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EITC for All: A Universal Basic Income Compromise Proposal

Benjamin M. Leff
American University Washington College of Law, bleff@wcl.american.edu

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Abstract

Much has been written about a concept called universal basic income (UBI). With a UBI, the government gives every person a certain amount of money each year, or even each month. The UBI has broad appeal with thinkers on both the right and the left, but the appeal is partially because different thinkers have different visions of what the current state of affairs is with respect to government welfare policies and different theories about why these existing policies are inadequate or damaging. Reforming existing programs, rather than making a radical break with the past, could satisfy at least some of the interests that motivate support for a UBI. The purpose of this Article is to explore the possibility of modifying the Earned Income Tax Credit (EITC), the largest and arguably most popular U.S. anti-poverty government transfer program, in order to capture at least some of the benefits associated with the UBI. This Article explores four problematic aspects of the EITC, each of which could be modified to make it function more like a UBI. These four aspects are: (1) the EITC creates disincentives to work for the so-called "nearly poor" because the credit phases out at moderately low income levels; (2) the EITC is fundamentally dependent on family structure, which is potentially unfair, invasive, and affects incentives to marry, divorce, and cohabitate; (3) receipt of the EITC benefit is temporally mismatched with recipient need, expensive for recipients to collect, and difficult for the IRS to administer because the EITC is integrated with the tax

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system; and, finally, (4) the EITC is too small to fully function as a hedge against underemployment and poverty. Modifying the EITC would make it more like a UBI and would make it more effective at achieving the goal of supporting financially struggling workers and their families while minimizing perverse incentives.

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I. Introduction

Much has been written about a concept called universal basic income (UBI). The basic definition of UBI is "a regular cash income, paid to all, on an individual basis, without means test or work requirement."[1] In other words, the government gives every person some money every year, or even every month.[2] UBI appeals to thinkers on the political left, the political right, and places in between.[3] But, sometimes the broad appeal of UBI can be attributed to the fact that different thinkers envision different UBIs that solve different problems.[4] That is partially because different thinkers have different visions of what the current state of affairs is with respect to government welfare policies and different theories about why these existing policies are inadequate or damaging.[5] In fact, current income-support policies in the United States are a pastiche of approaches, all of which are simultaneously different from and similar to a UBI.[6] Reforming

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1. PHILIPPE VAN PARIJS & YANNICK VANDERBORGHT, BASIC INCOME: A RADICAL PROPOSAL FOR A FREE SOCIETY AND SANE ECONOMY 1 (2017); *see also* SIMON BIRNBAUM, BASIC INCOME RECONSIDERED: SOCIAL JUSTICE, LIBERALISM, AND THE DEMANDS OF EQUALITY 3 (2012) (providing an alternative definition of UBI as "an income unconditionally granted to all permanent members of society on an individual basis, without any means test or work requirement").

2. *See* VAN PARIJS & VANDERBORGHT, *supra* note 1, at 1 (explaining the basic principle behind universal basic income).

3. *See, e.g.*, Nathan Heller, *Who Really Stands to Win from Universal Basic Income?*, NEW YORKER, July 2, 2018, at 65–66 ("Guaranteed income, reconceived as basic income, is gaining support across the spectrum, from libertarians to labor leaders.").

4. *See, e.g.*, ANNIE LOWREY, GIVE PEOPLE MONEY: THE SIMPLE IDEA TO SOLVE INEQUALITY AND REVOLUTIONIZE OUR LIVES 130 (2018) ("[T]here is a pernicious and nonsensical idea that a UBI would appeal to both sides, acting as a bipartisan means that could be used for bipartisan ends. The *idea* of a UBI might be bipartisan, but the ends and means would never end up pleasing both sides.").

5. *See* VAN PARIJS & VANDERBORGHT, *supra* note 1, at 40–43 (explaining the EITC and the social welfare programs enacted alongside it and discussing the benefits and drawbacks). In the United States, the issue of different theories is exacerbated by the fact that much of the writing about UBI, scholarly and otherwise, is produced in countries with very different (and generally more robust) welfare policies. *See* VAN PARIJS & VANDERBORGHT, *supra* note 1, at 7–9 (providing examples of European contributions to the idea of a universal basic income).

6. *See* VAN PARIJS & VANDERBORGHT, *supra* note 1, at 40–43 (comparing and contrasting EITC and UBI); *see also* LOWREY, *supra* note 4, at 184 (comparing the amount of money spent on various social welfare programs with the money that

existing programs, rather than making a radical break with the past, could satisfy at least some of the interests that motivate support for a UBI.[7] The purpose of this Article is to explore the possibility of modifying the Earned Income Tax Credit (EITC),[8] the largest and arguably most popular U.S. anti-poverty government transfer program, in order to capture some of the benefits associated with a UBI.[9]

The Earned Income Tax Credit (EITC) is a U.S. federal income-support program that is politically popular.[10] Proposals to expand the EITC have become more common in recent years.[11] One former contender for the Democratic presidential nomination in 2020, Senator Kamala Harris, had proposed a new tax credit that would function like a reformed EITC, even though it was described as a supplement to the existing EITC rather than a reform of it.[12] The EITC differs from a UBI in several respects, but as a broad federally funded program that provides financial support to low-income families and individuals, it also has many commonalities.[13] This Article seeks to explore four problematic

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would be spend on a proposed UBI).

7. *See* LOWREY, *supra* note 4, at 7 (setting forth some of the benefits supporters of the UBI recognize).

8. *See* SARAH HALPERN-MEEKIN ET AL., IT'S NOT LIKE I'M POOR: HOW WORKING FAMILIES MAKE ENDS MEET IN A POST-WELFARE WORLD 24 (2015) ("The EITC was designed to bring a minimum-wage worker and his or her family above the official poverty line.").

9. *See* VAN PARIJS & VANDERBORGHT, *supra* note 1, at 40–43 (explaining the history of the EITC and those it would benefit).

10. *See* HALPERN-MEEKIN ET AL., *supra* note 8, at 4 ("President Reagan proclaimed it 'the best anti-poverty, the best pro-family, the best job creation measure to come out of Congress.'").

11. *See* Gene B. Sperling, *A Tax Proposal That Could Lift Millions Out of Poverty*, THE ATLANTIC (Oct. 17, 2017), https://www.theatlantic.com/business/archive/2017/10/eitc-for-all/542898/ (last visited Oct. 23, 2019) (describing a Republican and Democratic consensus on expanding the EITC to serve childless workers) [https://perma.cc/7QUG-Z495]; *see, e.g.*, Grow American Incomes Now Act, H.R. 3757, 115th Cong. (2017) (proposing an expansion of the EITC for working families).

12. *See* LIFT (Livable Incomes for Families Today) the Middle Class Act, S. 3712, 115th Cong. (2018) (proposing a cash payment for low- and middle-income American households); *see also* Press Release, Kamala D. Harris, Harris Proposes Bold Relief for Families Amid Rising Costs of Living (Oct. 18, 2018) (stating that the Act would "provide middle class and working families with a tax credit of up to $6000 a year—or up to $500 a month—to address the rising cost of living").

13. *See* Andrew Flowers, *What Would Happen if We Just Gave People*

aspects of the EITC, each of which could be modified to make it function more like a UBI, and I would argue, better.[14] Those four aspects are: (1) the EITC creates disincentives to work for the so-called "nearly poor" because the credit phases out at moderately low income levels; (2) the EITC is fundamentally dependent on

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Money, FIVETHIRTYEIGHT (Apr. 25, 2016), https://fivethirtyeight.com/features/universal-basic-income/ (last visited Oct. 23, 2019) ("The original seed planted by [Milton] Friedman's negative income tax idea eventually blossomed into the Earned Income Tax Credit.") [https://perma.cc/2LJS-SCEV]; *see also* Dennis J. Ventry, Jr., *The Collision of Tax and Welfare Politics: The Political History of the Earned Income Tax Credit*, *in* MAKING WORK PAY: THE EARNED INCOME TAX CREDIT AND ITS IMPACT ON AMERICA'S FAMILIES 15 (Bruce D. Meyer & Douglas Holtz-Eakin eds., 2002) (describing the history of the EITC as a federal benefit for low-income working taxpayers); Dennis J. Ventry, Jr., *Welfare by Any Other Name: Tax Transfers and the EITC*, 56 AM. U. L. REV. 1261 (2007) (highlighting that qualification for EITC depends upon an individual's tax returns).

14. *See* discussion *infra* Part V (exploring solutions to the identified problems of the EITC). Some versions of these problems (and others) have been discussed in the literature on improving the EITC. *See* Anne L. Alstott, *The Earned Income Tax Credit and the Limitations of Tax-Based Welfare Reform*, 108 HARV. L. REV. 533 (1995) (discussing problematic aspects of the EITC); *see also* MAKING WORK PAY: THE EARNED INCOME TAX CREDIT AND ITS IMPACT ON AMERICA'S FAMILIES 1 (Bruce D. Meyer & Douglas Holtz-Eakin, eds., 2002) (providing research which discusses the EITC and its "noncompliance and marriage penalties"); Anne L. Alstott, *Why the EITC Doesn't Make Work Pay*, 73 LAW & CONTEMP. PROBS. 285 (2010) (evaluating the significance and the history of the EITC); Leslie Book et al., *Insights from Behavioral Economic Can Improve Administration of the EITC*, 37 VA. TAX REV. 177 (2018) (arguing for more taxpayer-centric policies to boost EITC compliance); Daniel P. Gitterman et al., *Expanding the EITC for Single Workers and Couples without Children: Tax Relief for All Low-Wage Workers*, 15 GEO. J. ON POVERTY L. & POL'Y 245, 245–46 (2008) ("[E]xpansion of the EITC to childless single workers and married couples without children deserves greater attention."); 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, 522–23 (2013) (describing how the once a year payment of the EITC does not provide adequate safety from financial shocks during the year); Francine J. Lipman & Dawn Davis, *Heal The Suffering Children: Fifty Years after the Declaration of War on Poverty*, 34 B.C. J.L. & SOC. JUST. 311, 322 (2014) ("Child-related tax benefits have done much to relieve poverty, but they could be more effective."); Francine J. Lipman, *Access to Tax ~~In~~Justice*, 40 PEPP. L. REV. 1173, 1186 (2013) (noting a number of the EITC's "design challenges"); AM. ENTER. INST. FOR PUB. POL'Y RES. & BROOKINGS INST., OPPORTUNITY, RESPONSIBILITY, AND SECURITY: A CONSENSUS PLAN FOR REDUCING POVERTY AND RESTORING THE AMERICAN DREAM 38 (2015) (arguing for removal of the child dependence requirement as a way to "improve employment among disconnected men"); STEVE HOLT, AM. ENTER. INST., THE ROLE OF THE IRS AS A SOCIAL BENEFIT ADMINISTRATOR 1 (2016) (offering "strategies to improve the IRS's role as benefit administrator");

family structure, which is potentially unfair, invasive, and affects incentives to marry, divorce, and cohabitate; (3) receipt of the EITC benefit is temporally mismatched with recipient need, expensive for recipients to collect, and difficult for the IRS to administer because the EITC is integrated with the tax system; and, finally, (4) the EITC is too small to fully function as a hedge against underemployment and poverty.[15] A reformed EITC that corrected these four problems would, in each instance, move the program closer to a UBI. It would also make the EITC program more effective at achieving the goal of supporting financially struggling workers and their families while minimizing perverse incentives.

At the same time, an expanded and modified EITC would still bear one fundamental difference with a UBI: No money would be provided unless a recipient works.[16] I believe that a UBI *without* a work requirement is superior to a modified EITC, but I acknowledge that a significant barrier to political support for a UBI comes from discomfort with a comprehensive program that completely delinks income from work.[17] That discomfort comes from several very real sources.[18] First, the moral connection between income and work—while subject to numerous caveats—runs deep in American culture.[19] The idea that people who are able

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15. *See* Lipman, *supra* note 14, at 1186 (identifying what she believes are the four most pressing remaining problems with the EITC: "(1) complexity; (2) high marginal tax rates in the EITC income phase-out ranges; (3) the marriage penalty; and (4) minimal benefits for childless low-income workers and workers outside of the age range and other statutory requirements").

16. *See* VAN PARIJS & VANDERBORGHT, *supra* note 1 (defining the universal basic income as having no work requirement); *see also* HALPERN-MEEKIN ET AL., *supra* note 8, at 24 (laying out that the EITC is supposed to help minimum-wage workers, necessarily requiring a work component).

17. *See* Heller, *supra* note 3, at 65 (observing that there is apprehension regarding the delinking of work and welfare).

18. *See* VAN PARIJS & VANDERBORGHT, *supra* note 1, at 99 (acknowledging that universal basic income goes against widely held views that "it is unfair for able-bodied people to live off the labor of others") (quoting Jon Elster, *Comment on Van der Veen and Van Parijs*, 15 THEORY & SOC'Y 709, 719 (1986)); *see also* DAMON JONES & IOANA MARINESCU, THE LABOR MARKET IMPACTS OF UNIVERSAL AND PERMANENT CASH TRANSFERS: EVIDENCE FROM THE ALASKA PERMANENT FUND (2018) (using the Alaska Permanent Fund as a method for studying the impact of a UBI on labor markets); BIRNBAUM, *supra* note 1 (addressing the philosophical issues by a basic income that in effect de-couples work from income).

19. *See* VAN PARIJS & VANDERBORGHT, *supra* note 1, at 99 (acknowledging that universal basic income goes against widely held views that "it is unfair for

to work and support themselves would choose to stay home while other workers are compelled by the state to support them seems manifestly unjust to many, even to many philosophers.[20] Second, good empirical evidence about the effects of a substantial UBI on labor participation rates is rare (although there are many current projects seeking to gather good data).[21] Observers may have legitimate concerns that a UBI would create incentives for low-income workers to stay home.[22]

A true UBI demands a delinking of income and labor.[23] But, because of significant popular and political opposition to this delinking, it is worthwhile to explore mechanisms for getting at least some of the benefits of a UBI without having to try to convince skeptics of its most radical feature. Envisioning a modification of the existing EITC to make it more like a UBI is at least one way to do that.

This Article proceeds in four parts. First, I introduce the UBI. Second, I explain how the current EITC works and introduce some criticism of it. Third, I describe similarities between the EITC and a UBI. And, fourth, I describe four proposed reforms of the EITC to make it function more like a UBI and discuss some of the trade-offs involved in substituting an expanded EITC for a full UBI program.

able-bodied people to live off the labor of others") (quoting Jon Elster, *Comment on Van der Veen and Van Parijs*, 15 THEORY & SOC'Y 709, 719 (1986)).

20. *See* VAN PARIJS & VANDERBORGHT, *supra* note 1, at 9 (acknowledging that universal basic income goes against widely held views that "it is unfair for able-bodied people to live off the labor of others") (quoting Jon Elster, *Comment on Van der Veen and Van Parijs*, 15 THEORY AND SOC'Y 709, 719 (1986)); *see also* BIRNBAUM, *supra* note 1 (addressing the philosophical issues by a basic income that in effect decouples work from income); STUART WHITE, THE CIVIC MINIMUM: ON THE RIGHTS AND OBLIGATIONS OF ECONOMIC CITIZENSHIP 3 (2003) (analyzing the justness of a market economy under certain obligations related to economic citizenship); Miranda Perry Fleischer & Daniel Hemel, *Atlas Nods: The Libertarian Case for Basic Income*, 2017 WIS. L. REV. 1189, 1203–34 (providing philosophical analysis and justification of a UBI).

21. *See* JONES & MARINESCU, *supra* note 18, at 2 (using the Alaska Permanent Fund as a method for studying the impact of a UBI on labor markets).

22. *See, e.g.*, VAN PARIJS & VANDERBORGHT, *supra* note 1, at 99 (laying out the two main concerns that most opponents of the UBI express).

23. *See* VAN PARIJS & VANDERBORGHT, *supra* note 1, at 1 (explaining that universal basic income does not require a work requirement, therefore delinking it from income and labor).

II. Universal Basic Income ("UBI")

A universal basic income ("UBI") is an old idea that has recently seen increased attention and popularity around the world.[24] A simple definition of a UBI is that it is "a regular cash income, paid to all, on an individual basis, without means test or work requirement."[25] Not included in the definition, but important nonetheless, is the idea that a basic income, at least one that is not merely transitional, should be sufficient to make a significant difference in the lives of poor recipients.[26] Ideally, it should provide at least a subsistence living to everyone in society.[27] In effect, a UBI is a fixed amount of cash that is paid to each member of society regularly throughout the year, whether they work or not, and whether they are poor or not.[28] While the idea of a UBI seems simple, it is often presented as a radical departure from current governmental transfer programs, especially in a place like the United States that is perceived to have a relatively restrictive social safety net.[29] In some ways, it is indeed both simple and radical. But, each of the components of its definition is both more complicated and less radical the more they are examined. I break the UBI down into five primary components in this Section: (i) A UBI has no work requirement; (ii) a UBI is not "means tested"; (iii) a UBI is paid on an individual basis; (iv) a UBI is a cash payment made at regular intervals throughout the year; and (v) a UBI is large enough to make a significant difference in the lives of the poor. This Article argues that the largest transfer program in the United States, the EITC, could be modified to incorporate four

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24. *See, e.g.*, Heller, *supra* note 3, at 66 ("Recently, a resurrection has occurred.").

