Economic Security Project

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The Future of Tax Filing

Part 3: Beyond Direct File: A Vision for the Future of Tax System Access

Chapter 12: Dependents

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Contents

[1] This chapter is significantly informed by user research led by Allison Abbott.

Summary

- Current law and de facto practice about claiming dependents on tax returns are complex and inconsistent. (12.1)
    - Despite harmonization efforts, tax benefits have different legal definitions of a child (12.1.1). In practice, in most cases of conflicting dependent claims, the de facto resolution process is "first come, first served" (12.1.3).
    - The IRS audits taxpayers and calculates aggregate statistics of dependent claiming on the basis of methods that do not match the de facto filing administration practices. (12.1.4, 12.1.5)
    - Contrary to these rules, taxpayers tend to claim children on the basis of informal agreements within their families or court-ordered formal agreements like custody agreements — arrangements most taxpayers do not know are technically unlawful. (12.1.6)

- The current system creates a number of serious problems. (12.2)
    - Due to the shape of the law and the vagaries of its implementation, some children cannot be claimed by any filer for one or more tax benefits, in apparent contradiction of the policy intent. (12.2.1)
    - Many children are claimed by, technically speaking, the wrong family member; we call these intra-family misclaims. These intra-family misclaims are generally benign mistakes in policy terms, but they create the appearance of tens of billions of dollars of improper payments in the EITC — which have driven policymakers to implement access-restricting measures in the name of reducing fraud. They also may vastly inflate statistics measuring the EITC participation gap, causing policymakers and third-party stakeholders to go looking in the wrong place for Americans missing out on their tax benefits. (12.2.2)
    - The de facto adjudication rules can make it difficult for the family to claim a child, in case of conflict (12.2.3). Meanwhile, the sheer complexity of the system also creates administrative burden (12.2.4) and feeds the damaging widespread impression that the tax system cannot be navigated by everyday people (12.2.5).
- Taxpayers' intuitions about the child-claiming rules — explored in a series of user research sessions — differ significantly from the current rules, and point toward a new paradigm. (12.3)
    - In a series of scenarios where we asked taxpayers which of multiple adults should claim a child, only 21% of votes actually matched current law. (12.3.2.1)
    - There was widespread disagreement about who should claim, and many taxpayers could not articulate a consistent principle that would identify the right claimant in every case. (12.3.2.2)
    - Taxpayers generally believe that, within reason, families should be able to decide among themselves who claims a given child (12.3.3.1). Some of these intra-family choices are consistent with behavior some policymakers would consider "gaming" — but taxpayers did not tend to see such behavior as inappropriate or immoral (12.3.3.2). Taxpayers tend to believe legal agreements like divorce decrees or custody agreements should be the first line of defense in determining who claims a child, and tend to see these kinds of agreements as a special case of the family working it out among themselves (12.3.3.3).
    - In the case that there is a conflict between family members, though, taxpayers expect there to be clear and objective rules to resolve the conflict (12.3.3.4).
    - When thinking through who truly ought to claim a given child, most taxpayers had an intuition of applying some type of relationship test and some type of support test to determine claims. There was disagreement, though, about how those tests would be defined. (12.3.4.1, 12.3.4.2)

    - Taxpayers did not voice any support for the idea that children might be classified differently for different benefits, or any understanding that such splitting is part of current law. (12.3.4.3)
- Recommendations:
    - All tax programs should use a common dependency definition, under which one child is only ever claimed by one tax unit. One tax unit should claim one child, with that child consistently eligible or ineligible for all relevant programs to the greatest extent possible. (12.4.1)
    - Rather than prescriptively identify the one tax unit who is definitively able to claim a given child, the law should define a permissive set of claimants, any of whom may validly claim the child. Within this set of claimants, families are encouraged to decide for themselves who claims the child. As long as only one of the valid claimants claims the child, the government does not need to second-guess which one it is. We provide a few possibilities of how this permissive class may be defined. (12.4.2)
    - In cases that multiple valid claimants do claim the child, there should be a detailed set of tiebreaker rules that the government will use to adjudicate between the rival claims. These rules only come into play if there are multiple claims actually made. The tiebreakers should be based on the taxpayer intuitions laid out in earlier sections. (12.4.3)
    - This new paradigm raises implementation challenges, since not all claims come in at the same time. Equitable administration may require some child claims to be held provisionally until the government is confident there is not a rival claim. (12.4.4)
    - The IRS needs a quick and human-centered resolution process to adjudicate rival claims, one which does *not* require snail mail for administration. (12.4.5)
    - The new regime does increase the capacity for unsympathetic "gaming" — that is, deliberate manipulation for tax advantage — in child claims. Policymakers may reduce the incentive to game by removing quirks in existing tax law, such as the three-child limit for EITC. They may also consider granting IRS statutory authority to prevent specific cases of unsympathetic gaming — specifically those that entail high-income parents shifting child claims to lower-income family members. (12.4.7)
    - While many of these recommendations may seem challenging to implement, we encourage policymakers to consider the myriad untenable contradictions in the status quo, including widespread legal instruments that violate the terms of the tax law; widespread audits, enforcement actions, and alleged overpayments based on benign intra-family misclaims; and the simple fact that, more than 20 years after the establishment of the current policy regime, we are as far as ever from everyday taxpayers actually knowing, understanding, and following the letter of the law.

For all the complexity in the U.S. tax code, it is the thicket surrounding claiming children that may wreak the most unnecessary havoc for tax administration and access. (Throughout this chapter, we discuss the process of claiming *dependents*, who are usually but not always children; for simplicity, we will usually refer to children as a stand-in for the broader point.)

Despite meaningful attempts at reform, the current law governing which adults can claim which children are complex and disjointed; often, taxpayers can claim children for some tax benefits but not others. Meanwhile, taxpayers' intuitions about and understanding of the rules have drifted far from the letter of the law, as have the de facto administration practices of the IRS. Predictably, this situation yields administrative burden, bureaucratic costs, and unintentionally unclaimed children.

All this misalignment also produces enormous downstream issues. For years, the EITC has been plagued by its 25-40% overpayment rate, attracting myriad onerous policies that restrict tax access in an effort to reduce waste and abuse. Meanwhile, the EITC has been plagued too by its stubbornly persistent 20% non-participation rate, with funders, advocates, and organizations of all sizes constantly supporting new programs intended to get the EITC to the one in five eligible families who allegedly don't claim it.

We argue in this chapter that large portions of the EITC overpayment and underclaim populations may be functionally data artifacts borne of the mismatch between the child-claiming rules and taxpayers' perceptions of them, rather than widespread failures to claim or any malicious intent on the part of the taxpayer. If we rewrote the rules to match taxpayers' understanding of them, underclaims and overpayments would likely fall precipitously. And this correction would allow the tax administration space to focus precisely on that much smaller and more manageable population that truly is overclaiming, or missing out. The current rules introduce massive distortions into the tax system, badly hampering real progress.

Finally, there is the matter of better synthesis across government programs. Advocates often envision an application system unified across taxes and benefits. But a baseline prerequisite for such integration is a unified definition of family across domains, and a prerequisite for that is a unified definition within the tax system itself. Those who dream of better unification across government programs should start with the broken definition of family within the tax code.

Section 12.1 reviews the status quo — the law governing child claims, and its de facto implementation and enforcement. Section 12.2 reviews the problems caused by the status quo, including the inflation of under- and over-payments discussed above. Section 12.3 reviews our user research findings on the dependent rules — what taxpayers think would be a fair system. Section 12.4 makes recommendations.

Note that most of this work — and especially the user research — is focused exclusively on tests that determine which of several households might claim a given child ("whose child is

this"), not questions like age[2] or self-support[3] that might determine whether a given child ought to be claimed at all ("is this person someone's child") — though we do address those questions in passing.

