a study to evaluate the compliance impact of education and outreach on potentially noncompliant EITC taxpayers.<sup>36</sup> TAS Research identified EITC taxpayers who were audited in 2015 and others who were not, but who had similar risk scores to the taxpayers who were audited. TAS then developed three representative samples from this population:

- Audit Group: This group was comprised of taxpayers who were audited in 2015.
- Test Group: This group was comprised of taxpayers who were not audited in 2015, but with similar risk scores to the taxpayers who were audited. The National Taxpayer Advocate sent letters highlighting potential errors to this group at the beginning of the 2016 filing season.

32 Generally, IRC § 6212 requires that prior to assessment of a liability the IRS must send a notice of deficiency to the taxpayer via certified mail. This notice provides the taxpayer with the right to petition the U.S. Tax Court, the only opportunity for judicial review without first paying the tax. IRC § 6213. However, IRC § 6213, in subsections (b) and (g), authorizes the IRS to use its math error authority to summarily assess tax and bypass normal deficiency procedures. Summary assessments made under these provisions can be abated if the taxpayer timely requests abatement. IRC § 6213(b)(2)(A). The IRS will then work the case through normal deficiency procedures. IRC § 6213(b)(2)(A).

33 *Rand v. Comm'r*, 141 T.C. 376 (2013). See also National Taxpayer Advocate 2014 Annual Report to Congress 449.

34 IRC § 6664(a).

35 Pub. L. No. 114-113, Consolidated Appropriations Act, 2016 (Division Q, PATH Act of 2015), § 209, 114th Cong. (Dec. 18, 2015).

36 See Research Study: *Study of Subsequent Filing Behavior of Taxpayers Who Claimed Earned Income Tax Credits Apparently in Error and Were Sent an Educational Letter From the National Taxpayer Advocate*, vol. 2, *infra*; National Taxpayer Advocate FY 2017 Objectives Report to Congress, vol. 2, 185.

- Control Group: This group was also comprised of taxpayers not audited in 2015, but with similar risk scores to the taxpayers who were audited or sent a TAS letter.

In January 2015, the National Taxpayer Advocate sent about 7,100 letters to the taxpayers who were not audited but appeared to have erroneously claimed EITC on their 2014 returns.<sup>37</sup> The letters were specifically designed to inform and educate taxpayers with targeted and specific information about EITC eligibility rules, geared to the error the IRS identified. The letters explained their purely educational purpose, and clearly stated that this contact was not an audit. For those taxpayers who received Title IV benefits (Temporary Assistance for Needy Families, *etc.*), the letter included a sentence reminding them that the eligibility rules for EITC were different from the rules for Title IV benefits, so a taxpayer could receive Title IV benefits for a child and yet not be eligible for the EITC with respect to that same child. TAS then compared the level of compliance shown on taxpayers' 2016 returns among three groups:

- Taxpayers who were not audited but were sent the TAS letter;
- A representative sample of taxpayers whose 2014 returns were audited; and
- A representative sample of taxpayers whose 2015 returns appeared to erroneously claim the EITC but who were not audited and did not receive the TAS letter.<sup>38</sup>

The TAS letter, intended to educate taxpayers about the requirements for claiming EITC, appeared to help taxpayers avoid repeating their mistakes.<sup>39</sup> Taxpayers who were sent a TAS letter were less likely to file a 2015 return that repeated the apparent error of not meeting the relationship test, compared to unaudited taxpayers who were not sent a TAS letter.

TAS is planning to repeat the letter test in the 2017 filing season. TAS will add an additional sample of taxpayers who will be offered, in the letter, the availability of a dedicated "Extra Help" line staffed by trained TAS employees who can answer taxpayer questions about the letter and the EITC eligibility rules. TAS will be tracking the compliance behavior of that cohort as well, and report on that in the 2017 Annual Report to Congress.

While the IRS has not collected any data to show the impact of the Future State on low income taxpayers, there is some data to suggest it will be harmful to many in the low income taxpayer population. As the IRS moves away from traditional in-person services such as live telephone assistance or face-to face, the transition will impact some groups of taxpayers more than others.<sup>40</sup> Research conducted by the Pew Research Center (Pew) confirms that internet use varies across different groups.