25. VAN PARIJS & VANDERBORGHT, *supra* note 1, at 1.

26. *See* Heller, *supra* note 3, at 65 ("In the U.S., its supporters generally propose a figure somewhere around a thousand dollars a month: enough to live on—*somewhere* in America, at least—but not nearly enough to live on well.").

27. *See* Heller, *supra* note 3, at 65 (explaining what basic income should consist of).

28. *See* Heller, *supra* note 3, at 65 ("A universal basic income, or U.B.I., is a fixed income that every adult—rich or poor, working or idle—automatically receives from government.").

29. *See* VAN PARIJS & VANDERBORGHT, *supra* note 1, at 170–71 (providing poll data from the United States indicating strong opposition to government welfare).

of these five elements. The very first component—the lack of work requirement—is not proposed.

A. A UBI Has No Work Requirement

For many, the most radical definitional component of a UBI is that, unlike most other social welfare transfer programs, it does not distinguish between recipients based on their ability or willingness to work.[30] That is to say, it is provided on an equal basis to recipients whether they work or not, even if non-work is a choice.[31] Most other forms of social welfare in the United States (and elsewhere) at least attempt to particularize aid to specific categories of "deserving" recipients.[32] For example, the social security system in the United States illustrates some of the ways social welfare is often categorized.[33] There are programs for the elderly,[34] the disabled,[35] the temporarily unemployed,[36] and the spouses and children of deceased workers.[37] In many cases, receipt of benefits is conditional on a history of labor participation and payment of social security taxes.[38] Additional social programs are largely directed at children, since children are inherently

30. *See* VAN PARIJS & VANDERBORGHT, *supra* note 1, at 99 (acknowledging that universal basic income goes against widely held views that "it is unfair for able-bodied people to live off the labor of others") (quoting Jon Elster, *Comment on Van der Veen and Van Parijs*, 15 THEORY & SOC'Y 709, 719 (1986)).

31. *See* Heller, *supra* note 3, at 65 ("A universal basic income, or U.B.I., is a fixed income that every adult—rich or poor, working or idle—automatically receives from government.").

32. *See* John Kay, *The Basics of Basic Income*, 52 INTERECONOMICS 69, 69 (2017) (noting that "[a]ll established tax and benefit systems make use of both contingent and income-related information" and providing examples).

33. *See* SOC. SEC. ADMIN., SECTION 218 TRAINING: INTRODUCTION TO SOCIAL SECURITY, https://www.ssa.gov/section218training/basic_course_3.htm (last visited Oct. 23, 2019) (listing the social welfare programs that fall under the social security program) [https://perma.cc/TA7H-9S7F].

34. *See id.* (listing retirement insurance as social security program).

35. *See id.* (listing disability insurance as a social security program).

36. *See id.* (listing unemployment insurance as a social security program).

37. *See id.* (listing survivors' insurance as a social security program).

38. *See id.* ("Your work in Social Security covered employment helps you and your family qualify for [social security] benefits. The benefit amounts are based on the earnings reported to the Social Security Administration.").

"deserving" (and not expected to work), although their parents may or may not be.[39]

Obviously, this impulse to separate "deserving" from "undeserving" poor is, and has always been, fraught because of social conceptions of inclusion and exclusion shaped by race and other factors.[40] For most non-elderly adults, whether they have children or not, the most basic way U.S. social welfare policy has distinguished between deserving and undeserving poor is to attempt to assess potential recipients' *willingness* to work.[41] However, it is administratively complicated to assess an individual's willingness to work, since the question is necessarily particular.[42] Therefore, the biggest transfer program in the United States, the EITC, uses a very simple metric to assess willingness to work: The credit is calculated as a percentage of earned income.[43] If a potential recipient is unable to work in the market economy, then she is denied all benefit. If she works, the benefit is phased in based on how much she earns. The more she earns, up to a ceiling, the more she gets. This simple metric obviously fails to provide benefits to potential recipients who are unable to work, either because they cannot find any paid job or because of disability or other "legitimate" reason, but its strength is its administrative simplicity.[44] A UBI, on the other hand, eschews all attempts to

39. *See id.* (listing family and child welfare services as a social security program).

40. *See, e.g.*, LOWREY, *supra* note 4, at 138 ("Large swaths of the American safety net and wealth-building programs were designed to exclude, punish, and discipline the descendants of the country's slaves.")

41. *See* 45 C.F.R. § 261 (2019) (explaining the Temporary Assistance for Needy Families Program—what used to be called "welfare"—has an elaborate work requirement).

42. *See id.* (discussing the administrative steps that must be taken to determine willingness to work).

43. *See* discussion *infra* Part III ("[T]he amount of credit received by very low-income workers is entirely dependent on how much they earn. As they earn money, they are eligible for the credit as a percentage of money earned, up to an amount of income at which they are receiving the maximum credit.").

44. A recent popular book is testament to the perceived importance of a work requirement to gain popular and political support for a transfer program. Chris Hughes, a founder of Facebook, argues passionately for what is in some respects a universal basic income. But in his version, a recipient must show *some* kind of work, either paid labor or certain kinds of unpaid non-market labor. *See* CHRIS HUGHES, FAIR SHOT: RETHINKING INEQUALITY AND HOW WE EARN 94 (2018) (discussing the work requirement).

differentiate between recipients who need aid because they cannot work and recipients who simply choose not to work.

In this Article, I make no attempt to resolve the fairness, incentives, or administrability arguments about the value of a work requirement.[45] Instead, I present a universal transfer program that *maintains* a work requirement—in other words, one that is not a UBI. I do this simply to avoid one set of difficult issues that accompany any discussion of a true UBI. I believe these discussions are valuable and should not be avoided forever, but the purpose of this Article is to propose a program that does not rise or fall on the issue of willingness to work.

B. A UBI Has No Means Test

The second key aspect of a UBI is that it is not "means-tested."[46] That means that no one is denied the transfer because of their income or wealth.

It is sent out to all recipients on an equal basis.[47] This feature is often misunderstood, but it is arguably supported by arguments about fairness, incentives, and, perhaps most importantly, administrative simplicity. A UBI is often distinguished from existing transfer programs by arguing that existing transfer programs, because of means-testing, create what is sometimes called a "poverty trap."[48] Often, traditional means-tested transfer programs are described as follows: (i) Benefits are only available to recipients whose income is below a certain threshold; (ii) once the threshold is exceeded, the recipient ceases to qualify for the

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45. *See* discussion *infra* Part V (setting forth proposals to make the EITC more like a UBI and notably not discussing the arguments surrounding the work requirement).

46. *See* VAN PARIJS & VANDERBORGHT, *supra* note 1, at 8 (stating that the UBI is not based upon the wealth or income of those seeking the transfer). *But see* discussion *infra* note 211 (pointing out that some UBI advocates, like Karl Widerquist and Charles Murray propose UBI plans with phase-outs, apparently not viewing a phase-out of benefits as inconsistent with the definition of a UBI).

47. *See* VAN PARIJS & VANDERBORGHT, *supra* note 1, at 14 (describing how a basic income is paid in cash and unconditional in payment to each individual "at a level independent of that individual's household situation").

48. *See, e.g.*, VAN PARIJS & VANDERBORGHT, *supra* note 1, at 7 ("People are entitled to continuing handouts on the condition that they remain destitute, and can prove it is involuntary.").

transfer; (iii) therefore, means-testing creates a strong *dis*incentive for a potential recipient to climb out of poverty by earning money, because earnings can disqualify the recipient for the transfer.[49] In its most extreme form, means-testing creates a "cliff" effect, removing eligibility for transfers as soon as income exceeds some fixed level.[50] Almost as extreme as a cliff is a "soak up" program, in which every dollar earned over the threshold amount results in a loss of a dollar of benefit.[51]

While some traditional means-tested transfer programs may have been designed that way at some point in time, very few still are.[52] Instead, eligibility for benefits generally *phases out* as income rises.[53] In a "phase-out" program, the quantity of transfer for which a recipient is eligible decreases as income increases, eventually reaching a point at which the recipient is no longer eligible for any transfer.[54] This phase-out structure still creates a disincentive to earn whenever the recipient's income places them

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49. *See* VAN PARIJS & VANDERBORGHT, *supra* note 1, at 7 (describing the ways in which a means-tested transfer can assist in creating a poverty trap for those seeking to utilize the transfer).

50. *See* Van PARIJS & VANDERBORGHT, *supra* note 1, at 18 (pointing out that a means-tested transfer creates a line for which eligibility can be drawn ensuring that those above a fixed level can no longer use the transfer).

51. *See* VAN PARIJS & VANDERBORGHT, *supra* note 1, at 19 (discussing the implications of imposing a marginal tax rate of 100% on any income earned by the poor, resulting in a poverty trap where one unit of benefit is retracted with every unit earned); *see also* BIRNBAUM, *supra* note 1, at 12 (explaining that a poverty trap is when "income support is reduced with the full amount of an increase in one's labor income").

52. *See* GENE FALK, CONG. RESEARCH SERV., R43634, TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF): ELIGIBILITY AND BENEFIT AMOUNTS IN STATE TANF CASH ASSISTANCE PROGRAMS 3–5 (2015) (explaining that the only significant means-tested program in the United States is Temporary Assistance for Needy Families (TANF), which has different eligibility rules for each state).

53. *See* Daniel N. Shaviro, *Effective Marginal Tax Rates on Low-Income Households*, 84 TAX NOTES 1191, 1192–99 (1999) (discussing how a phase-out system operates with regards to the income of those seeking the transfer).

54. *See id*. at 1191–92 (describing how a phase-out benefit correlated to an income increase results in an "identical incentive and distributional effect" as imposing a positive marginal income tax rate explicitly); *see also* ANNIE MILLER, A BASIC INCOME HANDBOOK 81 (2017) (describing how phase-out ranges can often effectively disincentivize people from utilizing them because of the ways in which the earning disincentives can overlap). The U.K. recently tried to mitigate the problem of multiple overlapping phase-outs by creating a Universal Credit, which is reduced by a "Marginal Deduction Rate" (phase-out) of 65 or 76 percent, depending on the income of the recipient. *Id*.

in the "phase-out range." When multiple benefit programs have uncoordinated overlapping phase-out ranges, the earnings disincentive can get very large, even potentially exceeding 100%. That means that earning a dollar under such circumstances would result in the worker losing more than a dollar in benefits, in that case, it seems that the earnings disincentive is real and dramatic.[55] However, much more often, phase-outs are more gradual,[56] and the incentive effect might be small. There is empirical uncertainty about how the disincentive works at lower levels of income.[57] When phase-outs strongly affect incentives for low-income workers, they are said to create a "poverty trap" (just as a cliff or soak-up would) by discouraging workers from earning enough to climb out of poverty.[58]

An ideal UBI solves this problem by removing the phase-out of benefits, making the benefit available to all.[59] For some, removing means testing seems inefficient or unfair.[60] Why should the government give money to people who earn enough on their own and do not need government assistance? After all, to the degree to which the purpose of government transfer programs is to assist the poor, targeting benefits at the poor seems like the most

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55. *See* MALCOLM TORRY, MONEY FOR EVERYONE: WHY WE NEED A CITIZEN'S INCOME xi (Bristol Univ. Press 2013) (explaining how marginal deduction rates impact additional earnings); *see also* Guy Standing, *Forward* to MALCOLM TORRY, MONEY FOR EVERYONE: WHY WE NEED A CITIZEN'S INCOME, at xxii (Bristol Univ. Press 2013) (arguing means tests and behavior tests cannot overcome poverty traps "whereby the precariat often pay a marginal tax rate of over 80 percent, twice what the 'middle class' is expected to pay . . . [and] many end up paying more than 100 per cent 'tax' on income gained in some precarious short-term job.").

56. *See id.* at 157 (explaining that many phase-outs are not as large of a disincentive as they can be laid out to be and are rather much less drastic).

57. *See* discussion *infra* accompanying notes 218–223 (discussing the income disincentives that can come with certain transfer programs especially for those in lower income brackets).

58. *See* Alstott, *Why the EITC Doesn't Make Work Pay*, *supra* note 14, at 549 ("For workers in the EITC phase-out range, the EITC creates an unambiguous potential work disincentive.").

59. *See* VAN PARIJS & VANDERBORGHT, *supra* note 1, at 28 (discussing the ways basic income can help our economy and create "a way of living that is sustainably generalizable.").

60. *See* MILLER, *supra* note 54, at 81 (discussing how removing means testing can create disincentives that make it less likely for people to take advantage of the transfer credit).

efficient policy. The answer is that a UBI is available to all to avoid the disincentives associated with phasing it out. Many UBI supporters also argue that a non-means-tested benefit is good politically because it avoids distinguishing between low-income people (who need assistance) and middle- and higher-income people.[61]

As an added complication, it is often pointed out that it is inappropriate to think about a UBI outside the context of any tax used to fund it.[62] Wherever there is an income tax, there is a governmentally created disincentive to earn income. If income is taxed at 10%, for example, the marginal benefit of earning a dollar is reduced by 10%. This disincentive functions the way a phase-out of a benefit program functions. There is the potential for confusion in the terminology used to describe the difference between a phase-out and a general income tax, like the one described above. In the example above, what distinguishes a phase-out and a tax is the fact that the phase-out ceases affecting income once the benefit has been entirely lost, while the tax continues as income grows. But it is important to emphasize the similarity between the two. Both function as a "marginal tax rate" on income: In the case of the phase-out, the marginal tax rate is increased only when income is within the phase-out range; in the case of the general tax, the marginal tax rate is presumably increased consistently on all income.[63] Therefore, a phase-out increases the marginal tax rate for relatively lower-income people, while the general tax increases the marginal tax rate for higher-income people as well. A flat tax combined with a basic income (usually called a demogrant in the economic and tax literature) is "progressive" (and can be dramatically so).[64]

61. *See, e.g.*, MILLER, *supra* note 54, at 79 ("[U]niversality means that everyone is included, and by avoiding the division created by targeting, it could lead to a more united, inclusive and harmonious society.").

62. *See* VAN PARIJS & VANDERBORGHT, *supra* note 1, at 133 (discussing how a personal income tax is the more straightforward tax to fulfill this obligation of funding for universal basic income).

63. *See* Shaviro, *supra* note 53, at 1191 (defining "marginal tax rate" to be a structure "which results from layering multiple income-conditioned transfer phase-outs on top of various income-related taxes").

64. *See* Ari Glogower & Clint Wallace, *Shades of Basic Income* 8–9 (N.Y.U. 70th Annual Conference on Labor; Ohio State Pub. Law Working Paper No. 443, 2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3122146 (explaining

Regressivity—which is when the marginal tax rate decreases for higher-income taxpayers—is generally perceived to be unfair and might create bad incentives.[65] It might create bad incentives because higher marginal rates among lower-earning people under certain circumstances might create stronger disincentives for such people to work than those that apply to higher-earning people, creating unnecessary barriers to them working their way out of poverty or near poverty. Thus, UBI supporters argue that a UBI—even one funded exclusively by a flat or relatively flat income tax—is both fairer and more efficient than a means-tested transfer program, even in an otherwise moderately progressive income tax system.[66] Although the real lesson is that the fairness or efficiency of means-testing can only be evaluated in the context of the structure of the system that funds such a program.[67]

If a "surtax" was used to fund a UBI (or reformed EITC) and to recapture benefits from recipients as their income rises, that would be similar (or could be identical) to the UBI "phasing out," the traditional structure by which benefits are lost as income rises.[68] One potential difference between a "phase-out" and a "surtax" relates to how each function is administered. On one hand, if a benefits program operates outside of a taxing system, it must have its own administrative system to administer it. This administrative system must have the capacity to timely and accurately collect information about each applicant's income. On the other hand, if a benefit program is universal, but the value of the benefit is recaptured through a surtax, only the tax

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the effect of a cash grant on the progressivity of an income tax) [https://perma.cc/9SZV-A6F3].

65. *But see* Walter J. Blum & Harry Kalven, Jr., *The Uneasy Case for Progressive Taxation*, 19 U. CHI. L. REV. 417 (1952) (questioning whether an income tax should be progressive as a way to achieve fairness).