12.1 Background: the status quo

12.1.1 Current law

On tax day in 2002, Treasury Secretary Paul O'Neil unveiled his department's proposal for a simplification of the rules for claiming a child. The department's proposed "uniform definition of a qualifying child" attempted to make consistent the rules for five tax provisions related to children: the dependency exemption, Head of Household (HoH) filing status, CTC, EITC, and the Child and Dependent Care Credit (CDCTC). He said, "The tax code should not scare law-abiding and hard-working citizens when they sign their tax return. Our tax code is still an abomination. It is not worthy of our free society. By beginning to undo unnecessary complexities, we can take the first steps to a better, simpler tax code. We need to start now."

To illustrate the value of this task, Treasury outlined the tax situation of a multigenerational household in which a child's mother, aunt, and grandmother are each entitled to claim only some of the benefits for the child under then current law; in the example, the CDCTC fell through the cracks, with no one in the household eligible to claim it. Treasury touted, "Under the proposal, the child's mother (or if the family prefers, the grandmother or aunt) could claim all [five] tax benefits."

Yet by the time the proposal was enacted in the Working Families Tax Relief Act of 2004, the tax treatment of Treasury's example family was once again fractured, now with family members only able to claim certain benefits to the exclusion of different benefits that other members might claim. Although it was indeed a significant improvement in complexity and burden, the resulting statute did not realize Secretary O'Neil's vision. Over time, more inconsistencies were added, pulling the definitions ever farther from "uniform."

The table below is our attempt to summarize just *some* of the current law.

		Section 152 Qualifying Child (QC)	Section 152 Qualifying Relative (QR)	EITC Qualifying Child	CTC Qualifying Child	Credit for Other Dependents	HoH Qualifying Person	CDCTC Qualifying Person

[2] Generally speaking, qualifying children must be under 19; or under 24 and full-time students; or any age and totally disabled. For CTC, children must be under 17. We did not examine these boundaries.
[3] Dependents cannot have provided more than half of their own support. We did not examine this boundary.

Relevant to conflicting claims	**Relationship**	Descendent, younger sibling, or descendent of sibling/ descendent; includes fosters and adoptees	QC rules plus parents, grandparents, uncles, aunts, and year-round co-resident non-relatives	QC rules	QC rules	QC or QR rules	QC or QR rules (except *not* co-resident non-relatives)	QC rules, *OR* Disabled spouse *OR* Disabled QR
	Residency	> 6 months living with claimant	— 12 months if co-resident non-relative — Others, no requirement	QC rules, in U.S.	QC rules, in U.S., Canada, or Mexico	QC or QR rules	— No req, if parent — >6 months for all other	— QC rules, if QC — > 6 months, if spouse or QR
	Res. waived by 8332	N/A	N/A	No	Yes	Yes	No	No
	Costs paid	No requirement	Must provide half of all support for the QR; *OR* multiple support agreement	QC rules	QC rules	QC or QR rules	QC or QR rules *AND* must provide half of *household* expenses	QC or QR rules, *AND* paid child care, with certain additional restrictions
Not relevant to conflicting claims	**Age**	Under 19 *OR* under 24 and full-time student *OR* any age and totally disabled	No requirement	QC rules	Under 17	QC or QR rules	QC or QR rules	— If QC, under 13 (when incurring expenses; not full-year age) — Others, no requirement
	SSN	No req.	No req.	Child (and whole household) needs SSN valid for employm ent	Child (and at least one parent) needs SSN valid for employme nt	No req.	No req.	No req.
	Would- be dep's finances	QC must *not* provide for more than one half of their living costs	QR must earn under $5,050	No req.	QC rules	QC or QR rules	QC or QR rules	— If QC, QC rules — Others, no rules (income test waived for QRs)

A few especially critical observations:

- In almost every case there is, at most, one valid claimant for any child for a given benefit. In the rare case where more than one adult passes the original basic rules, there are binding tiebreaker rules (not shown above) that end with only one valid claimant. (This may seem obvious, but we will see later it conflicts with taxpayers' intuitions.)
- But there is no guarantee that there is anyone who can claim a child. Some children have zero valid claimants.
- A relatively wide range of biologically-related (or legally-related, e.g., via adoption or foster care) taxpayers can claim a child, though there are limits. But there is almost no allowance for taxpayers without a biological or legal relationship to claim a child

for EITC or CTC. Mom's boyfriend whom she hasn't married (and who isn't the child's father) can't claim the child. A non-family household who informally (without adoption proceedings) takes in a child can't claim them. This relationship test is the first principal determinant of who can make a claim.

- For many provisions, the claimant must live with the child for at least six months; this is the second principal determinant of who can make a claim.
    - There is an exception, though: parents with greater than six months' co-residency ("custodial parents") can cede their claiming right to parents without ("non-custodial parents") if they file Form 8332 explicitly ceding their claim.
    - But there is an exception to the exception: Form 8332 cedes these taxpayers' claims for CTC and ODC, but not for EITC, CDCTC, or HoH QP. A custodial parent may file Form 8332, intending to let their non-custodial parent claim their mutual child for all the key tax benefits. Despite the 8332, however, the non-custodial parent still can't claim the child for EITC, CDCTC, or HoH QP.
    - Meanwhile, if three taxpayers each live with a child for four months, none of them can legally claim the child (for EITC, CTC, CDCTC, or HoH QP; though they likely *can* be claimed for the Credit for Other Dependents).
- For EITC and CTC, there is no explicit requirement that the claimant pay for the child's living expenses; to the degree such a requirement is present, it is implied in the co-residency rule. (The residency test was adopted in lieu of a more explicit support test due to its perceived easier administrability.)
    - There *is* a 'support test' that applies to qualifying children under CTC, HoH QP, and CDCTC: the child cannot provide for more than half of their own living expenses.
    - But this test does *not* apply to the EITC. A financially nearly-independent child who lives with their parents can be claimed for the EITC — but not CTC, HoH, or CDCTC.
- All these discrepancies between programs cause knock-on effects one generation up. It stands to reason that a taxpayer cannot claim a child for CTC if they, themselves, are being claimed for CTC by a parent — and similarly for EITC. But, because CTC and EITC have different rules, taxpayers must determine both if they are able to be claimed as a dependent for CTC and, separately, if they are able to be claimed as a qualifying child for EITC.
- There are also a constellation of conflicting rules regarding the child's age, immigration status, and more.

But the complexity does not stop there: as noted, in some cases, two different taxpayers may both pass the tests to claim a given child. (Consider, for example, a multi-generational household in which the child's parents and grandparents cohabitate and file separately.) For these cases, there are a series of tiebreaker rules, applied in order:

