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Whose Child Is This? Improving Child-Claiming Rules in Safety-Net Programs

ABSTRACT. To address the staggering problem of child poverty in the United States, policymakers distribute a host of safety-net and transfer programs designed to support children and families. All of these programs require rules to determine how benefits are distributed. Among the more important of these are “child-claiming” rules. These rules determine which adults can receive benefits for which children, driving how well a program helps recipients and satisfies societal goals.

This Article critically assesses the design of child-claiming rules for safety-net programs, using as case studies the Child Tax Credit and the Earned Income Tax Credit. It considers how best to design child-claiming rules to achieve specific program goals, the foremost of which is supporting children’s well-being. This analysis illustrates that no single rule regime dominates. Rather, policymakers must compromise between important objectives such as channeling benefits to children’s caregivers and providing flexibility to claimants’ households. Informed by a principle-driven framework, the Article considers how best to navigate these difficult tradeoffs and proposes specific child-claiming rules under several different benefit structures. The analytical framework can inform the design of administrable and inclusive child-claiming rules across safety-net programs.

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ARTICLE CONTENTS

INTRODUCTION	1722
I. SAFETY-NET BENEFITS AND CHILD-CLAIMING RULES	1728
A. Child-Benefit Programs in the United States and Abroad	1729
1. The Earned Income Tax Credit and Child Tax Credit	1729
2. Other U.S. Programs	1731
3. Programs Outside the United States	1733
B. Categories of Child-Eligibility Rules	1733
C. Current Child-Claiming Rules	1735
1. Rules for Tax-Administered Benefits	1736
2. Rules in U.S. Non-Tax Programs	1737
3. Rules in Non-U.S. Programs	1740
II. CENTRALITY OF CHILD-CLAIMING RULES TO PROGRAM OUTCOMES	1742
A. Excluded Children	1742
B. Limited Flexibility	1745
C. Compliance Costs for Taxpayers	1745
D. Administrative Costs for the IRS	1748
III. DEFINING PROGRAM GOALS	1752
A. Primary Goal: Promoting Children’s Well-Being	1752
1. Children’s Well-Being as a Primary Goal	1753
2. Instrumental Goals for Promoting Children’s Well-Being	1755
B. Tradeoffs in Program Design	1757
1. Channeling Versus Complexity	1758
2. Channeling Versus Inclusivity	1760
3. Inclusivity Versus Complexity	1761
C. Other Policy Goals	1762
IV. PROPOSED CHILD-CLAIMING RULES	1764
A. Policy 1: Universal Child Allowance	1765



B. Policy 2: Benefit with Income Phase-Out	1771
C. Policy 3: Benefit with Income Phase-In	1776
D. Policy 4: Benefit with Phase-In and Phase-Out	1779
E. Summary of Proposed Rules	1780
V. TRANSLATING INTO REAL-WORLD POLICY	1782
A. Specific Legislative Reforms	1782
B. Further Administrative Considerations	1785
1. Conflict-Resolution Rules	1785
2. Annual Benefits Versus Shorter Claim Periods	1787
3. Unifying Rules Across Programs	1790
CONCLUSION	1792

INTRODUCTION

Child poverty is a staggering problem in the United States. Roughly 11 million children are growing up in families that live below the poverty line, comprising nearly one-third of all Americans living in poverty.¹ Research finds that, compared to nonpoor children, children living in poverty suffer worse physical and mental health, lower educational attainment, higher stress levels, and other negative outcomes that persist into adulthood.² These findings should surprise no one. And yet, for the past several decades social safety-net programs in the United States have often failed to reach the poorest children. By design, they operate via a patchwork, decentralized system that fails to capture all families in need.³ By execution, they are administered in ways that burden the poorest households with complex rules and aggressive enforcement tactics.⁴

For the first time in decades, dramatic reform of child-benefit programs may be imminent. In March 2021, Congress passed the American Rescue Plan Act, which temporarily expanded one of the largest child benefits, the Child Tax Credit (CTC), to reach virtually all U.S. families with children.⁵ Child welfare advocates and sympathetic lawmakers seek to capitalize on current momentum

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1. EMILY A. SHRIDER, MELISSA KOLLAR, FRANCES CHEN & JESSICA SEMEGA, U.S. CENSUS BUREAU, P60-273, INCOME AND POVERTY IN THE UNITED STATES: 2020, at 53 tbl.B-1 (Sept. 2021), <https://www.census.gov/content/dam/Census/library/publications/2021/demo/p60-273.pdf> [<https://perma.cc/Q9JK-U7QS>].
 2. NATIONAL ACADEMIES OF SCIENCES, ENGINEERING, AND MEDICINE, A ROADMAP TO REDUCING CHILD POVERTY 67-96 (Greg Duncan & Suzanne Le Menestrel eds., 2019) [hereinafter REDUCING CHILD POVERTY]; Caroline Ratcliffe & Signe-Mary McKernan, *Child Poverty and Its Lasting Consequence*, URB. INST. 10-11 (Sept. 20, 2012), <http://www.urban.org/research/publication/child-poverty-and-its-lasting-consequence> [<https://perma.cc/NYG8-JVF6>]; Mercedes Ekono, Yang Jiang & Sheila Smith, *Young Children in Deep Poverty*, NAT'L CTR. FOR CHILD. IN POVERTY 5-6 (Jan. 2016), http://www.nccp.org/publications/pdf/text_1133.pdf [<https://perma.cc/KYN8-ADSW>].
 3. See Ezra Rosser, *Introduction to HOLES IN THE SAFETY NET: FEDERALISM AND POVERTY* 5-7 (Ezra Rosser ed., 2019) (detailing the devolution of welfare spending to the states via block grants and administrative flexibility).
 4. See PAMELA HERD & DONALD P. MOYNIHAN, ADMINISTRATIVE BURDEN: POLICYMAKING BY OTHER MEANS 15-42 (2018); Leslie Book, T. Keith Fogg & Nina E. Olson, *Reducing Administrative Burdens to Protect Taxpayer Rights* (Harv. Pub. L. Working Paper, Paper No. 21-44, 2021), <https://ssrn.com/abstract=3902570> [<https://perma.cc/P54R-ZJ69>]; Paul Kiel & Jesse Eisinger, *Who's More Likely to Be Audited: A Person Making \$20,000 – or \$400,000?*, PROPUBLICA (Dec. 12, 2018, 5:00 AM EST), <https://www.propublica.org/article/earned-income-tax-credit-irs-audit-working-poor> [<https://perma.cc/ZC2X-XURE>].
 5. Congress did so by temporarily removing limitations on the refundability of the credit, so that families with zero earned income would be eligible in 2021. American Rescue Plan Act, Pub. L. No. 117-2, § 9621, 135 Stat. 4, 144 (2021) (codified as amended at I.R.C. § 24(i)(1)) (removing the Child Tax Credit (CTC) refundability limits for 2021).

by making these expansions permanent.⁶ Although the proposed expansion of the CTC appeals most to Democrats, there is bipartisan recognition of the need to better support children through the U.S. social safety net, evidenced by Senator Mitt Romney’s alternative child-benefit proposal.⁷ These proposals and others take diverse tactics ranging from modifying existing child tax credits, to adopting a universal basic income program that accounts for children, to partly replacing existing safety-net programs with a universal child allowance.⁸

Despite their differences, all of these programs rely on some set of rules to distribute resources intended to benefit a child to some responsible person other than the child, such as a parent or caregiver. Such “child-claiming” rules are necessary because children cannot directly receive or spend cash payments on their own behalf. Although largely neglected by both scholars and policymakers, these rules are vitally important. They determine who’s in and who’s out—that is, which children can benefit from a program and which cannot. They affect how costly a program is to administer and how burdensome it is for beneficiaries to comply with the rules. And they shape whether the benefits of a program are channeled to those most in need or reinforce existing patterns of inequality.

The task of designing child-claiming rules would be simple in a society with largely uniform child-care arrangements, but modern U.S. society is not homogeneous in this way. Family structures and child-rearing arrangements in the United States are complex and diverse, and becoming more so.⁹ Marriage rates have declined significantly in recent decades, and a large proportion of children

6. U.S. DEP’T TREASURY, GENERAL EXPLANATIONS OF THE ADMINISTRATION’S FISCAL YEAR 2022 REVENUE PROPOSALS 77-80 (May 2021), <https://home.treasury.gov/system/files/131/General-Explanations-FY2022.pdf> [<https://perma.cc/5BVP-46UF>].

7. *The Family Security Act*, OFF. OF SENATOR MITT ROMNEY, https://www.romney.senate.gov/sites/default/files/2021-02/family%20security%20act_one%20pager.pdf [<https://perma.cc/78PU-VQB3>].

8. See, e.g., REDUCING CHILD POVERTY, *supra* note 2, at 133-72 (analyzing alternative policies to reduce child poverty); Matt Bruenig, *Comparing Three Types of Child Benefit Designs*, PEOPLE’S POL’Y PROJECT (Jan. 22, 2021), <https://www.peoplespolicyproject.org/2021/01/22/comparing-three-types-of-child-benefit-designs> [<https://perma.cc/6TV9-XZGR>]; Dylan Matthews, *Child Poverty in the US Is a Disgrace. Experts Are Embracing this Simple Plan to Cut It.*, VOX (Apr. 27, 2017, 8:00 AM EDT), <https://www.vox.com/policy-and-politics/2017/4/27/15388696/child-benefit-universal-cash-tax-credit-allowance> [<https://perma.cc/L5G2-QQHA>] (describing different child-benefit program designs).

9. Elaine Maag, H. Elizabeth Peters & Sara Edelman, *Increasing Family Complexity and Volatility: The Difficulty in Determining Child Tax Benefits*, URB. INST. & BROOKINGS INST.: TAX POL’Y CTR. 1 (Mar. 3, 2016), <https://www.taxpolicycenter.org/sites/default/files/alfresco/publication-pdfs/2000641-increasing-family-complexity-and-volatility-the-difficulty-in-determining-child-tax-benefits.pdf> [<https://perma.cc/9LAR-B8B7>].

live with single parents or cohabitating unmarried couples.¹⁰ Children often split their time between different households, and a growing number of children live with and are supported by nonparent relatives.¹¹ These complex living arrangements often make it difficult to determine which person is best situated to receive resources intended to improve a child's well-being. Rules that assume a traditional two-parent family structure are a poor match for reality and can end up excluding many of the children who would benefit most from assistance.¹²

This Article makes three contributions to the literature on the design of safety-net programs. First, we show how child-claiming rules are pivotal to the functioning of such programs, both theoretically and practically. Drawing on the current requirements for claiming the Earned Income Tax Credit (EITC) – the largest antipoverty cash-transfer program in the United States today¹³ – and the CTC, we explore how the child-claiming rules explicitly and implicitly draw boundaries around which children can benefit and which cannot, and how these restrictions shape the efficacy of the programs.¹⁴ The framework we develop highlights the characteristics of child-claiming rules that give rise to these effects, providing a theoretical lens for considering policy reforms in this area.

Second, having established the centrality of child-claiming rules for program outcomes, we consider how best to design them to achieve specific program goals. We start with a brief theoretical discussion to demonstrate that pursuing even a single, uncontroversial objective, such as promoting children's well-being, entails significant policy tradeoffs.¹⁵ Then, informed by the framework developed at the outset, we consider how best to navigate the difficult yet inevitable policy choices that arise and propose concrete reforms to the existing child-claiming rules for safety-net programs, focusing primarily on those programs

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10. Sally C. Curtin & Paul D. Sutton, *Marriage Rates in the United States, 1900–2018*, NAT'L CTR. FOR HEALTH STAT. 1 (Apr. 2020), https://www.cdc.gov/nchs/data/hestat/marriage_rate_2018/marriage_rate_2018.pdf [<https://perma.cc/489W-ZLYA>]; Anne L. Alstott, *Updating the Welfare State: Marriage, the Income Tax, and Social Security in the Age of Individualism*, 66 TAX L. REV. 695, 696 (2013).
 11. See Maag et al., *supra* note 9, at 1; Natasha V. Pilkauskas & Christina Cross, *Beyond the Nuclear Family: Trends in Children Living in Shared Households*, 58 DEMOGRAPHY 2283, 2283 (2018).
 12. See *infra* Section II.A.
 13. See CHARLES P. RETTIG, BARRY W. JOHNSON & DAVID P. PARIS, INTERNAL REVENUE SERV., DEP'T TREASURY, PUBL'N 1304, INDIVIDUAL INCOME TAX RETURNS 2018, at 195–202 tbl.2.5 (2020), <https://www.irs.gov/pub/irs-pdf/p1304.pdf> [<https://perma.cc/VU4Z-E9B7>].
 14. See *infra* Section II.A.
 15. See *infra* Section III.B.

administered through the tax code.¹⁶ By highlighting how different child-claiming rules provide a better or worse fit for alternative program designs, our analysis illustrates that no single rule regime dominates across the program objectives we identify.

Third, we offer legislative and administrative considerations with the goal of assisting policymakers to translate our proposed rules into law.¹⁷ In particular, the current child-claiming rules for the EITC and CTC operate by reference to the rules governing which children can be claimed by a taxpayer as a “dependent.”¹⁸ The dependent-child rules at least in part seek to define a family unit and account for families’ ability to pay, rather than seeking to distribute cash benefits to support children’s well-being. We argue for delinking the child-claiming rules for the EITC and CTC from the dependent-child rules. To assist with this goal, we offer sample statutory language for a proposed rule regime that would largely stand apart from dependent-child rules. In addition to legislative considerations, we discuss important administrative details, including conflict-resolution rules, annual versus monthly claim periods, and unification of child-claiming rules across safety-net programs.

To demonstrate the centrality of child-claiming rules, we focus on the CTC and EITC, two of the largest cash-based benefit programs for U.S. families.¹⁹ We detail how the current child-claiming rules lead to the exclusion of millions of poor children from these programs — as well as limited flexibility for families, high compliance costs for claimants, and high administrative costs for the government. As we explain below, the current rules primarily rely on what we refer to as “connection tests,”²⁰ which limit who can claim a particular child based on the relationship between the claimant and the child. For instance, a taxpayer must be closely related to the child and reside with her for more than half the

16. See *infra* Sections IV.A, IV.B, IV.C, and IV.D. See *infra* Section IV.E for a table summarizing our proposed rules.

17. See *infra* Part V.

18. Using the language of the statute, a child qualifies as a taxpayer’s dependent if the child is the taxpayer’s “qualifying child” or the taxpayer’s “qualifying relative.” The child-claiming rules for the CTC and Earned Income Tax Credit (EITC) are based on the former. I.R.C. §§ 32(c)(3)(A), 24(c)(1), 152(c) (2018).

19. The EITC and CTC regularly provide around \$140-150 billion in cash benefits to working families. RETTIG ET AL., *supra* note 13, tbls.2.5 & 3.3, at 195-202, 215-24. The other major federal cash support program, Temporary Assistance for Needy Families (TANF), receives only \$16.5 billion per year from the federal government; in 2019, states contributed roughly another \$15 billion to state TANF funds. *Policy Basics: Temporary Assistance for Needy Families*, CTR. ON BUDGET & POL’Y PRIORITIES 2 (2021), <https://www.cbpp.org/sites/default/files/atoms/files/7-22-10tanf2.pdf> [<https://perma.cc/A3ER-BNE4>]; 42 U.S.C. § 603(a)(1)(C) (2018).

20. See *infra* Section I.B.

year in order to claim her for the EITC.²¹ Although imposed on potential claimants rather than children, these connection tests have the effect of excluding certain children from a program's benefits entirely. In the case of the EITC, for example, children who do not live with a close relative for enough of the year cannot benefit from the credit.

The most vulnerable households are hit hardest by the exclusions and complexity that the current child-claiming rules create. Children living in poverty are more likely to live in families with complex care arrangements that do not fit neatly into the current connection tests.²² Additionally, because of the overlap between race and poverty as well as demographic differences in marital patterns and family structures, these rules are more likely to exclude children in Black and Hispanic families.²³ There is also evidence that enforcement activity is higher against such households, perhaps as a result of suspected violations of the child-claiming rules.²⁴ These outmoded rules are thus most likely to exclude and overburden vulnerable and historically marginalized families.

If child-claiming rules are central to program outcomes, then policymakers must design the rules for any particular program with that program's goals in mind. This Article provides a framework for doing so. We start with the goal of promoting children's well-being. As we show, furthering even this single goal is not straightforward. In order to promote children's well-being, child-claiming rules should channel funds to someone who will spend them for the child's benefit, ensure sufficient inclusivity of children, and keep the complexity that families must navigate reasonably low. As our analysis demonstrates, these principles tend to conflict with each other.²⁵

To illustrate one such conflict—between the goals of channeling and inclusivity—imagine a simple universal benefit that is available to all children regardless of their financial situation. Consider a child-claiming rule that permits anyone to claim a child for a particular benefit as long as no one else does so. This “hands-off” design of the child-claiming rules would maximize inclusivity by

21. I.R.C. §§ 32(c)(3), 152(c) (2018).

22. Maag et al., *supra* note 9, at 1.

23. See Jacob Goldin & Katherine Micheltore, *Who Benefits from the Child Tax Credit?*, 75 NAT'L TAX J. 123, 124-25 (2022).

24. See Kim M. Bloomquist, *Regional Bias in IRS Audit Selection*, 2019 TAX NOTES 987, 989; Paul Kiel & Hannah Fresques, *Where in the U.S. Are You Most Likely to Be Audited by the IRS?*, PROPUBLICA (Apr. 1, 2019), <https://projects.propublica.org/graphics/eitc-audit> [<https://perma.cc/TTT6-3QFN>]; Kara Leibel, Emily Y. Lin & Janet McCubbin, *Social Welfare Considerations of EITC Qualifying Child Noncompliance* (Off. of Tax Analysis, Working Paper 120, 2020), <https://home.treasury.gov/system/files/131/WP-120.pdf> [<https://perma.cc/282J-HVQ7>].

25. See *infra* Section III.B.

ensuring that each child may be claimed by someone. It would also maximize potential claimants' flexibility to decide among themselves who claims a child and thereby accommodates the diverse caregiving arrangements that families adopt.²⁶ The rule does nothing, however, to ensure that benefits are channeled to the individual most likely to spend funds in a manner that promotes the child's well-being. A parent is likely a better claimant than a next-door neighbor. A custodial parent is likely a better claimant than a noncustodial parent. Thus, a rule that maximizes inclusivity in this way may undermine the channeling goal and could result in less of the program's benefits reaching the child. Even with a solitary goal, and using the simplest benefit structure, designing child-claiming rules still entails resolving such tradeoffs. Our analysis leads us to conclude that no single child-claiming rule regime dominates on all dimensions of supporting children's well-being.

Benefit programs may target other policy goals in addition to promoting children's well-being. We consider two additional goals that bear directly on program design: limiting program benefits for high earners via an income phase-out (means-testing), and incentivizing work via an income phase-in.²⁷ Effective child-claiming rules must account for these goals or risk undermining these aspects of a benefit's design. As above, tradeoffs are inevitable as additional goals are introduced. For example, while a phase-out reduces total outlays, it also introduces additional complexity and opportunities for gaming, which increase administrative costs.²⁸ These goals may also conflict with our primary goal of promoting children's well-being.

Although no single rule regime dominates for each of the goals considered here, good design is still within reach. By bearing in mind the policy tradeoffs we present, policymakers can craft child-claiming rules that balance these various objectives to best serve children. To demonstrate, we propose specific child-claiming rules under four different benefit structures: a universal benefit, a benefit with a phase-out, a benefit with a phase-in, and a benefit with both a phase-in and a phase-out. Our proposed rules are more inclusive of children and more flexible for claimants relative to current rules, while still protecting the government's interests.

We start by describing child-claiming rules for a universal child allowance, by which we mean a benefit that does not phase out or phase in by income.²⁹ We

26. From a purely budgetary perspective, the government is indifferent as to who claims a child and receives the benefit, as long as no child is claimed by more than one person.

27. See *infra* notes 199-207 and accompanying text for further discussion of the importance of these goals to benefit programs' design.

28. See *infra* Section III.C.

29. See H. Luke Shaefer, Sophie Collyer, Greg Duncan, Kathryn Edin, Irwin Garfinkel, David Harris, Timothy M. Smeeding, Jane Waldfogel, Christopher Wimer & Hirokazu Yoshikawa,

propose a relatively simple rule regime that requires only shared residency and prioritizes the claims of parents only against nonrelative household members. We also propose that children be allowed to claim themselves in certain rare cases where no one else can claim them. For benefits that phase out or phase in based on income, we propose additional rules that seek to protect the program goals that underlie these design features, while still ensuring that someone is available to claim low-income children in nearly all cases.³⁰ Relative to current rules, our proposal would expand eligibility to nonrelative household members as well as nonhousehold members in some cases (and subject to certain constraints). In doing so, they would increase child-benefit programs' inclusivity and flexibility relative to current rules.

The Article proceeds as follows. Part I describes the current child-claiming rules underlying child-benefit programs in the United States and abroad. This discussion focuses on the EITC and CTC, briefly describes the rules for several of the other important U.S. safety-net programs, and touches on select child-benefit programs abroad. Part II explains how the current rules fall short, leading to the exclusion of children and other serious problems for claimants and the government. Parts III and IV form the heart of the Article. Part III describes core goals underlying child-benefit programs and Part IV proposes specific child-claiming rules informed by those goals. Part V finishes with additional legislative and administrative considerations.

I. SAFETY-NET BENEFITS AND CHILD-CLAIMING RULES

Safety-net benefits nearly always depend on whether and how many children live in a household.³¹ Each program must therefore employ a set of rules to determine which children a recipient may claim for that particular program. These rules differ across programs but can be analyzed using a common framework.

This Part starts by briefly describing child-linked safety-net programs in the United States and abroad, focusing primarily on the EITC and CTC—programs that together provide the majority of cash support to low-income families in the United States.³² Next, to provide a foundation for our analysis later in the Article, we classify the elements of child-claiming rules into four categories based on

A Universal Child Allowance: A Plan to Reduce Poverty and Income Instability Among Children in the United States, 4 RUSSELL SAGE FOUND. J. SOC. SCI. 22, 30 (2018) (describing a universal allowance); see also *infra* Section IV.A (same).

30. See *infra* Sections IV.B, IV.C.

31. See *infra* Section I.C.

32. See *supra* note 19; see also Nada Eissa & Hilary Williamson Hoynes, *Taxes and the Labor Market Participation of Married Couples: The Earned Income Tax Credit*, 88 J. PUB. ECON. 1931, 1931 (2004) (describing the EITC as “the largest cash-transfer program for lower-income families

how they affect a household's eligibility for benefits: (1) child-based eligibility tests, (2) connection tests, (3) prioritization rules, and (4) conflict-resolution rules. The final Section recounts the current child-claiming rules for the EITC and CTC, as well as highlights notable rules in other domestic and foreign programs.