66. *See* Glogower & Wallace, *supra* note 64, at 8–9 (illustrating how a basic income grant is more progressive than an exemption for taxpayers).

67. *See* Daniel J. Hemel & Miranda Perry Fleischer, *The Architecture of a Basic Income,* 86 UNIV. CHI. L. REV. (forthcoming 2019) (manuscript at 8–9), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3346467 (describing the interactions between a UBI phase-out and a progressive income tax) [https://perma.cc/U324-HM5F].

68. *See id.* (manuscript at 8) ("[S]ome of the distinctions drawn between different UBI variants—for example a UBI with a phase-out and a UBI that never phases out—turn out to be alternative ways of accounting for the same flow of funds.").

administration needs to collect that information (which, presumably, it must do anyway). A surtax is therefore an administrative simplification over a phase-out. To the degree in which a benefit recipient could receive the benefit but fail to pay the surtax owed (through fraud, error, or failure of the tax administration), a surtax system might increase costs and result in unfairness. The administrative distinction between a surtax system and a phase-out system should not be ignored, nor confused with the conceptual differences described above.

C. A UBI Is Paid on an Individual Basis

A third key aspect of a UBI is that it is provided on an "individual" basis, as opposed to many traditional transfer programs where benefits depend on aspects of family status.[69] First, in traditional benefits programs, marital status often affects benefits, with married couples receiving less per capita than unmarried individuals.[70] Second, many programs provide more to custodial parents of minor children than to recipients who do not have custody of children.[71] Each of these family-status conditions creates complexity in the administration of the program, and potentially creates unfairness and perverse incentives.

There is a strong justification for the family-structure-conditional design of traditional transfer programs. With respect to recipients who are "coupled," it is argued that a subsistence level of income is higher for people who live alone than for people who share income with another adult because of so-called household economies of scale.[72] Attempts to identify an

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69. *See* VAN PARIJS & VANDERBORGHT, *supra* note 1, at 14–16 (explaining that a basic income is "individual" by definition).

70. *See* U.S. DEP'T OF HEALTH & HUMAN SERVS., 2019 POVERTY GUIDELINES (2019), https://aspe.hhs.gov/2019-poverty-guidelines (last visited Oct. 23, 2019) [hereinafter 2019 POVERTY GUIDELINES] (noting that in 2019 the poverty line for a single person household was $12,490, but it was only $16,910 for a two-person household) [https://perma.cc/3EXZ-AT3G].

71. *See, e.g.*, FALK, *supra* note 52, at 1–2 (explaining that TANF is one of several government benefits provided to poor families with children).

72. *See* Julie A. Nelson*, Household Economies of Scale in Consumption: Theory and Evidence*, 56 ECONOMETRICA 1301, 1301–02 (1988) ("[T]he notion that . . . the cost per person of maintaining a given material standard of living may fall as household size rises, often arises in the literature

official "poverty line" generally recognize this fact, with the poverty line for a two-adult household being lower per person than the poverty line for a single adult.[73] To the degree to which a couple with a $20,000 annual income shares expenses, they are effectively "richer" than a person living alone with $10,000 annual income.[74] Therefore, if the goal of a transfer program is to provide each recipient with a comparable minimum standard of living, then giving less per person to couples who share expenses makes sense.

But, of course, problems start immediately.[75] First, a system is needed to establish a way of identifying those people who share expenses. In many programs, marriage is used as a proxy, which is obviously problematic since unmarried persons sometimes cohabitate and share expenses, and married persons sometimes do not. Using a proxy that is both over and under inclusive creates unfairness for those persons "misidentified" by the proxy. Perhaps more importantly, reducing benefits for individuals who get married may create disincentives to marry (or incentives to divorce), which is often called a "marriage penalty."[76] Imagine that two unmarried persons could cohabitate and share expenses, and each get the full $10,000 benefit (because they are unmarried). If they would receive a smaller per-person benefit if they married, they have an incentive not to wed. A UBI avoids the perverse incentives and potential unfairness of traditional transfer

on household composition.").

73. *See* 2019 POVERTY GUIDELINES, *supra* note 70 (noting that the poverty guidelines are sometimes loosely referred to as the "federal poverty level" (FPL), "but that phrase is ambiguous and should be avoided, especially in situations (e.g., legislative or administrative) where precision is important").

74. *See* Nelson*, supra* note 72*,* at 1312 ("The variation in the sizes of the estimated effects across goods suggests that economies of scale are very important in the consumption of shelter, and substantially less important in the consumption of clothing and transportation.").

75. *See* VAN PARIJS & VANDERBORGHT, *supra* note 1, at 14–16 (analyzing the different problems associated with providing basic income based on family structure).

76. *See The Tax Policy Center Briefing Book: A Citizens' Guide to the Tax System and Tax Policy Tax Policy*, TAX POL'Y CTR., https://www.taxpolicycenter.org/briefing-book/what-are-marriage-penalties-and-bonuses (last visited Oct. 23, 2019) ("A couple incurs a marriage penalty if the two pay more income tax filing as a married couple than they would pay if they were single and filed as individuals.") [https://perma.cc/G8ST-5UCF].

payments, but at the cost of failing to take into account potential savings from cohabitation.[77]

With respect to treatment of custodial children, the justification comes from the observation that—if income is held steady—a person who supports children is effectively "poorer" than a person who does not. That follows from the simple observation that children cost money.[78] But again, conditioning the receipt of transfers on the custody of children creates some administration problems, incentive problems, and arguably fairness issues. Most UBI supporters argue that the additional cost of children should be addressed by granting each child his or her own UBI (though one smaller than an adult) to reflect the marginal cost of raising a child (and to affirm the personhood of children).[79] In this case, the only administrative issue is deciding which adult(s) should receive the child's UBI payment to spend on the child's behalf.

D. A UBI Is a Regular Cash Income

Finally, a definitional criterion of a UBI is that it is "regular."[80] It can be paid every month or every week, but it should not be paid as a lump sum at the end of the year, and it should not be paid only once over a person's life.[81] The benefit of a regular payment is that it can support a person through periods of unemployment or underemployment without a savings requirement—that is, even if a person fails to save for periods of low income, the UBI will be available to at least provide for his or her subsistence.

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77. *See, e.g.*, MILLER, *supra* note 54, at 68 (criticizing UBI schemes "because individual assessment means that couples will receive twice as much as a singleton, when they could manage on less than that").

78. *See* Jacob Goldin & Zachary Liscow, *Beyond Head of Household: Rethinking Taxation of Single Parents*, 71 TAX L. REV. 367, 391 (2018)("[C]hildren cost money to raise, including feeding, housing, and child care . . . .").

79. *See Should a Basic Income be Paid to Children?*, BASIC INCOME EARTH NETWORK https://basicincome.org/basic-income/faq/#children (last visited Oct. 23, 2019) (discussing a UBI for children) [https://perma.cc/7W63-BVCF].

80. *See* Robert C. Guth, *Never Say Never: Ambitious State Tax Reform Proposals to Watch in 2018*, 27 J. MULTISTATE TAX'N & INCENTIVES 24, 46 n.31 (2018) (defining universal basic income as "income paid by a government, at a uniform level and at regular intervals, to each adult member of society").

81. *See generally* ANNE ALSTOTT & BRUCE ACKERMAN, THE STAKEHOLDER SOCIETY (2000) (providing an example of a single-payment system).

In addition to being regular, a UBI is provided in cash, not "in kind."[82] Some welfare programs, like Supplemental Nutrition Assistance Program (food stamps),[83] are provided "in kind," out of a concern that cash may be misused by its recipients or engender fraud.[84] A UBI is provided in cash under the assumption that people are generally the best equipped to determine their own needs, and therefore should be trusted with cash.[85] Some argue that recognizing recipients' capacities to make their own choices has dignitary value whether or not they maximize their benefits.[86] Cash is less expensive to administer than "in kind" benefits, so—all else being equal—a cash benefit should be preferred.[87] Insisting that a UBI should be delivered in cash does not mean that it cannot be delivered in an electronic form that is the equivalent of cash. The UBI could be loaded onto debit cards, for example, or in any other technologically appropriate mechanism.[88]

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82. *See About Basic Income*, BASIC INCOME EARTH NETWORK, https://basicincome.org/basic-income/ (last visited Oct. 23, 2019) ("Cash payment: It is paid in an appropriate medium of exchange, allowing those who receive it to decide what they spend it on.") [https://perma.cc/YEX8-YNLJ].

83. Supplemental Nutrition Assistance Program (SNAP), U.S. DEP'T OF AGRIC. (2019), https://www.fns.usda.gov/snap/supplemental-nutrition-assistance-program-snap (last visited Oct. 23. 2019) [https://perma.cc/KB5S-SDLN].

84. *See How FNS Fights SNAP Fraud, Waste, and Abuse*, U.S. DEP'T OF AGRIC. (2019), https://www.fns.usda.gov/snap/fraud (last visited Oct. 23, 2019) (detailing SNAP's fraud policies) [https://perma.cc/6MFN-GVGR].

85. *See*, *e.g.*, VAN PARIJS & VANDERBORGHT, *supra* note 1, at 13 (arguing that cash is superior to in-kind transfers as a means of "achieving greater freedom for all").

86. *See* Fleischer & Hemel, *supra* note 20, at 1234 (explaining why cash transfers enhance "autonomy and self-ownership").

87. *See* Michelle Miley, *What Is the Difference Between Cash Transfers & In-Kind Benefits?*, THE NEST, https://budgeting.thenest.com/difference-between-cash-transfers-inkind-benefits-22791.html (last visited Oct. 23, 2019) (noting that when a government agency distributes food to the hungry, it expends time and money, which "cash transfers don't require") [https://perma.cc/D9AG-3VHH].

88. *See, e.g.*, *What Is Electronic Benefits Transfer (EBT)?*, U.S. DEP'T OF AGRIC. (July 13, 2018), https://www.fns.usda.gov/snap/ebt (last visited Oct. 23, 2019) ("Electronic Benefits Transfer (EBT) is an electronic system that allows a recipient to authorize transfer of their government benefits from a federal account to a retailer account to pay for products received.") [https://perma.cc/L99G-HV6Z].

E. A UBI Is Large Enough to Have a Substantial Effect on the Lives of the Poor

The final criterion is not always stated by UBI advocates (and may not be universally accepted), but is nonetheless important to most conceptions of a UBI: It should be large enough that it does not leave many people in poverty.[89] Even though UBI advocates have very different conceptions of what problems a UBI should be designed to solve, very few of them would be satisfied with a UBI that left a substantial portion of the population in poverty.[90] Therefore, a UBI must be more substantial than current social welfare and transfer programs.

III. The Earned Income Tax Credit

The Earned Income Tax Credit ("EITC") is the largest anti-poverty program in the United States, delivering $65 billion in cash to low-income families.[91] It is a "refundable" tax credit, which means that it is integrated into the federal income tax system, with applicants seeking the credit by submitting a tax form with a special schedule attached, and the credit first being used to decrease any income tax due, and then if any of the credit remains, providing it to the applicant.[92] The "refundable" nature of the credit means that for many very low-income people, the EITC is a net payment to the recipient from the federal government over

89. *See, e.g.*, MILLER, *supra* note 54, at 23 (stating that "an excellent definition of a full Basic Income" is its "emphasis on universal, individual, unconditional and high enough for the individual to live a life of dignity with the opportunity to participate in public life").

90. *See* Fleischer & Hemel, *supra* note 20, at 1259 (describing that, at minimum, UBI should cover "food, clothing, shelter," and possibly basic healthcare).

91. *See* HOLT, *supra* note 14, at 1 (stating that that the EITC is the federal government's "largest—and most successful—antipoverty programs" delivering 65 billion dollars to 27 million eligible workers and families).

92. *See Policy Basics: The Earned Income Tax Credit*, CTR. ON BUDGET & POL'Y PRIORITIES (2019), https://www.cbpp.org/research/federal-tax/policy-basics-the-child-tax-credit (last visited Dec. 16, 2019) [hereinafter *Policy Basics*] ("The amount of EITC depends on a recipient's income, marital status, and number of children.") [https://perma.cc/9U5R-M5AV].

and above any federal income taxes the recipient paid.[93] Because it often functions as a payment from the government, rather than a reduction in income taxes due, it is a "transfer" program. The EITC has five characteristics that are most important for our current purposes: (i) It is phased in (which makes it "work-conditional"); (ii) it is phased out (which makes it "means-tested"); (iii) it is provided based on family status, especially based on custody of minor children; (iv) it is delivered through the tax system; and (v) it is insufficient to raise all recipients out of poverty.[94]

A. The EITC Is Work-Conditioned

First, the EITC is "phased-in," which means that the amount of credit received by very low-income workers is entirely dependent on how much they earn—if they earn nothing, they get nothing.[95] As workers earn money, they are eligible for the credit as a percentage of money earned, up to an amount of income at which they are receiving the maximum credit.[96] For example, a worker with three or more qualifying children receives a credit equal to 45% of earnings from the first dollar earned up to $14,290 of earnings.[97] If she earns $14,290, her credit is 45% of that amount, which is $6431—the maximum credit.[98] If she earns any less than that, she gets a smaller credit. If she were to work twenty hours per week for fifty weeks of the year doing a minimum wage job ($7.25 per hour), she would earn $7250, and so her credit would

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93. *See id.* (describing the implication of the "refundable" nature of the EITC program).

94. *See id.* (describing five important aspects of the EITC program).

95. *See id.* ("As the EITC phases in, it is calculated at a set percentage of earnings called the 'phase-in rate,' which depends on marital status and number of children.").

96. *See id.* (noting that the EITC is designed to encourage and reward work, and incentivize people to leave welfare for work and for low-wage workers to increase their work hours).

97. *See* Rev. Proc. 2018-18, 2018-10 I.R.B. § 3.05 (2018), https://www.irs.gov/pub/irs-irbs/irb18-10.pdf (last visited Oct. 23, 2019) (announcing inflation adjusted numbers for 2018 tax returns, including EITC Earned Income Amounts) [https://perma.cc/E9AJ-2424].

98. *Id.*

only be $3262.50 (45% of her earnings in the phase-in range).[99] Because of this "phase-in" structure, the EITC is work-conditioned, but unlike other work-conditioned transfer programs, the EITC only takes into account paid work.[100] No credit is given either for seeking work in good faith or for any kind of unpaid labor, whether it is for one's family or in the volunteer sector.[101] Similarly, no credit is given for people who are unable to earn, because of disability or age, for example.

B. The EITC Is Means-Tested

Second, the EITC is "phased-out," which means that the credit is lost as a percentage of income after a worker reaches a certain level of earned income (the "Income Eligibility Ceiling").[102] An unmarried worker with three qualifying children starts losing the credit when her income exceeds $18,660.[103] After that, for each dollar she earns, she loses 21.06 cents of credit.[104] When she has earned $49,194, she has completely lost the credit.[105] This phase-out is the way that the EITC is "means tested," and it makes any potential recipient who earns more than $54,884 ineligible to receive any credit.[106] For most taxpayers, the credit is unavailable

99. *Id.*

100. *See Policy Basics*, *supra* note 92 ("As the EITC phases in, it is calculated at a set percentage of earnings called the 'phase-in rate,' which depends on marital status and number of children.").

101. *See, e.g.*, HUGHES, *supra* note 44, at 169 (proposing that anyone who has a dependent under six or over 70-years-old should qualify for the benefit, since they are doing unpaid household labor).

102. *See Policy Basics*, *supra* note 92 ("[T]he point where the EITC phase-out begins, a household's EITC amount decreases by a set percentage of income (the 'phase-out rate') until the EITC is reduced to zero, where the phase-out ends.").

103. *See* Rev. Proc. 2018-18, 2018-10 I.R.B. 395 (2018), https://www.irs.gov/pub/irs-irbs/irb18-10.pdf (last visited Dec. 16, 2019) (showing the same threshold amount for unmarried workers with one or two qualifying children) [https://perma.cc/E9AJ-2424].

104. *See id.* (dividing the maximum amount of credit by the difference between the threshold phase-out amount and the completed phase-out amount).

105. *See id.* (multiplying .2106 by $6431 and adding the threshold phase-out amount of $18,660).

106. *See id.* (noting that the maximum income at which any taxpayer is eligible for any credit is $54,884, which is the Income Eligibility Ceiling for a married couple with three or more children).

at much lower levels of income.[107] For example, once a childless person earns $15,270, he or she receives no credit.[108] Taxpayers' assets do not impact their eligibility for the EITC directly, but any income from savings can have a dramatic effect. Rather than phase-out the credit as investment income rises, there is a cliff at $3500.[109] Taxpayers whose investment income exceeds $3500 do not qualify for the credit, no matter how much or little earned income they have.[110] If one's investment income is below $3500, it does not affect the calculation of the credit. As is discussed above, this phase-out creates an additional effective marginal tax rate, arguably creating a disincentive to earn additional income in the phase-out range, just as the phase-in creates a negative marginal tax rate (so to speak), increasing incentives to earn market income in the phase-in range.