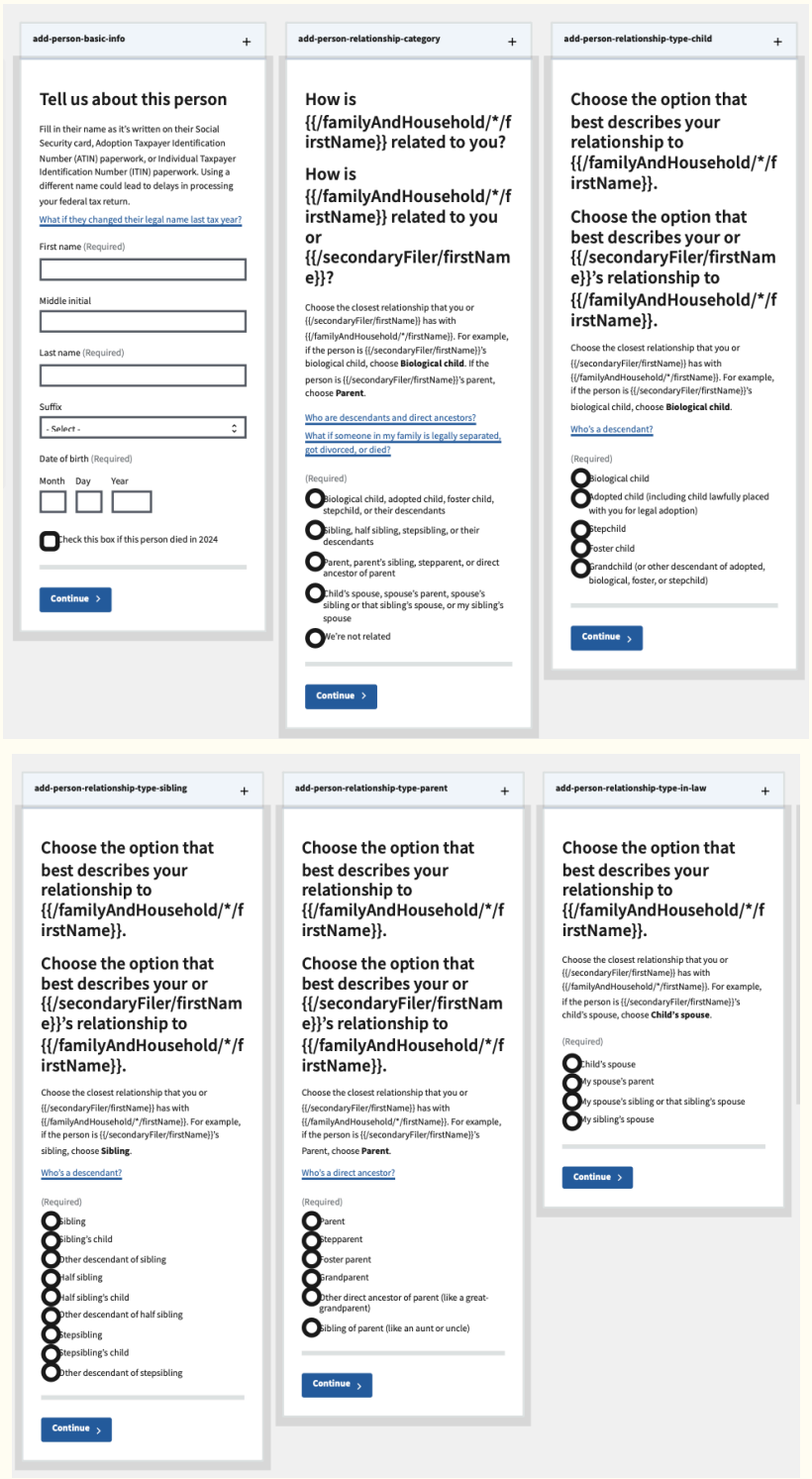
- Parents are entitled to claim over non-parents (unless the parent agrees to cede the claim, and the non-parent has higher income). If this does not resolve the tie,

- The person with more time lived with the child claims the child. If this does not resolve the tie,
- The person with the higher adjusted gross income claims the child.

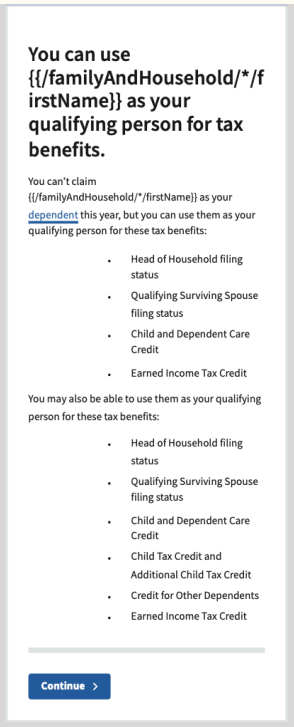
12.1.2 Tax software implementation

Most taxpayers are oblivious to much of this complexity, as they rely on preparers or tax software to file. Most tax software, mercifully, does not expect taxpayers to understand these various and highly complex rules. Instead, software generally asks taxpayers a series of questions about each potential dependent, and determines automatically which tax benefits they qualify for, if any.

Needless to say, the software must probe a dizzying array of topics. Below, for example, are just a few of the questions Direct File asked about a potential dependent. In Direct File's all-screens view, there are 81 separate screens a taxpayer may see for each would-be dependent they enter (though it's highly unlikely a taxpayer could see even the majority, and the average taxpayer likely saw more like 8-12).



Sometimes, given the rules, the answers result in a child being eligible for some benefits and not others. Below, again, is Direct File's determination for a child with mixed eligibility. (The bulleted items would conditionally hide or show depending on the taxpayer's situation).



But there is an important aspect of the current law that is usually not fully implemented in tax software: Form 8332, via which custodial parents can cede (some) claims to the non-custodial parent. The process form Form 8332 appears to be as follows:

- The custodial parent fills out a paper Form 8332, and gives it to the non-custodial parent. (Tax software generally does not appear to directly help parents with this part of the process.)
- The non-custodial parent e-files their return. Presumably, they claim the children despite answering no to the residency questions by indicating they have a Form 8332 from the custodial parent. Then they actually have to submit to the IRS the Form 8332 that the other parent provided. They can either do this by scanning it and attaching it to their e-file submission (if their software allows), or by mailing the paper Form 8332 to the IRS under cover of a Form 8453. (The Form 8332 instructions only clearly outline this latter option.) If they choose the latter route, the non-custodial parent allegedly has three business days after e-filing to submit the 8332 and 8453. (It is not clear what happens if they submit late.)
- Form 8332 can cede a claim for one year, or in perpetuity. If the claim was ceded in perpetuity, and the custodial parent wants to revoke the ceded claim, they must file Form 8332 directly with the IRS revoking the claim, *and* give a copy of this revocation to the non-custodial parent.

It is little wonder that some software has limited support for the 8332 process. There is no public data on the number of Forms 8332 that are filed, but it appears to be a relatively small number. While custodial parents do frequently *intend* to cede claims to non-custodial parents (see Section 12.1.6), they often do not actually use the existing Form 8332 to do so.

12.1.3 Modernized e-File and de facto adjudication

The actual current statute about child claiming is very complex, and most tax software implements (most of) that logic faithfully and in detail. When claims reach the IRS, though, the *de facto* rules are very different, and much simpler: the claimer who files first is usually allowed to claim the child. (This is essentially in keeping with the IRS's overall voluntary compliance posture, which generally accepts taxpayer's self-reported data at face value unless there is explicit reason to investigate it further.)

When a taxpayer e-files a return, the Modernized e-File (MeF) system runs a series of checks to confirm the validity of a return — including whether the dependents or EITC qualifying children on the return have been claimed on another e-filed return this year. If not (and other checks pass), the return will be accepted. Returns can be flagged for additional review or audit in the post-acceptance stage, but such returns are not especially likely to be flagged solely on account of their dependent claims, which as of yet are not suspicious.

Now, suppose another family member e-files a return the following week, claiming the same dependent or qualifying child. MeF will check their return, find the conflicting claim, and reject the return. Generally speaking, the taxpayer *cannot e-file their return* with this conflicting claim. (Beginning in 2025, taxpayers can e-file this conflicting claim if and only if they are enrolled in the Identity Protection PIN program. According to the IRS, as of December 2024, only 10 million taxpayers had IP PINs.) Otherwise, if taxpayers want to contest this child claim, they have to print out their return and mail it. This paper filing is a burden in and of itself, and can occasion a protracted and opaque dispute resolution process besides. It's little wonder, then, that most taxpayers choose not to pursue the resolution. Per Gorman, McGuire, and Splinter (2025) about 1% of e-filed dependent claims are rejected due to duplicate claims, but only about 0.3% then go on to be paper filed, formally lodging a dispute for resolution.[4]

If taxpayers *do* paper file to initiate a dispute, the IRS tells taxpayers it will *begin* adjudicating the dispute after two months. The process is conducted entirely by paper mail, and then judged according to the details of the tax law. There is not public data on these resolution processes, but anecdotal evidence suggests they can take years. Sometimes, to prevent issues in future tax years, families will find relief outside of the tax system, resorting to measures like seeking injunctions against the improper claimant.

12.1.4 Audits

For the 99.7% of dependents who are not subject to a disputed claim on a paper-filed return, the IRS generally accepts the dependency claim at face value. But if a return is selected for audit, which is disproportionately common for EITC claims in particular, the IRS will seek substantiation of the child according to the letter of the tax law. The IRS, in other

[4] Some of the taxpayers dissuaded from filing probably reflect the system working — e.g., a divorced parent who forgot she was not planning to claim the kids this year. But some surely are dissuaded by the de facto "first come first serve" logic.

words, asks audited taxpayers for evidence of co-residency and relationship to substantiate their child claims.