A. Child-Benefit Programs in the United States and Abroad

1. The Earned Income Tax Credit and Child Tax Credit

Within the tax code, the two largest child benefits are the EITC and the CTC.³³ The EITC is a refundable tax credit for working taxpayers. The amount of benefits it provides varies dramatically based on income and family size, with a maximum benefit in 2020 ranging from \$538 (\$1,502 in 2021)³⁴ for taxpayers without qualifying children to \$6,660 for taxpayers with three or more qualifying children.³⁵ Designed to encourage work, the EITC phases in based on a taxpayer's earned income and phases out based on a taxpayer's income and marital

with children"); RETTIG ET AL., *supra* note 13, at 200-06 tbl.2.5, 219-28 tbl.3.3 (providing more comprehensive data on the EITC and CTC).

33. STAFF OF JOINT COMM. ON TAX'N, JCX-23-20, ESTIMATES OF FEDERAL TAX EXPENDITURES FOR FISCAL YEARS 2020-2024, at 32-33 tbl.1 (2020), <https://www.jct.gov/publications/2020/jcx-23-20> [<https://perma.cc/J7UL-LWBS>] (providing estimated expenditures of \$68.3 billion for the EITC and \$117.6 billion for the CTC in 2020, which is larger than any other family-related tax expenditure). Although we will focus on the EITC and CTC, there are a number of other tax provisions linked to children. The head-of-household filing status provides preferential tax brackets and a larger standard deduction to single taxpayers supporting a child in their household. I.R.C. § 1(b), 2(b) (2018). The child and dependent care credit provides a non-refundable credit of up to \$3,000 per child for amounts spent on childcare that enable the taxpayer to work. I.R.C. § 21 (2018). The premium tax credit provides a subsidy to taxpayers to reduce the cost of health-insurance coverage, including coverage purchased for the taxpayers' dependents. 42 U.S.C. § 18081 (2018). A smaller, nonrefundable child tax credit of up to \$500 per child is available for certain dependents not eligible for the CTC. I.R.C. § 24(h) (2018). And, while it was in effect, the individual-mandate provision of the Affordable Care Act imposed a penalty on taxpayers that did not procure health-insurance coverage for their dependent children. See U.S. Ctrs. for Medicare & Medicaid Servs., *The Fee for Not Having Health Insurance*, HEALTHCARE.GOV, <https://www.healthcare.gov/fees/fee-for-not-being-covered> [<https://perma.cc/6LUF-NYHC>].
34. I.R.C. § 32 (2018); American Rescue Plan Act, Pub. L. No. 117-2, § 9621, 135 Stat. 4, 144 (2021); *Earned Income and Earned Income Tax Credit (EITC) Tables*, INTERNAL REVENUE SERV. (Jan. 21, 2022), <https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit/earned-income-and-earned-income-tax-credit-eitc-tables> [<https://perma.cc/H6PT-RCN4>].
35. INTERNAL REVENUE SERV., PUBL'N 596, EARNED INCOME CREDIT (EIC) 32-33 (Jan. 26, 2021), <https://www.irs.gov/pub/irs-pdf/p596.pdf> [<https://perma.cc/UHH5-5AFS>].

status.³⁶ Approximately one in five taxpayers claim the EITC, including 44% of all taxpayers with children.³⁷

The CTC provides a tax credit for taxpayers with children. The maximum CTC amount has increased over time, rising from \$1,000 per child prior to 2018 up to \$2,000 per child from 2018 through 2020.³⁸ For the year 2021, Congress temporarily expanded the CTC to \$3,600 for children up to age 5 and \$3,000 for children ages 6-17.³⁹ Like the EITC, the CTC's benefits phase out by income, but extend up to a much higher income level, with the phase-out not beginning until a taxpayer's income reaches \$200,000, or \$400,000 for joint filers.⁴⁰ Notably, aside from the year 2021, the amount of CTC that taxpayers can receive as a tax refund is limited based on the amount by which the taxpayer's income exceeds \$2,500;⁴¹ thus, children of nonworking taxpayers receive no benefit from the credit and children of low-earning taxpayers receive only a partial benefit from the credit.⁴² In addition, since 2017, the refundable portion of the credit has been capped at \$1,400 per child,⁴³ further limiting the potential benefits of the credit for the children of low-income taxpayers.

In March 2021, Congress enacted the American Rescue Plan Act (ARPA) in response to the continuing COVID-19 pandemic. In addition to increasing the EITC for taxpayers without children, ARPA expanded the CTC to reach non-working families with children for 2021. For that year, ARPA temporarily removed the limits on the CTC's refundability, expanding the benefits of the credit

36. See *Policy Basics: The Earned Income Tax Credit*, CTR. ON BUDGET & POL'Y PRIORITIES 1-2 (2019), <https://www.cbpp.org/sites/default/files/atoms/files/policybasics-eitc.pdf> [<https://perma.cc/4BJU-55XL>]; I.R.C. § 32(b) (2018) (providing phase-in and phase-out percentages).

37. Hilary Hoynes & Jesse Rothstein, *Tax Policy Toward Low-Income Families 1* (Nat'l Bureau of Econ. Rsch., Working Paper No. 22080, 2016), <https://www.nber.org/papers/w22080> [<https://perma.cc/J5CP-5AWC>].

38. I.R.C. § 24(a), (h) (2018).

39. *Id.* § 24(i)(3).

40. *Id.* § 24(b)(2), (h)(3).

41. *Id.* § 24(d)(1)(B)(i), (h)(6).

42. For additional discussion of this restriction and the number of children affected by it, see Goldin & Michelmore, *supra* note 23, at 129-35; Sophie Collyer, David Harris & Christopher Wimer, *Left Behind: The One-Third of Children in Families Who Earn Too Little to Get the Full Child Tax Credit*, CTR. ON POVERTY & SOC. POL'Y 2-3 (May 13, 2019), <https://www.povertycenter.columbia.edu/news-internal/leftoutofctc> [<https://perma.cc/9VLA-UBTZ>].

43. I.R.C. § 24(h)(5) (2018).

to virtually all children, regardless of employment or earnings.⁴⁴ In the fall of 2021, congressional Democrats worked to make these changes permanent.⁴⁵

Apart from the child-claiming rules (discussed below), there are a number of limitations governing which children may qualify taxpayers to receive the EITC and CTC. First, qualifying children must be younger than a specified age. For the CTC, the age cutoff was 17 in years prior to 2021 and 18 in 2021.⁴⁶ For the EITC, the age cutoff is 19, unless the child is a full-time student, in which case the cutoff is 24, or unless the child is permanently disabled, in which case there is no age cutoff.⁴⁷ Second, to qualify for the EITC or CTC, a taxpayer's child must have a Social Security number that authorizes her to work in the United States.⁴⁸ Third, the child must not file a joint tax return with her spouse.⁴⁹ Finally, a child does not qualify for the CTC (but may still qualify for the EITC) if she provides over half of her own support.⁵⁰

2. Other U.S. Programs

Outside of the tax code, a number of important safety-net programs target benefits to low-income families with children. Among the most prominent are the Supplemental Nutrition Assistance Program (SNAP, also known as food stamps), the National School Lunch Program, Temporary Aid to Need Families (TANF), housing programs, and Medicaid.⁵¹ In addition, several other programs, such as Social Security Disability Insurance (SSDI) or survivor benefits

44. American Rescue Plan Act, Pub. L. No. 117-2, § 9621, 135 Stat. 4, 144 (2021); I.R.C. § 24(i) (2018). The increased maximum credit amount was phased out for married taxpayers with incomes above \$150,000. The phase-out began at \$112,500 for most unmarried taxpayers claiming children. Absent the limit on refundability, the CTC thus effectively became a benefit with a phase-out only, a structure we discuss below in Section IV.B.

45. See H. COMM. ON WAYS & MEANS, 117TH CONG., COMMITTEE PRINT CONSISTING OF SUBTITLES F, G, H, AND J: BUDGET RECONCILIATION LEGISLATIVE RECOMMENDATIONS RELATING TO INFRASTRUCTURE FINANCING, GREEN ENERGY, SOCIAL SAFETY NET, AND PRESCRIPTION DRUG PRICING 367 (Comm. Print 2021), https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/SUBFBGHJ_xml.pdf [https://perma.cc/4G8E-3BBA].

46. I.R.C. § 24(c)(1), (i)(2) (2021).

47. *Id.* §§ 32(c)(3), 152(c)(3).

48. *Id.* §§ 32(m), 24(h)(7).

49. *Id.* § 152(c)(1)(E).

50. *Id.* § 152(c)(1)(D) (creating the support test for the CTC); *id.* § 32(c)(3)(A) (disregarding the support test for the EITC).

51. See Marianne Bitler, Hilary Hoynes & Elira Kuka, *Child Poverty, the Great Recession, and the Social Safety Net in the United States*, 36 J. POL'Y ANALYSIS & MGMT. 358, 368 tbl.1 (2017) (listing various safety-net programs that support low-income families); Robert

and Supplemental Security Income (SSI), provide benefits to children as primary beneficiaries but are paid to adult parents or caregivers.⁵²

Many of these programs provide in-kind rather than cash support. For instance, SNAP provides funds for food and Medicaid provides health insurance. The exceptions to the preference for in-kind support are TANF, Social Security, and SSI, all of which provide cash support to qualifying recipients. Most low-income families in the United States do not receive cash support outside of the tax system because eligibility under nontax programs is quite restricted.⁵³ TANF, for instance, imposes onerous eligibility requirements—such as working thirty hours per week—and a five-year cap on benefits.⁵⁴ To receive benefits through Social Security, a child must have a parent who is disabled and qualified to receive SSDI,⁵⁵ or have a deceased parent who was entitled to Social Security disability or retirement benefits.⁵⁶ To receive SSI, the child herself must have a documented disability.⁵⁷ These restrictions have transformed the U.S. tax system into the primary distributor of cash support to low-income households.

Greenstein, *Examining the Safety Net: Testimony of Robert Greenstein, President, Center on Budget and Policy Priorities, Before the Human Resources Subcommittee of the House Committee on Ways and Means*, CTR. ON BUDGET & POL'Y PRIORITIES 10-11 (Nov. 3, 2015), <https://www.cbpp.org/sites/default/files/atoms/files/11-3-15bud-testimony.pdf> [<https://perma.cc/GBS4-JC9L>] (discussing the importance of health-care programs, such as Medicaid, to estimating the cost of government spending on low-income households).

52. 20 C.F.R. § 404.350 (2020); *Benefits for People with Disabilities*, U.S. SOC. SEC. ADMIN., <https://www.ssa.gov/disability> [<https://perma.cc/G7YD-SLMY>]; see *Benefits for Children with Disabilities*, U.S. SOC. SEC. ADMIN. 1 (2021), <https://www.ssa.gov/pubs/EN-05-10026.pdf> [<https://perma.cc/W63X-65KL>].
53. See *Policy Basics: Temporary Assistance for Needy Families*, *supra* note 19, at 6 (stating that only 23 out of every 100 families in poverty received TANF in 2019).
54. *Id.* at 4-5; see also *id.* at 6 (providing that fewer than one quarter of families living in poverty receive TANF benefits).
55. 42 U.S.C. § 423 (2018) (providing eligibility rules for Social Security Disability Insurance (SSDI)); see also *Family Benefits*, U.S. SOC. SEC. ADMIN., <https://www.ssa.gov/benefits/disability/family.html> [<https://perma.cc/KRB3-2TPV>] (same).
56. 20 C.F.R. § 404.350 (2020).
57. 42 U.S.C. § 1382(a) (2018) (providing eligibility rules for Supplemental Security Income (SSI)).

3. Programs Outside the United States

Outside of the United States, over 100 countries provide some form of child-based or family-based benefit.⁵⁸ Twenty-three of these countries provide a universal cash allowance, and another forty countries provide a means-tested child benefit.⁵⁹ Program structures differ dramatically, with coverage varying based on age of children, income level, immigration status, disability status, and so forth.⁶⁰ For instance, universal allowances are more common among European countries, such as Austria's Familienbeihilfe and Germany's Kindergeld.⁶¹ Both programs provide monthly cash benefits between approximately \$150 and \$250 (\$PPP⁶²) to families with children under the age of 18 (or older for children who are students), irrespective of the family's income level or parent's employment status.⁶³ Some programs, like Canada's or the United Kingdom's Child Benefit, provide a quasi-universal benefit that screens out higher-income households.⁶⁴ Other countries reach children via means-tested benefits, contributory social-insurance programs, or other categorical targeting structures.⁶⁵

B. Categories of Child-Eligibility Rules

This Section describes four rule types that jointly determine whether taxpayers can claim a child for purposes of a particular child benefit: (1) child-based eligibility tests, (2) connection tests, (3) prioritization rules, and (4) conflict-resolution rules. Categorizing the rules in this manner helps to consider the

58. *Briefing: Universal Child Benefits: Policy Issues and Options*, OVERSEAS DEV. INST. & UNICEF 4 (June 2020), <https://www.unicef.org/media/70416/file/Universal-child-benefits-Briefing-2020.pdf> [https://perma.cc/NZ6D-JRHJ].

59. *Id.*

60. *See id.* at 4-5.

61. *Id.* at 3 tbl.1.

62. Purchasing Power Parity (PPP) is a method of currency conversion that seeks to account for price differences between countries. *See Purchasing Power Parities (PPP)*, ORG. FOR ECON. COOP. & DEV. (OECD), <https://data.oecd.org/conversion/purchasing-power-parities-ppp.htm> [https://perma.cc/394S-L5H9].

63. *Briefing: Universal Child Benefits: Policy Issues and Options*, *supra* note 58; *see Additional Benefits and Support for Parents*, OESTERREICH.GV.AT (Feb. 17, 2020), <https://help.gv.at/Portal.Node/hlpd/public/content/143/Seite.1430900.html#allowance> [https://perma.cc/Y4PK-EWKB]; *Child Benefits Leaflet*, FAMILIENKASSE 5 (Jan. 2021), https://www.arbeitsagentur.de/datei/kg2-e-merkblattkindergeld_bao14317.pdf [https://perma.cc/Z3AV-4WWE].

64. *Universal Child Benefits: Policy Issues and Options*, OVERSEAS DEV. INST. & UNICEF 209-10 tbl.A1 (June 2020), <https://www.unicef.org/sites/default/files/2020-07/UCB-ODI-UNICEF-Report-2020.pdf> [https://perma.cc/DJ7D-QHXZ].

65. *Id.* at 210-12 tbl.A1.

rules' designs in a way that transcends program-specific details. The categories also provide a shorthand for later discussion of the problems caused by current child-claiming rules in the EITC and CTC as well as tradeoffs inherent in the design of any child-claiming rules.

Child-based eligibility tests limit which children can be claimed based on the characteristics of the child. A child who does not satisfy the eligibility tests for a particular benefit cannot be claimed for purposes of that benefit by anyone. Age limits and immigration-status requirements are examples of child-based eligibility tests. Child-based eligibility tests are outside the focus of this Article because they raise a distinct set of policy considerations not tied to the relationship between the child and the potential claimant.⁶⁶

Connection tests limit who can claim a particular child based on characteristics of the claimant's connection to the child. An individual who fails one of the connection tests for a child may not claim that child under any circumstances. This result does not change even if no one else is eligible to claim the child. For example, a requirement that a taxpayer reside with a child for over half of the year is an example of a connection test because it hinges on an aspect of the connection between the taxpayer and the child (shared residence). Similarly, a requirement that a taxpayer be closely related to a child is a connection test, as is a requirement that taxpayers must be older than the children they claim.

Prioritization tests apply to the group of potential claimants who satisfy the connection tests with respect to a child. They further limit a potential claimant's ability to claim a child based on characteristics of that claimant compared to other potential claimants. Put differently, prioritization tests further restrict the set of eligible claimants for a child based on comparisons between the eligible claimants. In some cases, applying the prioritization tests will result in only one person being allowed to claim a particular child; in other cases, the tests yield multiple possible claimants for the same child. To illustrate, under the current EITC and CTC rules, when a child's parent is one of the potential claimants of a child, nonparents who otherwise qualify may claim the child only if their income

66. Interestingly, many of the child-based eligibility tests for the EITC and CTC appear configured to provide relief for caregivers rather than for the children themselves. For example, most children aged 19-23 remain eligible to be claimed for the EITC only if they attend college. See I.R.C. § 152(3)(A) (2018). This difference in treatment makes sense if the goal of the credit is to support caregivers and if caregivers of children in college tend to support those children at older ages. However, from the perspective of child welfare, taxpayers aged 19-23 who are not in college are probably at least as likely to benefit from their household receiving additional financial support. Similarly, consider the requirement for the CTC that a child not provide more than half of her own support. See *id.* at § 152(c)(1)(D). Meeting this requirement may indicate some degree of financial independence from the child's caregivers, but it need not indicate any lesser degree of financial need for the child or household.

exceeds the parent's income.⁶⁷ Note that for a given child, the potential claimants who satisfy the prioritization tests are a (weak) subset of those who satisfy the connection tests.

Conflict-resolution rules specify who may claim a child when multiple eligible claimants attempt to claim the same child during the same time period. Although the connection and prioritization tests may produce multiple eligible claimants for a particular child, only one person may actually claim that child in any one time period. The conflict-resolution rules determine which claim will prevail among multiple otherwise eligible claims. These rules do not come into play if only one person claims a child. For instance, as described below, the current conflict-resolution rules for the EITC and CTC break ties in favor of parents over nonparents. Where two parents claim a child, the rules resolve claims based on the duration of shared residence with the child and then based on income.⁶⁸

In summary, a child must satisfy the child-based eligibility tests to be claimed by anyone. In order for a particular person to claim a child, that person must satisfy the connection and prioritization tests with respect to that child. Anyone who satisfies these tests with respect to an eligible child may claim her as long as no other eligible claimant also does so. And if two or more people satisfying the connection and prioritization tests for a single child both claim her for the same time period, the conflict-resolution rules determine whose claim will succeed.

The following Section describes the specific child-claiming rules for the EITC and CTC. The remainder of this Article draws on these rule types – in particular, the connection and prioritization tests – to evaluate the current rules and propose an alternative approach.

C. Current Child-Claiming Rules

Most child and family-benefit programs share a common element of disbursing benefits to a responsible adult.⁶⁹ They therefore require some method for determining which adults can receive benefits for a particular child. This Section first describes the child-claiming rules that apply for child-linked tax benefits

67. *Id.* § 152(c)(4)(C).

68. *See id.* § 152(c)(4)(B). This Article only briefly discusses conflict-resolution rules in Part V.

69. Certain in-kind benefits can be provided directly to the child. For instance, low-income children receive free school lunch directly. *See The National School Lunch Program*, U.S. DEP'T OF AGRIC. (Nov. 2017), <https://fns-prod.azureedge.net/sites/default/files/resource-files/NSLPFactSheet.pdf> [<https://perma.cc/24D4-R33A>]. Even so, children must still be linked to a specific household in order to determine whether their income qualifies them for the program. *See id.* (explaining that children qualify for free or reduced-price school lunch based on household income or household participation in other means-tested benefit programs).

such as the EITC and CTC, then briefly describes notable child-claiming rules in other programs in the United States and abroad.

1. *Rules for Tax-Administered Benefits*

For a taxpayer to claim a child for purposes of the EITC or CTC, the child must satisfy four tests with respect to the taxpayer claiming her.⁷⁰ The first three are connection tests and the fourth is a prioritization test. First, a qualifying child must satisfy a relationship test: the child must be the claiming taxpayer's child, grandchild, sibling, niece, or nephew.⁷¹ For purposes of this test, children who are legally fostered by the taxpayer are treated the same as the taxpayer's biological or legally adopted children.⁷² Second, the child must satisfy a residency test: she must live with the taxpayer for at least half of the year.⁷³ For purposes of the CTC, but not the EITC, the custodial parent can waive the residency test to allow a noncustodial parent to claim the child instead.⁷⁴ Third, the claiming taxpayer must be older than the child.⁷⁵ Fourth, the claiming taxpayer must satisfy an income-prioritization test: any taxpayer who is not the child's parent must have income at least as high as anyone else who could potentially claim the child.⁷⁶

In addition to these eligibility rules, a child cannot be claimed for the same benefit by more than one taxpayer for the same year.⁷⁷ When two or more tax-

70. For the most part, child-linked tax provisions incorporate child-claiming rules by reference to the rules that define a dependent child. See I.R.C. §§ 32(c), 24(c) (2018). Specifically, both the EITC and the CTC reference the "qualifying child" rules in I.R.C. § 152(c), which set out the child-claiming rules described in this Section. Most other child-linked tax provisions allow taxpayers to claim children under a broader set of circumstances, including situations in which the child is the taxpayer's "qualifying relative" but is not the taxpayer's "qualifying child." See, e.g., *id.* §§ 2(b) (head of household filing status), *id.* § 21 (child and dependent care credit), *id.* § 25A (American Opportunity Tax Credit), *id.* § 36B (health insurance premium tax credit), *id.* § 151 (dependent exemption). The conditions under which a taxpayer may claim a child as a qualifying relative are specified in I.R.C. § 152(d) (2018).

71. I.R.C. § 152(c)(2) (2018).

72. *Id.* § 152(f)(1).

73. *Id.* § 152(c)(1)(B).

74. *Id.* § 152(e); *id.* § 32(c)(3)(A) (disregarding the rule for divorced parents in I.R.C. § 152(e) (2018)).

75. *Id.* § 152(c)(3).

76. *Id.* § 152(c)(4).

77. See *id.*; *Tie Breaker Rules*, INTERNAL REVENUE SERV. (July 16, 2021), <https://www.eitc.irs.gov/eitc-central/about-eitc/basic-qualifications/tie-breaker-rules/tie-breaker-rules> [<https://perma.cc/9T35-53B3>].

payers attempt to claim the same child in the same year, a series of conflict-resolution rules determine which of the competing claims is valid.⁷⁸ The other claim(s) are disallowed. In particular, parents' claims are prioritized over claims by nonparents.⁷⁹ To resolve conflicting claims by parents, ties are broken based on duration of shared residence during the year and then, if there is a tie, by income.⁸⁰

2. *Rules in U.S. Non-Tax Programs*

Child-claiming rules across other U.S. family-benefit programs vary significantly. Devolution of safety-net program administration from the federal level to state governments magnifies this variability.⁸¹ Even so, considering federal guidelines governing program eligibility as well as patterns across states offers a sense of the child-claiming landscape among other safety-net programs.

Starting with the most uniform program rules, federal regulations dictate eligibility rules for Medicaid by reference to the Internal Revenue Code's "dependent" rules.⁸² A parent will include her child in her household for Medicaid purposes if she plans to claim the child as a dependent on her tax return.⁸³ If the child is claimed as a dependent by someone other than her parent – or by a non-custodial parent – the child is included in the household of the parent(s) with whom she lives, if any.⁸⁴ In other words, Medicaid's child-claiming rules require shared residency and parental relationships, in some ways even more strictly than the EITC and CTC's connection tests. However, these rules have a different effect than those governing cash-benefit programs. Their main effect is determining whether the child's income is low enough to qualify them for Medicaid benefits. If a child lives with their parent but is claimed as a dependent by a non-

78. *E.g.*, I.R.C. § 152(c)(4)(B) (2018).