C. The EITC Is Based on Family Status (Not Individual)

Third, the EITC is expressly tied to family status, which produces some complications around marriage and child custody.[111] First, even for couples without children, there is a marriage penalty associated with the structure of the benefit. Under certain circumstances, the aggregate benefit received by two married people is smaller than the benefit received if they are unmarried.[112] For parents of a single child, the marriage penalty is more dramatic: If one parent earns enough to lose all or some of

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107. *See id.* (basing availability of credit on income levels for 2018 tax year).

108. *See id.* (providing information for 2018 tax year).

109. *See id.* (stating that the earned income tax credit is not allowed for taxpayers who have investment income that exceeds $3500). This investment-income cliff creates a strong disincentive to save enough in income-producing investments to reach that limit. *See* Hemel & Fleischer, *supra* note 67 (manuscript at 56) (pointing out that the 2018 EITC cliff relating to investment income cliff of $3500 could create a marginal tax rate of 60,000% on the 3,501st dollar of investment income).

110. Rev. Proc. 2018-18, 2018-10 I.R.B. 395 (2018), https://www.irs.gov/pub/irs-irbs/irb18-10.pdf (last visited Dec. 16, 2019) [https://perma.cc/E9AJ-2424].

111. *See Policy Basics*, *supra* note 92 ("The amount of EITC depends on a recipient's income, marital status, and number of children.").

112. *See Policy Basics*, *supra* note 92 (comparing the phase-out rates for those filing earned income taxes individually versus those married and filing jointly).

the credit, then marriage disqualifies the other parent from benefits as well, even if the other parent is the sole caregiver of a child.[113] If the parents are separated and file under "married filing separately" status, then *neither* parent can claim the credit no matter how little or much they earn, since that status disqualifies parents from the EITC entirely.[114] Second, because the benefit is so much larger for the custodial parent of children, the structure disincentivizes marriage for parents of multiple children, especially for parents who have more than two children.[115] The increase in benefits with the first child is slightly larger than the marginal increase with a second child, and much higher than the marginal increase of adding a third child.[116] After a parent has three children, there is no additional benefit.[117] This structure creates an incentive for parents of multiple children to remain unmarried and each claim at least one child.[118] A married couple with four children who each earn $18,000, for example, would receive a credit of $3976.[119] If that same couple were unmarried, and each parent claimed two children, they would each receive a

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113. *See* Caleb Smith & Michelle Lyon Drumbl, *Understanding the Earned Income Tax Credit*, *in* EFFECTIVELY REPRESENTING YOUR CLIENT BEFORE THE IRS § 27.1.2.4 (Keith Fogg ed., 7th ed. 2018) (explaining how the marriage penalty is more severe for some low-income married couples).

114. *See id.* (explaining the EITC implications of having a "married filing separately" status).

115. *See* I.R.C. § 32(c)(3)(A)(2018) (noting the special rule for divorced or separated parents wherein a noncustodial parent can only claim deductions for qualifying children under § 151 and a child tax credit); *see also* Smith & Drumbl, *supra* note 113, § 27.2.3.2 ("[T]he custodial parent is able to use the qualifying child for purposes of Head of Household filing status, EITC and the dependent care credit . . . [while] [t]he non-custodial parent is able to use the qualifying child for the dependency exemption and child tax credit.").

116. *See* § 32(b)(1) (listing the tax credit percentages attributable to the number of qualifying children).

117. *See id.* (applying tax credits to a max of 3 or more qualifying children).

118. *See* Smith & Drumbl, *supra* note 113, § 27.2.2.4 ("Absent divorce or legal separation, . . . taxpayer[s] must file married filing separate (and [are] therefore ineligible for the EITC) unless they are 'considered unmarried' under section 7703.").

119. *See* Rev. Proc. 2018-18, 2018-10 I.R.B. § 3.05 (2018), https://www.irs.gov/pub/irs-irbs/irb18-10.pdf (last visited Dec. 16, 2019) (providing inflation-adjusted EITC amounts for 2018, from which one could calculate that a married couple who earns $36,000 in the aggregate, earns the maximum credit of $6431, but puts $11,650 of their income into the phase-out range, reducing their credit by 2,453) [https://perma.cc/E9AJ-2424].

credit of $5716, and between the two of them, they would receive an aggregate credit of $11,432. In other words, because the couple is married, they receive $7454 less credit than they would receive if they were unmarried. This is true even if they cohabitate. These and other family-structure issues create potentially perverse incentives around marriage and cohabitation.

The EITC is structured so almost no benefit (never more than a refund of a worker's payroll tax obligation) goes to people who are not the custodial parent of at least one child.[120] Because almost all other safety net programs are available to families with children or the elderly or disabled, childless workers and parents without primary care responsibility may fall through a hole in the safety net.[121] Non-custodial parents of children may still have very real child support obligations, just like custodial parents, but no ability to meet them because they do not qualify for income-support programs.[122]

In addition to disincentivizing marriage and failing to serve taxpayers who are non-custodial parents, basing EITC benefits on family structure also complicates filing and enforcement. While the IRS allows cohabitating unmarried parents to choose which parent claims the child,[123] this is not the case with parents who do not cohabitate for at least half of the year.[124] In other words, only the parent who lives with the child for over half the year can claim

120. *See Policy Basics*, *supra* note 92 ("In contrast to the EITC for families with children, the EITC for workers not raising children in the home remains extremely small—too small even to fully offset federal taxes for workers at the poverty line.").

121. *See* Gitterman et al., *supra* note 14, at 249 ("[Single workers] are generally ineligible for means-tested cash and medical assistance . . . such assistance is limited to families with children, the elderly, and those with disabilities").

122. *See* Gitterman et al., *supra* note 14, at 249 ("Very low-wage, non-custodial parents may find it difficult to meet their child support obligations and survive economically, which can further marginalize their attachment to legitimate work and to their children's economic and psychological well-being.").

123. *See* INTERNAL REVENUE SERV., U.S. DEP'T OF THE TREASURY, PUB. NO. 596, EARNED INCOME CREDIT (EIC) 14 (2017), https://www.irs.gov/pub/irs-prior/p596--2017.pdf (noting the tax treatment of children by unmarried parents in examples ten and eleven) [https://perma.cc/JD3G-BDJM].

124. *See id*. at 11 (requiring that a "qualifying child" live with you in the home for more than half the year).

the child for EITC purposes.[125] This rule is further complicated by the fact that parents who live apart are permitted to choose which one claims a child for the purposes of the "dependency exemption," and the custodial parent files a form with the IRS to "release" the child's dependency exemption to the other parent. But this "release" is not only ineffective for the purposes of the EITC, it is often used by the IRS as evidence that the noncustodial parent does not qualify for the EITC because they fail the residency requirement.[126] Taxpayers must be able to prove, and the IRS must be able to assess, where a child actually lives for over half the year.[127] When parents share custody of a child or the child's living situation changes during the year, evidentiary problems can prevent eligible taxpayers from receiving the credit.[128] Further, the very definition of a qualifying child is not consistent across various tax provisions.[129] In conclusion, the fact that administration of the EITC is linked to family status and directed towards custodial parents of children creates perverse incentives, limits the reach of the EITC, and creates administrative and enforcement burdens.

D. The EITC Is Paid in a Lump Sum as a Tax Refund

Fourth, the EITC is integrated into the federal income tax administrative system, which has implications about how it is claimed and delivered. Filing a return is complicated, and so claimants often hire paid preparers to help them file a return and claim the refund.[130] Compared to the way traditional welfare

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125. *See* I.R.C. § 32(c)(3)(C) (2018) (stating that the child must have lived with the taxpayer in the United States for over half a year).

126. *See* Smith & Drumbl, *supra* note 113, at 12–13 (explaining how the IRS uses the release for EITC purposes).

127. *See* IRM Exhibit 4.19.14-1 (providing a list of examples of acceptable documentation for EITC claims, such as proof of citizenship and relationship status).

128. *See* Smith & Drumbl, *supra* note 113, at 12–13 ("In close cases the practitioner is forced to count the days, which apart from substantiation and memory issues, is further complicated by the treatment of temporary absences.").

129. *See generally* U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-17-558, FEDERAL LOW-INCOME PROGRAMS: ELIGIBILITY AND BENEFITS DIFFER FOR SELECTED PROGRAMS DUE TO COMPLEX AND VARIED RULES (2017) [hereinafter GAO-17-558] (describing various low-income program eligibility requirements).

130. *See, e.g.*, Leslie Book, *Bureaucratic Oppression and the Tax System*, 69

benefits are usually claimed, this method shifts some of the cost of receiving the benefit onto the claimant; however, some believe it reduces stigma and makes claiming the benefit easier.[131] Participation in the program among eligible claimants is estimated to be significantly higher than among traditional welfare programs.[132] The most important fact about the way the refund is delivered is that it is paid in a single lump sum several months after the relevant year ends; therefore, it is not available to pay bills at the time that it is most needed.[133]

E. The EITC Is Too Small to Eradicate Poverty

Finally, the EITC is too limited in amount.[134] The maximum credit that any family can receive under current law (2018) is $6431 total for the year, for a taxpayer with three children.[135] For a childless taxpayer, the maximum credit in 2018 is $519 for the year (less than $45 per month).[136] In other words, compared to other transfer programs, the credit is substantial for recipients with children but is comparatively small for childless recipients (or recipients who do not meet the qualifications for the credit).[137] In

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TAX LAW. 576, 576–77 (2016) (describing the administrative difficulties associated with claiming the EITC); *see also* HOLT, *supra* note 14, at 4 (highlighting four of the significant challenges associated with claiming the EITC).

131. *See* HALPERN-MEEKIN ET AL., *supra* note 8, at 193 (arguing that receiving the EITC through the tax system reduces stigma).

132. *See* Book, *supra* note 130, at 572 (discussing the high participation rate for the EITC).

133. *See* HOLT, *supra* note 14, at 4 (noting "[a] timing mismatch between when benefits are needed in EITC-qualifying households and when they are made available"); *see also* discussion *infra* Part IV.C (describing the debate between scholars as to the advantages and disadvantages of the lump sum payment).

134. *See* Sharon Parrott, *Commentary: The EITC Works Very Well—But It's Not a Safety Net by Itself*, CTR. ON BUDGET & POL'Y PRIORITIES (Mar. 26, 2014), https://www.cbpp.org/sites/default/files/atoms/files/3-26-14tax-commentary.pdf (last visited Dec. 16, 2019) (noting that the EITC itself is not enough income assistance to keep people out of deep poverty) [https://perma.cc/6D9Q-FA9Q].

135. *See* Rev. Proc. 2018-18, 2018-10 I.R.B. § 3.05 (2018), https://www.irs.gov/pub/irs-irbs/irb18-10.pdf (last visited Dec. 16, 2019) (providing inflation-adjusted EITC maximum credit amounts for families who have multiple children) [https://perma.cc/E9AJ-2424].

136. *Id.*

137. *See, e.g.*, Gitterman et al., *supra* note 14, at 258 (comparing maximum benefit amounts for recipients with no qualifying children, one qualifying child,

fact, the credit for childless workers is expressly tied to payroll taxes, refunding the half of payroll taxes that are paid by employed persons.[138] If a person is self-employed (or a contractor), she is responsible for both halves of her payroll tax obligation so that the EITC will never do more than refund *half* of the payroll taxes she owes.[139] As a result, for workers without custody of minor children, the EITC functions as a small tax refund, not a transfer program.[140]

Because the EITC is so much more substantial for recipients with children, it really functions much more like a supplement to the child tax credit, providing tax relief and transfers to parents.[141] But even as a transfer program for recipients with children, the credit leaves many families in poverty.[142] Even with the maximum credit for a family with three children ($6431 in 2018),[143] this amount is not enough to bring a family out of poverty ($25,750 for a family of four)—even when added to the wage a parent would earn if working minimum wage ($7.25) for 2000 hours ($14,500).[144]

F. Illustrative Examples

To illustrate these five components of the EITC program, it might be useful to think about two families, the Smiths and the Joneses. The Smiths consist of Ashley Smith and her three

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and two or more qualifying children).

138. *See* I.R.C. § 32(b)(1) (2018) (noting that the credit percentage for taxpayers with no qualifying children is 7.65%).

139. *See id.* (describing the applicability of the EITC to non-custodial parents).

140. *See, e.g.*, Gitterman et al., *supra* note 14, at 247 ("Currently, there is only a small EITC for single workers between the ages of 25 and 64 who are not raising children.").

141. *See* I.R.C. §§ 24(a), 24(h)(2) (2018) (stating that a credit of $2000 per child is available to workers in a broad range of incomes).

142. *See* Alstott, *Why the EITC Doesn't Make Work Pay*, *supra* note 14, at 300 (concluding that the EITC still leaves many families in poverty).

143. *See* Rev. Proc. 2018-18, 2018-10 I.R.B. § 3.05 (2018), https://www.irs.gov/pub/irs-irbs/irb18-10.pdf (stating the EITC maximum amount for a family with three children) [https://perma.cc/E9AJ-2424].

144. *See* 2019 POVERTY GUIDELINES, *supra* note 70 (detailing the number of persons in a family or household and the corresponding poverty level that would qualify the household for subsidies and benefits).

children, Sophia (9), Ethan (7), and Emma (5). The Joneses, alas, consists solely of Ms. Smith's ex-husband, Michael Jones.

The impact of the EITC on Mr. Jones is unlikely to be large. He is eligible for almost eight cents for every dollar he earns up to $6780.[145] If he has a minimum-wage job, he will earn this amount once he works 935 hours over the course of the year, which qualifies him for the maximum credit of $519.[146] Unfortunately, if he is an employee for all those hours, he will owe that amount in payroll taxes, which will be withheld from his paychecks by his employer(s).[147] If he is self-employed, or employed as a contractor rather than an employee, he will owe twice the amount of the credit as self-employment taxes.[148] So, the credit will only have the effect of offsetting or partially offsetting his federal tax obligations, even at the lowest levels of income.

Once he manages to work 1171 hours at minimum wage, the credit will start acting as a *dis*incentive to work. At the federal minimum wage of $7.25, Mr. Jones will earn $8490 when he works 1171 hours—the EITC for a worker with no qualifying children begins to phase out at $8490 (in 2018).[149] For every dollar he earns now, almost eight cents of credit will be lost. That loss of credit compounds his payroll tax or self-employment tax obligations, so that he will lose almost twenty-three cents for every dollar he earns, even before calculating any federal (or state) income tax that he might owe. Mr. Jones's payroll taxes will be withheld throughout the year (or if he is self-employed, he will be required to make estimated payments periodically), but his EITC payment

145. *See* Rev. Proc. 2018-18, 2018-10 I.R.B. § 3.05 (providing inflation-adjusted EITC amounts for an unmarried individual who does not have custody of children).

146. *See id.* (providing the earned income credit and phase-out amount for eligible individuals).

147. *See* I.R.C. § 3101 (2018) (stating the payroll tax rate); *see also id.* § 3102 (stating that employers are required to collect payroll taxes on behalf of employees); *id.* § 32(b)(1) (stating that the EITC rate for taxpayers with no children is 7.65%).

148. *See id.* § 1401 (stating the self-employment tax rate); *see also id.* § 32(b)(1) (stating the EITC rate for taxpayers with no children is 7.65%).

149. *See* Rev. Proc. 2018-18, 2018-10 I.R.B. § 3.05 (2018), https://www.irs.gov/pub/irs-irbs/irb18-10.pdf (last visited Dec. 16, 2019) (announcing EITC Phase-Out Thresholds for 2018) [https://perma.cc/E9AJ-2424].

will be made in one lump sum in the first half of the year following the year he qualifies for it.[150]

If Mr. Jones is like the majority of other claimants, he will have to hire someone to do his tax returns to claim the credit and will likely pay them for this service.[151] He might even pay extra to receive a refund-anticipation loan, and his net EITC payment will then be even smaller.[152] Because Mr. Jones is not the custodial parent of his children, he will not receive any EITC on their account, but he may still have an obligation to pay child support to his former spouse. Financial support obligations are not part of the EITC calculus and an unmarried person without custodial children is treated the same as an unmarried person with no children to support at all. [153]

For Ms. Smith, the credit operates differently and will probably have a bigger impact on her than on Mr. Jones. If she doesn't manage to find any paid work in 2018, the EITC will not help her at all.[154] But if she can find paid work, the EITC will pay her forty-five cents for every dollar she earns up to $14,290, subsidizing the first 1971 hours of work at minimum wage; her phase-out would not begin until she earns $18,660 (2574 hours at minimum wage).[155] The subsidy will not be enough to bring her family out of poverty until her market earnings are substantial,

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150. *See infra* Part IV.C (describing the debate between scholars as to the advantages and disadvantages of the lump sum payment).