Of course, this audit proceeding exists on an entirely independent path from the MeF processing. Suppose mom is the custodial parent, but dad claims the kids for EITC on March 1. On March 5, mom tries to claim the kids, but her return is rejected; discouraged, she removes the kids and files as single, and dad gets the credit payments. Much later, dad is audited and has his refund disallowed. Mom, regardless, does not get the money.

12.1.5 Research and aggregate statistics

The IRS publishes aggregate estimates of EITC overpayments and underpayments, which are often due to improperly claiming or failing to claim a child. These estimates appear to come from two different methodologies, which only partially match any of the parts of the process above.

The overpayment rate is extrapolated from the audit program — specifically from audits of randomly-selected (and thus representative) returns, and so is based on cases where an audited taxpayer cannot substantiate their child claim according to the claiming rules. However, in the audit program, nonresponse is classified as noncompliance. Many of these audits are correspondence audits administered entirely by mail. So a taxpayer is classified as an overpayment due to an improper child claim if they fail to answer their mail, inflating the overpayment rate.

The underpayment rate, on the other hand, bears no relationship to any of the data discussed above. Instead, the IRS and the Census Bureau link a sample of tax returns to Census survey observations. They use the Census observations to identify tax units that *should* claim a given child (or, more precisely, a tax benefit that requires a child), and classify as underclaims those cases where these observations cannot be matched to a return with that child/provision. If Census data imprecisely captures the family relationships of respondents, the underpayment rate will likely be inflated (net of adjustments to the Census models; see Section 12.2.2.2).

12.1.6 How taxpayers currently claim dependents

Our user research sought to interrogate how taxpayers currently approach the question of how to claim dependents.

The participants we spoke to with ambiguous claiming situations were nearly all divorced/separated. Nearly all of them determined whether to claim their children not by examining the esoterica of 26 USC 152, IRS publications, or software explainers, but according to a divorce agreement or other legal document. Most alternated which parent would claim the children each year, at least for odd-numbered children.[5] Notably, all

[5] That is, if separated parents had three children, often Parent A would claim Child 1, Parent B would claim Child 2, and they would alternate claiming Child 3.

participants believed this approach – adhering to the terms of legal agreements or informal arrangements between family members – was "following the rules." Almost none (with one exception, below) seemed to be aware that tax law could supersede their agreements:

- *"When I was divorced, it depended on what our court order said. Our court order would say even years and odd years, as long as they were current on their child support payments. If he wasn't current, I got to claim... I think even a court order for custody goes throughout the whole United States."* — Participant #4
- *"I'm a single mom. So in my divorce agreement, their father and I actually rotate the years in which we can claim the children. So I always have to go back and reread my divorce paperwork to remember if I'm even or odd because I forget. But once I can remember what I'm supposed to be doing, it's relatively easy from that point on. And we have three kids. So basically, we each claim one kid every year, and then our third child, we rotate back and forth... Once the oldest ages out, we each claim the remaining two year to year. And then when our son ages out, we'll rotate my daughter.... I have clicked on the little help tutorial [in filing software, which] told me, okay, if you claim this child more than X number of days a year, you can claim them on your taxes... However, I know a divorce agreement, a binding legal document might say, okay, we're going to still rotate the kids. So [a divorced parent] might want to look at their legal documentation, because I think that would probably overrule."* — Participant #1

(This misperception about divorce decrees overruling dependent law is not limited to the relatively uninformed. While working on this paper, one of us presented at a conference precisely about the question of defining family for legal purposes, where a law professor moderating a panel told the assembled crowd about how she had ensured her divorce paperwork gave her uncontested right to claim her children.)

Even those who didn't have formal paperwork stipulating a yearly trade-off knew about this approach or even had done it:

- *"So, you know, in the beginning, it was like a rough patch because we were kind of going back and forth. And now we're able to co-parent, and so we're able to come to an agreement like that where we switch off."* — Participant #3, who is divorced, with three kids, and trades off claiming all three of them with his ex. They don't split time 50-50; he spends more of the money and his ex spends more of the time.
- *"We used to rotate... I know some parents rotate every year, like my best friend rotates with her... former significant other, they rotate every year."* — Participant #9

Another participant claimed her de facto child on the basis not of a divorce decree, but a legal document from DCFS:

- *"Well, she's my granddaughter, but I've had her since birth, so I'm just mom. But legally, she's my granddaughter, and she was formerly a foster child... So that's a little bit complicated... But she's never lived with either parent for any length of time, and neither one of them that I know of have ever filed their taxes. It was determined by the*

> *Department of Children and Family Services... And on the guardianship papers, it breaks down the legal guardianship, and so on there, it says that I am able to claim her on my taxes, and I think that just prevents the other two parents from doing it... I haven't run into any situation where they've tried, because she's lived with me her whole life, but if it were to happen, then I do have a piece of paper saying I am legally allowed to claim her."* — Participant #12

Only one participant we spoke to had even an inkling that such arrangements might not be legal under the current tax law. Participant #8 described the experience of a friend who was trading off claiming children each year with her ex-partner when *"they ended up receiving a letter saying something like, we're flagging your account... It was an agreement between them. This is the way they decided to go about [it], but it did get red flagged by the IRS."*

Some of these arrangements — ceding claims to non-custodial parents with the consent of both parents — could have been lawful if the parents had filed Form 8332 and had followed that form's dictates in terms of which tax provisions can and cannot be ceded. But notably, none of the participants mentioned ever filing Form 8332, and none seemed aware of any distinction between tax provisions which can and cannot be ceded.

12.2 Problems

12.2.1 Underpayments because no one claims a child

The complexity can create a situation where no one claims a given child, at least for some tax benefits.

One way this can happen is that, in fact, *no one* is eligible to claim a child. There are various examples:

- A child splits their time, four months each, living with three different adults (e.g., a child used to live 50-50 with their mother and their aunt, but in September moved in with their grandparents full-time instead). None of them pass the residency test for CTC/EITC (though one *may* qualify to claim the child as a qualifying relative for other benefits).
- A child lives all year with a de facto adoptive family who takes care of them but is not in fact biologically or legally related. No one passes the relationship test for CTC/EITC (though if the child lives there all 12 months, they might be claimed as a qualifying relative for other benefits).
- A young 19-year-old parent lives with their former foster mother, who technically no longer has a legal relationship with the young parent since they aged out of the foster care system. The young parent is eligible to be claimed by the former foster mother, and so cannot claim their baby. But the former foster mother has no biological or legal relationship to the baby they consider their grandchild, and cannot claim the baby either. No one can claim the child for CTC/EITC (though if the baby

lived there all 12 months, the de facto foster grandmother can likely claim the baby as a qualifying relative for other benefits).

Goldin and Jurow Kleiman (2022) suggest that the above cases amount to several hundred thousand children.[6] Alice Lin also describes other compelling cases where this problem can occur.

There are also subtler situations in which other individual tax benefits are unclaimable. Consider a single parent and a single grandparent who both live with a child. The grandparent pays most household expenses; meanwhile, the parent works and otherwise qualifies for EITC, and (correctly) claims the child. But, since the parent claims the child as a qualifying child, the grandparent cannot claim the child as a qualifying person for Head of Household status. Both the parent and the grandparent must file as single, with neither able to claim the benefits of HoH filing status, despite being unmarried guardians taking care of a child. This situation may be less egregious than those above; it may not be an injustice that HoH status sometimes goes unclaimed. But the idea that both the adults raising a child must file as single seems counterintuitive.