79. *Id.*

80. *Id.*

81. Rosser, *supra* note 3, at 1 (describing the shared federal-state administration of safety-net programs).

82. *Determining Household Size for Medicaid and the Children's Health Insurance Program*, CTR. ON BUDGET & POL'Y PRIORITIES 1-2 (Sept. 27, 2018), http://www.healthreformbeyondthebasics.org/wp-content/uploads/2016/02/KeyFacts_Determining-Households-for-Medicaid.pdf [https://perma.cc/XS2C-VH2S].

83. *Id.*; I.R.C. § 152(c) (2018) (providing rules for who qualifies as a dependent child).

84. *Determining Household Size for Medicaid and the Children's Health Insurance Program*, *supra* note 82, at 2-3. If the child does not live with a parent, she may belong to a household that includes only herself as well as any siblings with whom she lives. *Id.* at 2.

parent, under the income-prioritization test described above, the parent's income must be lower than that of the person claiming the child as a dependent.⁸⁵ By excluding the child from the nonparent's household, these rules either link the child with the lower-income parent, or place the child alone (or with siblings). Either result will increase the likelihood that the child will qualify for Medicaid benefits.

State governments administer SNAP benefits under strict federal rules based on shared residency. Generally speaking, the rules provide that a child belongs to the household where she lives and eats her meals.⁸⁶ A child under the age of 22 who lives with a parent must be included in that parent's household.⁸⁷ If a child lives with someone other than her parent and is under the age of 18, she must be considered a part of that person's household if she is under that person's "parental control."⁸⁸ These rules are both stricter and more flexible than those for the EITC and CTC. They require children to be included with residential parents but allow nonrelatives to claim a child where necessary. Rules for joint custody are devolved to the states.⁸⁹ At least several states allow parents to choose who claims the child, only adjudicating instances of competing claims.⁹⁰ Other states place the child in the household where the child consumed the majority of her meals.⁹¹

States have broad leeway to administer TANF programs, such that eligibility rules differ considerably from state to state.⁹² Perhaps most notably, compared

85. See I.R.C. § 152(c)(4)(C) (2018) (providing that if a parent may claim a child as a dependent but does not do so, another person may only claim the child if her income is higher than the income of any parent(s)).

86. See 7 C.F.R. § 273.1(a)(3) (2021).

87. *Id.* § 273.1(b)(1)(ii).

88. *Id.* § 273.1(b)(1)(iii). Parental control means that the child is "dependent" upon that person financially or otherwise. *Id.*

89. *Id.* § 273.1(c).

90. *E.g.*, CAL. DEP'T OF SOC. SERVS., FOOD STAMP REGULATIONS ELIGIBILITY STANDARDS § 63-402.151(c), at 153 (2000), <https://www.cdss.ca.gov/ord/entres/getinfo/pdf/fsmano4a.pdf> [<https://perma.cc/GQ46-W7LF>]; NEV. DIV. OF WELFARE & SUPPORTIVE SERVS., HOUSEHOLD DETERMINATION § A.330.1, at 20 (2001), https://dwss.nv.gov/uploadedFiles/dwssnvgov/content/Home/Features/Eligibility_and_Payments/Chapter%20A-0300.pdf [<https://perma.cc/5T6U-6F58>] (providing that the department need only adjudicate duplicate claims where "the parents will not make a choice or agree to allow the other one to apply for the children").

91. *E.g.*, OR. DEP'T OF HUM. SERVS., OREGON PROGRAMS ELIGIBILITY NOTEBOOK (OPEN) 120 (2021), <https://sharedsystems.dhsoha.state.or.us/DHSForms/Served/de2818.pdf> [<https://perma.cc/XS48-YH6W>].

92. See LINDA GIANNARELLI, CHRISTINE HEFFERNAN, SARAH MINTON, MEGAN THOMPSON & KATHRYN STEVENS, U.S. DEP'T OF HEALTH & HUM. SERVS., OPRE REPORT 2017-82, WELFARE RULES DATABASE: STATE TANF POLICIES AS OF JULY 2016, at 13-28 (2017), <https://www.urban>

to EITC and CTC child-claiming rules, state TANF rules often designate a broader array of care relationships as eligible to claim children. Many states allow claims from relatives as distant as the fifth degree of kinship, encompassing great-great-grandparents, great-great-aunts and uncles, and first cousins once removed.⁹³ Nineteen states also allow nonrelatives to claim children for TANF benefits, usually conditioned on legal custody, guardianship, or emergency situations.⁹⁴ For instance, Connecticut and Colorado both allow unrelated legal guardians to claim children for TANF purposes.⁹⁵ Alabama allows nonrelatives to claim children in times of emergency or crisis even without legal status for a period up to ninety days.⁹⁶

Finally, returning to the federal government, the Social Security Administration (SSA) operates two programs that make regular payments on behalf of children. First, children may qualify for the SSI program if they are disabled and have sufficiently low income.⁹⁷ Second, children may become eligible to receive Social Security survivor benefits upon the death of a family member who was receiving Social Security retirement or disability benefits.⁹⁸ Distinct from the other programs described here, children qualify for SSA programs directly based partly on personal characteristics rather than only through membership in a low-income household.⁹⁹ For both programs, the SSA usually issues payments to a “representative payee,” a designated adult who receives benefits on a child’s behalf.¹⁰⁰ In selecting a representative payee, the SSA considers factors that are relevant to promoting the best interest of the beneficiary child.¹⁰¹ In general, however, the SSA chooses a representative payee by following a specified prioritization based on the relationship to the child in question.¹⁰² For children

.org/sites/default/files/publication/95251/welfare_rules_databook_state_tanf_policies_as_of_july_2016_1.pdf [https://perma.cc/72EH-BT5N] (discussing differences in TANF eligibility rules across states).

93. See, e.g., 208-00-001 ARK. CODE R. § 2211 (2021); HAW. CODE R. § 17-656.1-7 (LexisNexis 2021).

94. GIANNARELLI ET AL., *supra* note 92, at 68-69 tbl.I.B.9.

95. CONN. GEN. STAT. § 17b-112 (2021); COLO. REV. STAT. § 26-2-703(18.3) (2021).

96. ALA. ADMIN. CODE r. 660-2-2.20 (2021).

97. In 2019, 1.2 million children below the age of eighteen received SSI, constituting approximately 14% of all recipients. SOC. SEC. ADMIN., NO. 13-11827, SSI ANNUAL STATISTICAL REPORT, 2019, at 20 (2020), https://www.ssa.gov/policy/docs/statcomps/ssi_asr/2019/ssi_asr19.pdf [https://perma.cc/ZM9U-LAGP].

98. 20 C.F.R. § 404.350 (2021).

99. *Id.* §§ 404.350, 416.610.

100. *Id.* § 416.610.

101. *Id.* § 416.620.

102. *Id.* § 416.621(c).

under 18, the SSA uses the following order of preferences: (1) custodial parents; (2) noncustodial parents providing support; (3) noncustodial parents not providing support; (4) relatives or stepparents with custody; (5) relatives without custody but who are providing support; (6) a relative or close friend without custody but who is demonstrating concern for the child's well-being; (7) an authorized social agency or custodial institution.¹⁰³ Additionally, and distinct from the above programs, representative payees must use the funds to directly support the beneficiary child.¹⁰⁴

3. *Rules in Non-U.S. Programs*

Child-claiming rules in child-benefit programs administered by countries outside of the United States offer several interesting points of comparison. As noted above, over 100 countries provide some form of child- or family-based benefit.¹⁰⁵ There is not space for a comprehensive comparison across the various rule regimes. This Section highlights child-claiming rules in several high-income countries with institutional and bureaucratic capacities similar to the United States.

Perhaps most notably, rather than relying on bright-line tests like kinship relationship or shared residency, some countries use a more holistic primary-caregiver standard to determine who should receive benefits. For instance, Canada's child-benefit program distributes benefits to the person who is "primarily responsible" for a child.¹⁰⁶ Canadian income-tax rules define such responsibility to include various factors such as supervising the child's daily activities, maintaining a secure environment for the child, arranging childcare, and so forth.¹⁰⁷ The United Kingdom similarly distributes its child benefit to the person who is responsible for a child but defines such responsibility differently. There, a person is responsible for a child if she lives with the child or if she provides financial

103. *Id.*

104. *Id.* § 404.2035.

105. See *supra* Section I.A.3; *supra* note 58 and accompanying text.

106. Can. Revenue Agency, *Canada Child Benefit: Who Can Apply*, GOV'T OF CAN. (Nov. 4, 2021), <https://www.canada.ca/en/revenue-agency/services/child-family-benefits/canada-child-benefit-overview/canada-child-benefit-before-you-apply.html#primary> [<https://perma.cc/3WGL-56FK>].

107. *Id.*; Income Tax Regulations, C.R.C., c 945, pt. LXIII, § 6302 (Can.), https://laws.justice.gc.ca/eng/regulations/C.R.C.,_c._945/page-56.html#h-592901 [<https://perma.cc/ZNM6-5KPF>].

support for the child that is at least equal to the amount of the child benefit received.¹⁰⁸

A primary-caregiver standard is simultaneously more stringent and more lenient than the rules for the EITC and CTC. Although perhaps only one person will qualify to receive benefits—namely, the child’s primary caregiver—that person need not be a parent or close relative of the child. Both Canada and the U.K. allow nonrelatives to claim children as long as claimants satisfy the rules regarding responsibility for the child.¹⁰⁹ In Canada, a nonparent can claim a child as long as the child is “wholly dependent” on the claimant for support and under her “custody and control” either in law or in fact.¹¹⁰ Rules in the U.K. are even more permissive. There, a nonparent may claim a child as long as the parent does not also claim the same child.¹¹¹ Even informal care arrangements are acceptable. Moreover, noncustodial parents in the U.K. may also claim a child that they do not live with, as long as they provide financial support for the child at least equal to the amount of the child benefit.¹¹²

Several countries divide benefits between multiple households under certain circumstances. In Australia, the Family Tax Benefit may be paid to two or more households based on the percentage of time each household cares for a child.¹¹³ In Canada, where two parents share separate custody of a child, each parent will receive 50% of the child benefit.¹¹⁴ Sweden divides benefits between both parents by default unless one parent has sole custody of the child and reports this arrangement to the Swedish government.¹¹⁵ Splitting benefits between multiple households allows for a more flexible residency rule compared to the full-year, single-household test that applies to the EITC and CTC.

108. Social Security Contributions and Benefits Act 1992, c 4, pt. IX, § 143(1) (U.K.), https://www.legislation.gov.uk/ukpga/1992/4/pdfs/ukpga_19920004_310320_en.pdf [<https://perma.cc/4MAL-8RYZ>].

109. *Id.*; Income Tax Act, R.S.C. 1985, c 1, pt. I, div. B, subdiv. F, § 70(10)(c) (Can.), <https://laws-lois.justice.gc.ca/PDF/I-3.3.pdf> [<https://perma.cc/P6HL-FUVK>].

110. Income Tax Act § 70(10)(c).

111. *Claim Child Benefit*, GOV.UK, <https://www.gov.uk/child-benefit/eligibility> [<https://perma.cc/98ZN-6CC7>].

112. Social Security Contributions and Benefits Act § 143(1).

113. See *FTB Part A Payment Rates*, SERVS. AUSTL. (Dec. 10, 2021, 8:01 PM), <https://www.servicesaustralia.gov.au/individuals/services/centrelink/family-tax-benefit/how-much-you-can-get/ftb-part-payment-rates> [<https://perma.cc/N5ZA-7XPK>].

114. *Canada Child Benefit and Related Federal, Provincial, and Territorial Programs*, CAN. REVENUE AGENCY 9 (2021), <https://www.canada.ca/content/dam/cra-arc/formspubs/pub/t4114/t4114-21e.pdf> [<https://perma.cc/N6TN-7S4T>].

115. *Child Allowance*, FÖRSÄKRINGSKASSAN (July 7, 2021), <https://www.forsakringskassan.se/english/parents/child-allowance> [<https://perma.cc/5T9Y-LUWG>]; SOCIALFÖRSÄKRINGSBALKEN [SFB] [SOCIAL INSURANCE CODE] 16:7 (Swed.).

Finally, some countries use a female-parent or mother presumption in distributing benefits. In Sweden, for children born before March 1, 2014 and living in joint-custody situations, benefits are paid to the “parent who gave birth to the child.”¹¹⁶ In Canada, if the child lives with a female parent, that parent is presumed to be primarily responsible for the child’s care.¹¹⁷ There are several exceptions to the presumption, for instance, where the child lives with both parents and the female parent releases her claim to the child in writing.¹¹⁸ We briefly consider below how a gender-based presumption might fit within a U.S. benefit context.¹¹⁹

II. CENTRALITY OF CHILD-CLAIMING RULES TO PROGRAM OUTCOMES

This Part critically assesses the current child-claiming rules for the EITC and CTC. We argue that the current rules are central to program outcomes but come up short in important ways. In particular, the current rules fail to effectively channel benefits to children, are difficult for taxpayers to comply with, and are difficult for the Internal Revenue Service (IRS) to administer.

A. *Excluded Children*

The current child-claiming rules under the EITC and CTC operate to exclude many children from support, even those in great need.¹²⁰ In particular, as discussed in Part I, child-claiming rules require a taxpayer to live with the child for at least half of the year and be closely related to the child in order to claim her. Although structured as connection tests for potential claimants, these rules end up excluding children who fail to satisfy them for any taxpayer. That is, they implicitly create additional child-based eligibility requirements. If a taxpayer must be closely related to a child and live with her for more than six months in order to claim her, then a child who does not live with a close relative for enough months of the year cannot be claimed by anyone. She will thus receive no support through either the EITC or CTC.

116. *Child Allowance*, *supra* note 115.

117. Income Tax Act, R.S.C. 1985, c 1, pt. I, div. B, subdiv. A.1, § 122.6 (Can.), <https://laws-lois.justice.gc.ca/PDF/I-3.3.pdf> [<https://perma.cc/P6HL-FUVK>].

118. Income Tax Regulations, *supra* note 107, at § 6301(1)(a).

119. See *infra* Section V.B.1.

120. Collyer et al., *supra* note 42, at 2-3 (describing children excluded under current tax-credit rules); Goldin & Michelmore, *supra* note 23, at 124-25.

The current connection tests cause two main categories of children to be excluded from child tax benefits. The first are those being raised by an individual other than one of the specified types of close relatives. For example, a child being raised by a different type of biological relative, such as a cousin, cannot be claimed, nor can a child being raised or informally fostered by a nonrelative, such as a close family friend.¹²¹ Although it is difficult to estimate precisely, a recent study using Census data suggests that approximately 330,000 children fall into this category each year.¹²²

The relationship test excludes even more children because of its interaction with the earnings test in the EITC and CTC. It does so by further limiting the already restricted pool of eligible claimants who themselves satisfy the work requirement. For example, consider a child who lives with her mother and the mother's unmarried partner who supports the household financially. If the child's mother does not work, the earnings test bars her from claiming benefits; the relationship test then prevents the mother's partner from claiming the child. Together, these two tests block the child from receiving any support through child tax benefits. Again, although precise estimates are difficult, analyses with Census data suggest that the interaction of the relationship test with the earnings test prevent an additional 1.6 million children from benefitting from the CTC and an additional 1.2 million children from benefitting from the EITC.¹²³

Moreover, these excluded children are not drawn randomly from across the population. In particular, they are significantly more likely to be Hispanic (37% of excluded children are Hispanic compared to 26% of all children).¹²⁴

Children facing housing instability also face likely exclusion due to the child-claiming rules. Specifically, if a child cannot satisfy the residency test with respect to any taxpayer during the year, then no one will be eligible to claim that child.¹²⁵ For example, a child who lives with his mother for five months, his father for five months, and a grandparent for two months would not satisfy the residency

121. I.R.C. § 152(c)(1)-(2) (2018).

122. Goldin & Michelmore, *supra* note 23, at 141.

123. The CTC statistic was calculated from *id.* Specifically, Column 2 of Panel B of Table 3 in *id.* shows that approximately 1.96 million children would gain eligibility from eliminating the relationship test, and comparing Columns 5 and 6 of that panel shows that approximately 330,000 children would remain ineligible if the earnings test, but not the relationship test, was eliminated. Hence, 1.96 million minus 0.33 million, or approximately 1.6 million children, are excluded from CTC eligibility because of the earnings limits and relationship test. A similar calculation, following the methodology described in *id.*, yields the finding that the relationship test and earnings test together exclude approximately 1.2 million children from the EITC.

124. *Id.* at 17; *see also id.* at 24 (comparing *id.* at Column 2 of Panel B of Table 3 to *id.* at Appendix Table 1).

125. I.R.C. § 152(c)(1)(B) (2018).

test for any taxpayer and would be excluded from CTC and EITC benefits. Estimating the number of children in this situation is difficult because most survey data do not capture children's mobility over the course of the year.¹²⁶ Children or caregivers facing housing instability may also be underrepresented in surveys.¹²⁷

Like the relationship test, the residency test also interacts with earnings tests to worsen exclusion. In particular, for the purposes of the EITC, noncustodial parents who work cannot claim children with whom they do not reside.¹²⁸ Thus, a child living primarily with a parent who does not work cannot be claimed for (or benefit from) the EITC, even if a working noncustodial parent financially supports their household.

In addition to being arbitrary, children excluded because of the child-claiming rules are likely often those who would benefit most from support.¹²⁹ Excluding such children thus undermines the ability of these benefit programs to channel benefits where they are most needed and to support some of the most disadvantaged children in society.

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126. One analysis studying the residential mobility of children *across* years found that over three million children in any given year live with a different adult than they lived with the prior year. Chuck Marr, Kris Cox, Stephanie Hingtgen, Katie Windham & Arloc Sherman, *House COVID Relief Bill Includes Critical Expansions of Child Tax Credit and EITC*, CTR. ON BUDGET & POL'Y PRIORITIES 6 (Mar. 2, 2021), <https://www.cbpp.org/sites/default/files/2-9-21tax.pdf> [<https://perma.cc/B43H-TRLT>].
127. According to one estimate from Voices of Youth Count and the University of Chicago, one in thirty adolescents between the ages of thirteen and seventeen experience some form of unaccompanied homelessness during the course of a year. M.H. Morton, A. Dworky & G.M. Samuels, *Missed Opportunities: Youth Homelessness in America*, VOICES OF YOUTH COUNT 5 (2017), <https://voicesofyouthcount.org/wp-content/uploads/2017/11/VoYC-National-Estimates-Brief-Chapin-Hall-2017.pdf> [<https://perma.cc/NT5F-2ZHD>].
128. For the CTC, under certain circumstances, the custodial parent can release her claim to allow the noncustodial parent to claim the child. See I.R.C. § 152(e)(2) (2018).
129. With regard to the negative consequences of housing instability, see, for example, T. Jelleyman & N. Spencer, *Residential Mobility in Childhood and Health Outcomes: A Systematic Review*, 62 J. EPIDEMIOLOGY & CMTY. HEALTH 584, 587 (2008), determining that “[i]n multivariate analysis moving three or more times was associated with increased indirect aggression, property offen[s]es and alcohol use by 12 years of age.”; S.E. Gilman, I. Kawachi, G.M. Fitzmaurice & S.L. Buka, *Socio-Economic Status, Family Disruption and Residential Stability in Childhood: Relation to Onset, Recurrence and Remission of Major Depression*, 33 PSYCH. MED. 1341, 1345 (2003), finding that family disruption and residential instability by the age of seven predict an increased risk for the development of depression; and Diana Becker Cutts, Alan F. Meyers, Maureen M. Black, Patrick H. Casey, Mariana Chilton, John T. Cook, Joni Geppert, Stephanie Ettinger de Cuba, Timothy Heeren, Sharon Coleman, Ruth Rose-Jacobs & Deborah A. Frank, *U.S. Housing Insecurity and the Health of Very Young Children*, 101 AM. J. PUB. HEALTH 1508, 1508 (2011), noting that multiple moves are associated with adolescent mental-health concerns and substance abuse.

B. *Limited Flexibility*

In addition to excluding some children entirely, the current child-claiming rules significantly limit taxpayers' flexibility to determine which household member claims the child. In addition to the strict limits that connection tests impose, a prioritization rule requires that a child living with multiple nonparent relatives may only be claimed by the one with the highest earnings.¹³⁰ This income-based rule operates without regard to which family member is best suited to receive benefits for a child.

Consider a family in which a grandmother is the primary caregiver for a child. Suppose that the child's uncle also lives with them and that he earns more income than the grandmother. Under the current child-claiming rules, only the uncle may claim the child for child tax benefits.¹³¹ In other words, the uncle's presence in the household precludes the grandmother from claiming the credit. Not only does such a rule potentially channel benefits to the wrong person,¹³² but it also creates a disincentive for shared living arrangements that could benefit children. For instance, in our example, the grandmother may be hesitant to move in with the child's uncle if doing so might preclude her from claiming benefits. This decision could harm the child if the uncle would have contributed to the household financially or helped with caregiving.

Connection tests also limit flexibility. Imagine a child living with an older sibling and an unrelated adult caregiver, such as a close family friend. In this case, the relationship test means that only the older sibling can claim the child, even if the unrelated adult was actually the caregiver for both siblings and the payee who would best promote the child's well-being. In these ways, the current rules fail to accommodate the diversity of caregiving arrangements among American families.

C. *Compliance Costs for Taxpayers*

The complexity of the current child-claiming rules creates significant compliance costs for taxpayers. While some eligibility criteria are simple to assess — such as whether someone is related to the child — other criteria are more difficult.

130. I.R.C. § 152(c)(4)(A) (2018).

131. *See id.*

132. Channeling benefits to the uncle could be justifiable if he provides the most financial support to the child. The fact that two different household members might be conceivably good claimants further supports flexibility in child-claiming rules, to allow families to decide who is best-suited to claim the child. We discuss the tradeoffs between channeling and inclusivity below in Section III.B.2. We propose rules to accommodate diverse family arrangements below in Part IV.

Prioritization tests present a particular challenge for families, especially those with complex household structures and care arrangements. These rules require not only information about the claimant and the child, but also nonobvious information about other taxpayers, such as how much income they earned and how much of the year they lived with the child. The residency test can also be difficult for taxpayers to evaluate, especially in joint-custody situations. For example, a child may live with both parents for something close to the 183-day threshold required for claiming. In such cases, complying with the rules requires taxpayers to count days and recall childcare schedules one or more years prior.

Complexity in child-claiming rules can also lead to mistakes by taxpayers. This concern is heightened when the rules deviate from economic and child-caring realities in nonintuitive ways. For example, a child's older cousin who is raising the child as her own may think of the child as hers and incorrectly assume that she qualifies to claim him.¹³³ Similarly, an unmarried partner of a child's parent who supports a child financially may assume (again, incorrectly) that he qualifies to claim the child and may feel entitled to do so.

The complexity and counterintuitiveness of the child-claiming rules likely contribute to the high rates of EITC noncompliance. Some estimates find that improper claims account for approximately 25% of dollars paid.¹³⁴ Child claiming errors are a substantial source of overclaims.¹³⁵ Taxpayers who improperly claim credits face steep debt and tax penalties, including up to ten-year bans on claiming the credit in future years.¹³⁶ Such overclaims also reduce political support for these programs and prompt the IRS to devote substantial resources to auditing low-income taxpayers claiming these benefits.¹³⁷

In addition, because the excluded children and taxpayers do not fall evenly across households, errors and rule violations are also not uniformly distributed. Errors under the relationship test may be more common in communities with

133. See I.R.C. § 152(c)(2) (2018).

134. See *Authorities Provided by the Internal Revenue Code Are Not Effectively Used to Address Erroneous Refundable Credit and Withholding Credit Claims*, TREASURY INSPECTOR GEN. FOR TAX ADMIN. 4 (2020), <https://www.treasury.gov/tigta/auditreports/2020reports/202040008fr.pdf> [<https://perma.cc/VMX9-B46A>] (providing Internal Revenue Service (IRS) internal estimates from 2018).