151. *See* HOLT, *supra* note 14, at 5 ("A majority of EITC filers use commercial for-profit tax preparers, and these can be expensive.").

152. *See* Brett Theodos et al., Urban Inst. *Characteristics of Users of Refund Anticipation Loans and Refund Anticipation Checks*, U.S. DEP'T OF TREAS., 1, 3 (2010) https://www.treasury.gov/resource-center/financial-education/Documents/Characteristics%20of%20Users%20of%20Refund%20Anticipation%20Loans%20and%20Refund%20Anticipation%20Checks.pdf (last visited Dec. 16, 2019) (detailing that refund anticipation loans are bank made loans that allow taxpayers to receive advances on their tax refunds from the IRS) [https://perma.cc/MXG7-YYU4].

153. *See Policy Basics*, *supra* note 92 ("Under current law, a childless adult or noncustodial parent working full-time, year-round at the federal minimum wage is ineligible for the EITC.").

154. *See* I.R.C. § 32(a)(1) (2018) (noting that the credit applies to earned income).

155. *See* Rev. Proc. 2018-18, 2018-10 I.R.B. § 3.05 (2018), https://www.irs.gov/pub/irs-irbs/irb18-10.pdf (last visited Dec. 16, 2019) (providing the EITC Earned Income Amount and Phase-Out Thresholds for 2018) [https://perma.cc/E9AJ-2424].

but a 45% subsidy is likely to have significant effects on her life and the lives of her children. On the other hand, because the subsidy is significant for her, the phase-out might have a more significant disincentive effect on her labor choices than on those of Mr. Jones. For example, if Ms. Smith managed to get a job that paid ten dollars an hour and she was working 1900 hours per year, the phase-out would impact any additional work she performed, reducing her take-home pay by twenty-one cents for every dollar she earned (again, in addition to the payroll or self-employment taxes, which would reduce her pay by 7.65% or 15.3% respectively).[156] Like Mr. Jones, Ms. Smith will not receive her EITC payment until months after the year is over, she will also likely pay someone to obtain them for her, and she may pay extra for a loan against the payment. If Ms. Smith receives child support payments from Mr. Jones, it will not be considered "earned" income, and so cannot increase or reduce the amount of her credit.[157]

Finally, the way the credit is structured around family composition may have important implications for Ms. Smith's domestic choices. First, if she were married to Mr. Jones, the two of them together could never receive more than the maximum credit of $6431, and so, in effect, Mr. Jones would lose his (relatively minor) credit.[158] More importantly, their income would be aggregated for the purposes of the credit, so if both worked minimum wage jobs, their credit would start phasing out when the two of them reached an *aggregate* of 3358 hours of paid work (1679 each).[159] Because of that, the phase-out "poverty trap" affects

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156. *See Policy Basics*, *supra* note 92 (applying the provided phase-out rate of 21.06%, to the annual income of a single unmarried parent of three children); *see also* I.R.C. § 32(b)(1) (2018) (providing the payroll tax and self-employment tax rates).

157. *See What Is Earned Income?*, IRS (2019), https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit/earned-income (last visited Oct. 23, 2019) (providing examples of income that are not earned income) [https://perma.cc/N4LG-QTFT].

158. *See* Rev. Proc. 2018-18, 2018-10 I.R.B. § 3.05 (2018), https://www.irs.gov/pub/irs-irbs/irb18-10.pdf (last visited Dec. 16, 2019) (providing the maximum credit for a married couple filing jointly) [https://perma.cc/E9AJ-2424].

159. *See id.* (providing EITC Earned Income Amount and Phase-Out Thresholds for 2018).

married workers at far lower levels of work than unmarried parents of custodial children.[160] Perhaps even more importantly, if they were married and filed separately (which they might do if they were separated and Ms. Smith wanted to keep her finances separate), neither could claim any credit at all.[161]

Thus, the EITC is a quite successful program for supplementing the earned income of low-wage workers, but it provides no benefit for people who can't earn income, creates a disincentive to earn for low and middle-income workers who are climbing out of poverty, distorts some choices about family structure, is delivered in a way that fails to maximize the benefit to its recipients, is mainly effective for parents with qualifying children, and is not large enough to guarantee that its recipients will not still be below the official poverty line. That is to say, it is work-conditional, means-tested, based on family-status, administered through the income-tax system, and moderate in overall amount. In its present form, the EITC appears to be quite different from a UBI. However, the next section discusses some ways that the EITC is actually closer to a UBI than other benefit programs.[162] Finally, the last section discusses proposed reforms of the EITC that make it even more like a UBI.[163] Most of these reforms have been proposed for many years by critics without tying them in any way to the concept of UBI.[164]

IV. Similarities Between a UBI and the EITC

As described above, there are profound differences between a UBI and the EITC.[165] But when the EITC is compared to other more traditional anti-poverty programs, it becomes clear that the EITC already has some significant similarities to a UBI. These similarities are, at least arguably, significant contributors to the

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160. *See Policy Basics*, *supra* note 92 (showing phase-out amounts for both single and married individuals).

161. *See* Smith & Drumbl, *supra* note 113, at 8 ("Married taxpayers cannot claim the EITC if using the married filing separately filing status.").

162. *Infra* Part IV.

163. *Infra* Part V.

164. *See infra* Part V.

165. *See supra* Parts II–III (discussing various aspects of the UBI and EITC).

EITC's successes.[166] Political and scholarly commentators strongly emphasize the differences between "traditional welfare" programs and the EITC,[167] and UBI enthusiasts distinguish a UBI from existing government anti-poverty programs in similar ways.[168] For example, (i) like a UBI, the EITC is paid in cash not in-kind; (ii) like a UBI, the EITC has relatively few conditions, and those conditions are relatively easy for a bureaucracy to assess, decreasing administrative costs; (iii) like a UBI, the EITC is perceived to be less stigmatizing to recipients than "traditional welfare"; and (iv) the EITC's phase-out is gradual enough that it probably creates very little disincentive to work.[169]

A. EITC Is Paid in Cash

The most obvious similarity between a UBI and the EITC is the EITC is paid in cash, with no constraints on how the recipient spends it.[170] This may seem like a simple thing, but it is actually quite different from the other largest transfer programs in the United States and is somewhat controversial. For example, arguably the largest anti-poverty program in the U.S. is Medicaid, which provides medical insurance to low-income U.S. residents.[171] Obviously, medical insurance is an in-kind benefit, and recipients who believe that they would be better off using the cost of those benefits for something other than medical insurance are unable to do so. Supplemental Nutrition Assistance Program ("SNAP"), usually called "food stamps," is the second largest anti-poverty program in the United States, with 45.8 million recipient

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166. *See generally infra* Parts IV.A–D (discussing the characteristics the UBI and EITC share).

167. *See* HALPERN-MEEKIN ET AL., *supra* note 8, at 6 ("It would be wrong to call the EITC the new welfare—it is unlike welfare in nearly every way one could imagine.").

168. *See* VAN PARIJS & VANDERBORGHT, *supra* note 1, at 69.

169. *See infra* Parts IV.A–D.

170. *See* GAO-17-558, *supra* note 129, at 6 (describing the EITC as "cash assistance").

171. *See* GAO-17-558, *supra* note 129, at 6 (reporting that an estimated 68.9 million people were enrolled in Medicaid in 2015 at a total expenditure of approximately $330 billion).

families.[172] A recipient of "food stamps" receives a debit card that can be used only at participating merchants and only for qualifying products.[173] For example, the debit card cannot be used to buy hot foods, foods intended to be consumed on the premises, or nonfood items like toilet paper or cleaning supplies.[174] In addition, because the card must be used with participating vendors, it cannot be used to purchase eggs or vegetables from a neighbor who raises or grows them.[175]

For some UBI and EITC supporters, the difference between "in-kind" and "cash" benefits is important.[176] For example, libertarians like Charles Murray argue that "[t]he limited competence of government is inherent," and therefore distributing cash is inherently better than distributing governmentally selected benefits.[177] The EITC—like a UBI and unlike an in-kind benefits program such as SNAP or Medicaid —is an unconditional cash transfer.[178] It can be used for whatever the recipient thinks would benefit them the most. It can even be used to pay the fees that tax preparers charge for claiming it.[179] Recipients of the EITC report strong perceived benefits of receiving money with which they can do whatever they want.[180] Some purposely spend it on

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172. *See* GAO-17-558, *supra* note 129, at 4 (comparing the largest anti--poverty programs in the United States by number of recipients).

173. *See Facts About SNAP*, U.S. DEP'T OF AGRIC. (Aug. 14, 2019), https://www.fns.usda.gov/snap/facts (last visited Sept. 14, 2019) (detailing the process for using an Electronic Benefits Transfer card under the SNAP program) [https://perma.cc/9GMD-S233].

174. *See id.* (listing the various foods that may not be purchased with SNAP benefits).

175. *See id.* (describing the process for using SNAP benefits via a connected point-of-sale terminal).

176. *See* VAN PARIJS & VANDERBORGHT, *supra* note 1, at 13 (arguing that cash is better than in-kind benefits because it creates administrative simplicity, eliminates pressures from lobbyists, and promotes individual choice).

177. CHARLES MURRAY, IN OUR HANDS: A PLAN TO REPLACE THE WELFARE STATE 92 (rev. ed. 2016).

178. *See* GAO-17-558, *supra* note 129, at 4 (identifying the types of benefits offered by the largest government anti-poverty programs).

179. *See* GAO-17-558, *supra* note 129, at 4 (identifying "cash assistance" as the benefit derived from the EITC).

180. *See* HALPERN-MEEKIN ET AL., *supra* note 8, at 15–16 (discussing various ways in which individuals have benefited from of the EITC's lack of in-kind restrictions).

things that may seem to some observers to be frivolous expenditures.[181] They take their children to Disney World,[182] for example, or they might have a lavish Christmas feast with wrapped presents and a costly tree.[183] Most, however, use it to pay down debt and save at least some for future income shocks, something that one cannot do with in-kind or highly restricted benefits.[184] Again, the fact that the EITC is an unconditional cash grant, like a UBI, means that recipients can do with it what they want, and that enhances their liberty and arguably their self-esteem. Some scholars argue that it can contribute to a mental shift that may actually have a significant effect on the climb out of poverty.[185]

So, the fact that the EITC, just like a UBI, is paid in cash means that it has the same philosophical benefits of promoting liberty and autonomy. Similarly, cash payments under an EITC have the same economic benefit of permitting people to spend the money on whatever they think is best, which is more efficient to the degree that people generally make the best choices about how to use resources for their own happiness.

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181. *See Planet Money, Episode 451: Why Some People Love Tax Day*, NAT'L PUB. RADIO (Apr. 12, 2013, 9:30 AM), https://www.npr.org/sections/money/2013/04/12/177063399/episode-451-why-some-people-love-tax-day (last visited Oct. 23, 2019) (discussing how one EITC beneficiary spent part of her credit on a trip to Disney World for her son) [https://perma.cc/ZNZ6-SFR5].

182. *Id.*

183. *See* HALPERN-MEEKIN ET AL., *supra* note 8, at 187 ("Most years, she has taken out a $1000 loan—an advance on the refund—in December, which covers Christmas gifts, but she has had to pay roughly $400 in interest and fees for the privilege; both are taken from her tax refund.").

184. *See* HALPERN-MEEKIN ET AL., *supra* note 8, at 187 ("Nearly four in ten refund dollars are invested—used for purposes households associate with upward mobility—or saved."); Jessica Dickler & Sharon Epperson, *Here's What Americans Do with Their Tax Refunds*, CNBC, https://www.cnbc.com/2019/03/01/heres-what-americans-will-do-with-their-tax-refunds.html (last updated Mar. 31, 2019) (last visited Oct. 23, 2019) (discussing the results of a survey that asks what Americans do with the proceeds of their tax refunds) [https://perma.cc/9LA3-24C4].

185. *See* HALPERN-MEEKIN ET AL., *supra* note 8, at 19 ("In sum, the EITC seems to inspire future-oriented goals. And to some extent, it also seems to prompt the financially responsible behavior—thrift and debt payoff—that could lead to their fulfillment.").

B. EITC Is Administratively Simple

Another similarity between the EITC and a UBI is that it is comparatively much simpler to administer than traditional welfare programs. The EITC is claimed by submitting a regular tax return to the IRS with a schedule attached.[186] Other than the representations made on the form, no other supporting material is required.[187] The form is then administered by the IRS, which already has the burden of collecting almost all the information on the schedule in order to administer the tax laws.[188] Traditional welfare benefits require much more elaborate reporting, often involving face-to-face meetings between case workers and recipients.[189] The relative simplicity of the EITC's administration results in much lower administrative costs for the program.[190] For example, the EITC's program costs are estimated to be between 1 and 1.85% of the benefits distributed, whereas the program costs in the food stamps program are estimated to be closer to 20 to 25% of benefits distributed.[191] The low administrative barriers also results in higher participation rates among eligible potential recipients.[192] Again, EITC participation is estimated at 89%, compared to a participation rate for food stamps that is about 70%.[193] Anecdotal evidence supports the view that traditional

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186. *See* INTERNAL REVENUE SERV., U.S. DEP'T OF THE TREASURY, 2016 PUB. NO. 596, EARNED INCOME CREDIT (EIC) 18 (2016) (detailing the process for filing an EITC with a regular tax return).

187. *See id.* at 18–19 (detailing the process for filing an EITC with a regular tax return).

188. *Id.*

189. *See* Ventry, *Welfare by Any Other Name*, *supra* note 13, at 1264 (describing the administrative simplicity of the EITC, relative to other social welfare programs).

190. *See* Ventry, *Welfare by Any Other Name*, *supra* note 13, at 1265 ("The sum total of [the EITC's] administrative benefits results in lower costs and higher participation rates relative to direct transfer programs.").

191. *See* Ventry, *Welfare by Any Other Name*, *supra* note 13, at 1265 ("The sum total of [the EITC's] administrative benefits results in lower costs and higher participation rates relative to direct transfer programs.").

192. *See* Ventry, *Welfare by Any Other Name*, *supra* note 13, at 1265 (comparing a participation rate of up to 89% for the EITC with a rate closer to 70% for the Food Stamps program).

193. *See* Ventry, *Welfare by Any Other Name*, *supra* note 13, at 1265 (comparing a participation rate of up to 89% for the EITC with a rate closer to 70% for the Food Stamps program).

anti-poverty programs can be complex enough that potential recipients are unable to make use of them, and that the EITC solves at least some of those problems. For example, Annie Lowrey reports the experience of one food stamps recipient who reported, "I lost food stamps three or four times because I couldn't get the paperwork, or couldn't call the right number. I did everything I was supposed to do."[194] The EITC, even though it is computationally complex and has some frustrating qualification rules that exclude some recipients, is much easier to claim, largely because the fact that it is a part of a regular tax form means that commercial tax-preparation firms make the claim for most recipients, for a fee of course.[195] Even without any reform, this structure makes the benefit easier to claim than traditional anti-poverty programs. A UBI would likely be even simpler to administer, because its universality means that there are almost no qualifications to assess. But the administrative simplicity of the EITC is more like a UBI than traditional welfare programs.

C. EITC Is Not Experienced as Stigmatizing

One of the claims most powerfully made by UBI supporters is that traditional anti-poverty programs are experienced as stigmatizing to their recipients.[196] For example, in the introduction of their popular book, Philippe Van Parijs and Yannick Vanderborght link traditional anti-poverty programs to humiliation of their recipients.[197] Annie Lowrey points out how racialized the discourse around antipoverty programs is in the United States, arguing that "[l]arge swaths of the American safety net and wealth-building programs were designed to exclude,

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194. LOWREY, *supra* note 4, at 114–15.

195. *Cf.* Ventry, *Welfare by Any Other Name*, *supra* note 13, at 1264 & n.12 (discussing benefits that result from administering social-welfare programs through the tax code).

196. *See* VAN PARIJS & VANDERBORGHT, *supra* note 1, at 7 ("[D]ue to their conditionality, [traditional anti-poverty programs] have an intrinsic tendency to turn their beneficiaries into a class of permanent welfare claimants.").

197. *See* VAN PARIJS & VANDERBORGHT, *supra* note 1, at 7 ("People are entitled to continuing handouts on the condition that they remain destitute, and can prove it is involuntary. They are also subjected to more or less intrusive and humiliating procedures.").

punish, and discipline the descendants of the country's slaves."[198] To the degree to which the administration of or the rhetoric around traditional anti-poverty programs are experienced as stigmatizing or racist, they may have a profound negative impact on their recipients.