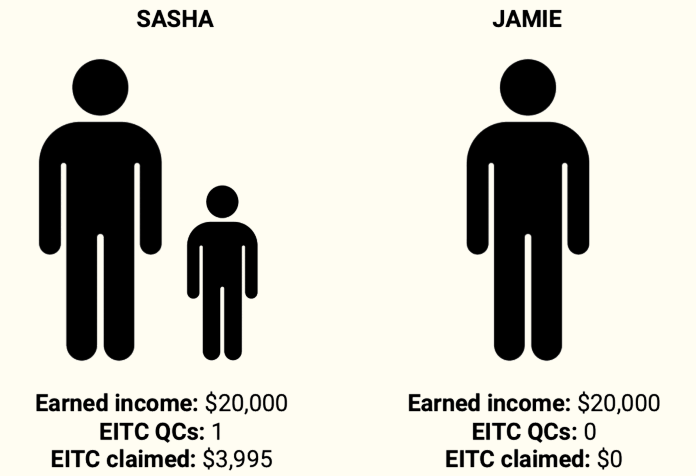
A child may also fail to be claimed due to the mismatch between taxpayers' intuitions and the actual implementation of tax law in self-prep software. As we explored in Section 12.1.6, some taxpayers intend to claim a child irrespective of the ins and outs of the literal rules and are in fact rather unaware of the details. We believe it is possible that taxpayers are sometimes eligible to claim a child for all the relevant tax benefits, and go through the thicket of software questions intending to do so, but mis-answer one or more esoteric questions along the way, causing them to *not* claim the child for some benefits. The taxpayer does not notice they have made the mistake, as the child *does* indeed show up on the return. Their refund is just smaller than expected, and they never realize they did not in fact fully claim the child.

Both of these situations are relatively rare, but they represent serious problems: we have children who are not being claimed for some or all of the benefits to which they entitle the taxpayer.

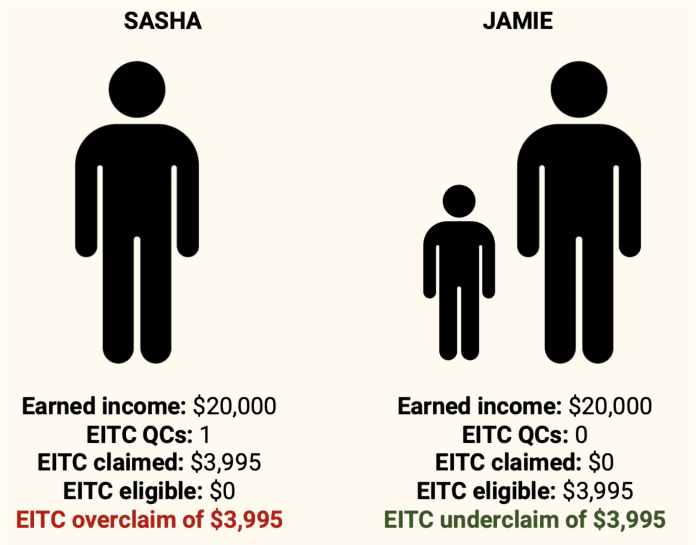
12.2.2 Underpayments and overpayments caused by intra-family misclaims

Consider two separate households, headed by divorced parents Sasha and Jamie, each with income of $20,000. Their child splits their time between Sasha and Jamie, and they mutually understand that Sasha will claim the child this year. Given this, Sasha will claim $3,995 in EITC and Jamie will claim no EITC:

[6] The authors also define another category of 1.2-1.5 million children who cannot be claimed for EITC or CTC because of the relationship between the earnings and the relationship tests. We consider these as cases of the 'intra-family misclaim' problem discussed in the next section.



But then the Census-IRS data match concludes (correctly or not) that the child actually spent slightly more time with Jamie; and, meanwhile, Sasha fails to substantiate the residency test in response to an audit. So the government sees the situation as below: Sasha's return is a $3,995 EITC over-claim, and Jamie *may be* counted among the one in five eligible households who fail to claim EITC (although on the underclaim side, some analyses may correctly account for certain versions of this error — see Section 12.2.2.2).



The data suggest serious problems: Sasha is a fraudster erroneously claiming a child that isn't theirs, and Jamie (in analyses that do not account for the error) is inexplicably leaving thousands of dollars on the table. But instead, in this scenario, both Sasha and Jamie have plausible claims to the child. Sometimes, the IRS's observation is probably simply wrong; Sasha *does* have the best claim, and measurement error or audit non-response causes the erroneous inference that anything was amiss. In other cases, the IRS is nominally right: Jamie technically has the proper claim, according to the current rules, but those rules run in the face of the family's own understanding and intuitions. And the same EITC was paid out

in each case, costing the government nothing. (Other scenarios could cost the government money; more below in Section 12.2.2.3.)

We call this scenario an intra-family misclaim, in which intra-family claiming prioritization may not follow the letter of the law, or IRS's perception thereof, but the credit probably does still reach the child, and Jamie (the only obviously ostensibly aggrieved party) does not perceive anything to be amiss.

Research suggests that, much of the time there is an inappropriate child claim, we are probably indeed looking at intra-family misclaims, not outright fraud or foul play. Leibel et al (2020) find that 87% of children claimed by the "wrong household" for EITC had either a valid family relationship with the improper claimant, lived with the claimant for more than half the year, or both. (Usually, the improper claimant had a valid relationship but could not substantiate six months' co-residency. The relationship was more likely to be a grandparent or an uncle/aunt than the average dependent claim.) In other words, we very well may be looking at lots of Sasha/Jamies; or cases where, for example, a claimant grandmother financially supports her grandson year round and spends time caring for him every day, even though technically he lives at his mother's house. Our user research supports the idea that there are vast numbers of intra-family misclaims where all parties involved — except the IRS — see the claim as appropriate.

12.2.2.1 The scale of intra-family misclaims: first-order estimation

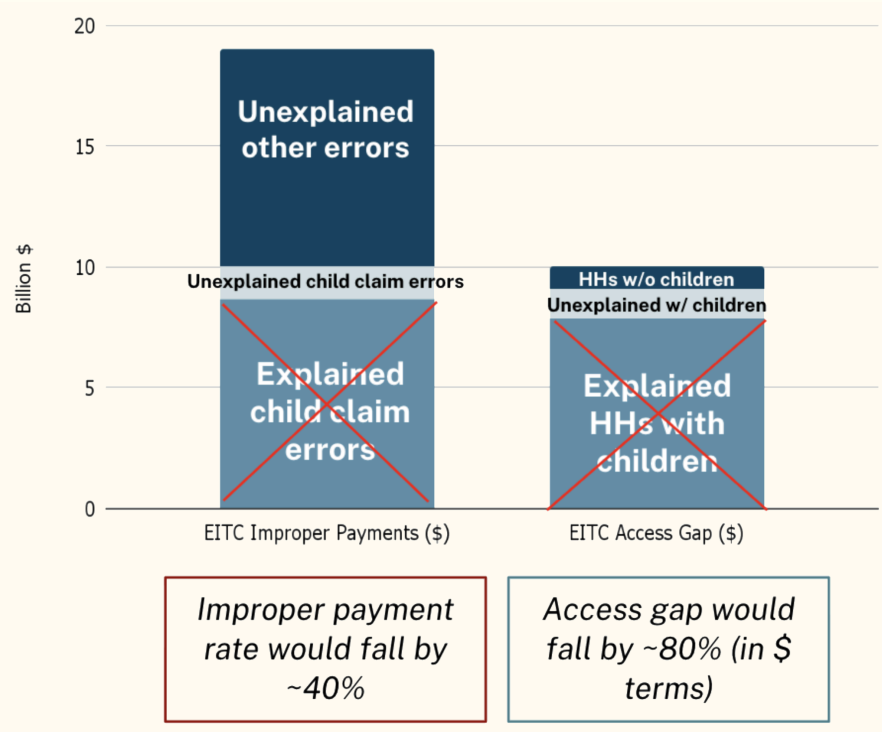
What is the statistical impact, in the aggregate, of these intra-family misclaims? At a high level:

- Leibel (2014) estimates that about 3 million households claim about $10 billion in EITC improper payments by claiming a child that is not theirs, representing about 53% of the total $19 billion in EITC improper payments.
- Averaging across a range of slightly conflicting studies, the IRS appears to estimate that about 3.5 million households with children fail to claim about $9 billion in EITC payments that they are eligible for.[7] This represents about 90% of the $10 billion in unclaimed EITC (and about half of the roughly 7 million eligible households who fail to claim EITC).[8]

To a first order of approximation, these populations are around the same size. Suppose we assumed — following Leibel's finding that 87% of 'wrong household' claims did pass the relationship or residency tests — that 87% of putatively improper child claims were intra-family misclaims. If we re-defined these misclaims as proper claims, the improper payment rate would fall by 40%, to about $10 billion, and the EITC access gap (measured by

[7] See Appendix C of Zucker and Ramamurti (2024).
[8] The remaining gap is much smaller in dollar than in person terms since the remaining non-claimants are predominantly childless adults who receive a much smaller EITC.

dollars) would fall by 80%, to about $2 billion, overnight.[9] (Caveats may apply to the underclaim side of this analysis; see Section 12.2.2.2.)