135. Leibel et al., *supra* note 24, at 9.

136. I.R.C. § 32(k) (2018).

137. See Leslie Book, *The IRS's EITC Compliance Regime: Taxpayers Caught in the Net*, 81 OR. L. REV. 351, 373-74 (2002) [hereinafter Book, *EITC Compliance*] (describing IRS compliance efforts against EITC recipients); see also Leslie Book, *The Poor and Tax Compliance: One Size Does Not Fit All*, 51 KAN. L. REV. 1145, 1146 (2003) [hereinafter Book, *One Size*] (“[I]n the past decade, the government spent hundreds of millions of dollars on EITC compliance initiatives.”).

nontraditional family structures.¹³⁸ Similarly, errors under the residency test may be more common in communities with substantial housing instability.¹³⁹ All of these factors are more common in communities of color.¹⁴⁰ This fact may partly contribute to higher EITC audit rates in communities of color.¹⁴¹ Audits, in turn, impose burdens on taxpayers through delayed refunds, onerous verification paperwork, and potential penalties and disallowances when taxpayers cannot substantiate their claims or fail to respond. The threat of audit may deter even eligible taxpayers from claiming the credits for which they qualify.¹⁴²

Finally, the complexity of the child-claiming rules likely contributes to incomplete take-up of the EITC and CTC.¹⁴³ Incomplete take-up of these benefits

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138. Recall that the relationship test limits the ability of individuals to claim children whose relationship to them does not fall into one of several specified categories. Hence, the test is more likely to constrain claiming by those living in communities where caregiving and shared residency with extended family members (such as cousins) or nonrelatives (such as neighbors) are more common. See Christina J. Cross, *Extended Family Households Among Children in the United States: Differences by Race/Ethnicity and Socioeconomic Status*, 72 *POPULATION STUD.* 235, 236 (2018) (documenting diversity in patterns of shared residency with extended family members across racial and ethnic communities and geographies in the United States); Natasha V. Pilkauskas & Christina J. Cross, *Beyond the Nuclear Family: Trends in Children Living in Shared Households*, 55 *DEMOGRAPHY* 2283, 2284 (2018) (investigating trends in shared residency among extended family members).
139. Recall that the residency test limits the ability of individuals to claim children with whom they did not live for six months or more during the year. Failing to claim the correct child is therefore more likely in communities in which children are more likely to move between households during the course of the year rather than live with the same adult caregiver consistently. We are not aware of high-quality studies that investigate differences across communities in the prevalence of this particular form of housing instability. See *supra* Section II.A.
140. Ann M. Aviles & David O. Stovall, *When ‘Class’ Explanations Don’t Cut It: Specters of Race, Housing Instability, and Education Policy*, 19 *U. MD. L.J. RACE, RELIGION, GENDER & CLASS* 166, 169-70 (2019); Colette Allred, *Resident Single Parents: Mothers & Fathers*, *NAT’L CTR. FOR FAM. & MARRIAGE RSCH. & BOWLING GREEN STATE UNIV.* 1 (2019), <https://www.bgsu.edu/content/dam/BGSU/college-of-arts-and-sciences/NCFMR/documents/FP/fp-19-21-resident-single-parents.pdf> [<https://perma.cc/M77R-H8Y6>].
141. Kiel & Eisinger, *supra* note 4.
142. John Guyton, Kara Liebel, Dayanand S. Manoli, Ankur Patel, Mark Payne & Brenda Schafer, *The Effects of EITC Correspondence Audits on Low-Income Earners* 35 (Nat’l Bureau of Econ. Rsch., Working Paper No. 24465, 2019), <https://www.nber.org/papers/w24465.pdf> [<https://perma.cc/ZC2K-VPLU>].
143. Nat’l Taxpayer Advoc., *Annual Report to Congress*, INTERNAL REVENUE SERV. 247, 250-51 (2015), <https://www.taxpayeradvocate.irs.gov/reports/2015-annual-report-to-congress/full-report> [<https://perma.cc/LJ4R-NNTM>] (“[T]he EITC is directed toward a population of taxpayers who are least able to navigate its complexity.”).

is a widely recognized policy concern.¹⁴⁴ For example, an estimated one in five EITC-eligible taxpayers fails to claim the credit.¹⁴⁵ Governments and nonprofits invest tens of millions of dollars annually in outreach and educational campaigns concerning these benefits.¹⁴⁶ However, the complexity of the current child-claiming rules undermines outreach and education campaigns by making it difficult to communicate to taxpayers how they can determine their eligibility or calculate their likely benefit. In addition, to the extent the child-claiming rules lead to overclaiming by some taxpayers, they also contribute to underclaiming by others; that is, since the vast majority of children are only claimed once in a given year, for every ineligible taxpayer who incorrectly claims a child there can be a different (eligible) taxpayer who fails to do so.

D. Administrative Costs for the IRS

In addition to causing headaches and penalties for taxpayers, the current child-claiming rules for the EITC and CTC are quite challenging for the IRS to administer. From an enforcement perspective, the primary challenge is that the IRS lacks independent sources of information to verify whether the taxpayer claiming a child satisfies the child-claiming rules with respect to that child. In particular, the IRS lacks year-to-year information on where and with whom people live.¹⁴⁷ Because children may change residences over the course of the year, the IRS does not have a ready source of high-quality and automatically reported information to verify whether a taxpayer claiming a child satisfies the residency requirement with respect to that child. Similarly, the IRS does not generally have reliable information about which individuals a child is related to other than the

144. See, e.g., Jacob Goldin, *Tax Benefit Complexity and Take-Up: Lessons from the Earned Income Tax Credit*, 72 TAX L. REV. 59, 59-60 (2018) (considering the problem of EITC take-up and complexity); Saurabh Bhargava & Dayanand Manoli, *Psychological Frictions and the Incomplete Take-Up of Social Benefits: Evidence from an IRS Field Experiment*, 105 AM. ECON. REV. 3489, 3489-90 (2015) (considering the causes of low take-up of EITC benefits).

145. *EITC Participation Rate by States*, INTERNAL REVENUE SERV. (Jan. 15, 2021), <https://www.eitc.irs.gov/eitc-central/participation-rate/eitc-participation-rate-by-states> [<https://perma.cc/WQS8-HD2W>].

146. Goldin, *supra* note 144, at 72 & n.69.

147. See Leibel et al., *supra* note 24, at 36 (“To date, there are no comprehensive national data that allow IRS to routinely confirm living arrangements, relationships and marital status of taxpayers and children.”). For instance, although the IRS has access to the Federal Case Registry of Child Support Orders—a database with information about child custody that is used for child-support enforcement—a Treasury study found that residency information from the database was incorrect up to 40% of the time. Nat’l Taxpayer Advoc., *Special Report to Congress, Earned Income Tax Credit: Making the EITC Work for Taxpayers and the Government*, INTERNAL REVENUE SERV. 37 (2019), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/JRC20_Volume3.pdf [<https://perma.cc/K7CW-9YW7>].

parent or parents listed on the child's birth certificate, undermining its ability to accurately enforce whether the relationship test is satisfied.¹⁴⁸ Because it lacks independently provided information about these relationships, the IRS tends to rely on audits to enforce these requirements, which, as described above, can be burdensome to taxpayers.

Enforcement aside, this lack of independent information prevents the IRS from increasing benefit take-up on its own. Knowing whether a taxpayer qualifies for the CTC or EITC requires two key pieces of information: the taxpayer's income and whether the taxpayer may claim any children. Although in many cases the IRS has high-quality, third-party-reported information about taxpayers' incomes,¹⁴⁹ it lacks such information about which children a taxpayer may claim. Because it cannot determine which taxpayers are eligible for a benefit, it typically relies on general communications or vague notices for encouraging benefit take-up.¹⁵⁰ If the IRS could effectively assess taxpayers' eligibility for benefits, it could provide them with prepopulated returns or personalized benefit information.

Current IRS efforts to increase EITC take-up illustrate this problem. When taxpayers file a tax return showing income and children that appear to qualify them for the EITC, but fail to claim the EITC, the IRS sends them a notice and simplified worksheet for claiming the credit.¹⁵¹ Despite being sent to a population that is highly likely to be EITC-eligible, almost half of notice recipients still fail to claim the credit.¹⁵² One possible explanation is the complexity of the child-claiming rules. In fact, randomized experiments have shown that simplifying the

148. See Leibel et al., *supra* note 24, at 36; see also John Wanchek & Robert Greenstein, *Earned Income Tax Credit Overpayment and Error Issues*, CTR. ON BUDGET & POL'Y PRIORITIES 7 (Apr. 19, 2011), <https://www.cbpp.org/sites/default/files/atoms/files/4-5-11tax.pdf> [<https://perma.cc/UEQ9-TLLS>] (listing databases the IRS uses to confirm EITC information, which provide information on parental custody, age, and social security numbers, but not other relatives).

149. See Leandra Lederman, *Statutory Speed Bumps: The Roles Third Parties Play in Tax Compliance*, 60 STAN. L. REV. 695, 697-98 (2007) (describing the important role of third-party reporting to tax compliance); Internal Revenue Serv., *General Instructions for Certain Information Returns*, U.S. DEP'T OF THE TREASURY 4 (2021), <https://www.irs.gov/pub/irs-pdf/i1099gi.pdf> [<https://perma.cc/XE8W-Z9BG>] (listing income information reporting requirements).

150. See, e.g., Internal Revenue Serv., *Notice 797, Possible Federal Tax Refund Due to the Earned Income Credit (EIC)*, U.S. DEP'T OF THE TREASURY (2020), <https://www.irs.gov/pub/irs-pdf/n797.pdf> [<https://perma.cc/P3YF-BRKU>] (providing general notice to taxpayers about possible eligibility for the EITC).

151. Bhargava & Manoli, *supra* note 144, at 3496 (studying the CP-09 and CP-27 notice programs to promote EITC take-up among apparently eligible but nonclaiming tax filers).

152. *Id.* at 3497.

eligibility questions on this notice and worksheet increases benefit take-up.¹⁵³ Such efforts exclude those who do not file a tax return, a population that represents an estimated two-thirds of those who qualify for but fail to claim the EITC.¹⁵⁴ Because nonfilers do not report information to the IRS about their children, and because the IRS does not collect such information from other sources, it is difficult for the agency to conduct personalized outreach to this group.

Problems of exclusion, inflexibility, compliance cost, and administrative cost are not limited to child benefits distributed through the tax system. All safety-net programs draw lines that have the potential to exclude and burden intended beneficiaries as well as impose costs on government agencies charged with program administration. Indeed, IRS-administered child benefits actually do a better job of reaching low-income families compared to other safety-net benefits like TANF, and at lower administrative cost.¹⁵⁵ Much of this discussion, therefore, is broadly applicable to all safety-net programs that aim to improve children's well-being.

Advocates and scholars are well aware of these concerning outcomes and some of the structural conditions that have contributed to them.¹⁵⁶ Commentators criticize various design elements of the EITC and CTC, including the phase-

153. *Id.* at 3508.

154. Off. of Inspections & Evaluations, *The Internal Revenue Service Should Consider Modifying the Form 1040 to Increase Earned Income Tax Credit Participation by Eligible Tax Filers*, TREASURY INSPECTOR GEN. FOR TAX ADMIN. 2 fig.1 (Apr. 2, 2018), <https://www.treasury.gov/tigta/ierereports/2018reports/2018IER004fr.pdf> [<https://perma.cc/PH8U-US4Z>].

155. See, e.g., Nat'l Taxpayer Advoc., *supra* note 147, at 54 fig.A.9; Leonard Burman & Deborah I. Kobes, *EITC Reaches More Eligible Families than TANF, Food Stamps*, URBAN-BROOKINGS TAX POL'Y CTR. (Mar. 17, 2003), https://www.urban.org/research/publication/eitc-reaches-more-eligible-families-tanf-food-stamps/view/full_report [<https://perma.cc/3VPM-EJZK>]; David A. Weisbach & Jacob Nussim, *The Integration of Tax and Spending Programs*, 113 YALE L.J. 955, 1011-12 (2004) (comparing the administrative cost of the EITC to that of food stamps).

156. Commentators also highlight the credits' roles in advancing child and family well-being, including improved education, health, emotional well-being, and so forth. See, e.g., Thomas L. Hungerford & Rebecca Thiess, *The Earned Income Credit and the Child Tax Credit: History, Purpose, Goals, and Effectiveness*, ECON. POL'Y INST. 1-2 (Sept. 25, 2013), <http://www.epi.org/files/2013/The-Earned-Income-Tax-Credit.pdf> [<https://perma.cc/2K3S-PTSW>]; *Tax Policy Center's Briefing Book*, URBAN-BROOKINGS TAX POL'Y CTR. (May 2020), <http://www.taxpolicycenter.org/briefing-book/how-does-eitc-affect-poor-families> [<https://perma.cc/4X5L-UY6K>] ("The EITC is the single most effective means-tested federal antipoverty program for working-age households – providing additional income and boosting employment for low-income workers."); Bryann DaSilva, *New Poverty Figures Show Impact of Working-Family Tax Credits*, CTR. ON BUDGET & POL'Y PRIORITIES (Oct. 17, 2014, 2:00 PM), <https://www.cbpp.org/blog/new-poverty-figures-show-impact-of-working-family-tax-credits> [<https://perma.cc/YU3H-5D92>] (summarizing analysis which shows "how critical these tax credits are for low-income families").

in structure,¹⁵⁷ cliff effects of certain eligibility rules,¹⁵⁸ and the smaller credit amount for childless recipients.¹⁵⁹ Others consider program administration, highlighting the damaging consequences of lump-sum payment,¹⁶⁰ high over-claim rates,¹⁶¹ and poorly targeted enforcement.¹⁶² Much scholarship also relates problematic design and administration to underlying principles and ideologies, as this Article does. For instance, some point to the effect of race-based rhetoric and assumptions on program outcomes.¹⁶³ This robust scholarship has contributed to recent efforts to reform the EITC and CTC to make the programs more inclusive and effective in supporting workers and families.

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157. Ariel Jurow Kleiman, *Low-End Regressivity*, 72 TAX L. REV. 101, 119-21 (2018) (critiquing the phase-in structure of the EITC).
158. Manoj Viswanathan, *The Hidden Costs of Cliff Effects in the Internal Revenue Code*, 164 U. PA. L. REV. 931, 934, 937 (2016) (examining how cliff effects in the EITC “create problematic results for taxpayers and frustrate the intended goals of the tax provisions to which they are attached”).
159. Jurow Kleiman, *supra* note 157, at 121-24 (describing how smaller benefits for childless workers leads to regressive tax rates at the bottom of the income distribution).
160. MICHELLE LYON DRUMBL, TAX CREDITS FOR THE WORKING POOR: A CALL FOR REFORM 142-50 (2019); Sara Sternberg Greene, *The Broken Safety Net: A Study of Earned Income Tax Credit Recipients and a Proposal for Repair*, 88 N.Y.U. L. REV. 515, 523 (2013) (finding that the EITC fails to help recipients weather financial shocks because it is only paid once per year).
161. See Leslie Book, *Preventing the Hybrid from Backfiring: Delivery of Benefits to the Working Poor Through the Tax System*, 2006 WIS. L. REV. 1103, 1111-12 (describing the problem of EITC over-claims).
162. See Book, *One Size*, *supra* note 137, at 1148 (arguing for a “multi-faceted” approach to EITC enforcement).
163. See Dorothy A. Brown, *Race and Class Matters in Tax Policy*, 107 COLUM. L. REV. 790, 794-95 (2007) (assessing how racially charged rhetoric and political speech undermines support for refundable tax credits); Dorothy A. Brown, *The Tax Treatment of Children: Separate but Unequal*, 54 EMORY L.J. 755, 762 (2005) (evaluating, and rejecting, the assumption that the typical EITC recipient is Black).

Other scholars critique the EITC’s preoccupation with incentivizing work in the formal labor market. See, e.g., Anne L. Alstott, *Why the EITC Doesn’t Make Work Pay*, 73 L. & CONTEMP. PROBS. 285, 288 (2010) (arguing that the EITC fails to adequately support workers because it focuses benefits on stably employed workers, ignoring the frequent job disruptions common to low-wage workers); Anne L. Alstott, *The Earned Income Tax Credit and the Limitations of Tax-Based Welfare Reform*, 108 HARV. L. REV. 533, 534 (1995) (arguing that the discourse surrounding the EITC places undue emphasis on work-incentive effects); Anne L. Alstott, *Work vs. Freedom: A Liberal Challenge to Employment Subsidies*, 108 YALE L.J. 967, 971 (1999) (arguing that the case for employment subsidies like the EITC “rests on mistaken or morally dubious claims about the intrinsic or instrumental value of paid work”); Nancy C. Staudt, *Taxing Housework*, 84 GEO. L.J. 1571, 1573-74 (1996) (arguing that nonmarket housework should be included in the tax base, and exploring the implications of such reform for redistributive policies); Noah D. Zatz, *Supporting Workers by Accounting for Care*, 5 HARV. L. & POL’Y REV. 45, 47 (2011) (arguing that childcare should be counted as formal employment for the purpose of work requirements).

This Article contributes to this body of research by highlighting the ways child-claiming rules are central to program outcomes and by developing a framework to design such rules to further those goals.¹⁶⁴ To design an effective safety-net program, child-claiming rules must be crafted with desired outcomes in mind. The rest of the Article is devoted to this task, considering various normative goals underlying the EITC and CTC as well as how they ought to influence the design of the child-claiming rules for the credits.

III. DEFINING PROGRAM GOALS

We begin our discussion by identifying core principles to drive the design of child-claiming rules. This Part and the next consider how to design such rules for child-benefit programs. To keep things simple, we initially focus on one primary normative goal: promoting children's well-being. This overarching goal implicates several secondary or instrumental goals, including channeling benefits to proper recipients, ensuring sufficient inclusivity of children, and minimizing the compliance burden on recipient families.

As this Part shows, even satisfying one objective — promoting children's well-being — is challenging because the instrumental goals for achieving that objective conflict with each other. In particular, we highlight tensions between minimizing complexity, channeling benefits to the proper recipient, and ensuring the benefit's design is sufficiently inclusive. Thus, policymakers must grapple with significant tradeoffs when designing child-claiming rules.

Acknowledging that promoting children's well-being is merely one possible goal, the last Section considers additional policy goals that bear directly on program design.

A. Primary Goal: Promoting Children's Well-Being

In this Section, we explain why we approach the design of child-claiming rules primarily through the lens of promoting children's well-being, and we highlight three instrumental subgoals that are important for achieving that objective.

164. Other work mentions child-claiming rules in the context of high overclaim rates. See, e.g., Book, *supra* note 161, at 1111 (discussing “the overclaim problem”); Patricia A. Cain, *Dependency, Taxes, and Alternative Families*, 5 J. GENDER RACE & JUST. 267, 283–84 (2001) (“The structure of the EITC makes it difficult to apply to nontraditional families.”); Nina E. Olson, *Preface to Nat’l Taxpayer Advoc.*, *supra* note 147, at vii (“Yes, the EITC is undermined by overclaims — both inadvertent and fraudulent.”).

1. *Children's Well-Being as a Primary Goal*

We believe that child-claiming rules ought to be designed to promote children's well-being. We define well-being broadly to encompass a child's physical, mental, emotional, and social condition.¹⁶⁵ Such well-being is based on material factors such as living conditions and access to adequate nutrition and medical care. It is also based on nonmaterial factors such as stress levels in the child's household and stable familial relationships.¹⁶⁶ Our definition of children's well-being is broad, but not all-encompassing. For instance, it does not encompass children's civil or constitutional rights.¹⁶⁷

The structures of the EITC and CTC support the notion that these programs were designed (at least in part) to support children's well-being. For much of its existence, the EITC has provided vastly larger benefits to households with children compared to those without,¹⁶⁸ and as its name suggests, the CTC is only available to households with children.¹⁶⁹

Legislative history offers further support that these programs were designed with a goal of furthering children's well-being. When President Clinton included an expanded EITC in his 1993 budget, he explained that the program would en-

165. Children's well-being is a topic relevant to diverse areas of law. The United Nations Convention on the Rights of the Child provides a broad definition that includes physical, mental, emotional, social, and spiritual development. G.A. Res. 44/25, Convention on the Rights of the Child (Nov. 20, 1989). Our definition is somewhat less broad, as we focus on conditions that can be directly or indirectly affected by household income.

Scholars in other areas of law have considered the question of children's well-being in greater detail, in particular those addressing child custody, juvenile justice, and children's rights. See generally Anne C. Dailey & Laura A. Rosenbury, *The New Law of the Child*, 127 YALE L.J. 1448, 1451-52 (2018) (proposing a "new law of the child" organized around a framework of "relationships, responsibilities, and rights").

166. For instance, all else equal, a policy that creates a disincentive for a child's parents to cohabituate would be less desirable than one that does not create such a disincentive, because a child likely benefits from living with both parents.

167. See G.A. Res. 44/25, Convention on the Rights of the Child (Nov. 20, 1989); cf. THOMAS R. YOUNG, 1 LEGAL RIGHTS OF CHILDREN § 11:1 (3d ed. 2021) ("The Supreme Court has extended a number of rights to minors, including due process, free speech, and privacy rights.").