The EITC, on the other hand, again because it is folded into the tax system, requires no special application process or encounters with benefits administrators.[199] Sarah Halpern-Meekin and her co-authors, who conducted an in-depth study of 115 families who received the EITC, report that their subjects had a much more positive experience of claiming and collecting their EITC check.[200] She argues that, "[c]laiming benefits through the tax system is a much less stigmatized and socially isolating experience than waiting in line at the welfare office. Working families can get help without paying a social and psychological price."[201] To the degree to which a UBI is intended to reduce the social stigma associated with anti-poverty programs, it is possible that the EITC has already accomplished a significant portion of that goal. Additional reforms may make it even less stigmatizing.

198. LOWREY, *supra* note 4, at 138; *see generally* MARTIN GILENS, WHY AMERICANS HATE WELFARE: RACE, MEDIA, AND THE POLITICS OF ANTIPOVERTY POLICY (John Tryneski ed., 1999) (discussing the American public's complicated views on welfare).

199. *See* Ventry, *Welfare by Any Other Name*, *supra* note 13, at 1264 ("In the case of the EITC, would-be tax-transfer claimants self-declare eligibility simply by filing a tax return.").

200. *See* HALPERN-MEEKIN ET AL., *supra* note 8, at 20

> No welfare bureaucrats are controlling their lives. The working poor can exercise autonomy and spend that gloriously large lump sum however they please. When they arrive at that H&R Block office to collect their refund check, their status as beneficiaries of a cash assistance program is invisible. They are there because they filed their taxes just like every other hardworking American. Some evidence suggests that an enhanced sense of social inclusion might lead to other forms of prosocial behavior, such as political and civic engagement.

201. HALPERN-MEEKIN ET AL., *supra* note 8, at 193.

D. The EITC's Phase-Out Is More Gradual than Most Means-Tested Programs

Finally, a UBI is often contrasted to traditional anti-poverty programs by pointing out that a means-tested program creates disincentives to earn money for the recipients, which are removed in a true non-means-tested UBI.[202] The EITC is a means-tested program, but its benefits phase out with earnings much more gradually than welfare programs imagined by UBI supporters, and somewhat more gradually than most actual traditional anti-poverty programs in the United States.[203]

As noted above, many UBI advocates believe that the means-testing of traditional welfare programs function as a "cliff" or a "soak up."[204] In reality, almost all programs in the United States function as a phase-out, with benefits decreasing with earnings at some rate less than 100%.[205] So, it is very rarely the case that a dollar of earnings results in a dollar loss of benefits. However, because most programs are more sharply targeted at poorer recipients than the EITC, most phase out more quickly than the EITC.[206] The EITC also phases out at a higher level of income than most other anti-poverty programs,[207] and so the disincentive to work it creates has less effect on people in poverty (and more effect on people at the upper end of the poverty line or just climbing out of poverty).[208]

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202. *Cf.* Fleischer & Hemel, *supra* note 20, at 1269 ("We agree that a UBI is likely to be more efficient than the existing system of mean-tested in-kind transfers.").

203. *Compare supra* notes 59–86 and accompanying text (discussing UBI supporters' arguments in favor eliminating phase-outs in their entirety), *with* DANIEL N. SHAVIRO, EFFECTIVE MARGINAL TAX RATES ON LOW-INCOME HOUSEHOLDS 11–13 (1999) (describing the phase-out calculations for various government anti-poverty programs).

204. *Supra* notes 51–52.

205. *See, e.g.*, SHAVIRO, *supra* note 203, at 11–13 (describing the current anti-poverty programs in the United States and their respective phase-outs).

206. *See* Daniel Shaviro, *The Minimum Wage, the Earned Income Tax Credit, and Optimal Subsidy Policy*, 64 U. CHI. L. REV. 405, 477–79 (1997) (analyzing the phase-out rates of government anti-poverty programs).

207. *See id.* at 477–79 (stating the levels of income at which various government anti-poverty programs have completely phased out).

208. *See supra* notes 53–58 and accompanying text (discussing the effect of phase-outs on the incentive to earn extra income).

As discussed above, a single parent of three children, for example, has their EITC phased out between $18,660 and $49,194 of income.[209] That phase-out creates an effective 21.06% marginal tax rate on income within the phase-out range. That compares favorably to most conceptions of a UBI that include a phase-out.[210] For example, Karl Widerquist, a UBI supporter, proposes a UBI with a 50% phase-out starting at the very first dollar of income.[211] Thus, the EITC "means-testing" phase-out, while still potentially having an adverse effect on recipients whose income puts them in the phase-out range, is not nearly as extreme as is imagined by some UBI advocates, and is also less extreme than most existing traditional anti-poverty programs in the United States.

V. Four Proposals to Make the EITC More Like a UBI

The EITC in its current form provides moderate income support to parents of minor children and has the strength of creating work incentives for very low-income workers, but it is criticized for (i) creating disincentives to work when the credit is being "phased out;" (ii) creating perverse incentives with respect to family structure and insufficiently supporting childless workers and noncustodial parents; (iii) being hampered by administrative complexity and delay; and (iv) being too small to eradicate poverty, especially for childless workers. Happily, all four of these criticisms could be addressed in an expanded EITC that functions more like a UBI. This section discusses how.

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209. *See* Rev. Proc. 2018-18, 2018-10 I.R.B. 395 (2018), https://www.irs.gov/pub/irs-irbs/irb18-10.pdf (last visited Dec. 16, 2019) (providing inflation-adjusted EITC amounts for 2018) [https://perma.cc/E9AJ-2424]

210. *See* MELISSA S. KEARNY & MAGNE MOGSTAD, UNIVERSAL BASIC INCOME (UBI) AS A POLICY RESPONSE TO CURRENT CHALLENGES 5–7 (2019) (discussing the parameters for various UBI proposals and pilot programs).

211. Karl Widerquist, *The Cost of Basic Income: Back-of-the-Envelope Calculations*, BASIC INCOME STUD. (2017), https://works.bepress.com/widerquist/75 (last visited Oct. 23, 2019) [https://perma.cc/FK72-ZMW2]; *see also* MURRAY, *supra* note 177, at 8 (proposing a relatively gradual phase-out, starting with 10% and increasing by 4% with each subsequent $5000, but capping at $60,000).

A. Do Not Phase Out the Credit

The first proposal is perhaps the most radical, and (for that reason?) has not been advocated in any of the existing proposals to reform the EITC that I know of, but it would have some very significant benefits. That reform is to remove the phase-out of the benefit, so once a worker earned sufficient income to qualify for the maximum credit, they would receive it no matter how high their income got during the year. The primary benefit of such a structure is that it would remove the concentrated work disincentives (the "poverty trap") caused by the phase-out of the benefit.[212] It would also dramatically simplify the administrative burden because the government would not need to withdraw benefits as income rises in the phase-out range.[213] Once it was determined that a recipient earned enough to qualify for the full credit, both the recipient and the government could rely on the fact that the recipient qualified for the full credit, without any concern that future earnings would reduce the credit the recipient was due.[214] This reform would make further reforms described later much easier to implement, especially distributing the benefit monthly instead of annually.

As discussed above, UBI advocates argue that a universal benefit with no phase-out is superior to a means-tested benefit for two primary reasons. First, removing the phase-out eradicates the poverty trap by eliminating the work disincentives created by phasing out the benefit.[215] Second, removing the phase-out dramatically simplifies the administration of a benefit program.[216]

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212. *See* SHAVIRO, *supra* note 203, at 18 (describing the benefits of refraining from phasing out a benefit program); *see also* Lily L. Batchelder, Fred T. Goldberg & Peter R. Orsag, *Reforming Tax Incentives into Uniform Refundable Tax Credits,* BROOKINGS INST. (Aug. 1, 2006) (describing the benefits of refraining from phasing out a benefit program).

213. *See* Batchfelder, Goldberg & Orsag, *supra* note 212 (discussing the administrative costs of benefits).

214. *See* SHAVIRO, *supra* note 203, at 17 (comparing the phase-out structure to a demogrant structure of distributing benefits).

215. *See* Alstott, *Why the EITC Doesn't Make Work Pay*, *supra* note 14, at 549 ("For workers in the EITC phase-out range, the EITC creates an unambiguous potential work disincentive.").

216. *See* Alstott, *Why the EITC Doesn't Make Work Pay*, *supra* note 14, at 566

Both of these arguments in favor of a non-means-tested program apply in the case of the EITC.[217]

With respect to the work disincentive created by the phase-out of the EITC, first it is important to point out that the majority of EITC claimants are in the phase-out range.[218] Thus—at least theoretically—the EITC should disincentivize work for many more recipients than for those whose labor participation is incentivized.[219] In fact, for three quarters of all EITC recipients, the credit serves as a disincentive to earn additional income (because they are in the phase-out range) rather than an incentive, although the magnitude of the disincentive is very hard to assess.[220] There is some consensus among economists doing empirical work that the phase-in of the EITC increases labor participation by single mothers, persuading some mothers who are not earning money to work in the market economy.[221] But the

("[P]articular issues of EITC administration sometimes overlook the structural features that create those problems and make those problems resistant to reform."), 589 (arguing for greater accessibility and cheaper administration).

217. *Compare* Fleischer & Hemel, *supra* note 20, at 1263–66 (discussing the problems with phase-outs in a UBI program), *with* Alstott, *Why the EITC Doesn't Make Work Pay*, *supra* note 14, at 566 (discussing similar issues with phase-outs in an EITC program).

218. *See, e.g.*, Nada Eissa & Hilary Hoynes, *Redistribution and Tax Expenditures: The Earned Income Tax Credit* 5 (Nat'l Bureau of Econ. Research, Working Paper No. 14307, 2008) (explaining that three quarters of people getting the EITC are in the phase-out range).

219. *See* Chris Edwards & Veronique de Rugy, *Earned Income Tax Credit: Small Benefits, Large Costs*, CATO INST. TAX & BUDGET BULL. NO. 73 (Oct. 14, 2015), https://www.cato.org/publications/tax-budget-bulletin/earned-income-tax-credit-small-benefits-large-costs (last visited Oct. 23, 2019) ("[F]or most recipients [the EITC] creates a disincentive to increase earnings.") [https://perma.cc/7PJR-XT7F]; *see also* Alstott, *Why the EITC Doesn't Make Work Pay*, *supra* note 14, at 549 ("For workers in the EITC phase-out range, the EITC creates an unambiguous potential work disincentive.").

220. *See, e.g.*, HALPERN-MEEKIN ET AL., *supra* note 8, at 7

> [T]he reach of the EITC is roughly five times that of the old welfare system, even when the welfare rolls reached their peak of roughly five million households in 1993 and 1994. This is due to a very gradual falloff in benefits . . . [so that] the EITC serves such a large percentage of American households (about one in five) that it looks more like a universal program than a program for the poor, at least from the point of view of those at the bottom.

221. *See* Austin Nichols & Jesse Rothstein, *The Earned Income Tax Credit (EITC)* 40 (Nat'l Bureau of Econ. Research, Working Paper No. 21211, 2015) (summarizing empirical research findings on labor participation and the EITC).

economic literature attempting to assess the disincentive effect of the phase-out range is much more complicated and does not result in any clear findings.[222] Therefore, it is not clear how substantial the disincentive effect of the EITC phase-out is. However, it is perfectly reasonable to assume that the EITC phase-out acts as a disincentive to work as much as a 21.6% additional marginal income tax rate would, if you assume that the phase-out and the tax are equally salient to the worker.[223]

The administrative simplification that comes from removing the EITC phase-out is not so impressive when discussed in isolation. The EITC is already administered through the tax code, and the information determining level of qualification is collected on an income tax return. If there was no phase-out, taxpayers would still need to collect the same information about income that they do currently, since they would still need to file a full income-tax return in order to claim the reformed EITC. The fact that they could be confident throughout the year that additional earnings would not disqualify them for EITC benefits might have incentive effects but would not really simplify filing much. At best, it might encourage some recipients to file, even if they might have avoided filing currently, because they erroneously believed that they earned too much to qualify. As discussed later, however, the removal of the phase-out would have substantial simplification effects if the program were reformed to permit periodic (as opposed to annual) payments of the EITC benefits.[224] That reform is much more difficult if the EITC benefit phases out as income rises.

There are two primary objections to removing the phase-out of the EITC. The first is that it would be too "costly" to pay the benefit to so many people.[225] The second is that it is unfair or inefficient to make payments to people who do not need the money.[226] On further

222. *See id*. at 43–47 (summarizing the economic literature on the effect of the EITC phase-out on number of hours worked).

223. *See id.* at 45 (explaining that one theory about the difficulty in observing an effect of the EITC on number of hours worked is that participants may have difficulty in predicting how their work affects the amount of credit they receive).

224. *See infra* Part V.C.

225. *See* Shaviro, *supra* note 206, at 408 ("Thus, the EITC supposedly would 'cost' more if it were not phased out.").

226. *See* SHAVIRO *supra* note 203, at 17–18 (entertaining a hypothetical scenario where Bill Gates receives food stamps).

examination, neither objection is as damning as it might initially appear, although neither is trivial. First, it is hard to conceive of the true cost because the majority of people will both be paying for the benefit (presumably through some form of taxation) and receiving it. If taxes go up by $5000 for someone who under the reformed law receives a $5000 EITC payment that they previously would not have received, then the new benefit has no "cost" to them. So, in effect, there is no way to adequately assess the cost of removing the phase-out of the EITC without calculating the changes that would be made to the tax code to pay for the reform. It is beyond the scope of this paper to attempt any such calculation.[227] As for fairness and efficiency, the same response applies: It is impossible to say whether providing a tax credit to high-income people is fair unless we know how the tax code has been changed to fund this payment.

B. Pay on an Individual Basis

Paying the EITC on an individual basis means paying the same amount to an individual regardless of marriage status or living arrangements. It does not mean that there can be no payment on account of children, that children need to receive the same amount per person as adults, or that the payment on account of children cannot be made to a parent on the basis of custody. So, reforming the EITC so that it is calculated on an individual basis solves some of the criticisms that have been leveled against the current EITC because of its treatment of family status and composition, but not all of them.[228] It is widely recognized that the family status provisions are the source of the greatest complexity in claiming and administering the EITC.[229] As discussed above, the

227. I hope to assess possible funding sources and structures in a future work.

228. *See* Alstott, *Why the EITC Doesn't Make Work Pay*, *supra* note 14, at 539–41 (discussing problematic familial aspects of the EITC and stating that the EITC has enjoyed support because of its assertion as a "pro-family" alternative).

229. *See, e.g.*, HOLT, *supra* note 14, at 3

> The greatest complications result from two specific sources: first, the requirement that the child live with the claiming taxpayer for more than half the year (and in the [United States]), and second, the rules determining who may receive the credit when more than one taxpayer is eligible to claim the same child.

benefit claimed by any adult is dependent on whether they are the custodial parent of any qualifying children.[230] Adult qualification depends on both marital status and factual questions about where children lived and who lived with them over the course of the year.[231] If a child is assigned to the wrong parent, even accidentally, both parents' tax returns are erroneous (or even potentially fraudulent).[232] One powerful illustration of the fine line that can separate even fraudulent returns from accurate ones is the treatment of the children of unmarried parents. If both parents live for over half the year with their children, the IRS permits those parents to choose which parent should claim the children, and there is nothing wrong with assigning the children to parents in order to maximize the amount of credit received.[233] However, if one of the parents lives with the children for less than half the year, then that parent cannot choose how to allocate the children.[234] Only the parent who lived with the child for half the year is eligible to claim the credit.[235] In fact, if the parents decide to assign the child to the noncustodial parent, they could be guilty of tax fraud (a criminal offense) and their mistaken impression that the IRS permitted them to choose which parent could claim the child would not be a defense.[236] This complexity, and the noncompliance it creates, has very real effects.[237] It keeps some

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230. *See supra* Part III.C (discussing how after three children, there is no additional benefit to the parents so the structure creates an incentive for parents of multiple children to remain unmarried and each claim at least one child to maximize their benefits).

231. *See supra* Part III.C ("These and other family-structure issues create potentially perverse incentives around marriage and cohabitation.").

232. *See Basic Qualifications*, IRS, https://www.eitc.irs.gov/eitc-central/about-eitc/basic-qualifications/basic-qualifications (last updated Feb. 6, 2019) (last visited Oct. 23, 2019) (describing the criteria for a qualifying child) [https://perma.cc/8H8W-9SRY].

233. *See* Smith & Drumbl, *supra* note 113, at 14 (explaining flexibility parents have when both meet the requirements to claim a child for EITC purposes).

234. *See Basic Qualifications, supra* note 232 (describing the criteria for a qualifying child).

235. *See Basic Qualifications*, *supra* note 232 (describing the eligibility requirements).

236. *See* I.R.S. Publication 501 (2018) (explaining when a child will be treated as the qualifying child of the noncustodial parent).