- In 2013, a Pew survey revealed that 44 percent of adults with no high school diploma reported not going online whereas only seven percent of adults with some college reported not going online.<sup>41</sup>
- In 2014, Pew found that only 77 percent of adults with household income less than \$30,000 per year went online but 99 percent of adults with household income of \$75,000 or more went online.<sup>42</sup>

37 See Research Study: *Study of Subsequent Filing Behavior of Taxpayers Who Claimed Earned Income Tax Credits Apparently in Error and Were Sent an Educational Letter From the National Taxpayer Advocate*, vol. 2, *infra*.

38 *Id.*

39 *Id.*

40 National Taxpayer Advocate 2014 Annual Report to Congress 11.

41 Pew Research Center (Pew), *Offline Adults* (2013), <http://www.pewinternet.org/data-trend/internet-use/offline-adults/> (last visited Dec. 31, 2016).

42 Pew, *Internet User Demographics* (2014), <http://www.pewinternet.org/data-trend/internet-use/latest-stats/> (last visited Dec. 31, 2016).

- Over 90 percent of Americans under the age of 50 report going online whereas less than half of Americans over the age of 80 use the internet.<sup>43</sup>

Even when a taxpayer can access the internet, it does not mean that access is adequate. In 2015, only 67 percent of all adults reported having broadband access in the home.<sup>44</sup> A lack of broadband in the home was identified as a disadvantage to getting tasks done.<sup>45</sup> According to Pew surveys, 43 percent of non-broadband adopters say that cost is the primary reason why they do not currently have broadband.<sup>46</sup> Instead, “many of those non-broadband adopters are now turning to their smart phones and other mobile devices to bridge those gaps.”<sup>47</sup> Having to rely on a smart phone or similar device for complex tasks can be difficult because of the small screen and the requirement that the user find a public space providing service, such as a coffee shop.<sup>48</sup>

In 2015, the United Kingdom’s tax authority, Her Majesty’s Revenue and Customs (HMRC), announced “the end of the tax return” as it set out to modernize its tax system.<sup>49</sup> By 2020, HMRC plans to have a fully digital system where taxpayers will have their own accounts to register, file, pay, and update their information at any time.<sup>50</sup> The initiative made a commitment to have “good customer service at its heart.”<sup>51</sup> HMRC acknowledges that even with the convenience of digital services, some taxpayers need additional support. As a result, HMRC plans to offer alternative options for assistance, including over the phone, face-to-face visits, and partners in the community.<sup>52</sup> Most significantly, unlike in the United States, 89 percent of households in Great Britain have an internet connection and 93 percent of those households have broadband.<sup>53</sup>

#### TAXPAYER DIGITAL COMMUNICATION

It is important that the IRS understands the needs and preferences of the taxpayers who will be using the digital features of the Future State.<sup>54</sup> Taxpayer Digital Communication (TDC) is a pilot project, slated to begin in the first quarter of FY 2017, which TAS continues to develop in conjunction with IRS Online Services.<sup>55</sup> Under this initiative, taxpayers will have the ability to communicate with their assigned

43 Oral statement of Aaron Smith, Associate Director, Pew Research Centers, National Taxpayer Advocate Public Forum 153 (Feb. 23, 2016).

44 Pew, *Home Broadband 2015* (Dec. 21, 2015), <http://www.pewinternet.org/2015/12/21/home-broadband-2015/> (last visited Dec. 31, 2016).

45 Oral statement of Aaron Smith, Associate Director, Pew Research Centers, National Taxpayer Advocate Public Forum 155 (Feb. 23, 2016). The Federal Communications Commission (FCC) demonstrates the difference between broadband access and the alternative, dial-up access, by offering this explanation: “Every page, image and video on the web comes to your home device as small pieces of data, or packets. How fast these packets move on the network is measured in Megabits per second, abbreviated Mbps. Broadband technology can move those packets to and from your home much more quickly than dial-up access using a modem and telephone line.” FCC, *Broadband Service for the Home: A Consumer’s Guide*, <https://www.fcc.gov/research-reports/guides/broadband-service-home-consumers-guide> (last visited Dec. 31, 2016).

46 Oral statement of Aaron Smith, Associate Director, Pew, National Taxpayer Advocate Public Forum 155 (Feb. 23, 2016).

47 *Id.*

48 *Id.* at 158.