168. I.R.C. § 32(b) (2018).

169. *Id.* § 24(a).

sure that working families with “a child in the house” should not live in poverty.¹⁷⁰ The CTC’s legislative history offers similar evidence of policymakers’ desire to support families with children, including middle-class families.¹⁷¹ This history demonstrates a broad conception of children’s well-being similar to that used here, although it is one predominantly focused on children’s access to material resources.¹⁷²

Legislative history aside, there are plenty of good reasons that promoting children’s well-being is a worthwhile objective. For one, doing so alleviates human suffering by improving children’s physical and mental health. Further, some may believe that children are particularly deserving of support because they bear no responsibility for their lot in life.¹⁷³ They are the quintessential “deserving poor.”¹⁷⁴ For those concerned about income inequality, there is evidence that supporting low-income children can reduce inequality in the long term.¹⁷⁵ In

170. Address Before a Joint Session of Congress on Administration Goals, 1 PUB. PAPERS 117 (Feb. 17, 1993); see also Dennis J. Ventry, Jr., *The Collision of Tax and Welfare Politics: The Political History of the Earned Income Tax Credit, 1969-99*, 53 NAT’L TAX J. 983, 1008 (2000) (situating the EITC expansions within broader welfare reform throughout the 1980s and 1990s).
171. See 143 CONG. REC. 11341 (1997) (statement of Rep. Jack Kingston) (supporting “tax relief” for middle-income families who need support “for education needs, for medical needs, for shelter, for food, and so forth”). See generally David Brooks Harris, *The Child Tax Credit: How the United States Underinvests in Its Youngest Children in Cash Assistance and How Changes to the Child Tax Credit Could Help* 51-96 (2012) (Ph.D. dissertation, Columbia University) (on file with author) (discussing how the CTC’s enactment was intended broadly to benefit families).
172. See 143 CONG. REC. 11341 (1997) (statement of Rep. Jack Kingston); see also STAFF OF SELECT COMM. ON CHILD., YOUTH, AND FAMS., 99th CONG., A FAMILY TAX REPORT CARD: COMPARING SEVEN CRITICAL TAX ISSUES FOR FAMILIES AS TREATED UNDER CURRENT LAW, KEMP-KASTEN, BRADLEY-GEPHARDT, AND TREASURY II, at vii (Comm. Print 1985), <https://play.google.com/store/books/details?id=-v3HvAd6i-UC&rdid=book--v3HvAd6i-UC&rdot=1> [<https://perma.cc/YKU2-EVFG>] (contextualizing analysis of tax-reform proposals given that families spend a large portion of resources on children, including “food, housing, transportation, and other necessities”).
173. Various deontic frameworks reflect such a view. Perhaps most notably, luck egalitarianism holds that people should not be differently situated through no fault of their own. See Julian Lamont & Christi Favor, *Distributive Justice*, in STAN. ENCYCLOPEDIA OF PHIL. (Edward N. Zalta ed., Sept. 26, 2017), <https://plato.stanford.edu/archives/win2017/entries/justice-distributive> [<https://perma.cc/4G9H-ATNY>].
174. See MICHAEL B. KATZ, *THE UNDESERVING POOR: AMERICA’S ENDURING CONFRONTATION WITH POVERTY* 3 (2d ed. 2013) (describing children as the “deserving poor”).
175. See, e.g., Arloc Sherman & Tazra Mitchell, *Economic Security Programs Help Low-Income Children Succeed over Long Term, Many Studies Find*, CTR. ON BUDGET & POL’Y PRIORITIES 3-5 (2017), <https://www.cbpp.org/sites/default/files/atoms/files/7-17-17pov.pdf> [<https://perma.cc/4UG3-9NZ5>] (reviewing research on the long-term positive consequences of income-support programs); Raj Chetty, John N. Friedman & Jonah Rockoff, *New Evidence on the Long-Term Impacts of Tax Credits*, INTERNAL REVENUE SERV. 3 (Nov. 2011), <http://www.irs.gov/pub/irs-soi/11rpchettyfriedmanrockoff.pdf> [<https://perma.cc/4K6W-VSXB>] (“[E]ach

truth, supporting children is one of the few relatively uncontroversial positions in the otherwise heated discourse surrounding safety-net programs. Everyone seems to agree to some extent that a wealthy society should take care of its children.¹⁷⁶

2. *Instrumental Goals for Promoting Children's Well-Being*

The overarching goal of promoting children's well-being implicates several instrumental goals that are central to the design of child-claiming rules. This Section highlights three such subgoals and describes why they are important for promoting children's well-being.

First, the rules should ensure that the program benefit is channeled toward the child for whom it was received. To achieve this channeling objective, the child-claiming rules should direct funds to the individual(s) whose spending will best promote the child's well-being.¹⁷⁷ Because caregiving situations vary, and because children's well-being is multifaceted, an ideal claimant for a child can vary based on the circumstances. In some cases, for instance, the ideal claimant will be the adult most likely to spend the funds on the child directly, such as the person who purchases the child's food or clothes. In other cases, the ideal claimant would use the funds for some other purpose that benefits the child indirectly, such as by reducing household financial stress or enabling the claimant

dollar of income through tax credits increases net present value (NPV) earnings by more than \$1."); Anna Aizer, Shari Eli, Joseph Ferrie & Adriana Lleras-Muney, *The Long-Run Impact of Cash Transfers to Poor Families*, 106 AM. ECON. REV. 935, 937-38 (2016).

176. KATZ, *supra* note 174, at 3.

177. Because designing child-claiming rules requires, to at least some degree, codifying kinship care arrangements in law, the exercise is bound to reflect and perpetuate certain cultural values. The United States has a troubled history of state governments and the federal government dictating norms about family formation and childrearing, under the ostensible goal of promoting the child's well-being. See H.R. REP. NO. 95-1386, at 9 (1978) ("The wholesale separation of Indian children from their families is perhaps the most tragic and destructive aspect of American Indian life today."); 25 U.S.C. § 1901(5) (2018) (reporting congressional findings "that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families"). See generally MARGARET JACOB, *A GENERATION REMOVED: THE FOSTERING AND ADOPTION OF INDIGENOUS CHILDREN IN THE POSTWAR WORLD* 21 (2014) ("Many [American Indian women] faced social workers and judges who believed their families to be inadequate and their communities unfit places to raise a child. Thousands suffered the loss of their children through one means or another."). Even so, we believe that the exercise is necessary and worthwhile in the service of promoting children's well-being, and that attention to this history, along with paying attention to diverse cultural norms and voices, can make the repetition of these injustices less likely.

to spend more time with the child.¹⁷⁸ In yet other cases, the ideal claimant might be someone who doesn't care for the child directly, but who uses the money to secure a job that allows him to support the child's household financially. The ideal claimant may even be someone who does not currently live with the child, but who would be able to live with and care for the child with the additional financial assistance that the benefit provides. The diversity of caregiving arrangements within the United States means that the ideal claimant is likely to differ from family to family.

A second instrumental objective for promoting children's well-being is that the child-claiming rules should be inclusive. That is, the rules should ensure that each child meets the child-claiming requirements for at least one potential claimant—otherwise the child is de facto excluded from receiving the program's benefits. As described in the prior Part, a major shortcoming of current child-claiming rules in the tax code is that they rely on connection tests that have the effect of excluding millions of children from the benefits of the EITC and the CTC.¹⁷⁹

The final instrumental objective we highlight is minimizing complexity. We use the term “complexity” broadly to describe the burden to taxpayers of learning about and complying with the child-claiming rules. Compliance costs from complex program rules harm claimants and undermine a benefit program's ability to support children. For example, child-claiming rules that rely on information that is difficult for potential claimants to obtain entail hassle costs related to determining eligibility. These hassle costs increase the likelihood that claimants will make mistakes¹⁸⁰—either claiming a child when they are not eligible to do so or failing to claim a child whom they do qualify to claim. Similarly, if claiming rules contradict taxpayers' intuitions about who should claim a child, the rules are likely to lead to mistakes by ineligible taxpayers who (incorrectly) expect that they are eligible. Adopting rules that minimize claimant mistakes is important, in part because missing out on the credits harms children. Additionally, inaccurate overclaims can result in penalties, bans on program participation

178. Research finds that strong, frequent stress during childhood negatively affects brain development and can lead to mental illness later in life. See *generally Excessive Stress Disrupts the Architecture of the Developing Brain* 1-6 (Nat'l Sci. Council on the Developing Child, Working Paper No. 3, 2014), <http://developingchild.harvard.edu/resources/wp3> [<https://perma.cc/38C7-XWXS>] (summarizing research on the effects of “toxic stress” on child development).

179. See discussion *supra* Section II.A.

180. See Goldin, *supra* note 144, at 74-81 (describing informational complexity in general as well as specific informational complexity in the EITC).

in future years, reduced political support for the program, and heavy audit burdens in low-income communities and communities of color.¹⁸¹

Apart from the information upon which the claiming rules depend, computational complexity also matters. Computational complexity refers to the complexity of the process that translates the required information into an eligibility determination.¹⁸² A computationally complex rule makes it difficult for potential claimants to determine their eligibility and plan ahead. And, if a credit's rules make the claiming process too complex to do without software or professional assistance — as is the case for most taxpayers with respect to the EITC and CTC — the costs of tax preparation drain resources from the child's household. In similar fashion, eligibility criteria that turn on difficult-to-attain or difficult-to-verify information are particularly burdensome for taxpayers to substantiate to the IRS if they are audited.

Designing child-claiming rules to promote children's well-being entails furthering important instrumental goals. This discussion has focused on three such goals: channeling benefits, ensuring inclusivity, and minimizing complexity.¹⁸³ The next Section explains how these instrumental goals conflict with each other in the design of child-claiming rules, creating tradeoffs that policymakers must navigate.

B. Tradeoffs in Program Design

Even with only one overarching normative goal, the structure of child-claiming rules involves tradeoffs and requires prioritizing certain instrumental goals over others. This Section will consider tradeoffs arising between channeling, inclusivity, and complexity.

181. See I.R.C. § 32(k) (2018) (outlining the consequences of improperly claiming the credit); Book, *EITC Compliance*, *supra* note 137, at 373-74 (suggesting a higher IRS audit burden for low-income taxpayers).

182. See Goldin, *supra* note 144, at 60 (differentiating between informational and computational complexity in the context of refundable tax credits); *id.* at 81-86 (describing computational complexity in the EITC).

183. There are other instrumental subgoals that fall outside the scope of this Article but are nonetheless important to promoting children's well-being. For instance, child-claiming rules may create incentives or disincentives for parents to marry. We focus on the three listed in the text because we believe they are relatively well-accepted objectives, on which child-claiming rules have outsize effect, and which are especially important to addressing the problems described in Part II.

1. Channeling Versus Complexity

Two objectives that frequently conflict in the design of child-claiming rules are channeling benefits for children's well-being and minimizing complexity for claimants. The diversity of children's caretaking and living arrangements means that there is no simple, one-size-fits-all approach that would consistently channel benefits to the ideal claimant. The current rules seek to balance these two goals by using observable proxies for whether a potential claimant would spend funds in ways that benefit the child. One can understand the status-quo residency¹⁸⁴ and relationship¹⁸⁵ tests in this light: close relatives sharing a household with a child are probably more likely to spend funds in ways that benefit a child than would nonrelatives or relatives living in separate households. These bright-line tests are also relatively simple to apply. On the other hand, because these characteristics are only proxies for the attribute that matters for channeling (i.e., propensity to spend money to benefit the child), tests based on them yield the wrong result in some cases. In particular, when the ideal claimant does not live with the child or is not a close relative, the current child-claiming rules direct funds to the wrong person. In some of these cases, the rules exclude the child from the benefit entirely (as discussed in Part II).

In contrast to the current rules, holistic standards – like the primary caregiver standard used in Canada¹⁸⁶ – offer the promise of better targeting of benefits without necessarily entailing rigid eligibility rules.¹⁸⁷ Holistic standards, however, raise complexity and administrability considerations relative to the bright-line rules that currently govern.¹⁸⁸

To illustrate this tradeoff, compare the bright-line connection tests to an alternative standard-based regime. Whereas the current rules require children to be claimed by a close relative who lives with them for over half of the year,¹⁸⁹ a

184. I.R.C. § 152(c)(1)(B) (2018).

185. *Id.* § 152(c)(1)-(2).

186. See Can. Revenue Agency, *supra* note 106.

187. See Pierre Schlag, *Rules and Standards*, 33 UCLA L. REV. 379, 381-83 (1985) (attributing to a rule “a hard empirical trigger and a hard determinate response” and to a standard “a soft evaluative trigger and a soft modulated response”).

188. See Louis Kaplow, *Rules Versus Standards: An Economic Analysis*, 42 DUKE L.J. 557, 562-63 (1992) (“[S]tandards are more costly [than rules] for legal advisors to predict or enforcement authorities to apply because they require later determinations of the law’s content.”).

189. I.R.C. § 152(c)(1) (2018).

holistic standard might instead require a claimant to be a child's primary caregiver.¹⁹⁰ A primary-caregiver test and the current connection tests differ in several ways. First, the current connection test limits taxpayers' ability to claim a child based only on information about the taxpayer's own connection to the child. In contrast, the primary-caregiver test is a prioritization rule. Assessing whether a taxpayer is the primary caregiver is an inherently relative concept, requiring a comparison of one's caretaking of a child to the caretaking done by other taxpayers. Such an evaluation may impose additional compliance costs on recipients in the form of gathering and weighing information about other caregivers.

In some cases, however, a holistic standard may actually be easier for potential claimants to assess, especially when it better aligns with caregiving realities and potential claimants' normative intuitions about who should be able to claim a child. Although the current connection tests are fairly straightforward—they turn on objective inquiries like the nature of relatedness and time spent together over the year—the content of the tests themselves may not be intuitive for taxpayers. Learning about them may require research or professional guidance.¹⁹¹ In contrast, a primary-caregiver test is probably easier to understand without any research because it better aligns with caregiving realities and intuitions about who should be able to claim the child.

Nonetheless, determining who is a child's primary caregiver would be a complicated inquiry for many families and for the IRS. The challenge would be heightened when multiple individuals within a household share child caretaking responsibilities. Defining childcare could entail assessing multiple factors such as time, financial support to the child, financial support to the household, and relationship to the child. Multifactor tests that seek to synthesize and adjudicate messy human realities are notoriously indeterminate.¹⁹² The informational inputs to such a test would be difficult for claimants to substantiate and for the

190. As one example of such a regime, the Canada Child Benefit pays benefits to the person who is "primarily responsible" for caring for a child. See Can. Revenue Agency, *supra* note 106 (providing that an eligible person must supervise the child, ensure her medical needs are met, and arrange for childcare when necessary).

191. See U.S. GOV'T ACCOUNTABILITY OFF., GAO-16-475, REFUNDABLE TAX CREDITS: COMPREHENSIVE COMPLIANCE STRATEGY AND EXPANDED USE OF DATA COULD STRENGTHEN IRS'S EFFORTS TO ADDRESS NONCOMPLIANCE 22 (2016), <https://www.gao.gov/assets/gao-16-475.pdf> [<https://perma.cc/L2HG-DSQZ>] ("Faced with these complexities [in refundable tax credits], many potential credit recipients seek help filing their tax returns, typically from paid preparers.")

192. See, e.g., *Exacto Spring Corp. v. Comm'r*, 196 F.3d 833, 835 (7th Cir. 1999) (criticizing a seven-factor test as "nondirective"); *Palmer v. City of Chicago*, 806 F.2d 1316, 1318 (7th Cir. 1986) (describing multipronged tests as "redundant, incomplete, and unclear"); Adam S. Chodorow, *Economic Analysis in Judicial Decision Making – An Assessment Based on Judge Posner's Tax Decisions*, 25 VA. TAX REV. 67, 91-92 (2005).

IRS to verify. Potential claimants may have a particularly hard time assessing their caretaking responsibilities relative to others, especially in split-custody settings where some caretaking responsibilities occur in a different household.¹⁹³

Finally, a primary-caregiver test or other holistic standard might introduce this added complexity without appreciably improving flexibility. Under a primary-caregiver test, it is possible that only one individual (i.e., the primary caregiver) would qualify to claim each child. In contrast, the current rules might allow households to choose from among several eligible claimants, since any parent residing with a child is able to claim the child, as are close relatives living with the child whose incomes exceed the income of the parent(s).

2. Channeling Versus Inclusivity

Policymakers may also face tradeoffs when pursuing the goals of channeling and inclusivity.¹⁹⁴ The issue of flexibility highlights the possible tension between these two goals. Flexibility here refers to the flexibility that potential claimants have to choose among themselves who claims a child. To illustrate, consider the following simple rule: anyone may claim a child for a particular benefit as long as no other person claims the same child for the same benefit in the same year. This “hands-off” rule maximizes inclusivity by ensuring that each child may be claimed by someone. Moreover, the rule is simple to understand and easy to administer.¹⁹⁵ It also maximizes potential claimants’ flexibility to decide among themselves who claims a child and thereby accommodates the diverse caregiving arrangements that families adopt. But the hands-off approach does nothing to ensure that benefits are channeled to the claimant most likely to spend funds for the child’s well-being.

As an extreme example, in the purest version of the hands-off approach, someone with absolutely no connection to a child could legally claim her if no

193. Converting these standards into more rule-like objective measures could reduce some of the ambiguity for both taxpayers and the IRS, but at the normal cost of imposing rules instead of standards. Specifically, broad classifications may mislabel certain taxpayers as primary caregivers, precluding some taxpayers who are, in fact, the primary caregiver from claiming the benefits. Such broad classifications might instead channel benefits to other taxpayers from whom the child may not receive as much of the benefit.

194. Not all rule designs result in a conflict between the goals of channeling and inclusivity. For instance, a primary-caregiver standard channels benefits to a person who is likely to spend funds to benefit a child while also ensuring that *someone* is able to claim a child in all but the most extreme cases.

195. In most cases the government need only verify that a child has not been double-claimed in a single year. Where a child has been claimed more than once, conflict-resolution rules would kick in to determine which claimant receives the benefit. For a brief discussion of conflict-resolution rules, see *infra* Section V.B.1.

one else does. More realistically, suppose a child lives with one parent and there is also a noncustodial parent living separately who pays child support or otherwise financially supports the child. If the claiming rule provides the flexibility to reach a bargain in which the noncustodial parent claims the child, some share of the credit may end up benefitting the noncustodial parent rather than the child. This may occur if the noncustodial parent claims the credit and remits only a share of it to the custodial parent for help with the child, or, equivalently, if the noncustodial parent claims and remits the entire child-benefit amount but, as a result of the bargain, reduces other support he was previously providing. Or it may be that the custodial parent claims the child benefit, but as a result of the bargain (or bargaining process), the noncustodial parent remits less of other forms of support than he otherwise would.

Finally, a hands-off rule could open the door for an abusive partner of the child's parent or noncustodial parent to claim the child instead of the custodial parent through coercion. This undesirable outcome is the flip side to allowing nonrelatives or nonhousehold members to claim a child. Although expanding the child-claiming rules to these groups furthers inclusivity, it does so at the cost of undermining channeling when household decision-making does not reflect the best interests of the child.

3. *Inclusivity Versus Complexity*

More inclusive rules can lessen complexity. For example, the "hands-off" rule just described is both simple and inclusive. However, tensions between the goals of inclusivity and minimizing complexity may still arise for certain design decisions for child-claiming rules. To illustrate these tensions, consider the choice between the connection tests and prioritization tests described above.¹⁹⁶ Prioritization tests are more inclusive than connection tests, but they often entail greater compliance costs for taxpayers in the form of complexity.

As described in Section I.B, a connection test limits who can claim a particular child based on characteristics of the relationship between the claimant and the child. A prioritization test further restricts the set of eligible claimants for a child based on comparisons between the eligible claimants. Both types of tests perform a channeling function, seeking to ensure that benefits flow to the household member best suited to use them for a child's well-being.

Connection and prioritization tests each promote benefit channeling in ways that differently implicate concerns about inclusivity and complexity. In particular, connection tests tend to undermine inclusivity by excluding children who fail to satisfy the connection test with respect to any taxpayer. When this occurs,

196. See *supra* Section I.B.

the connection test implicitly constitutes an additional child-based eligibility requirement. For example, recall that under current law, only taxpayers related to and living with a child may claim the child; hence, current law effectively imposes a child-based eligibility test that only children who live with a sufficiently close relative may be claimed for the EITC and CTC.¹⁹⁷ As discussed in Part II, this limitation undermines the credits' ability to promote children's well-being and excludes some of the children most in need of benefits.

By contrast, prioritization tests do not undermine inclusivity. Although they reduce the set of potential claimants for a child, by definition, they do not reduce the set of potential claimants to zero. This is because a prioritization test only limits a person's eligibility to claim a child based on the presence of other eligible claimants. For example, a nonparent may claim a child only if the nonparent's income exceeds the income of any parent who may claim the child.¹⁹⁸ This test cannot reduce the number of potential claimants below one; either no parent can claim the child—so that the limitation does not apply—or the limitation does apply—in which case at least the parent (if not others) can claim the child.

Prioritization tests are more inclusive than connection tests, but they also tend to impose greater compliance costs on would-be claimants in the form of complexity. When a prioritization test applies, a taxpayer can only determine her eligibility in relation to other taxpayers. For example, the primary-caregiver test described above requires taxpayers to determine not only whether they provide care to a child but also how the care they provide compares with the care that every other potential claimant provides. Similarly, the income limit for nonparents just described requires nonparents to compare their income against the incomes of the child's parent(s) (and other nonparents) to determine whether they qualify to claim a child. In contrast, determining whether a potential claimant satisfies a connection test for a child does not require comparing the claimant's situation or relationship to the child to anyone else's.

C. *Other Policy Goals*

Benefit programs may be designed to further other policy goals in addition to promoting children's well-being. This Section briefly considers three such

197. See I.R.C. § 152(c)(1)-(2) (2018).

198. *Id.* § 152(c)(4).

goals that bear directly on program design: (1) limiting public costs,¹⁹⁹ (2) ensuring a progressive distribution of taxes and benefits,²⁰⁰ and (3) incentivizing work.²⁰¹

This Article does not make a normative case for these goals. Although there are certainly good reasons to support one or multiple of them,²⁰² those reasons do not explain why we consider them here. Rather, we consider these goals because they play an outsize role in safety-net program design. In particular, a benefit phase-out reflects the goals of limiting public costs and ensuring a progressive distribution of transfers.²⁰³ A benefit phase-in reflects the goal of encouraging work.²⁰⁴ Phase-ins and phase-outs, in turn, require modification of child-claiming rules to serve these goals while still prioritizing children's well-being. In our discussion below, we will consider how alternative child-claiming rules promote or hinder such objectives.

199. See Ventry, *supra* note 170, at 984 (explaining that the EITC was designed to satisfy a “welfare reform consensus that emphasized pro-work, pro-growth, low-cost policies”).

200. See Hungerford & Thiess, *supra* note 156, at 2 (explaining that the EITC was intended to reduce tax burdens on low-income taxpayers).

201. See, e.g., Lawrence Zelenak, *Redesigning the Earned Income Tax Credit as a Family-Size Adjustment to the Minimum Wage*, 57 TAX L. REV. 301, 304-05 (2004) (providing the legislative history supporting the work-incentive goal underlying the EITC); Ventry, *supra* note 170, at 995-96 (describing the EITC’s goal of “mov[ing] individuals off welfare and into paid employment”).

202. For instance, one may wish to limit public cost in order to require less revenue and therefore less taxation. See, e.g., ROBERT NOZICK, ANARCHY, STATE, AND UTOPIA 149 (1974) (“The minimal state is the most extensive state that can be justified.”). Progressive taxes and transfers may be justified on welfarist grounds, for instance, because a more equal distribution of income and wealth increases total social well-being. See Peter Diamond & Emmanuel Saez, *The Case for a Progressive Tax: From Basic Research to Policy Recommendations*, 25 J. ECON. PERSPS. 165, 165 (2011). A work incentive may be desirable because, in theory, it has greater antipoverty effects than a subsidy that lacks a work incentive. See Hilary W. Hoynes & Ankur J. Patel, *Effective Policy for Reducing Poverty and Inequality? The Earned Income Tax Credit and the Distribution of Income*, 53 J. HUM. RES. 859, 885-86 (2016) (concluding that static estimates underestimate the EITC’s antipoverty effects by failing to include work-incentive effects).