237. *See Consequences of Not Meeting Your Due Diligence Requirements*, IRS, https://www.eitc.irs.gov/tax-preparer-toolkit/preparer-due-diligence/consequences-of-failing-to-meet-your-due-diligence (last updated Apr. 1, 2019) (last visited

people from receiving the credit even though they qualify for it.[238] It decreases confidence in the tax system and government.[239] It causes a misallocation of IRS enforcement resources.[240] And for some people, it increases suspicion that fraud and noncompliance are endemic to the EITC program, decreasing the popular goodwill towards it and reinforcing negative stereotypes about the poor and near-poor.[241] One could greatly reduce this complexity by crafting the EITC as a credit for each adult, and then a credit for each child that may be claimed by an adult on behalf of the child. For example, one could imagine an EITC in which each adult received a maximum credit of $519 (the 2018 maximum credit for childless adults), and each child received a maximum credit of $2942 based on the earnings of any adult with which they live.[242] Under this system, it would be irrelevant if adults are married to each other, and it would take away the incentive to "split" children between two parents.[243] Of course, because the credit is the same for each child, the new system removes the old system's disincentive to have multiple children (especially more than three).[244]

When combined with the removal of the phase-out, described above, the change to an individual structure creates even more substantial benefits. That is, because no person can earn too much

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Oct. 23, 2019) (setting forth the penalties the IRS can assess for failure to comply with due diligence requirements) [https://perma.cc/L2EN-QHBU].

238. *See* HOLT, *supra* note 14, at iii ("A quarter of EITC payments are categorized as improper.").

239. *See* HOLT *supra* note 14, at 19 (stating that government officials are muddling through, not meaningfully addressing the challenges the IRS faces).

240. *See* HOLT, *supra* note 14, at 4 (stating that few additional resources were provided for implementation of the EITC).

241. *See* HOLT, *supra* note 14, at 10 (stating that these programs are frequently viewed with suspicion, not lessened by subpar compliance with EITC rules).

242. *See* Rev. Proc. 2018-18, 2018-10 I.R.B. § 3.05 (2018), https://www.irs.gov/pub/irs-irbs/irb18-10.pdf (last visited Dec. 16, 2019) (announcing EITC Earned Income Amount and Phase-Out Thresholds for 2018) [https://perma.cc/E9AJ-2424]. The current maximum credit for a family with one child is $3461; therefore, if a parent receives $519 in the proposed system, the child credit must be $2942 for parents to receive a larger benefit in the new system.

243. *See* HOLT, *supra* note 14, at 17 (discussing how separate benefits removes incentives for illegitimate behaviors and would result in improved compliance).

244. *See* I.R.C. § 32(b)(1) (2018) (providing no additional credit for families with more than three children).

to receive the credit anymore, there is no disincentive for a low-income parent to get married to a higher-income person. Finally, one could remove some of the incentives to have additional children by adjusting the magnitude of the benefit between children and adults to increase the credit per adult and decrease the credit per child. This could be done in a way that no one was worse off than they are under the current system. For example, one could increase the adult credit to $3720, and decrease the child credit to $1000 without anyone receiving a smaller credit than they would under the current system.[245] This proposed system would be more expensive than the first proposal, but would do a better job of supporting poor people without custody of children, would do an equal job of supporting people with children, diminish the dramatic difference in benefits between parents with children and people without, and decrease the incentive to have multiple children.[246]

C. Deliver in Cash Monthly

The third proposed modification of the EITC is for a governmental agency to make direct monthly payments to each recipient, rather than for recipients to receive the credit as a single annual payment months after the end of the year in which the recipient qualifies.[247] This direct monthly payment has a number of benefits (timing, simplicity, less cost to beneficiaries), but was

245. The maximum credit for a parent with two children is $5716; so, if the parent with two children received $3720, they would need $1000 per child in order for no one to receive less under the proposed plan than the current system. *See* Rev. Proc. 2018-18, 2018-10 I.R.B. § 3.05 (announcing EITC Earned Income Amount and Phase-Out Thresholds for 2018).

246. There have been a number of recent proposals to expand EITC coverage for noncustodial parents and for childless workers, including in former President Obama's 2016 Budget and by Paul Ryan, the former Republican Chair of the House Ways and Means Committee. *See* OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, BUDGET OF THE UNITED STATES GOVERNMENT, FISCAL YEAR 2016 (2015); Dylan Matthews, *Paul Ryan's Poverty Plan*, VOX (Oct. 8, 2015), https://www.vox.com/2014/7/24/18080430/paul-ryan-poverty (last visited Oct. 23, 2019) [https://perma.cc/8SWC-NNP2]; *see also* Nichols & Rothstein, *supra* note 221, at 52 (discussing theories for how to improve the EITC program).

247. *See* Nichols & Rothstein, *supra* note 221, at 52 (noting dissatisfaction over the lump-sum payment).

previously difficult or impossible to accomplish because of the structure of the EITC program.[248] Once the two changes proposed above are made—removing the phase-out and making the benefit individual—the barriers to a monthly direct payment are reduced such that the proposal is no longer outlandish.[249] In the UBI literature, there is very little discussion of the differential benefit of monthly as against annual distribution.[250] However, in the EITC literature, the issue is of constant interest, and heated debate.[251] That is because basic economic theory (and common sense) suggests that if people are going to receive a certain sum of money, they would be better off receiving it earlier and more often, rather than in one largish chunk at the end of the year.[252] But there is a persistent theme in the EITC literature about the benefits of annual lump-sum distribution.[253] The structure of the EITC program is an impediment to more frequent distribution, however,

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248. *See* Nichols & Rothstein, *supra* note 221, at 52 (discussing the benefits of monthly payments).

249. *See* Nichols & Rothstein, *supra* note 221, at 53 (discussing the drawbacks of monthly payments).

250. While the difference between annual and more frequent payment is not often discussed, the difference between a single lifetime payment (sometimes called a "Basic Endowment") and periodic payments (whether monthly or some other period) is an important debate among UBI advocates. *See, e.g.*, VAN PARIJS & VANDERBORGHT, *supra* note 1, at 29–31 (discussing payments in several large installments as opposed to monthly distributions); *see also* BRUCE ACKERMAN ET AL., REDESIGNING REDISTRIBUTION: BASIC INCOME AND STAKEHOLDER GRANTS AS CORNERSTONES FOR AN EGALITARIAN CAPITALISM 159 (2006) (discussing the arguments for basic endowments instead of monthly payments).

251. *See, e.g.*, Alstott, *The Earned Income Tax Credit and the Limitations of Tax-based Welfare Reform*, *supra* note 14, at 561 (stating the EITC cannot get money to taxpayers during the year when they need it); *see* MICHELLE L. DRUMBL, IMPROVING TAX CREDITS FOR THE WORKING POOR (2019) ("Could EITC reform include year-round delivery?"); *see also* STEVE HOLT, PERIODIC PAYMENT OF THE EARNED INCOME TAX CREDIT REVISITED 4–5 (2015) (making a case for periodic payments). *See generally* HALPERN-MEEKIN ET AL., *supra* note 8 (discussing how the EITC was meant to help lift people out of poverty). *See* 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, 62 (2010) (discussing the shortcomings of lump-sum payment regimes).

252. *See* Nichols & Rothstein, *supra* note 221, at 25 ("[A] lump-sum payment has a smaller effect on the household's utility than would a series of smaller payments throughout the year.").

253. *See e.g.*, HALPERN-MEEKIN ET AL., *supra* note 8, at 9 ("The lump sum at tax time can feel like an answer to a prayer.").

and has made it difficult to even conceive of how to reform the program to facilitate monthly payments.[254]

A discontinued feature of the EITC illustrates how hard it is to craft a good periodic payment system for the EITC without also making other changes to the program.[255] Between 1979 and 2010, a taxpayer could receive an "advance" on their EITC in each paycheck by filing a form with their employer, who would then decrease the taxpayer's withholding or make a positive disbursement of *advance* EITC ("Advanced Earned Income Credit" or "AEIC").[256] This program was intended to permit a taxpayer to smooth receipt of the credit for all the reasons described above.[257] However, there was never a time that more than 2% of EITC claimants chose to receive advance payments, which eventually resulted in Congress eliminating the option in 2010.[258] As Steve Holt succinctly puts it, "For years, the principal objection to developing a periodic payment option has been simple: The belief that nobody (or hardly anyone) wants it."[259] This belief came largely from the simple fact that take up of the AEIC is so low.[260]

But there are good reasons that an EITC recipient would dislike the AEIC program, even if it would have been beneficial to receive the money weekly.[261] For example, low-income taxpayers

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254. *See* Nichols & Rothstein, *supra* note 221, at 52 (stating that while there is ambition to change the method of payment, there is a lack of workable proposals on how to do this).

255. *See* Nichols & Rothstein, *supra* note 221, at 13 (describing the "Advance EIC" which was offered from 1979 to 2010).

256. *See* Nichols & Rothstein, *supra* note 221, at 13 (describing the "Advance EIC").

257. *See* Nichols & Rothstein, *supra* note 221, at 13 (explaining the program).

258. *See* HOLT, *supra* note 251, at 5 ("[F]or many, the [small amount it boosted each paycheck was] not worth the risk of potentially owing money back at the end of the year.").

259. *See* HOLT, *supra* note 251, at 15 ("Indeed the experience with the AEIC creates a presumption that—whatever the merits for addressing financial need—the intended beneficiaries are not interested in moving away from the single lump-sum payment that provides very large refunds to many.").

260. *See* HOLT, *supra* note 251, at 15 (describing how other countries' programs can explain variable take-up rates in advance payment option programs, with Canada's "Working Income Tax Benefit" program having very low take-up rates in periodic payment plans as compared to very high take-up (about 90 percent) in New Zealand's "Working Family Tax Credits.").

261. *See* HOLT, *supra* note 251, at 5 (discussing the reasons why the AEIC never caught on).

may have been (accurately) afraid that they would be required to *pay back* some portion of what they received during the year.[262] That is because the advance payments did not represent a final determination about eligibility for the credit.[263] It was just an estimate, subject to recapture at the end of the year if the recipient did not actually qualify for the amount they had received. In other words, an AEIC recipient might be faced with a large mandatory payment to the government at tax time. Because the amount of EITC benefit is based on child custody, earnings, and sometimes the earnings of multiple taxpayers, predicting how much will be available at the beginning of the year is difficult, even for taxpayers with relatively stable sources of income. For this reason, any kind of "advance payment" system for the EITC has to account for what happens if a child ends up living with a different parent than predicted, or a parent moves out of the family home, or one parent earns less than predicted, or more than predicted, or a couple gets married or divorced during the year.[264] Each of these events could cause a taxpayer to receive less EITC than she predicted. It makes sense that low-income taxpayers view the risk of having to make a large lump-sum payment at tax time to be an especially onerous event, and many who find themselves in that situation experience it as an especially painful financial shock.[265]

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262. *See* HOLT, *supra* note 251, at 5 (mentioning the risk of potentially owing money back at the end of the year).

263. *See* HOLT, *supra* note 251, at 18 (stating that a key flaw of the AEIC was that a single paycheck from a single employer is a poor indicator of household eligibility).

264. *See, e.g.*, Nichols & Rothstein, *supra* note 221, at 52 (explaining that the annual lump-sum payment structure of the EITC prevents it from being as effective as it might be, but that the authors "are not aware of workable proposals" to institute an advance EITC program that would not suffer from the fatal flaw of requiring some people to repay large sums at tax time).

265. *See, e.g.*, HOLT, *supra* note 251, at 19 ("The greatest concerns expressed by Colorado simulation participants were the inability to guess one's income and fear of the consequences of making a mistake."); *see also* Greene, *supra* note 14, at 561–62

> [W]hen we asked families if they would be interested in a program like the AEITC, they overwhelmingly told us that they would prefer to receive the EITC as a lump sum—as they currently receive it [at least partially because] they were afraid that if they took an advance on the money, they would ultimately owe the IRS money at the end of the year.

See also HALPERN-MEEKIN ET AL., *supra* note 8, at 72 ("The lump sum is also

On the other hand, if the EITC were reformed to provide benefits individually, rather than based on family status, it would be easier to predict at least the range of potential benefits any individual worker would be entitled to.[266] Of course, there would still need to be a determination of what responsible adult should receive a distribution intended for the support of a child, but the process could be simplified, and could be made to depend only on information available prior to making a distribution, so there would not be a need for the government to recapture payments that were made because of inaccurate predictions. Even more importantly, if the phase-out of the EITC were removed, then the amount of EITC a taxpayer received would only depend on income in the phase-in range. Once a taxpayer earned the threshold amount, her EITC credit would be secure for the year. Since significantly more taxpayers earn income in the phase-out range than in the phase-in range, that would mean that many fewer taxpayers would be uncertain about how much EITC they qualify for.[267] In other words, reforming the EITC so it was no longer dependent on family status and no longer was lost as income rose above a threshold amount would make it much easier to administer a monthly distribution, since the need for the government to recapture periodic payments made to taxpayers who turned out not to be eligible simply because they incorrectly predicted their family status or earned more than they expected.[268]

popular because low-wage workers are strongly averse to a particular form of financial risk: owing the IRS money at the end of the year."); DRUMBL, *supra* note 251, at 2 (theorizing that taxpayers did not participate in the AEITC because "1) taxpayers did not like having the employer act as an intermediary for something so personal . . .; 2) taxpayers were . . . worried about owing something back at tax time; and 3) . . . larger amounts of money are psychologically more meaningful."). There is also evidence that other factors led to the low participation rate, like poor understanding of the AEIC program, the fact that it relied on employer participation, administrative complexity, and the fact that most EITC recipients have their tax returns processed by paid preparers, who have an incentive for the recipients to receive as large a refund from their tax filing as possible.

266. *See* Nichols & Rothstein, *supra* note 221, at 52 (discussing potential changes regarding non-custodial parents' credits).

267. *See* Eissa & Hoynes, *supra* note 218, at 5 (explaining that three quarters of people getting the EITC are in the flat or phase-out range).

268. *See* Nichols & Rothstein, *supra* note 221, at 52 (stating people have suggested strategies to improve administration).

Once these reforms are made, the program could be made even simpler, if that was desired. For example, one could imagine a program in which a taxpayer receives their first year of EITC "for free" without any showing that they met the earnings requirement (maybe on one's eighteenth birthday). In that year, the taxpayer would receive their individual benefit every month in an amount equal to one twelfth of the maximum annual benefit.[269] Each person would receive a government-issued debit card in that year (or they could opt to have their benefit direct-deposited into an account at a financial institution).[270] Then, for each subsequent year, the taxpayer would receive benefits based on the prior year's earnings.[271] If the taxpayer earned the threshold amount in the prior year, he or she would continue to receive one twelfth of the maximum annual benefit every month. If the taxpayer earned less than the threshold amount in the prior year, then he or she would only earn an amount based on the prior year earnings. Of course, that means that if the taxpayer earns less than the threshold amount in some year, but then in a subsequent year earns more, the EITC would not reflect the increased earnings until the year following the year of increased earnings, much like it does under the current system.[272] On the other hand, in years in which taxpayer's income declined, the EITC benefit would not decline until the following year, cushioning the taxpayer from the adverse effect of the earnings decline, at least somewhat.

An EITC that was dependent only on whether an individual had enough earnings to get the maximum credit in the prior year would be infinitely easier to administer than the current EITC (which is already quite easy). In fact, for some taxpayers, there would be no need to even file a tax return to get it. For employees, income could be verified directly from the Social Security

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269. Proposals like these have been made by others. *See, e.g.,* DRUMBL, *supra* note 251 (proposing how to reform the EITC); *see also* Galle & Utsett, *supra* note 251, at 85 (setting out proposed reforms, including possibilities of government intervention).

270. *See* Galle & Utsett, *supra* note 251, at 85 ("We suggest that self-directed debit cards . . . can fill this need.").

271. *See* Eissa & Hoynes, *supra* note 218, at 4 ("[C]urrent year EITC is tied to prior year income . . . .").

272. *Cf.* Eissa & Hoynes, *supra* note 218, at 4 ("Finally, current year EITC is tied to prior year income, which may lead to inefficiencies given that employment and living arrangements change frequently for the low-income population.")

Administration without the filing of a tax return.[273] That way, recipients could be saved the cost of tax preparation,[274] the cost of refund-anticipation loans,[275] and at least some of the money that low-income workers pay in credit-card and payday loans to accelerate their receipt of the EITC currently.[276]

But of course, for taxpayers who both receive the credit and owe tax, any program design that decouples receipt of the credit from filing a tax return is likely to reduce tax compliance.[277] One of the benefits of the current EITC is that the fact that it is embedded in the income tax system means that recipients have to file taxes in order to receive the credit, and so the EITC creates tax-return filing norms and practices among low-income workers that may well persist as income rises for those workers.[278] For that reason, any program design that decouples receipt of the credit from tax filing would have to reincorporate some mechanism to create consequences for taxpayers who fail to file tax returns. For example, receipt of any credit in the *following* year might be dependent on adequately meeting one's tax filing obligations in the current year.