The idea that EITC over- and under-payments are meaningfully driven by intra-family misclaims also jibes with common sense. The fact that there are massive benefits available in the tax code for children is incredibly well-known across the United States. (The fact that childless people might get the EITC, meanwhile, is far less well understood.) While there are certainly some EITC-eligible families with children who fail to claim thousands of dollars, the idea that many millions of them every year strains credulity. If millions of missing households existed, outreach and engagement efforts would be finding them in droves. And, on the other hand, if millions of children were fraudulently claimed every year by adults with no meaningful connection to the child, there would be millions of annual horror stories about families unexpectedly unable to claim their children. Almost every American personally knows multigenerational families or divorced couples who regularly make technically-improper intra-family misclaims. How many Americans, on the other hand, know families who have been blocked from claiming their children by wholly fraudulent actors?

12.2.2.2 Technical issues regarding underclaim statistics

We noted above that, in some cases, the underclaim statistics may correctly account for intrafamily misclaims. That is, some estimates may in fact *not* count Jamie as being in the

[9] This assumes that the underclaim households are now eligible for zero EITC. In point of fact, they might be eligible for a smaller, childless EITC, which would leave more of an extant access gap than that shown in the figure. But given how much smaller the childless EITC is, the dollar gap would still shrink considerably.

participation gap, depending on the details of the misclaim. However, it is not entirely clear which estimates do and do not control for this issue; and there are certain specific scenarios where the issue is almost certainly not accounted for.

The further details in this section are technical and in some cases speculative. Casual readers may satisfy themselves with understanding that: (1) the intra-family misclaim issue *definitely* causes distortions on the overclaim side (that is, on Sasha's return), and (2) the intra-family misclaim issue very likely accounts for at least a portion of the underclaim stats, and *may* indeed account for a large portion — though it may not account for as large a portion as the high-level analysis above would suggest.

In this section, we are talking about the "Jamie" household. Jamie has $20,000 in income — ineligible for childless EITC, but eligible with a qualifying child. Jamie is technically entitled to claim a child, who is in fact — nominally incorrectly — claimed by Sasha. To model participation gaps, analysts define the household and model its "correct" tax return based on Census data, and then match the household to actual tax data. Households with a credit on their modeled return but not on their actual return are in the gap. But, critically, when the Census-IRS match is made, certain corrections are made to the modeled tax units. A household that was modeled EITC-eligible but filed Married Filing Separately, for example, will be re-modeled as EITC-ineligible.[10] So, what about the case in which Jamie is modeled as having a child but their matched tax return does not have a child: will they be re-modeled as not having a child, and have their eligibility recalculated accordingly?

- First, let us consider the case where Jamie does not file a return at all. In this case, since there *is* no match between the modeled household and an empirical tax return, Jamie's modeled household is *not* amended on the basis of an observed tax return. In this case, the participation gap *is* inflated by the intra-family misclaim issue. Jamie is modeled as having a child and being EITC eligible; they (do not file and) do not claim the credit, so they are in the gap.
    - If, perhaps more realistically,[11] Jamie had lower income, they would still be properly in the EITC gap after reassigning the child to Sasha, because even without a child they would be eligible for childless EITC. But, in this case, the estimated size of the unclaimed credit would be vastly overstated thanks to the incorrect number of children on the modeled return.
- Now let us consider another alternative case, where Jamie and Sasha are in the same household, and both file returns, which are both matched in the Census-IRS research process. In this case, the technical documents cited below appear to suggest the child *is* usually correctly reassigned from Jamie's return to Sasha's, and so Jamie is not in the participation gap.
- This leaves the original situation: Jamie and Sasha live in different households and both file. (This is, we suspect, the most common situation.) In this case, do the

[10] Married Filing Separately taxpayers are not eligible for the EITC — a provision designed to prevent gaming in wealthy one-income households.
[11] Lower-income taxpayers with income below the filing threshold are more likely not to file.

models update Jamie's modeled household to be childless, in light of the fact that no qualifying children were claimed on the matched and observed return?

- Plueger (2009) — apparently describing the official IRS participation rate methodology at the time — appears to suggest that Jamie's eligibility is *not* adjusted. Pp. 175-176 outline that the modeled eligibility is amended if another adult *in the household* claims the child instead, but does not mention amending eligibility if the other claimant is not in the same household. It notes further that "More analysis is needed to determine whether the unclaimed children in some returns and the unanticipated children in other returns balance out when viewing the national survey results" — again suggesting that the analysts were not ready to assume that these *were* the same children.
- Jones (2014) — again apparently describing the official methodology at the time — again appears to suggest Jamie's eligibility is *not* adjusted, though the language is ambiguous: "The analysis file, therefore, was refined to update and improve EITC eligibility modeling. Part of this process involved substituting in values from 1040, W2, or EITC data when available and appropriate. These included values for earnings, adjusted gross income, and investment returns and dividends; and variables related to household structure, filing status, and claimed children. Married persons filing separately were removed from eligibility to be consistent with EITC rules. **Qualifying children who were modeled as being dependent on one adult, but were claimed by another in the tax data, were reassigned to the claimant.** Finally, using the matched data allowed for checking when a possible eligible was actually claimed on someone else's tax return, which would disqualify him or her from EITC participation" (emphasis added). In context, "in the tax data" appears to describe only those households in the matched sample. But then if Sasha is not in the Census sample, and therefore not in the matched IRS data, the child would not be reassigned. And it is unlikely, given Census sampling, that Jamie and Sasha would both appear in the data, if they indeed live in different households.
- Coleman et al (2024) is the paper cited on the current IRS EITC participation rate page. This methodology is clearer than the other papers', and says that Jamie's eligibility *is* adjusted. Jamie's modeled child is defined as a "surplus child" (relative to the observed return), and in the case of a filer with a surplus child: "The number of qualifying children is reduced to the number of qualifying children claimed on the return. The filer's eligibility and credit amount are reestimated based on the reduced number of qualifying

children."[12] This means Jamie would *not* appear in the participation gap. However, a few points urge caution in accepting this fully at face value:

- If there had been a methodology change between Plueger/Jones and Coleman, there should have been a concomitant increase in the estimated participation rate. But, to our knowledge, there is no evidence of such a change in the average estimates any time in the last 20 years. An 80% participation rate has been the standard estimate throughout this entire period.
- Coleman et al Footnote 10 regards estimates of EITC dollars left on the table by tax units that do claim EITC, but do not claim the full modeled amount, an issue the authors refer to as under-claims. They write: "Under-claiming can occur when the actual EITC amount paid is less than the modeled EITC amount which can come from differing estimates of income **and/or number of qualifying children**" (emphasis added). But according to the written methodology this should not occur: if the provisional modeled number of qualifying children were to exceed the observed number on the return, the modeled number of children would be revised downwards, and would not cause a discrepancy between the modeled and claimed credit amounts. (Of course, perhaps it is the footnote that is in error.)
- Finally, the results in the paper, which is linked directly from the IRS EITC participation rate page, do not perfectly match the figures on the web page. The participation rates for TY19-21 are as shown below. Footnotes on the IRS page suggest that the TY21 discrepancy may be due to using CPS and ACS data in different contexts. But it is surprising that the different data sources would yield not just such different levels but different trend lines. The trend discrepancy calls into question which calculations are in fact being used for which statistics.