203. Daniel Shaviro, *The Minimum Wage, the Earned Income Tax Credit, and Optimal Subsidy Policy*, 64 U. CHI. L. REV. 405, 408 (1997) (“Phaseouts typically are defended . . . as necessary to ‘target . . . benefits to households that need them the most’ and ‘control . . . program costs.’” (quoting JAMES C. OHLS & HAROLD BEEBOUT, *THE FOOD STAMP PROGRAM: DESIGN TRADEOFFS, POLICY, AND IMPACTS* 41 (1993))). *But see id.* at 408-10 (critiquing these justifications for the EITC phase-out). Shaviro notes that phase-outs are in fact not necessary to target benefits or limit outlays, since adjusting tax rates would be sufficient to achieve a desired benefit distribution. *Id.*

204. See Nada Eissa & Jeffrey B. Liebman, *Labor Supply Response to the Earned Income Tax Credit*, 111 Q.J. ECON. 605, 608-09 (1996).

In addition to benefit structure, program administration is important to the goal of limiting public cost.²⁰⁵ Child-claiming rules affect program administration in part by determining what information the IRS must verify. If the IRS can easily observe key informational inputs to the child-claiming rules, it will be more effective at identifying which children are being claimed in violation of the rules.²⁰⁶ When the IRS can identify such overclaims with a high degree of precision, the claims can be effectively deterred without the need for draconian penalties. Effective deterrence reduces costly improper payments and means that audits can be more effectively focused on claimants at high risk of noncompliance (as opposed to broadly affecting low-income communities).

As above, tradeoffs are inevitable as additional goals are introduced. For example, while a phase-out reduces total outlays, it also introduces additional complexity, which increases administrative cost.²⁰⁷ These goals also sometimes conflict with the primary goal of promoting children's well-being, or with certain instrumental goals like channeling or inclusivity. For instance, requiring that a recipient work in the formal labor market excludes many children from receiving benefits, harming children's well-being.²⁰⁸ We consider these various tradeoffs in greater detail below as we describe specific child-claiming rules under various program structures.

IV. PROPOSED CHILD-CLAIMING RULES

In this Part, we propose child-claiming rules under a universal benefit, a benefit with an income phase-out, a benefit with an income phase-in, and a benefit with both an income phase-out and phase-in.

205. Lawrence Zelenak, *Tax or Welfare? The Administration of the Earned Income Tax Credit*, 52 UCLA L. REV. 1867, 1905 (2005) (“The overall cost of administering a transfer program can be understood as the combined cost of overpayments and direct administrative expenses . . .”).

206. Cf. Nat’l Taxpayer Advoc., *supra* note 147, at 37 (explaining that, where the IRS cannot easily verify taxpayer information using available databases, it incorrectly flags returns for inaccuracies).

207. See, e.g., Shaviro, *supra* note 203, at 409-10 (critiquing social-welfare programs’ phase-outs for creating marginal tax rates that are “unduly high” and “bounce up and down for no apparent reason”); Rodney P. Mock, Herbert G. Hunt III & Jeffrey Tolin, *When Economics Makes Bad Tax Policy: Tax Phase-Outs*, 37 VA. TAX REV. 485, 509-13 (2018) (discussing phase-outs, complexity, and compliance costs).

208. See *supra* Section II.A.

A. Policy 1: Universal Child Allowance

This Section considers child-claiming rules for a benefit that takes the form of a universal child allowance. Under such a program, anyone claiming an eligible child qualifies for the full benefit amount. Such benefits do not feature a work incentive or means-test. That is, they lack both a phase-out and phase-in. By considering the universal allowance first, we can consider the design of a benefit focused primarily on promoting children's well-being. We propose rules that seek to balance the various instrumental goals of channeling benefits, ensuring inclusivity, and minimizing compliance costs, while acknowledging that tradeoffs are inevitable.

Because every child is entitled to the same benefit amount, regardless of income, the government should be largely indifferent as to who claims the child. Thus, the child-claiming rules can be significantly more flexible than under the current system. However, to ensure that benefits indeed reach children, the rules should be designed to prioritize caregivers who are most likely to spend the money in a way that benefits the intended child.²⁰⁹ Lastly, the rules should provide an alternative, fallback rule in the event that no adult can claim the child, again to ensure that such children are not arbitrarily excluded.

Beginning with channeling, there are good reasons to believe that paying child benefits to custodial parents would tend to better channel benefits to children than paying them to noncustodial parents. More broadly, we should pay benefits to claimants that live in the same household with the child. There are several reasons to prefer claimants who live with children. First, the existing evidence showing that safety-net programs improve children's well-being is derived from studies of cash transfers to the household in which the child lives.²¹⁰ Such transfers have actual evidence of effectiveness.²¹¹ These results are intuitive; even if the benefits are not directly spent on the child, providing them to

209. In principle, requirements intended to channel benefits to children would be unnecessary if the interests of all potential claimants were perfectly aligned with those of the child. In that case, a hands-off design would provide flexibility for potential claimants to decide amongst themselves whose spending would most benefit the child, and it would allow that person to claim the child. In reality, such flexibility could undermine the channeling of benefits given the likelihood that some potential claimants would not fully prioritize the interests of the child.

210. See Sherman & Mitchell, *supra* note 175, at 5-7 (describing research on the positive effects of refundable tax credits – distributed to households in which children live – on children).

211. See *id.*; Chetty et al., *supra* note 175, at 29-31.

someone who lives with the child will reduce stress and improve well-being in the child's home generally.²¹²

Second, the vast majority of custodial parents are mothers.²¹³ There is some research finding that women are more likely than men to spend cash transfers on children.²¹⁴ Relatedly, the mere fact that mothers are more likely to have primary custody of children suggests that they will be more likely to spend benefits on children, since they are responsible for day-to-day care. These considerations support channeling benefits into the household where the child lives, and potentially to specific family members within that household.²¹⁵

Therefore, to better channel benefits to children, some combination of connection and prioritization tests is preferable to a purely hands-off approach. A primary-caregiver test might seem an ideal way to channel benefits to children.²¹⁶ However, as explained above, determining the identity of a child's primary caregiver is likely to be quite challenging for the administering agency and in some cases for taxpayers as well.²¹⁷

A residency test is a more practical alternative. Under our proposed regime, anyone living with a child would be a potential claimant. The rule could mirror

212. See Lisa A. Gennetian, Eldar Shafir, J. Lawrence Aber & Jacobus de Hoop, *Behavioral Insights into Cash Transfers to Families with Children*, 7 BEHAV. SCI. & POL'Y 71, 78, 84 (2021) (discussing how “predictable payments” can “alleviate cognitive resource constraints . . . on families” and noting that studies of the effects of unconditional cash transfers show “increased . . . psychological well-being and self-esteem” for recipients).

213. See Timothy Grall, *Custodial Mothers and Fathers and Their Child Support: 2017*, U.S. CENSUS BUREAU 3 (May 2020), <https://www.census.gov/content/dam/Census/library/publications/2020/demo/p60-269.pdf> [<https://perma.cc/W8J5-RLKX>] (reporting that about 80% of custodial parents are mothers). Note, however, that the percentage of custodial fathers increased from 16% in 1994 to 20.1% in 2018. *Id.*

214. See Joanne Yoong, Lila Rabinovich & Stephanie Diepeveen, *The Impact of Economic Resource Transfers to Women Versus Men: A Systematic Review*, UNIV. OF LONDON, EPPI-CENTRE 24 (Jan. 2012), <https://assets.publishing.service.gov.uk/media/57a08a6aed915d622c00070d/EconomicTransfer2012Yoong.pdf> [<https://perma.cc/88YH-RSZG>] (concluding that studies on conditional cash transfers to households “consistently find a relative difference in expenditure, investment and school enrol[ment] for transfers to women versus men”). *But see* Francesca Bastagli, Jessica Hagen-Zanker, Luke Harman, Valentina Barca, Georgina Sturge, Tanja Schmidt & Luca Pellerano, *Cash Transfers: What Does the Evidence Say?*, OVERSEAS DEV. INST. 254-55 (July 2016), <https://cdn.odi.org/media/documents/11316.pdf> [<https://perma.cc/MU52-BWJ9>] (finding mixed evidence that the gender of transfer recipients affects outcomes). It is worth noting that the evidence on cash-transfer programs comes almost entirely from other countries. *Id.* Given the importance of cultural context to gender norms, research outcomes cannot be assumed to apply in the United States.

215. We briefly discuss gender-based rules below. See *infra* Section V.B.1.

216. See, e.g., DRUMBL, *supra* note 160, at 99-100 (describing the primary-caregiver test for the Canada Child Benefit).

217. See *supra* Section III.B.

the current test — requiring that the claimant reside with the child for at least half of the year — or it could relax the current rule by shortening the required duration of shared residence to better accommodate complex joint-custody situations.²¹⁸ Relative to current law, this would entail eliminating the relationship and relative-age connection tests, as well as the prioritization rule that nonparents claiming a child have higher income than any parent who could claim the child.²¹⁹ It would also remove the CTC's limited exception to the residency test that allows a custodial parent to assign the child-claiming right to a noncustodial parent.²²⁰

A simplified claiming rule consisting solely of a residency test would offer several benefits. First, unlike current law, it would not exclude children being raised by neighbors, family friends, or relatives such as cousins. It would accomplish this by eliminating the relationship connection test, which, as described above, limits potential claimants to a short list of specified relatives of the child.²²¹

Second, relying exclusively on a residency test would do a reasonably good job of channeling benefits to children without overly restricting flexibility. In virtually all cases, a child's primary caregiver resides with the child, making her one of the qualifying claimants.²²² However, instead of imposing rigid rules to determine who the primary caregiver is, this approach leaves it up to the child's household members to decide for themselves who is in the best position to claim the child. And even when an individual who is not the child's primary caregiver claims the child, the benefits are still likely to reach the child insofar as they support the finances of the household.²²³ Thus, a residency-based regime would effectively channel benefits while providing some amount of flexibility for eligible claimants to decide who should receive the benefit.

218. The rules would also accommodate caregivers of children who are hospitalized or otherwise institutionalized for extended periods to ensure that these households do not lose benefits due to a child's temporary absence.

219. I.R.C. § 152(c) (2018).

220. *Id.* § 152(e).

221. *Id.* § 152(c)(2).

222. Indeed, shared residence would likely be one of the more important factors in a primary-caregiver test. Although shared residence is not explicitly included on the list of factors for the Canada Child Benefit, shared residence is necessary to meet several of the test's listed factors, including attending to the child's hygiene, caring for the child when she is ill, supervising daily activities, and maintaining a secure residence. See DRUMBL, *supra* note 160, at 100.

223. See Nancy Folbre, *Why Current Definitions of Family Income Are Misleading, and Why This Matters for Measures of Inequality*, WASH. CTR. FOR EQUITABLE GROWTH (July 12, 2017), <https://equitablegrowth.org/why-current-definitions-of-family-income-are-misleading-and-why-this-matters-for-measures-of-inequality> [<https://perma.cc/436W-QKYB>] (noting that most people in the United States pool income for much of their lives, or at least benefit from shared-household economies of scale).

Third, although more difficult to administer than the hands-off approach, a residency test would be simpler to administer than a primary-caregiver test. A residency test can be implemented as a bright-line rule reflecting the share of days of joint residence during the relevant time period, rather than requiring a fuzziy, multifactor test that considers such circumstances as time spent caring for the child and financial support.²²⁴ In this way, a residency test is easier to understand and apply for taxpayers and administrators.²²⁵

It is important to acknowledge again that channeling and inclusivity are in tension with each other, even with a residency-based test. Eliminating the relationship test would allow nonrelatives to claim a child, which would increase inclusivity and flexibility but could result in worse channeling of the benefit to support the child's well-being. Although nonrelatives frequently share in caregiving responsibilities and may often care for unrelated children as if they were their own, it may be that nonrelatives, on average, spend resources in ways that are less beneficial to the child. Where all members of the household pool resources, claims by nonrelatives are not concerning. But where household members do not share resources, and especially where bargaining-power differentials or abuse exists, such claims are more worrisome.²²⁶ For instance, an abusive partner might claim a child, despite not being involved in the child's caretaking. Or, one could imagine a distant relative or family friend demanding the right to claim a child in exchange for allowing the mother and child to stay in her house. A relationship test avoids this problem by preventing the nonrelative from claiming the child. However, it does so at the cost of excluding certain children from the program's benefits.

It would be preferable to require some additional channeling of benefits but to do so in a way that does not reduce inclusivity. Rather than resorting to a strict relationship test, a parental-prioritization rule could resolve this problem without excluding children from benefits. As a prioritization rule, this rule would

224. See *Palmer v. City of Chicago*, 806 F.2d 1316, 1318 (7th Cir. 1986) (criticizing multifactor tests). See *supra* Section III.B.1 for discussion of inputs to a primary-caregiver test.

225. From the program administrator's perspective, a challenge to this approach is that there does not exist high-quality, third-party reported information about which children live with which adults. This lack of information has complicated the IRS's efforts to enforce the residency test in the past. However, any such challenges would be at least as great under a primary-caregiver test, which would likely require information about residency as well as additional informational inputs. And, as discussed below, under a universal child allowance, there would be less reason for adults outside the child's household to attempt to claim the child, lessening the incentive for noncompliance and the need for strict enforcement.

226. Unmarried, cohabitating couples are less likely than married couples to pool their income. See Kasey J. Eickmeyer, Wendy D. Manning & Susan L. Brown, *What's Mine Is Ours? Income Pooling in American Families*, 81 J. MARRIAGE & FAM. 968, 974 (2019).

narrow the set of otherwise eligible individuals who qualify to claim the child.²²⁷ Specifically, under such a rule, a nonrelative living with a child could only claim the child if the child's parent is unable to do so.²²⁸ If no parent is present to claim the child, the child could be claimed by anyone living in the child's household.²²⁹ Nonparent relatives would not be affected by this test; they would still be able to claim the child if a parent is present. This flexibility is important because, as discussed above, grandparents and other family members often share caregiving responsibilities and may be the only ones able to claim a child when a parent is present but unable to do so.²³⁰ By using a prioritization rule rather than a stricter connection test, we can achieve some level of channeling without excluding children entirely, and while retaining some flexibility for claimants.

As explained above, prioritization rules add complexity and may increase compliance costs for taxpayers as well as enforcement costs for the administering agency. In this case, however, such complexity is likely to be relatively minor. For one thing, determining whether someone is a child's parent is usually straightforward. Further, unlike under the current system, with a universal benefit, taxpayers will have little incentive to game prioritization rules to maximize benefits, since all claimants would receive the same benefit amount. The prioritization rule in this case would essentially empower parents – and most commonly mothers – to maintain their claim to benefits in the face of pressure from cohabitating partners or other unrelated household members.²³¹

There is one final problem arising from the residency test that is worth addressing. As explained above, any connection test (including the residency rule) has the potential to exclude certain children from receiving benefits. Here, children who do not live with any one potential claimant for a sufficient amount of

227. Recall that, in contrast to a prioritization rule, a conflict-resolution version of this test would allow nonrelatives to claim the child absent a claim by the child's parent.

228. A child's guardian or foster parent would count the same as a biological parent for these purposes.

229. The caveat is if this is connected to some other tax liability, and some other tax debt, in which case there could be an incentive to claim strategically. Alternatively, if there is a fixed financial or hassle cost of filing, and someone else would be filing already, there may be incentive to have that individual claim the child.

230. For example, consider the child of an unmarried same-sex couple who is biologically related to one of the parents and has not been legally adopted by the nonbiological parent. This rule would permit the child's nonbiological parent to claim the child when the child's biological parent cannot do so, even if other biological relatives of the child are present in the household.

231. The proposed rule does not prioritize the claim of the parent over that of the relative family members who might also put pressure on the parent to give up their claim. But we think that preserving flexibility here is important given the frequent role played by other relatives in supporting the child when the parent is present but unable to file or not involved in caretaking.

time will not have anyone available to claim them. These children may move from household to household, not staying in any home or with any specific adult for longer than a few months at a time.²³² Children in this category might stay with multiple relatives during the course of the year (either through joint-custody arrangements or informal arrangements), move between multiple foster homes, or be unaccompanied homeless youth.²³³ Knowing the exact number of such children is difficult, partly because the concept for tax purposes does not directly track commonly tabulated children's poverty metrics, like homelessness or hunger. The number could well be substantial. Moreover, these children are especially vulnerable and would benefit most from additional support.²³⁴ They should not slip through the cracks.

To address this problem, one possible solution is to allow children to claim themselves for purposes of this benefit. Children—even young children—may already file tax returns in some cases, often with the help of an adult.²³⁵ Given this reality, there is no reason that children could not claim themselves for a child benefit. Young children who need to file a tax return to claim themselves would do so with the help of a legal guardian, as under the status quo. Assuming the child owed no other tax liability, she would receive a refund check in her name. The funds could be deposited in an account in her own name or in a beneficiary account controlled by a parent or other legal guardian. Such a structure is not unprecedented—Social Security payments to children operate similarly.²³⁶ To

232. At the extreme end, some children are considered “unaccompanied minors.” These children do not have parents or guardians or are not part of a family unit. *Youth Homelessness Overview*, NAT’L CONF. STATE LEGISLATURES, <https://www.ncsl.org/research/human-services/homeless-and-runaway-youth.aspx> [<https://perma.cc/7JTH-XHHX>]. One survey from 2017 estimates that approximately 700,000 youth experienced some form of unaccompanied homelessness during a twelve-month period. VOICES OF YOUTH COUNT, *supra* note 127, at 6.

233. VOICES OF YOUTH COUNT, *supra* note 127, at 7-8.

234. *See id.* at 12 (reporting that homeless youth are more likely to come from low-income households; identify as lesbian, gay, bisexual, or transgender; be unmarried parents; and come from Hispanic and Black households).

235. *See* INTERNAL REVENUE SERV., U.S. DEP’T OF THE TREASURY, PUBL’N NO. 929, TAX RULES FOR CHILDREN AND DEPENDENTS 3-4 (2021), <https://www.irs.gov/pub/irs-pdf/p929.pdf> [<https://perma.cc/T77R-S9TG>] (providing rules for when children must file a tax return).

236. *See generally* *A Guide for Representative Payees*, SOC. SEC. ADMIN. (Dec. 2019), <https://www.ssa.gov/pubs/EN-05-10076.pdf> [<https://perma.cc/2YYD-3HUZ>] (providing guidance to individuals who receive Social Security payments on a beneficiary’s behalf, including children).

A different potential fix would be to weaken the residency requirement, such as by requiring the taxpayer to live with the child being claimed for at least three to four months instead of six. However, such a structure could complicate coordination across households. There is also a greater risk that claimants would not be the child’s primary caregiver, and therefore that some portion of benefits will not be spent on the child.

prevent otherwise ineligible adults, such as a noncustodial parent, from indirectly claiming a child's benefits through this method, and to channel benefits through an adult when possible, we propose that children only be able to claim themselves when no qualifying adult is able to do so.

Finally, it is worth noting that these proposed rules would not eliminate two problems that exist under the current rules. First, noncustodial parents frequently claim children they do not live with, in contravention of the residency requirement.²³⁷ A residence-based rule may thus contribute to complexity-related noncompliance, such as when noncustodial parents incorrectly assume they can claim children who they support financially but with whom they do not reside. Second, and relatedly, the IRS does not have reliable third-party information to easily verify children's residency. By retaining the residency test, such claims would still constitute a mistake, giving rise to audits and penalties for taxpayers and the related enforcement challenges for the IRS. However, the problem of noncustodial child claims is largely a result of the incentive structure of the current credits, where only taxpayers with sufficient earned income are able to claim the benefit. In contrast, under a universal child allowance, there would be less incentive for noncustodial parents and others to claim a child with whom they do not live. And the revenue harm of such erroneous claims is much smaller than under current law, since everyone receives the same benefit amount. Thus, the government should be less concerned about these errors and their related enforcement challenges.

A universal credit structure enables far simpler rules compared to the current system. Even so, it still requires some channeling of benefits to ensure that credits flow to children. By allowing any household member to claim a child (subject to some prioritization of parents over nonrelatives), the proposed approach would provide a simple rule structure that balances goals of channeling, inclusivity, and minimizing complexity in service of the larger goal of promoting children's well-being. Allowing children to claim themselves ensures that no child slips through the cracks of the residency rule.

B. Policy 2: Benefit with Income Phase-Out

Child-benefit programs often take a more complicated form than the universal allowance just considered. This Section and the next two acknowledge these complexities, offering analysis of child-claiming rules for benefits that phase in

237. See Leibel et al., *supra* note 24, at 18 (explaining that most ineligible parental claims for the EITC failed the residency test).

and phase out based on claimants' income. These rules seek to protect the integrity of these income-based designs and to account for the policy goals that underlie them.

In comparison to a universal child benefit, a child allowance with an income phase-out no longer seeks only to support children's well-being, but also to target benefits to children below some financial threshold. This structure is a version of a "means-test" — that is, a program that limits eligibility based on need.²³⁸ Restrictions are necessary to balance flexibility in who may claim a child with the means-testing goal of the benefit's design. More generally, when the claiming taxpayers' return is used not only for delivering benefits but also for assessing the child's economic situation, the goal of means-testing benefits may come into conflict with the other objectives relating to the design of the child-claiming rules.

By and large, many of the rules we propose for a universal allowance could still work here. Those rules would channel benefits to claimants who live with a child and prioritize claiming by parents over nonrelatives. Allowing child self-claims also should not raise a problem in the context of an income phase-out, as long as such claims are limited to cases in which the child does not meet the definition of qualifying child for any taxpayer.

Additional restrictions are necessary, however, in order to protect the means-test. To illustrate why, consider the approach proposed above, under which the family members who live with a child have substantial flexibility to choose among themselves who should claim the child. The concern with applying that approach for a means-tested benefit is that the flexibility allows potential claimants to game the means-test by strategically allocating the child to a qualifying person. For example, a child living with high-income parents could still receive the credit if a lower-income aunt or uncle, or even a sibling, claims the child instead of the parents.

The child-claiming rules must be crafted to promote children's well-being while preventing such gaming. To do so, they must direct benefits to someone who is likely to spend them to support the child and whose income is an accurate proxy for the child's well-being.²³⁹ Continuing with the prior example, although a child's sibling may end up supporting the child's well-being by contributing to the household finances, the sibling's income is unlikely to accurately reflect the

238. See Benjamin M. Leff, *EITC for All: A Universal Basic Income Compromise Proposal*, 26 WASH. & LEE J. C.R. & SOC. JUST. 85, 96-97 (2019) (describing a program phase-out as a version of a means-test, in contrast to a universal program paid to all irrespective of income).

239. Accurately determining claimants' financial need is a core problem in means-tested programs. While tax benefits use the income of a family unit (as defined by tax rules), other programs, like SNAP, use combined income from all *household* members. See 7 C.F.R. § 273.1 (2021) (defining household for SNAP purposes).

child's own economic situation, at least when the child's parents are also present and living with the child.

When a parent lives with a child, it seems likely that the parent's income will typically be the best proxy for the child's economic situation.²⁴⁰ And because a custodial parent is arguably the most likely household member to act as the child's primary caregiver, both the means-testing and benefit-channeling considerations point toward the parent claiming the child.