Once the reforms proposed above were made, it would be much easier to administer the child component as a periodic cash payment throughout the year. For example, the issue of which

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273. *See* Hemel & Fleischer, *supra* note 67 (manuscript at 50–51) (proposing the administration of a UBI through the Social Security Administration rather than the IRS, which would be possible for a reformed EITC as well).

274. *See* HALPERN-MEEKIN ET. AL., *supra* note 8, at 69 (describing how the largest provider of tax preparations services to low-income taxpayers is H&R Block, which charges $192 for "the most basic return" and extra for each additional schedule, including the one for the EITC).

275. *See generally* Andrew T. Hayashi, *The Effects of Refund Anticipation Loans on the Use of Paid Preparers and EITC Takeup* (Va. Law & Econ., Working Paper No. 2016-9, 2016); *see also* HALPERN-MEEKIN ET AL., *supra* note 8 at 187 (describing an EITC recipient borrowing $1000 in December and paying $400 in interest and fees, paid out of her tax refund, which is paid in February).

276. *See* Galle & Utset, *supra* note 251, at 87 ("Currently, many households use refund anticipation loans to get early access to their EITC payment . . . .").

277. *See* Nichols & Rothstein, *supra* note 221, at 12 (explaining that the credit, when coupled with the filing of a tax return, acts as an incentive for one to file taxes).

278. *See* Nichols & Rothstein, *supra* note 221, at 12 (noting that the establishment of good tax habits early and in low-income workers correlates with the habits continuing as their earnings rise.)

adult can claim a child for EITC purposes is made more complicated by the fact that some adults earn too much money to qualify for the full credit, and so it is in the interests of the IRS to make sure that no adult claims the benefit unless they really deserve it. If a child lives seven months in the house of a relatively high-earning parent (in the phase-out range or beyond), and only five months in the house of the lower-earning parent, only the higher-earning parent is eligible for the credit.[279] If the lower-earning parent claims it, more money is distributed from the government, and the IRS must be concerned to prevent such improper payments. If there is no phase-out of benefits, then each parent can receive the full credit, and it simply doesn't matter from the government's point of view which parent claims the credit (as long as only one does). In that situation, it really would be appropriate for there to be an administrative system that ensured that only one parent received the credit but permitted qualifying adults to decide amongst themselves which adult should receive it.[280]

Therefore, the three reforms proposed so far—removing the phase-out of benefits, paying the credit on an individual basis, and paying the benefit monthly—all work together to make the EITC simpler in all ways. It would be easy for the government to administer it, easy for the recipient to claim it, easy for everyone to understand who got it and in what amounts. People could plan their lives around it, making whatever choices they thought were best knowing that the benefit would be available to them so long as they earned money. No other factors would be relevant, and no conditions would be placed on the use of the money. Just like a UBI.[281]

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279. *See Other EITC Issues*, IRS, https://www.irs.gov /faqs/earned-income-tax-credit/other-eitc-issues/other-eitc-issues (last visited Apr. 6, 2019) (explaining that the IRS tiebreaker for unmarried parents who both claim the same qualifying child is whichever parent the child has lived with longer during the tax year) [https://perma.cc/4HRU-KBZS].

280. The benefit would differ between adults if either was in the phase-in range, and therefore received less than the full benefit. But, as discussed previously, far fewer recipients are in the phase-in range than the phase-out range, and the simplification proposals offered in this Article would reduce that number even more.

281. *See* Heller, *supra* note 3, at 65–66 (explaining that "[a] universal basic income, or U.B.I., is a fixed income that every adult—rich or poor, working or

D. Make It Bigger

The final proposed modification of the EITC is the one that is conceptually the simplest, but probably the most difficult in practice, and that is to simply make it bigger. With good reason, UBI advocates are often vague about the exact magnitude of a proposed UBI, but there is some general consensus at least about the goals of a UBI, and these goals give some indication of an appropriate size.[282]

> In principle, a government fixes the basic income at a level to allow subsistence but also to encourage enterprise and effort for the enjoyment of more prosperity. In the U.S., its supporters generally propose a figure somewhere around a thousand dollars a month: enough to live on . . . but not nearly enough to live on well.[283]

That figure—$1000 per month—corresponds pretty nicely to the official poverty line for a single adult.[284] And so, at the very least the official federal measure of subsistence and the dominant proposed size of a UBI are consistent with each other.[285]

Setting the magnitude of the UBI at a level to eliminate poverty assumes that elimination of poverty is a central goal of the program.[286] There is no consensus in the United States that redistributive policies on this level are a legitimate function of

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idle—automatically receives from the government").

282. *See* Heller, *supra* note 3, at 66 (explaining that there is a mixed reaction to the UBI, but its supporters generally propose a figure that is "enough to live on—*somewhere in America*, at least—but not nearly enough to live on well").

283. Heller, *supra* note 3, at 66.

284. *See* 2019 POVERTY GUIDELINES, *supra* note 70 (stating that the "poverty guideline" (sometimes called the "federal poverty level") for a single adult in 2019 is $12,490 per year. For a family of four, the poverty guideline is $25,750).

285. The way the Poverty Guideline is calculated in the United States has been widely criticized, with many critics arguing that it is out-of-date and dramatically underestimates the amount of income necessary to avoid poverty. *See* NICHOLAS EBERSTADT, THE POVERTY OF 'THE POVERTY RATE' (AEI Press 2008) (arguing that the official poverty rate underestimates the amount of income necessary to avoid poverty).

286. *See About Basic Income*, *supra* note 82 (noting that a basic income that, in conjunction with other social services, is high enough "to eliminate material poverty and enable the social and cultural participation of every individual" is called a "full Basic Income").

government.[287] That is at least one reason why some UBI proposals are more modest and do not propose a UBI that would permit an adult to survive even on a subsistence level.[288] But even Charles Murray proposes a UBI of $13,000 per year (with $3000 of it mandatorily earmarked to purchase catastrophic health insurance).[289] He argues that he would prefer a government without any redistributive policies to help the poor, disabled, or elderly at all, but that libertarian ideal is "a solution that upward of 90% of the population will dismiss."[290] Therefore, he proposes a UBI at a level that "lowers the rate of involuntary poverty to zero for everyone who has any capacity to work or any capacity to get along with other people—which means just about everybody."[291]

Of course, thinking about how big an EITC would have to be to eradicate poverty is a complicated issue, because an EITC provides no income to anyone without earnings from the market economy. As a definitional matter, an EITC recipient has at least some market earnings. So, how much market earnings does one assume when one is claiming that the EITC is set to eradicate poverty? Surely, it should be large enough to bring any person who works at least 2000 hours at the federal minimum wage out of poverty. That seems like the most parsimonious way of interpreting the mandate. A person who works 2000 hours at the

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287. *See* Amanda Novello, *Universal Basic Income versus Jobs Guarantee—Which Serves Workers Better?*, THE CENTURY FOUNDATION, https://tcf.org/content/commentary/universal-basic-income-versus-jobs-guarantee-serves-workers-better/?agreed=1 (last visited Oct. 23, 2019) (explaining that there is controversy over the role of the government in implementing such a redistributive program) [https://perma.cc/9SQ3-29X4].

288. *See* Thomas Straubhaar, *On the Economics of a Universal Basic Income*, INTERECONOMICS, https://archive.intereconomics.eu/year/2017/2/on-the-economics-of-a-universal-basic-income/ (last visited Oct. 23, 2019) (explaining that the subsistence level is a political and not economic determination) [https://perma.cc/49NF-6MEY].

289. *See* MURRAY, *supra* note 177, at 3 (proposing that "we should take all of [money spent on income transfers] and give it back to the American people in cash grants").

290. *See* MURRAY, *supra* note 177, at 7 (proposing that the UBI should be $13,000 per year for each person over 21, with at least $3000 of that required to be spent on catastrophic health insurance). Murray believes that the UBI should be accompanied by a constitutional amendment that requires the repeal of all other social spending in order to ensure that redistributive spending does not increase too much.

291. MURRAY, *supra* note 177, at 37.

federal minimum wage of $7.25 earns $14,500, which is already more than the federal poverty guideline for a one-person household.[292] That would suggest that if one's goal was only eradicating poverty for full-time workers, an EITC would only be required for households with children. That is basically the structure of the current EITC, although it still fails to bring all households headed by a full-time worker out of poverty.[293]

But, presumably, one's goal for a UBI would be more expansive. For simplicity's sake, let's imagine a reformed EITC whose goal was to bring all households headed by at least a half-time worker out of poverty. A worker who worked 1000 hours at federal minimum wage would earn $7250. If that worker lived alone, he or she would need $5240 of EITC to reach the federal poverty guideline for single-person households. That seems like a reasonable place to start if one were proposing expanding the EITC to bring it closer to reaching the goal of eradicating involuntary poverty. For a worker to qualify for $5240 of credit with the first $7250 of income, the "phase-in rate" would have to be at least 73%, so for every dollar earned up to $7250, a worker receives seventy-three cents of EITC. When the worker earned $7250, they have received the maximum credit of $5293, which brings them (barely) over the federal poverty guideline of $12,490.[294]

This discussion leaves out the correct level for a household with children. If we assume that our goal is to bring a household out of poverty when one adult worker works at least 1000 hours at minimum wage, then we need to set the credit for each child at an appropriate level. The federal poverty guidelines go up by $4420

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292. *See* 2019 POVERTY GUIDELINES, *supra* note 70 (showing that the poverty guideline for a single person household is $12,490).

293. Margot L. Crandall-Hollick, *The Earned Income Tax Credit: An Economic Analysis*, CONG. RES. SERV. 1, 14 (2018), https://fas.org/sgp/crs/misc/R44057.pdf (observing that married and unmarried childless workers with pre-tax income below the poverty line have their income remain under the poverty line even after adding the EITC) [https://perma.cc/JYU9-CNMW].

294. I personally prefer an EITC set at 100% of earnings up to $6000, so a person earning $6000 would receive an EITC benefit of $6000 a year, or $500 a month. Chris Hughes proposes a benefit of $500 a month, which he argues should be provided through an "expanded and modernized EITC." HUGHES, *supra* note 44, at 167.

for each additional member of a household after the first.[295] Therefore, the child maximum credit must be at least $4420 if the adult maximum credit is $5293.[296] So, an adult worker, for each child they have, would get an additional credit of sixty-one cents for every dollar earned. An adult with custody of one child would get $1.34 for every dollar earned up to $7250; an adult with custody of two children would get $1.95 for every dollar earned up to $7250; etc. Of course, the program could move the child benefit out of the EITC so earning was irrelevant—into a child tax credit, for example, that every parent gets no matter how much they earn.[297] Similarly, if the adult credit were increased, the child credit could be decreased slightly, but that might result in very large families still falling below the federal poverty line. Perhaps it would make sense to provide levels that brings any family with three or fewer children above the poverty line, and not worry about ensuring that every single family with one parent working 1000 hours still exceeds the poverty line.[298]

Finally, it is important to acknowledge that an EITC (unlike some conceptions of a UBI) could never replace most other conditional transfer programs. Anyone who is unable to work in the market economy cannot benefit from the EITC, and so unless the government is to forsake them completely, other programs must still exist. For example, the various programs under the

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295. 2019 POVERTY GUIDELINES, *supra* note 70.

296. 2019 POVERTY GUIDELINES, *supra* note 70.

297. *See* Gil Charney, *The New Child Tax Credit*, H & R BLOCK (Oct. 10, 2018), https://www.hrblock.com/tax-center/irs/tax-reform/new-child-tax-credit/ (last visited Oct. 23, 2019) (stating that the Tax Cuts and Jobs Act expanded the Child Tax Cut, so starting in 2018, the child tax credit provides $2000 per child (although the refundable portion is smaller, there is a work requirement for the refundable portion, and the credit phases out for high-income taxpayers) [https://perma.cc/TRU6-C6DJ].

298. As described above, my personal preference would be to have per-adult benefit of $6000 per year, and then to take care of children through an expanded child tax credit without a work requirement. In order for a one-child household to avoid poverty, the per-child benefit would have to be $3660, so a person with custody of one child gets $3660 no matter how much they earn, and an additional $6000 so long as they earn at least $6000. If they work 1,000 hours at $7.25, they have $7250 of market income, $6000 of individual benefit and $3660 of child tax credit, for a total of $16,910 (exactly the federal poverty guideline of $16,910 for a family of two). Unfortunately, this benefit structure would not be enough to ensure that a single parent of two or more children had income above the poverty guideline.

purview of the Social Security Administration: Programs for the disabled,[299] elderly,[300] and others would still need to continue, since those people cannot work in the market economy. Similarly, it would probably be necessary to continue SNAP[301] and TANF,[302] since it is inappropriate to cease to provide any support for families with children who are unable to find work despite diligent effort.[303] These programs might be able to be reduced if the EITC was expanded but could not be completely abandoned.

Like the three other EITC reform proposals made in this Article—to remove the phase-out, to remove the family-status provisions, and to pay the benefit monthly—this proposal to expand the EITC so it almost eradicates poverty in all workers able to work at least 1000 hours per year is not a *necessary* component of any reform effort.[304] The EITC would be improved if any one of the reform proposals was enacted without the others, and none is necessary for its improvement. It is only if the goal of EITC reform is to get closer to eradicating poverty that its expansion is necessary. But that is a worthy goal.

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299. *See Disability—How You Qualify*, SOC. SECURITY ADMIN. https://www.ssa.gov/planners/disability/qualify.html (last visited Oct. 23, 2019) (explaining that to qualify for SSDI one must have been unable to work for a year due to disability) [https://perma.cc/3H23-KCEA].

300. *See Who Is Eligible for Social Security*, AARP, https://www.aarp.org/retirement/social-security/questions-answers/eligible-for-social-security.html (last visited Oct. 23, 2019) (explaining that one must be retired to qualify for retirement benefits) [https://perma.cc/2JFT-K4QQ].

301. *See Supplemental Nutrition Assistance Program (SNAP)*, BENEFITS.GOV, https://www.benefits.gov/benefit/361 (last visited Oct. 23, 2019) (showing that only certain low-income families qualify for SNAP benefits) [https://perma.cc/82XL-3ZFW].

302. *See e.g.*, *Texas Temporary Assistance for Needy Families (TANF)*, BENEFITS.GOV, https://www.benefits.gov/benefit/1679 (last visited Oct. 23, 2019) (explaining that only certain families with needy children qualify) [https://perma.cc/TGN6-PBUG].

303. *See* Lipman, *supra* note 14, at 1176–79 (detailing the effects of childhood poverty and how Congress has implemented social benefit policies using the federal income tax system).

304. *See* discussion *supra* Parts V.A–C.

VI. Conclusion

A universal basic income is in many ways a radical idea, and there are many reasonable people who are, and are likely to remain, unconvinced of the net benefits of such a significant overhaul of government transfer programs. That being said, proponents of a UBI are not wrong that many of a UBI's components are good policy. There are benefits to providing transfers in cash (or the equivalent on a debit card), to minimizing complicated and hard-to-verify qualifications for participation, to reducing or eliminating the "marginal tax rate" caused by the (too-steep) phase-out of benefits, to making each adult individually qualified rather than qualifications depending on family (and especially marital) status, and to providing the transfers regularly throughout the year when struggling people need them most. There are also benefits that may accrue from delinking anti-poverty transfers from paid work or attempts to get employed, although there are perceived (and possibly real) detriments to such an approach as well. This Article has attempted to provide a more modest way forward than trying to implement a true UBI all at once. Instead, it has proposed a series of reforms of the Earned Income Tax Credit, each of which makes the EITC more "UBI-like." Completely avoiding the discussion at the heart of a UBI—the delinking of transfers from labor—this Article has proposed that the EITC could be (i) paid to all without a phase-out, (ii) paid individually rather than based on family status, (iii) delivered monthly rather than annually, and (iv) expanded so it is large enough to eradicate poverty for any worker who can work at least half time at a job that pays at least the federal minimum wage. These reforms would still leave many poor people out: The disabled, elderly, full-time unpaid caregivers, and anyone else unable to secure employment for at least half the year would still be without assistance, and so the programs that serve those people would need to continue to operate. But for the rest of us, an expanded reformed EITC could provide a universal safety net that could capture many of the benefits of a UBI without the need to invent a bold new system seemingly out of nothing. It is plausible that modest half steps are less politically realistic than revolutionary action. But it is surely worthwhile to consider the possibility that benefits can be achieved without the radically new, even one modest step at a time.