	TY2019	TY2020	TY2021
IRS website	79%	76%	81%
Coleman et al (2024)	82%	80%	78%

[12] Note, though, that the converse is not true: if the family claims more children than are observed on the empirical return (they have "deficit children"), the number of modeled children is not edited upwards to match the tax return. Thus, if the Coleman methodology were used to estimate overclaims, the analysis in 12.2.2.1 would still hold. (In the aggregate, then, the Coleman modeled households contain fewer children than actually exist — which would be an issue if the model were used for anything *other* than the narrow purpose it was built for.) This point is relatively immaterial since, per 12.1.5, national estimates of overclaims come not from this Census-IRS research program, but from the audit program.

- A further wrinkle — or conversely, perhaps the key to the apparent contradiction — is the distinction between with-child and childless participation gaps. Recall that the average childless EITC benefit is an order of magnitude smaller than the average benefit with a child. To date, we have been considering the case where Jamie's income made them ineligible for childless EITC. But suppose their income were $12,000. In this case, they remain EITC-eligible without a child — but the credit would be worth 85% less.
    - Suppose that Jamies in this case are very likely not to file, perhaps in large part because of the smaller EITC. In this case, since non-filer households do not have their household composition adjusted, the participation gap would be unbiased in per-person terms, but badly biased in terms of dollar amounts.
    - Suppose, alternately, that Jamies in this case do file, but they often fail to claim the childless EITC. (This would, of course, raise a new question, as to how their tax software or tax preparers were letting this childless EITC go unclaimed.) In this case, again the participation gap would remain the same size in per-person terms. The Coleman methodology, though, would estimate a much smaller dollar gap than the apparent Plueger methodology, and a much larger fraction of the gap would be comprised of childless, rather than with-child, non-claimants. Any estimates of the dollar gap driven by older research than the Coleman paper would in this world be over-estimating the portion of the gap comprised of households with children, and thereby over-estimating the dollar gap. There is indeed some (admittedly very circumstantial) evidence for this theory:
        - Zucker and Ramamurti (2024), writing before the release of the Coleman paper, summarize the extant EITC gap research, finding that most sources point to the EITC taxpayer gap being about 50% childless, and the total EITC dollar gap being around $10 billion. The analysis suggests that, if intra-family misclaims were in fact seriously biasing these statistics, the gap would be about 80% childless, and the dollar gap about $3.6 billion (see Appendix C).
        - Coleman et al, more consistent with these later numbers, appear to suggest a gap of $4.5 or 4.7 billion[13] for TY2019 (the last year in their data before pandemic-era distortions), and report that 71% of households in the TY2021 EITC gap are childless (with perhaps still more childless *for purposes of EITC*). But both of these figures should be taken with a grain of salt. Regarding the former: the paper seems to systematically underestimate all dollar figures, due, it says, to weighting issues (see Footnote 5). Regarding the latter: the paper, frustratingly, does not systematically publish with-child/childless estimates, and provides this figure only for TY2021. The TY2021 rules vastly expanded eligibility for childless filers, which could have had

[13] Table 3 reports $4.7 billion. Table 1 implies $4.5 billion.

the impact of biasing the incidence of children in the non-claimant pool for that year.
    - If this circumstantial evidence were correct, though, we could be looking at the following situation:
        - Older estimates did not correctly account for the intra-family misclaims. This yielded a $10B gap, with half of the gap (in terms of tax units, not dollars) being those with children.
        - Newer estimates since Coleman correctly account for the intra-family misclaims (on the underclaim side). But the Jamies of the world, who are in point of fact eligible for childless EITC, are filing but not claiming it. They remain in the participation gap, but at a far lower dollar rate than previously assumed. In this case, the participation gap in dollar terms remains far smaller than assumed.
- On top of all this, there are questions about the PIK methodology (used to probabilistically link Census records to IRS data) and whether it introduces its own distortions, which could also be obscuring the EITC participation rate — due either to erroneous matches (which should be very rare, per Layne et al (2014)), or due to non-random failure to assign a PIK (see Raze et al (2026)).

What should we conclude from this exercise? There are a handful of possibilities, not entirely mutually exclusive:

1. Perhaps all EITC statistics have always correctly accounted for intra-family misclaims among filers (Plueger and Jones each accounted for it correctly, but the text of the papers was misleading), *and* Jamies are not especially likely to be non-filers. In this case, the 20% EITC participation gap is driven entirely by other issues, and changing dependent definitions will not impact it. In this case, too, the fact that the underclaim and overclaim populations approximately match in size is entirely coincidental. Even in this case, reforming the definitions would still cause overclaims to fall, and resolve other problems outlined throughout Section 12.2.
2. Perhaps Jamies are overwhelmingly likely to be non-filers; low-income taxpayers are simply not bothering to file at all when they do not claim children. In this case, the Jamies' modeled eligibility is *not* adjusted in any of the participation rate estimates, and the participation gap *is* a function of intra-family misclaims (whether or not there was a change in methodology). In this case, the analysis presented in 12.2.2.1 would slightly overstate the impact amending definitions would have on the participation gap, but not by much.[14]
3. Perhaps Jamies do file returns and are eligible for childless EITC, but for whatever reason fail to claim it. Older research did not adjust modeled EITC eligibility, was thereby stymied by intra-family misclaims, and therefore estimated a large participation gap in dollar terms based on the assumption that Jamie households had

[14] More households would remain in the gap, but they would move from the with-child gap to the childless gap, vastly decreasing the amount of money left on the table.

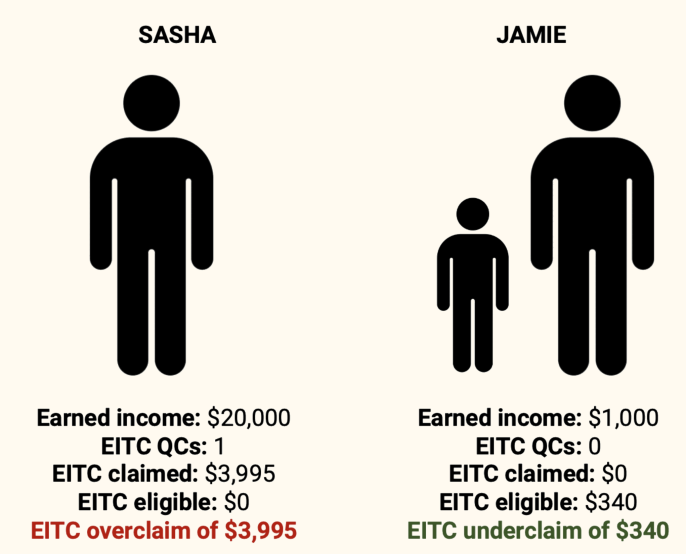
children. Newer research following Coleman correctly assesses that the Jamie households are in fact childless households for EITC, and are still in the gap, but with far smaller dollar figures. The participation gap in person terms would not, in this world, have changed over time. In this case, again, the analysis presented in 12.2.2.1 would slightly overstate the impact amending definitions would have on the participation gap, but not by much.[15]

4. Finally, as suggested by Footnote 10 in the Coleman paper, and by the apparent consistency of the estimates over time, perhaps the current participation gap estimate continues to *not* adjust the Jamie modeled households, and suffers from intra-family misclaims in the straightforward way one might expect. In this case, the analysis in 12.2.2.1 is correct on the merits.

We do not know which of these options is most likely. (Such ambiguity drives our argument in Section 14.2.1 that we need better data on the non-filer population.) Still, in all cases, there *are* measurement distortions stemming from the current dependent rules.

12.2.2.3 "Gaming"

So far in this section, both households were eligible for the same amount of EITC. Now let's suppose a slightly different scenario. Again, Sasha and Jamie have a productive co-parenting relationship: Sasha is the breadwinner, supporting the child financially, and Jamie stays at home to provide child care. Naturally, the child spends slightly more time with Jamie. Jamie has nearly no income and is not required to file taxes, so opts not to; Sasha files and claims the child, with Jamie's approval. But the IRS, expecting Jamie to claim the child, sees:



[15] Again, more households would remain in the gap, but they would move from the with-child gap to the childless gap, vastly decreasing the amount of money left on the table.