In some cases, however, a nonparent living in the same household may be the child's primary caregiver and the person best positioned to receive benefits. Imagine, for instance, a young parent living with her child and the child's grandparents, who care for the child while the parent is in school.²⁴¹ The rules should allow flexibility in such cases without undermining the means-testing of the benefit.

Crafting such a rule is possible, even while maintaining the presumption that a residential parent's income is the best proxy for the child's economic well-being. First, it is important to note that if a parent living with a child is eligible to claim the maximum benefit, there is little concern with others claiming the child merely to circumvent the means-testing requirement. There would be no incentive to manipulate who claims the child because the parent could always claim the full benefit. Thus, when the custodial parent's income is below the phase-out threshold, other household members should be permitted to claim the child. Second, no matter where the parent's income falls relative to the phase-out, anyone with a higher income would receive an equal or smaller benefit. Consequently, it would not undermine the means-testing goal to allow a nonparent to claim the child so long as the nonparent's income exceeds that of the parent.

To summarize, when a child lives with a parent, any other household member should also be permitted to claim the child as long as (1) the parent's income

240. Cf. Eickmeyer et al., *supra* note 226, at 974 (finding that nonmarried partners and those who do not share children are unlikely to pool resources).

241. See Divya Saxena & Sean Brotherson, *When Grandparents Become Parents to Their Grandchildren*, N.D. STATE UNIV. EXTENSION 1 (Mar. 2021), <https://www.ag.ndsu.edu/publications/home-farm/when-grandparents-become-parents-to-their-grandchildren> [<https://perma.cc/Y9TU-JRA3>] (providing that 2.5 million grandparents have primary responsibility for caring for grandchildren).

is below the start of the income phase-out range, or (2) the nonparent has income at least as high as the parent.²⁴² Such a rule would promote flexibility while preserving the integrity of the phase-out.²⁴³

The situation of cohabitating but unmarried parents raises additional design challenges,²⁴⁴ especially if one parent's income is above the start of the phase-out range.²⁴⁵ In such a case, one could imagine either (1) allowing the parents to decide who claims the child or (2) requiring that the child be claimed by the higher-income parent. Both of these approaches have downsides. With respect to the first, more flexible approach, it seems likely that parents living in the same household would both contribute to the child's financial well-being.²⁴⁶ Looking to only one parent's income – and likely the one with lower income – would provide an inaccurate picture of the child's economic situation. It could also create a marriage disincentive in the event that filing jointly with the higher-income parent would make the household ineligible for the credit.²⁴⁷ With respect to the second approach, forcing the higher-income parent to claim the child could undermine the channeling of the benefit, especially if the lower-earning parent was the child's primary caregiver. In addition, the second approach would provide a disincentive for unmarried parents to live in the same household. Although circumstances vary, the presence of a second biological parent in a child's household could contribute to the child's well-being; the child benefit should therefore not create a disincentive for this behavior.²⁴⁸

242. An even more flexible rule would allow any other taxpayer to claim the child but limit the credit to the amount that the child's parent would qualify for if she were to claim the child. However, this would raise substantial administrative difficulties because it requires knowing the precise amount of the parent's hypothetical benefits. Of course, the proposed rule is similarly complex because it requires specific knowledge of the parent's income relative to the threshold. A better alternative might be to limit the credit to the amount that the parent would be able to claim, so that the consequences of getting it wrong are less steep. A more conservative rule would simply require the parent to claim the child unless the other taxpayer earns more than the parent, as under current law. See I.R.C. § 152(c)(4) (2018).

243. As discussed above, we also recommend that nonrelative household members face the additional limitation of not claiming a child unless the parent cannot do so. See *supra* Section IV.A.

244. Married parents filing separate returns would be treated as unmarried for these purposes.

245. When both parents have incomes below the start of the phase-out range, these problems become moot because either parent would receive the full credit regardless. This result presumes that the income phase-out for married couples is twice that for single filers.

246. See Eickmeyer et al., *supra* note 226, at 974 (discussing income pooling among cohabitating partners that share children).

247. This concern would be less significant (or nonexistent) for couples in which the two people have similar earnings, assuming a higher threshold for joint versus single filers.

248. See Wendy D. Manning, *Cohabitation and Child Wellbeing*, 25 *FUTURE CHILD* 51, 57-58 (2015) (noting that for young children in certain conditions, those living with two cohabitating biological parents can have similar outcomes as those living with two married biological parents);

These challenges cut in multiple directions. On the one hand, the decision of whether to marry is likely more elastic than the decision of whether to cohabit, since the former typically entails shared residence along with other legal commitments. That is, people are likely to still live together in the face of a benefit reduction, but they may be less likely to get married. If so, creating a disincentive on the more inelastic margin – that of cohabitation – will distort behavior less. On the other hand, children may suffer more from their parents living separately, compared to their parents living with them but being unmarried.²⁴⁹ Further, the location of the threshold matters. For example, it could turn out to be the case that households with joint income near the current CTC phase-out threshold are less elastic with respect to marriage and cohabitation decisions than are households with incomes near the (much lower) current EITC phase-out threshold.²⁵⁰ There is no obvious solution to these considerations. Nonetheless, these are critical issues for policymakers to weigh. Additional empirical research in this area would be particularly helpful to such deliberations.

Other complexities arise when no parent is present. If there is more than one nonparent in the child's household, there is not an obvious reference person to use for the child's economic unit. One approach is to require that the highest-income household member claim the child. However, such a rule would be unfair if this person does not actually support or care for the child. A more inclusive approach would be to simply allow anyone in the household to claim the child. Depending on the phase-out threshold, such flexibility might make sense despite the fact that it would undermine the means-testing goal in some instances, given the practical reality that many children being raised by nonparents live in relatively low-income households. For example, only about half of grandparents raising children when no parent is present are in the labor force; the rest are unemployed, disabled, or retired.²⁵¹ A third approach is for the rule to establish

Gregory Acs, *Can We Promote Child Well-Being by Promoting Marriage?*, 69 J. MARRIAGE & FAM. 1326, 1327-28 (2007) (noting the consistent finding that children living with their married parents tend to have better outcomes than children living with a single parent). Of course, there are plenty of circumstances in which a child would be better off without the second parent's presence, such as in cases of domestic violence or abuse. Our point is that the child-claiming rules should not provide a blanket disincentive to the second parent's presence.

249. Acs, *supra* note 248, at 1327-28; Manning, *supra* note 248, at 51.

250. We know of no direct evidence for differences in the tax-elasticity of marriage by income, but see Janet Adamy & Paul Overberg, *Affluent Americans Still Say 'I Do.' More in the Middle Class Don't.*, WALL ST. J. (Mar. 8, 2020, 2:16 PM ET), <https://www.wsj.com/articles/affluent-americans-still-say-i-do-its-the-middle-class-that-does-not-11583691336> [https://perma.cc/F5WW-MRJA] for evidence that marriage rates are consistently higher among higher-income individuals.

251. Natasha V. Pilkauskas & Rachel E. Dunifon, *Children Living with Grandparents: Prevalence, Characteristics, and Complexity* 33 tbl.2 (June 2016) (unpublished manuscript), <https://drive.google.com/file/d/1oLfEjAJlGJwJURDJH4kohn6ycodODkGj/view> [https://perma.cc/

a hierarchy of potential claimants based upon their relationship to the child. For example, the rule might state that when a parent is not present, anyone who claims the child must have income at least as high as that of any grandparent who is present.

Whatever the rule, choosing the best approach will best be driven by additional data about family circumstances in relation to the particular phase-out level. As above, an overly strict rule risks creating a disincentive for high-income individuals to live with a child, which can end up undermining the child's well-being. Similarly, if the rule permits too much flexibility only when parents are not present, it could disincentivize absent parents from moving back in with their children. As above, the magnitude of these concerns depends on the location of the phase-out.

To summarize, a benefit with an income phase-out must balance the goals of promoting children's well-being and means-testing benefits. The residency-based rules we propose for a universal allowance could still work here, with some additional restrictions. These additional rules aim to protect the means-test without sacrificing flexibility and inclusivity. Specifically, when a parent is present, we propose rules that would allow any household resident to claim a child as long as their income is above that of the parent or the parent's income is not above the start of the income phase-out threshold. Using the custodial parent's income as the reference point likely paints an accurate picture of the child's financial well-being. Further complexities arise for households with two unmarried parents and for those with no parents present, the resolution of which would benefit from additional data.

C. Policy 3: Benefit with Income Phase-In

To incentivize work, child benefits may phase in based on the claimant's income.²⁵² In such cases, some of the previous considerations are mirrored while other tradeoffs arise. For the universal allowance, the main concern was channeling benefits to the correct person.²⁵³ Upon introducing an income phase-out,

/6ANM-2JDT] (finding an employment rate of 53% among grandparents raising children without a parent present); Natasha V. Pilkauskas & Rachel E. Dunifon, *Understanding Grandfamilies: Characteristics of Grandparents, Nonresident Parents, and Children*, 78 J. MARRIAGE & FAM. 623, 628 tbl.2 (2016) (finding an employment rate of 45% percent among grandparents raising children without a parent present).

252. See Isaac Shapiro, Robert Greenstein, Danilo Trisi & Bryann DaSilva, *It Pays to Work: Work Incentives and the Safety Net*, CTR. ON BUDGET & POL'Y PRIORITIES 10 (Mar. 3, 2016), <https://www.cbpp.org/sites/default/files/atoms/files/3-3-16tax.pdf> [<https://perma.cc/QQ4Q-FV5C>] (explaining that the EITC phase-in structure creates a significant "positive work incentive effect").

253. See *supra* Section IV.A.

this concern was balanced against preserving the integrity of the means-test.²⁵⁴ With the phase-in, by contrast, the design of the child-claiming rules must balance the strength of the work incentive and the goal of channeling benefits to the claimant who will best support the child alongside the goal of ensuring that the neediest children still benefit from the program.

To illustrate these objectives and tradeoffs, consider once again our proposed rule for the universal child allowance, in which any relative living with a child may claim the child, and in which any nonrelative living with the child may only claim the child when a parent is not present.²⁵⁵ Although these rules excluded certain individuals from claiming a child (i.e., all nonhousehold members and, under some conditions, nonrelatives), the exclusions were justified on the grounds that they would better channel benefits to the child. Moreover, those exclusions would not prevent a child from being claimed entirely, since we proposed that nonrelatives be permitted to claim a child when no parent was available to do so. Additionally, we proposed that children be permitted to claim themselves when no household member was available to claim them.

In contrast, for a benefit with an income phase-in, such limitations are much more likely to exclude children entirely by leaving them with no one to claim them. Consider a child living with his parent and his parent's unmarried partner (approximately 7% of all parents with coresident children fell into this category in 2020²⁵⁶). Suppose the partner works, providing financial support to the household, and the parent does not work. With an income phase-in and the child-claiming rules proposed above, no one would be able to claim the child. The parent cannot claim the child because she does not work; the partner cannot claim the child because he is a nonrelative and the child's parent is present. Although the limitation on nonrelatives' ability to claim the child may better channel benefits to the child, from the perspective of the child's well-being it is more important to guarantee that someone is able to claim the child in the first place. We would therefore drop the parental prioritization rule for a benefit with an income phase-in.

Allowing nonrelatives to claim a child even when a parent is present may affect the work incentives that the credit generates. The direction and magnitude of the effect, however, will vary. For the situation described above, allowing the nonrelative to claim the child (and thus potentially qualify for the credit) is likely to strengthen the credit's positive effect on work relative to the status quo design.

254. See *supra* Section IV.B.

255. See *supra* Section IV.A.

256. *Census Bureau Releases New Estimates on America's Families and Living Arrangements*, U.S. CENSUS BUREAU (Dec. 2, 2020), <https://www.census.gov/newsroom/press-releases/2020/estimates-families-living-arrangements.html> [<https://perma.cc/2TS7-LX8S>].

In particular, although it would lessen the incentive for the parent to work, the parent was already not working even with the credit in place. If the nonrelative was previously earning income in an amount that would place him in the credit's phase-in range, allowing him to claim the credit would have the effect of subsidizing additional work.²⁵⁷ In contrast, if the nonrelative's income was high enough such that the credit was already fully phased in, allowing him to claim the child would not affect his incentive to work other than through an income effect.²⁵⁸ For families in which the parent is not working but a nonrelative of the child is, the net effect of expanding the range of potential claimants on work is thus likely to be positive.

At the same time, expanding the range of potential claimants can undermine the effect of the credit on work for families where the parent is currently working because of the credit. That is, if the parent is working because of the credit, and the nonparent would work with or without the credit, allowing the nonparent to claim the child would reduce the incentive of the parent to work. Whether the change in the child-claiming rules results in a net strengthening or weakening of the credit's work incentive thus depends on factors such as the relative prevalence of these two types of families, the range of incomes over which the benefit phases in, and the benefit amount (which would shape the magnitude of the income effect).

A similar set of considerations may suggest relaxing the residency test as well. That is, in order to ensure that someone is able to claim children who live in households in which no one works, it may be advisable to eschew the residency test proposed above in favor of a more expansive connection test. Such a test could allow someone to claim a child if she satisfies either the residency test or a substantial support test.²⁵⁹ This rule would be similar to that of the United

257. *But see* Henrik Kleven, *The EITC and the Extensive Margin: A Reappraisal* 4-5 (Nat'l Bureau of Econ. Rsch., Working Paper No. 26405, 2021), https://www.nber.org/system/files/working_papers/w26405/w26405.pdf [<https://perma.cc/2VGS-KUK7>] (finding no clear evidence that EITC expansions increased labor supply).

258. By "income effect," we refer to the possibility that individuals would choose to work less when their wealth increases. *See* Nada Eissa & Hilary W. Hoynes, *Behavioral Responses to Taxes: Lessons from the EITC and Labor Supply*, 20 *TAX POL'Y & ECON.* 73, 88-89 (2006).

259. There are various ways to design a support test. For instance, the IRS could look to who provides "significant" support and offer safe harbors for financial support (for instance, 33% of the child's support) or time spent caring for the child (for instance, ten hours per week). *See, e.g.*, INTERNAL REVENUE SERV., U.S. DEP'T OF THE TREASURY, PUBL'N NO. 501, DEPENDENTS, STANDARD DEDUCTION, AND FILING INFORMATION 8-9 (2022), <https://www.irs.gov/pub/irs-pdf/p501.pdf> [<https://perma.cc/ZP37-VPAA>] (providing information on proving the support requirement for head-of-household filing status). Alternatively, a test could seek to determine the primary supporter, as does the current test for "qualifying relative," which is defined as a nonchild dependent. I.R.C. § 152(d)(1) (2018).

Kingdom's Child Benefit.²⁶⁰ Using an expansive connection test along these lines would allow noncustodial parents who provide financial or other support to a child to claim the child, as long as their income is above the phase-in amount. As explained above, paying benefits to a noncustodial parent may result in fewer benefits reaching the child than if the child were claimed by a custodial parent, but this option is still better than no one claiming the child. With respect to the work incentive, it is similarly difficult to draw general conclusions; the effect of the credit on work may either be increased or decreased depending on specific design choices relating to factors such as benefit amount and phase-in range.

To summarize, when there is an income phase-in, the child-claiming rules should be more flexible than otherwise. Although this may result in the “wrong” person claiming some children from the perspective of best channeling benefits to the child, the alternative outcome is often that no one will be able to claim the child. As described in Part II, such outcomes should be avoided, since the children excluded for these reasons are often those who would most benefit from additional financial assistance and are particularly likely to be drawn from communities of color.²⁶¹

D. Policy 4: Benefit with Phase-In and Phase-Out

The EITC contains both an income phase-in and a phase-out. The CTC also contains both an income phase-in and phase-out; the phase-in was eliminated for 2021 but returned at the start of 2022.²⁶² This structure is the most complex of the ones we consider because the rules must be designed to incentivize work as well as ensure that children being raised in high-income families do not receive the benefit. Under such constraints it becomes trickier to maintain both channeling and inclusivity.

We can adapt our proposed child-claiming rules to the current law structure by combining the rules in the prior two Sections. That is, a potential claimant would need to satisfy the income-based parental prioritization test from Section IV.B (i.e., a nonparent could only claim a child when she has higher income than the custodial parent, the custodial parent's income is below the start of the phase-out range, or no custodial parent is present) as well as the minimal connection test from Section IV.C (i.e., the claimant must share a residence with the child or provide sufficient support to her). The first of these rules balances the goal of

260. Social Security Contributions and Benefits Act 1992, c 4, pt. IX, § 143(1) (U.K.), https://www.legislation.gov.uk/ukpga/1992/4/pdfs/ukpga_19920004_310320_en.pdf [<https://perma.cc/4MAL-8RYZ>]; *supra* text accompanying note 111.

261. Goldin & Michelmore, *supra* note 23, at 129.

262. See *supra* Section I.A.1.

supporting children with channeling benefits and the work incentive. The second ensures that the resulting flexibility cannot be used to undermine the means-testing design.

Relative to current law, this approach would relax child-claiming limitations for some categories of potential claimants and leave other categories unaffected. In particular, it would allow a child to be claimed by nonrelatives living with the child (such as cohabitating partners of the parent) and by noncustodial parents, extending the program's work incentive to these groups and expanding the number of children covered. At the same time, to preserve the integrity of the phase-out, these newly eligible claimants would be precluded from claiming the child unless their income exceeded that of the child's parent, mirroring the limitation currently imposed on household members who are related to the child.

E. Summary of Proposed Rules

As this discussion has shown, no single rule regime dominates for each of the goals considered here. Even with only one normative goal and under the simplest benefit structure, unavoidable tradeoffs arise. Acknowledging the presence of additional goals adds more complexities.

Nonetheless, good rules are within reach. This discussion has shown that policymakers could simplify and improve the current child-claiming rules without sacrificing key program goals. Our proposed rules are more inclusive of children and more flexible for claimants relative to current rules, while still protecting the government's interests. As Figure 1 shows, the rules accomplish this increased inclusivity and flexibility by expanding eligibility to nonrelative household members as well as nonhousehold members, subject to certain constraints.

We acknowledge that these rules are complex in certain ways; balancing the various program goals necessarily entails some complexity. Even so, they reduce complexity relative to current rules by limiting the number of connection tests, expanding electivity for taxpayers, and reducing gaming incentives.

Figure 1 summarizes the key differences in claimant eligibility under the four program structures, comparing our proposed child-claiming rules to the current rules for the EITC and CTC.

FIGURE 1. WHO MAY CLAIM A CHILD? CURRENT LAW AND PROPOSED RULES

	CURRENT LAW (EITC/ CTC)	PROPOSAL			PHASE- IN & PHASE- OUT
		UNIV- ERSAL	PHASE- OUT	PHASE- IN	
HOUSEHOLD MEMBERS					
PARENTS	Yes	Yes	Yes	Yes	Yes
NON-PARENT RELATIVES					
NON-RELATIVES	Yes ^a	Yes	Yes ^a	Yes	Yes ^a
NON-RELATIVES					
NON-RELATIVES	No	Yes ^b	Yes ^{a,b}	Yes	Yes ^a
NONHOUSEHOLD MEMBERS					
NONHOUSEHOLD MEMBERS	No ^c	No	No	Yes ^d	Yes ^d

NOTES

- ^a If income is above parent’s or (under proposal) if parent’s income is below start of phase-out.
- ^b If parent is not present.
- ^c Noncustodial parent may claim CTC if custodial parent waives right.
- ^d If claimant provides child with substantial support.

How many and which children would be excluded under the child-claiming rules we propose? Under a universal child allowance, our proposed rules would include all children. Unlike the current rules, a nonrelative caregiver could claim those children being raised in households without close relatives. Children who do not share a residence with any adult for over half of the year would be able to claim themselves.

Under a benefit subject to a phase-out, our rules would exclude children living with parents whose income exceeds the phase-out threshold. For children not living with a parent, the result would depend on the specific rule adopted – that is, whether the highest-income person in the household would be required to claim the child or whether anyone in the household could do so. If the former, the rules would exclude such children only when another individual in the child’s household has income exceeding the phase-out threshold. For example, using

the 2020 CTC phase-out threshold, our proposed rules would exclude approximately 1% of children from the benefit.²⁶³

Finally, under a benefit subject to an income phase-in or minimum earnings threshold, our rules would only exclude children living in households in which no one in the household, nor anyone providing substantial support to the child, earned above the earnings threshold. Using the 2020 CTC income threshold of \$2,500, our rules would exclude fewer than 5% of children.²⁶⁴ Whereas the current child-claiming rules exclude approximately 11% of children under the pre-2021 CTC's design, our proposed rules would thus exclude fewer than 6% of children.²⁶⁵

V. TRANSLATING INTO REAL-WORLD POLICY

The discussion so far has elided much of the legislative, as well as the technical and administrative, details of on-the-ground program design. Even a perfect rule regime, which does not exist, would become messy when facing the reality of distributing benefits to millions of families via federal-agency infrastructure. Section V.A considers the legislative process, detailing the necessary statutory changes and offering sample language for some of the rules proposed in Part IV. Then, Section V.B raises several administrative issues that are particularly important to designing child benefits. Specifically, we consider conflict-resolution rules, whether claims of children should be determined annually or more frequently (such as monthly), and the possibility of adopting unified child-claiming rules across safety-net programs.

A. Specific Legislative Reforms

This Section briefly considers how Congress should amend statutory language to enact the rules suggested herein, offering example statutory text. Although politicians may not be best suited to designing rules that pursue simple normative goals, most of our proposed rules require changes to statutory language and thus necessitate congressional involvement. Moreover, embedding

263. Goldin & Micheltore, *supra* note 23, at 132-33 tbl.1 (showing that 1% of children live in households where their parent's income exceeds the top of the phase-out range, or their highest-income household member when no parent is present).

264. *Id.* at 138-39 tbl.3 (showing 7.9% of children excluded because of the earnings test, and 3% unexcluded once the relationship test is removed). The estimate is an upper bound because we lack data on the share of the remaining 4.9% (that is, 7.9%-3%) who are supported by someone who satisfies the earnings test but lives outside of their household.

265. As described in *supra* note 263-264, approximately 1% would be excluded because of the income phase-out and fewer than 5% would be excluded because of the earnings test.

these rules directly in the statute—rather than in agency regulations—ensures their longevity. In contrast to statutes, agencies have significant discretion over rulemaking activity, which allows subsequent presidential administrations to undo rules adopted under prior administrations.²⁶⁶

The EITC and CTC both use eligibility rules provided in Code section 152.²⁶⁷ That section defines a “dependent” for income-tax purposes, detailing the relationship, age, residency, support, and joint-return tests described above.²⁶⁸ As an initial matter, we propose that Congress mostly delink both the EITC and CTC from the qualifying-child test in section 152. The definition of a dependent should rely on different criteria than that of determining someone’s child for the purpose of distributing safety-net benefits. The former rules seek to define a family unit and account for ability to pay, while the latter pursue the goal of distributing benefits to all eligible children.²⁶⁹

To make this change, Congress should replace the references to Code section 152 with unique qualifying child rules for the CTC and the EITC.²⁷⁰ It could insert the new rules into both Code section 24 (for the CTC) and Code section 32 (for the EITC), or it could insert the rules into one and refer to them in the other.