49 Her Majesty’s Revenue and Customs (HMRC), *Making Tax Easier: the End of the Tax Return* 1 (Mar. 2015).

50 HMRC, *Making Tax Digital* 4 (Dec. 2015).

51 HMRC, *Making Tax Easier: the End of the Tax Return* 1 (Mar. 2015).

52 HMRC, *Making Tax Digital* 6 (Dec. 2015).

53 Office for National Statistics, *Internet Access: Households and Individuals: 2016* 25-29 (Aug. 4, 2016). Internet access in Great Britain is tied to age. Only 53 percent of households with one adult aged 65 or older has internet access. Office for National Statistics, *Internet Access: Households and Individuals: 2016* 29 (Aug. 4, 2016).

54 See Most Serious Problem: *Online Accounts: Research into Taxpayer and Practitioner Needs and Preferences Is Critical as the IRS Develops an Online Taxpayer Account System*, *supra*.

55 See National Taxpayer Advocate Fiscal Year 2017 Objectives Report to Congress 198.

TAS case advocate using a secure web-based portal that allows one-way and two-way communication, including live text chat, voice chat, video chat, and screen sharing. TDC also plans to deliver notifications and alerts by text message and feature smart phone interactivity. The pilot is designed to test whether TDC enhances communication and information sharing between TAS employees and taxpayers. TAS plans to pilot the portal to process EITC cases in four TAS offices.

The goal of testing EITC cases is to see if taxpayers can create online accounts and get through the three-factor verification process. Currently, the “pass rate” for taxpayers attempting to create an online IRS account is 28 percent.<sup>56</sup> The pass rate for low income taxpayers will most assuredly be lower, because they do not possess many of the financial attributes the verification process requires. Of those taxpayers who can create an online account, TAS will gather more details about their experience. For instance, TAS will attempt to answer these questions:

- Were taxpayers able to access their accounts in a timely manner;
- Were taxpayers able to use their accounts as intended;
- Did taxpayers communicate well via email and were they more responsive than regular mail;
- Did taxpayers respond and provide documentation more quickly via email than through regular mail;
- Did taxpayers understand what the IRS and TAS sent to them;
- Were taxpayers unwilling to use the online account (instead relying on telephone contact with the IRS); and
- Did taxpayers have a higher relief rate using the online account versus traditional contacts?

The National Taxpayer Advocate anticipates having this data by the end of 2017, which will shed light on the ability of over 27 million EITC taxpayers to participate in the IRS Future State. Given all of the concerns discussed above, the IRS should postpone its planning of any EITC Future State technology until the TDC data is available. Instead, the IRS should invest its resources into person-to-person communication for EITC taxpayers, including an “Extra Help” line.

## CONCLUSION

The National Taxpayer Advocate is concerned that the IRS may make the EITC out of reach for taxpayers with its Future State plans. Since the Future State relies on online services and self-help capabilities, the IRS may be creating a situation where many low income taxpayers who require personalized assistance are left to fend for themselves or pay for assistance from unregulated preparers. This may prevent eligible taxpayers from receiving the credit and will do nothing to improve the improper payment rate. This is happening at a time when unintentional errors claiming the EITC will have drastic consequences for taxpayers, including a future ban that can be imposed with more ease, and penalties that up until now have not been considered. The IRS has not collected sufficient data to determine if the Future State will be compatible with the needs of low income taxpayers, and what data is available clearly indicates it is not compatible. Given that the Future State could be negatively impacting one of the largest anti-poverty programs, the IRS should postpone its implementation for EITC purposes until it understands how this will affect low income taxpayers.

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56 National Taxpayer Advocate Notes from Services and Enforcement Executive Steering Committee Meeting (Nov. 17, 2016).

## RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS:

1. Amend Internal Revenue Manual 4.19.14.5.4, *EITC Qualifying Child*, to allow an IRS employee to use a state agency's determination that a taxpayer has qualified for Temporary Assistance for Needy Families, Section 8 or comparable benefits, as substantiation for EITC with a qualifying child.
2. Hire or train employees with social work skillsets in order to meet the needs of taxpayers claiming the EITC.
3. Postpone its planning of any EITC Future State technology until the TDC data is available. Instead, the IRS should invest its resources into person-to-person communication for EITC taxpayers, including a dedicated "Extra Help" line for EITC taxpayers.