Using the example of a universal child allowance distributed through the existing statutory infrastructure of the CTC, we offer the following example statutory language:

Code § 24(c)(1): For the purposes of this section, the term “qualifying child” means, with respect to any taxpayer for any taxable year, an individual—

266. Cf. Anne Joseph O’Connell, *Agency Rulemaking and Political Transitions*, 105 NW. U. L. REV. 471, 482-85 (2011) (discussing the scope of and limits on agency discretion). See generally MAEVE P. CAREY, CONG. RSCH. SERV., IN10611, CAN A NEW ADMINISTRATION UNDO A PREVIOUS ADMINISTRATION’S REGULATIONS? (2016), <https://sgp.fas.org/crs/misc/IN10611.pdf> [<https://perma.cc/Q2VF-8JZ8>] (discussing presidential administrations’ ability to undo regulations adopted in the prior administration); Jason Webb Yackee & Susan Webb Yackee, *Administrative Procedures and Bureaucratic Performance: Is Federal Rule-Making “Ossified”?*, 20 J. PUB. ADMIN. RES. & THEORY 261, 261 (2009) (finding that agencies can issue new rules relatively quickly, despite procedural requirements).

267. I.R.C. §§ 32(c)(3), 24(c) (2018); see also *id.* § 152(c) (providing eligibility rules for a “qualifying child”). For further details, see *supra* Section I.B.

268. *Id.* § 152(c).

269. See Adil Sayeed, *Choosing Between Tax Credits and Exemptions for Dependent Children*, 33 CAN. TAX J. 975, 976-77 (1985).

270. For instance, Code section 24 reads: “The term ‘qualifying child’ means a qualifying child of the taxpayer (as defined in section 152(c)) who has not attained age 17.” I.R.C. § 24(c)(1) (2018).

- (A) who has the same principal place of abode as the taxpayer for more than one half of the year,²⁷¹
- (B) who meets the age requirements of section 152(c)(3),²⁷²
- (C) who has not provided over one-half of such individual's own support for the calendar year in which the taxable year of the taxpayer begins, and
- (D) who has not filed a joint return (other than only for a claim of refund) with the individual's spouse under section 6013 for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

(c)(2) Where an individual may be claimed as a qualifying child under this section by 2 or more taxpayers for the same taxable year, if

- (A) one of those taxpayers is the qualifying child's parent, and
- (B) the other taxpayer is not a relative of the qualifying child,

Such individual will be treated as the qualifying child of the parent.

(c)(3) Where an individual cannot be claimed as a qualifying child under this section by any taxpayer, that individual may claim themselves as a qualifying child. This subparagraph only applies for the purpose of receiving the credit under this section.

This statutory architecture is somewhat simpler than that in section 152(c). For benefits with a phase-out, the statute would include an additional subsection that allows nonparental claims only when the claimant's income is above that of the parent or the parent's income does not exceed the start of the income phase-out. For benefits with a phase-in, the test would drop the residency requirement in favor of the more expansive connection test, which would allow someone to claim a child if she satisfies either the residency test or a support test.

271. This language could be modified to accommodate shorter time periods.

272. Code section 152(c)(3)(A) reads:

For purposes of paragraph (1)(C), an individual meets the requirements of this paragraph if such individual is younger than the taxpayer claiming such individual as a qualifying child and—

- (i) has not attained the age of 19 as of the close of the calendar year in which the taxable year of the taxpayer begins, or
- (ii) is a student who has not attained the age of 24 as of the close of such calendar year.

B. Further Administrative Considerations

1. Conflict-Resolution Rules

In addition to connection and prioritization tests, child-claiming rules require conflict-resolution tests to determine whose claim succeeds when multiple people claim the same child for the same time period. These rules adjudicate between the claims of eligible claimants – individuals whose attempt to claim a child would succeed if they had been the only one to do so.²⁷³ As claiming rules become more flexible, especially among individuals living in different households who may not coordinate their claims, the need for conflict-resolution rules increases. Conversely, in the extreme case that the child-claiming rules permit only a single eligible claimant for each child, as with the primary-caregiver test discussed in Section III.B, conflict-resolution rules are not necessary because only one of the conflicting claims of a child can be valid in the first place.

Like prioritization tests, conflict-resolution tests prioritize some claimants over others; unlike prioritization tests, they do not impede flexibility to the same degree because they only apply when the would-be claimants have failed to coordinate their claims successfully. Although they are not our focus, the considerations for designing conflict-resolution rules mirror those involved in designing connection and prioritization tests. As between conflicting claims, they should prioritize claims by those for whom the benefit will best promote the child's well-being – parents over nonparents and household residents over nonresidents (at least when nonresidents are potentially eligible in the first place). In addition, the tests should be administrable. They should be based on information that the administering agency can observe and that taxpayers can readily assess and prove.

As in our earlier discussion, perfectly satisfying all of these principles when designing conflict-resolution rules is impossible. Tradeoffs are inevitable. For conflicting claims by nonparent household members, for example, possible rules could prioritize claimants by income or, alternatively, based on the amount of support they provide to the child. The former is more administrable, but the latter more closely tracks the goal of promoting the child's well-being. Administrability is important here in practice to prevent claims from being subject to long delays while the administering agency investigates. At the same time, a conflict-resolution test based on an administrable but arbitrary factor could be even worse, if it (quickly) resulted in the wrong claimant receiving the benefit. Finally, given that the conflict-resolution rules only arbitrate conflicting claims among

273. See *supra* Section I.B.

eligible claimants, and eligible claimants are already selected for having a sufficiently close connection to the child, the harms of providing the benefit to the wrong claimant are probably relatively minor.

To strike a balance among these considerations, we propose establishing a hierarchy of eligible claimants based on their residency and relationship to the child. First, the claims of household members would defeat claims by individuals not living with the child. As discussed above, there is good reason to expect that payments to the former would tend to better support the child's well-being. Second, among household members, the claims of relatives would defeat the claims of nonrelatives. Third, between relatives, claims by parents would trump claims by nonparents. Fourth, within each category of parents, nonparent relatives, or nonrelatives, a support test could be used to break ties. To reduce the frequency of cases in which a support test is needed, another option would be to adjudicate claims among nonparental relatives according to the category of relative, such as prioritizing grandparents above aunts and uncles.

For competing claims between parents, to reduce the administrative challenges and delays that come from a support test, policymakers could offer presumptive eligibility to the person who gave birth to the child.²⁷⁴ Specifically, the person who gave birth to the child would be presumed to satisfy whatever eligibility rules apply – e.g., the residency test or support test. This rule is similar to the mother presumption rule that the Canadian Child Benefit employs. However, by basing the presumption on birth-relationship rather than gender, such a rule would obviate complexities that arise in the context of same-sex female parents and gender nonbinary parents. In cases where neither parent gave birth to the child, no one would receive presumptive eligibility.

Presumptive eligibility would apply before conflicts arise. Although it is not a conflict-resolution rule exactly, presumptive eligibility might improve the resolution of conflicts in many cases by distributing benefits to the person best situated to spend the funds for the child's well-being in the first instance.²⁷⁵ In most cases, the person who gave birth to the child is the child's mother. According to U.S. Census data, mothers are more likely than fathers to have sole or partial custody of children.²⁷⁶ Being a child's mother is thus a promising proxy for living with and caring for a child. In addition, the person who gave birth to the child

274. This presumptive eligibility would not apply to those who serve as birth surrogates but who are not involved in the child's care.

275. We plan to analyze the legal and political viability of birth-based presumptive eligibility in a separate piece.

276. TIMOTHY GRALL, U.S. CENSUS BUREAU, CUSTODIAL MOTHERS AND FATHERS AND THEIR CHILD SUPPORT: 2017, at 3 (2020), <https://www.census.gov/content/dam/Census/library/publications/2020/demo/p60-269.pdf> [<https://perma.cc/W8J5-RLKX>] (reporting that 79.9% of custodial parents in 2018 were mothers while 20.1% were fathers).

is nearly always listed on a child's birth certificate, making it straightforward for the government to verify such claims.

Birth-based presumptive eligibility would face several notable objections. First, it would create a disparate burden on claimants in families in which the person who birthed the child is not the person best positioned to claim the child. However, the child-custody data mentioned above suggests that this would occur in the minority of cases – that is, in those cases where both parents claim the child and the nonbirthing parent is the child's primary supporter or caregiver. Additionally, relative to a situation without birth-based presumptive eligibility, the total burden on the family would actually be reduced overall. Without presumptive eligibility, in the event of a conflict both parents would need to prove their support for the child. With presumptive eligibility, the nonbirthing parent would need to substantiate his support for the child just as he would without such a rule. The birthing parent, however, need not prove her support unless the other parent can establish his support for the child. Moreover, the burdensomeness can be reduced in certain ways, for instance by not requiring the nonbirthing parent to re-establish eligibility each year.

Second, birth-based presumptive eligibility could be problematic on equal-protection grounds because, in practice, it would treat women and men differently. For example, in *Sessions v. Morales-Santana*, the Supreme Court struck down a rule that treated fathers and mothers differently.²⁷⁷ It is possible, however, that thoughtful design might reduce such concerns, for instance, by ensuring that men have equal access to benefits (aside from documentation requirements) and by minimizing the disparate burden through streamlined documentation requirements. Parsing this argument requires more space than this brief treatment allows.

2. Annual Benefits Versus Shorter Claim Periods

Another important design question concerns the length of the claim-determination period. Although tax-administered child benefits currently use an annual period, a shorter claim interval, such as month-by-month, has several advantages. With a monthly claim period, two or more individuals could claim the same child for different months in a given year, with the total annual benefit prorated among the claimants. Our proposed child-claiming rules could be adapted to this setting by evaluating each test at the monthly rather than yearly level. For instance, the residency test would require the claimant to live with the child for at least half of the month rather than at least half of the year (as under current law).

277. 137 S. Ct. 1678, 1683 (2017).

One appealing feature of monthly child-claiming determinations is that it could better allocate benefits in cases where the ideal payee for promoting the child's well-being varies over the course of the year, such as when a child moves between households. This is especially appealing when the benefit is paid out monthly, since it would allow payments to follow the child in (somewhat) real time. On the other hand, such a rule could make claiming the credit more difficult – not because it is more difficult to compute (automated software can handle that easily) – but because it could require additional recordkeeping by the claimants and would require coordination with the other potential claimants (who may live in different households) to confirm the child was not being double-claimed in any month.

In addition, while a monthly test may better accommodate joint-custody situations where a child spends a nearly equal amount of the year between residences, it could end up causing more distortions to claimants' behavior in other cases when a child spends most of the year in one location but close to half of a given month in another.²⁷⁸ For example, a month-by-month claiming rule could put pressure on a custodial parent to prevent the child from spending longer blocks of time with the noncustodial parent, lest it preclude the custodial parent from claiming the child during the months in question. To limit this concern, and to reduce compliance burdens, the rule could allow an individual who can claim a child for at least 6 months in a year to claim the child for the entire year (assuming no one else eligible to claim a child for one of the months does so).

The appeal of annual versus subannual child-claiming determinations also depends on the timing of the benefit payments. Generally speaking, tax credits are paid in one lump sum annually, while other safety-net benefits are paid more often, usually monthly.²⁷⁹ There are pros and cons to both approaches.²⁸⁰ For example, there is evidence that some taxpayers take advantage of annual lump-sum payments as a tool for forced savings, enabling large expenditures that may be otherwise difficult for them to achieve.²⁸¹ At the same time, because annual

278. See Edward Fox & Jacob Goldin, *Sharp Lines and Sliding Scales in Tax Law*, 73 TAX L. REV. 237, 237-40 (2020) (discussing efficiency considerations of prorating tax benefits across taxpayers based on degrees of eligibility).

279. A benefit could be determined annually but paid monthly, and vice versa. For instance, the American Rescue Plan Act directed the IRS to pay a portion of the CTC to families each month, starting in July 2021. See I.R.C. § 7527A (2018) (authorizing the IRS to pay an advance CTC). During that time, the CTC continued to use the annual claim period provided under prior law, even though the payment was made monthly.

280. See DRUMBL, *supra* note 160, at 28-45 (discussing policy considerations relating to subannual administration of the EITC).

281. See, e.g., SARAH HALPERN-MEEKIN, KATHRYN EDIN, LAURA TACH & JENNIFER SYKES, IT'S NOT LIKE I'M POOR: HOW WORKING FAMILIES MAKE ENDS MEET IN A POST-WELFARE WORLD 182-

benefits are a poor match for daily consumption, annual lump-sum payments may fail to meet low-income families' actual needs or drive them to take on high-cost debt during the year.²⁸² In contrast, more frequent payments better track day-to-day consumption, and so might better subsidize basic needs and reduce the risk of families taking on debt.²⁸³ For 2021, Congress authorized the IRS to pay families an expanded CTC monthly during the tax year, rather than forcing recipients to wait until they file a tax return in winter or spring of the following year.²⁸⁴

A subannual payment schedule like the one enacted for the 2021 CTC heightens the appeal of subannual child-claiming rules, such as employing a monthly residency test rather than an annual one. One reason is that a subannual claiming rule can better channel benefits to children who move households during the course of the year. For example, if a child moves from one household to another in August, under an annual residency test only the first household would be eligible to claim the child for all payments during the tax year. In contrast, under a monthly residency test, the new household could qualify to start receiving payments for the child for months following the child's move.

In addition, for tax-administered benefits that are paid out in advance (like the expanded CTC for 2021),²⁸⁵ subannual child-claiming rules can reduce the

85 (2015); ELAINE MAAG, WILLIAM J. CONGDON & EUNICE YAU, OFF. PLAN., RSCH., & EVALUATION, DEP'T HEALTH & HUM. SERVS., REP. 2021-34, THE EARNED INCOME TAX CREDIT: PROGRAM OUTCOMES, PAYMENT TIMING, AND NEXT STEPS FOR RESEARCH 13 (2021), <https://www.urban.org/sites/default/files/publication/103722/the-earned-income-tax-credit-program-outcomes-payment-timing-and-next-steps-for-research.pdf> [https://perma.cc/Y5KU-NLR7]. *But see* Damon Jones, *Inertia and Overwithholding: Explaining the Prevalence of Income Tax Refunds*, 4 AM. ECON. J.: ECON. POL'Y. 158, 182 (2012) (presenting evidence that high rates of overwithholding partly reflect inertia rather than taxpayer preferences).

282. *E.g.*, Brian Galle & Manuel Utset, *Is Cap-and-Trade Fair to the Poor? Shortsighted Households and the Timing of Consumption Taxes*, 79 GEO. WASH. L. REV. 33, 48-56 (2010) (reviewing evidence that low-income households are liquidity constrained and subject to high-cost borrowing); Katherine Michelmore & Lauren Jones, *Timing Is Money: Does Lump-Sum Payment of Tax Credits Induce High-Cost Borrowing?*, 108 PROC. ANN. CONF. ON TAX'N & MINUTES ANN. MEETING NAT'L TAX ASS'N 1, 26 (2015) (finding evidence that receipt of refundable tax credits is correlated with higher likelihood of unsecured debt). *But see* Damon Jones, *Information, Preferences, and Public Benefit Participation: Experimental Evidence from the Advance EITC and 401(k) Savings*, 2 AM. ECON. J.: APPLIED ECON. 147, 149-50 (2010) (finding that additional information does not change take-up rates of monthly ("advance") EITC payments).

283. *See, e.g.*, Timothy N. Bond, Jillian B. Carr, Analisa Packham & Jonathan Smith, *Hungry for Success? SNAP Timing, High-Stakes Exam Performance, and College Attendance*, AM. ECON. J.: ECON. POL'Y (forthcoming), <https://www.aeaweb.org/articles?id=10.1257/pol.20210026> [https://perma.cc/PM8U-VQZ8]; MAAG ET AL., *supra* note 281, at 17.

284. I.R.C. § 7527A (2018).

285. *Id.*

likelihood that claimants will be forced to repay payments they receive early in the year. For example, suppose a child unexpectedly moves from one household to another in May, and the first household has already received monthly payments for the child for January through April. Under an annual residency test, the first household would generally be required to repay those payments. Such repayment obligations cause hardships for families that have already spent the money on the child. They are also difficult for the IRS to administer. Generous safe harbors, such as the one enacted in the 2021 CTC expansion,²⁸⁶ can alleviate the need for repayments under an annual child-claiming rule but can also greatly increase a program's cost and generate concerns about gaming and program integrity. In contrast, subannual child-claiming rules can reduce the risk of overpayments because a claimant's eligibility for benefits does not hinge on the child's residency during future portions of the year.

3. *Unifying Rules Across Programs*

In the United States today, there are a number of child-linked benefits, both within and outside of the tax code. In this Section, we consider the extent to which these programs should utilize a common set of child-claiming rules. While adopting unified child-claiming rules may seem sensible, there are certain drawbacks that may counsel against doing so.

One significant downside to imposing a common set of claiming rules across benefits, apparent from our discussion in Parts III and IV, is that the ideal child-claiming rule regime varies depending on the benefit's design. Well-designed rules for a universal benefit differ from those for a benefit with an income phase-in. Similarly, for benefits that phase in by income, the desirability of alternative claiming rules varies depending on the income phase-in range. Forcing a common set of rules to govern child claiming across benefits with disparate designs thus threatens to result in worse targeting of benefits and/or less flexibility for potential claimants.

On the other hand, imposing different sets of child-claiming rules for different benefits can confuse claimants, making it harder for them to plan and leading to over- or underclaiming mistakes. Indeed, taxpayers and their preparers frequently express exasperation at the different claiming rules that govern the head of household filing status as opposed to the CTC and EITC, which can result in taxpayers being able to claim a child for one, but not both, of these programs. In addition, unified claiming rules can make it easier for an administering agency to promote benefit take-up; if someone is able to (and does) claim a child for

286. *Id.* § 24(j)(2)(B).

one benefit, it implies that they also qualify to claim the child for other benefits linked to the same set of child-claiming rules.

A related question concerns whether eligible claimants should have flexibility to make different claiming decisions across benefits, such as by claiming a child for one benefit for which they are eligible but not for another. For example, suppose that a child lives with two unmarried parents, and the child-claiming rules for two different child benefits both allow either parent to claim the child (so long as only one does so). Requiring that claiming decisions be consistent across benefits would prevent one parent from claiming the child for one benefit while the other parent claims the child for the other benefit. Under the current rules for claiming children for tax benefits, for the most part, taxpayers are required to make consistent claiming decisions in this regard.

Allowing two (or more) eligible claimants to divide different child benefits between them could promote better targeting of benefits to children. For instance, suppose there are two child-linked benefits, one universal and one that is phased in by income, and suppose that the child-claiming rules allow certain nonresidential parents to claim the child. If a child's nonresidential parent works and the residential parent does not, the nonresidential working parent could claim the child for the phased-in benefit while the residential parent claims the child for the universal benefit. This outcome is preferable to the nonresidential parent claiming the child for both benefits to the extent that cash transfers tend to better support a child's well-being when they are paid to someone in the child's household.

Another case in which it seems preferable to allow inconsistent claiming decisions is for benefits that are linked to particular expenditures on a child's behalf, such as daycare (as with the child- and dependent- care tax credit) or health insurance (as with the premium tax credit). In those cases, it seems preferable to allow the individual making the expenditure to claim the child, even if that person is not the best positioned to claim other credits with respect to the child. This is partly a matter of convenience; the individual making the purchase would typically be the one with information and records with which to substantiate the claimed benefit.

There is also, however, reason to require that one person claim all benefits for a particular child. For instance, requiring consistent claiming decisions is important for provisions that impose particular obligations on individuals linked to children. The recently repealed individual mandate of the Affordable Care Act required most taxpayers to procure health insurance for their dependents or else pay a penalty.²⁸⁷ With respect to such obligations, claiming a child would, all else equal, be unappealing because it risks exposing oneself to a penalty. Requiring

287. See *id.* § 5000A(b).

individuals who claim a child for benefit programs to also claim the child with respect to such obligations could be an effective way to provide the requisite motivational force that such penalty inducements entail.

One way to accommodate different child-claiming rules across benefits without causing too much confusion could be to administer the benefits through different agencies.²⁸⁸ For example, a new child allowance with its own rules for claiming children would probably cause less confusion if implemented through the Social Security Administration or other non-tax agency than if implemented through the tax code and administered by the IRS, since taxpayers would not have to apply a new set of child-claiming rules when preparing their tax return.²⁸⁹

CONCLUSION

This Article comes at a pivotal moment for U.S. safety-net programs. Federal policymakers are debating reforms to the CTC that may drastically reduce child poverty by distributing a child allowance to all families below a certain income level. Those reforms, and other future reforms to child-linked benefits, will rely crucially on child-claiming rules.

Recognizing the centrality of these rules to transfer programs, this Article has sought to do three things. First, we have explained how child-claiming rules

288. A distinct approach is to continue to administer the benefit through the IRS, but to increase collaboration with other agencies, such as by participating in enhanced data sharing or training Social Security Administration caseworkers to help taxpayers navigate the child-claiming rules and process. For a general discussion of such interagency collaborations in the tax context, see Blaine Saito, *Collaborative Governance and the Low-Income Housing Tax Credit*, 33 VA. TAX REV. 451, 454-56 (2020).

289. On the other hand, moving the CTC out of the tax code would have disadvantages as well. First, the IRS already collects the income information upon which the benefit depends and has established rules for determining and adjudicating what counts as income. See generally Weisbach & Nussim, *supra* note 155 (discussing considerations for when a program should be administered through the tax code). Second, the agency has established rules and procedures for dispute resolution and a wide network of Volunteer Income Tax Assistance tax-return preparation sites and low-income taxpayer clinics to assist taxpayers. Third, moving the CTC into another agency could create confusion with respect to child-claiming rules in place for other benefits that the agency administers; with respect to the SSA, for example, the agency administers the SSI program, which requires rules for determining which adults may receive a child's SSI benefits as payee. Finally, an advantage of implementing child-linked benefits through the tax code is the additional incentive it creates to file a tax return, and thereby increasing the likelihood that claimants will take up other tax-administered safety-net programs for which they qualify. See Jacob Goldin, *Tax Benefit Complexity and Take-Up: Lessons from the Earned Income Tax Credit*, 72 TAX L. REV. 59, 61-62 (2018); Shanthi P. Ramnath & Patricia K. Tong, *The Persistent Reduction in Poverty from Filing a Tax Return*, 9 AM. ECON. J.: ECON. POL'Y 367, 373-82 (2017).

drive the efficacy of child benefits at the most basic level. Second, building on the analytical framework we develop, we have offered principled child-claiming rules for safety-net programs. This discussion has demonstrated that no single rule regime dominates for any given program goal or goals. Rather, policymakers must grapple with significant tradeoffs, compromising between important objectives such as channeling benefits to children's caregivers and ensuring that the rules are sufficiently inclusive. Acknowledging these tradeoffs, we have proposed specific child-claiming rules under several different benefit structures. Our proposed rule regimes further the core goals that we identify while accounting for the complex and unavoidable tradeoffs between them. Third, we have offered real-world legislative and administrative considerations to assist policymakers in translating these proposed rules into law.

Child-claiming rules are central to all safety-net programs, new and old alike. Designing inclusive and administrable rules will ensure that more children in need receive benefits that will help them lead healthier, happier lives.