In this case, the misclaim *does* cost the government money, relative to the letter of the law; the overclaim exceeds the underclaim by $3,655. We might say the family is improperly and strategically assigning children to the family member eligible for a larger credit.[16]

This analysis is restricted to EITC, but under current law, Sasha is also eligible for over $1,000 in CTC, whereas Jamie is eligible for $0. Goldin and Jurow Kleiman estimate that 1.6 million children are in this situation for CTC. There is also the more extreme scenario where Jamie has $0 earned income, and so is eligible for $0 in EITC; no one can claim the child for EITC. The authors estimate 1.2 million children (a near-subset of the 1.6) are in this situation.

In other words, it is plausible that a large portion of intra-family misclaims reflect situations where the family strategically assigns the child to a household who can get the benefit, rather than the "correct" household, who can't. If the maximal interpretation of the aggregate statistics in Section 12.2.2.1 is accurate, the 1.6 million households identified by Goldin and Jurow Kleiman could well represent slightly over half of the intra-family misclaims. This is consistent with Leibel et al's estimate that 85% of improper child claims generate a larger, rather than a smaller, EITC.[17]

Policymakers may argue, even if we can get comfortable with the family implications of benefits being routed through a different household, that there is a policy interest in preventing such costly "gaming."

Still, it is worth thinking critically about the nature and impact of such gaming:

- In the scenario above, the letter of the law denies the child access to CTC and most of EITC. Is it really a policy failure for families to find a way to receive this support? Consider that, if Sasha and Jamie were still married filing jointly, they would receive both credits.
    - Similarly, consider a scenario where mom did not work this year due to an illness, or while recovering from addiction, and grandma provided the financial support during the hard time, despite not literally living with her grandchild. Again, families can get EITC and CTC only by assigning the child to grandma. Does the law really intend to deny this family the support, particularly during their hour of need?
- Policymakers are probably more concerned about a scenario where a wealthy family — who more clearly does not deserve EITC — games the system by assigning the child to a lower-income member of the family. It is true that such behavior would maximize EITC, as Leibel et al document.

[16] The "gaming" dynamic could also impact the aggregate statistics. Because of this behavior, the amount of money on the overclaim side ought to exceed the amount of money on the underclaim side; on average, the same child is worth more to the household who actually claims them than the household who forgoes them. Because of the number of unknowns in the aggregate figures, we do not attempt to model this dynamic.

[17] To a first order of approximation, based on this 85% figure, we might assume that 70% of misclaims are intentional assignment to higher-EITC household, while the other 30% are assigned without regard for the resulting credit claims, with half falling in the red and half in the black.

    - Consider first, though, that EITC is only one part of the tax system. Suppose a single mom who is quite wealthy, earning $150,000, allows grandma, with earned income of $10,000, to claim the child. Grandma now claims $4,534 in combined EITC and Additional CTC.[18] But mom forgoes Head of Household filing status and CTC, increasing her tax liability by over $5,000.[19] Of course, this is only one scenario, and there are certainly cases where wealthy families would stand to gain by reassigning children to lower-income tax units. But a more holistic analysis may show such a scenario is less plausible and less common than some policymakers may think.
    - To the degree that this more problematic gaming does occur, though, the IRS will usually have the tools to distinguish it from the case above, where both households have low (or moderate) incomes. Policymakers need not paint high-income gaming with the same brush as low- and middle-income gaming.
- Leibel et al also ascribe a significant portion of EITC gaming to cases where Sasha has already claimed three children, the maximum for EITC, and allows Jamie to claim the fourth. This is again improper by the letter of the law, as Congress has determined to provide no additional marginal EITC support for fourth children and up. But it is not hard to imagine why families would seek additional support for their additional children, and why they may not understand that to be improper.

In short, some portion of intra-family misclaims may, on net, cost the government money. But we encourage policymakers to think seriously about the severity of this alleged policy failure. Even if some policymakers are committed to the idea that "gaming" along the lines of the above is intolerable, is it really tantamount to outright fraud? Is it really a case of millions of households abusively claiming children who are simply not theirs, and millions of others unwittingly missing out on a credit they could claim if only they would file a return? And to the degree some cases truly are so problematic, can they not be distinguished from those that are much more benign?

12.2.2.4 Policy impact

Meanwhile, the perception of these vast populations of under- and over-claims has very serious implications.

On the over-claim side, the EITC is regularly trotted out as a lion's den of waste, fraud, and abuse — the federal assistance program with *by far* the highest improper payment rate in the government. (The second highest, a tie between Medicaid and school lunches, have improper payment rates less than half that of EITC, according to the National Taxpayer Advocate.) Some politicians may hold up the EITC improper payment rate with the ideological goal of discrediting government assistance in general — for which purpose the statistics provide useful grist. Others may look on the abuse with sincere concern and

[18] $3,409 in EITC, and $1,125 in the refundable portion of the CTC.
[19] Using tax year 2024 figures: with AGI $150,000, a single filer has a taxable income of $135,400, and $25,539 in tax owed. A HoH filer with one CTC child has a taxable income of $128,100, and $20,093 in tax owed after CTC — $5,446 less.

constantly cast about in good faith for ways to reduce it. This led, in the 1990s, to disproportionate audits on EITC families, who were audited at rates much higher than wealthy taxpayers, and to the addition, in the Taxpayer Relief Act of 1997, of section 32(k), the now-infamous paragraph that bans families from the EITC for two or ten years if they are found to claim it improperly. More recently, in 2025, the improper payments concern led to a proposal for an EITC child pre-certification program, in H.R. 1, that could have blocked access to millions of eligible families while doing little to cut down on improper payments. Even if some advocates may themselves dismiss the import of a few billion dollars in alleged improper payments, they should still take seriously the onerous consequences that can be imposed on claimants when such concerns are allowed to fester. For those who *are* concerned about improper payments on their own merits, meanwhile, the estimated billions in improper payments due to improper child claims have served only to distract from the billions more in true improper payments due to misreports of income, sometimes at the behest of shady tax preparers, oversight of whom could *actually* meaningfully cut down on overclaims, as well as provide myriad ancillary benefits.

On the under-claim side, vast programs have been funded and built to address the alleged billions-of-dollars gap in EITC access. But the actual size and nature of this gap is, at best, subject to significant uncertainty. It is very likely we are looking in fundamentally the wrong place for the access gap — looking for millions of taxpayers with children, when the only true non-filers are, perhaps, young, single, childless taxpayers who have never filed before. Reaching such different types of groups could well require vastly different interventions. And, in the long run, truly closing the access gap (rather than just attacking it) requires an accurate measure of it.

12.2.3 Improper claims due to first-come-first-served implementation

As discussed in Section 12.1.3, despite what the statute says, in practice the administrative system strongly privileges the taxpayer who claims a child first. In the best case, this generates unnecessary pressure within complex families to file quickly, lest an inappropriate claimant beat you to the punch — a pressure which is widely reported anecdotally. In the worst case, it dissuades the appropriate family from filing a claim to their child in the presence of an incorrect competing claim, due to the high and opaque administrative costs of filing a challenge, allowing an inappropriate or even fraudulent child claim to stand.

12.2.4 Administrative burden on taxpayers and administration costs

Even in cases where the system generates an appropriate outcome, there is the question of the costs this complexity generates.

Taxpayers must answer dozens of detailed, sometimes-impenetrable questions about everyone in their family, and mail the IRS legalistic disclaimers like Form 8332; tax software must build, maintain, and test this functionality; tax agencies must design forms, answer questions from taxpayers and software developers, and enforce compliance. This creates

substantial monetary costs for tax software (consider that nearly 15% of all pages in Direct File — and, qualitatively, an even larger fraction of the total effort — were in the dependent flow), which is passed on to taxpayers via filing fees, or by tax agency program costs; it creates administrative costs for federal and state tax agencies; and it creates meaningful time costs for taxpayers. Right now, the complexity of family questions may not be so glaring, overshadowed by all the other complexity in the tax code. But if income-related questions in tax software can eventually be largely waived by pre-population, family information will become the one remaining source of intractably onerous complexity in tax prep — simply unavoidable under current law.

And the vast energy taxpayers, tax software providers, and IRS enforcers end up spending on these sprawling esoteric minutiae ends up distracting from building and enforcing a system that really does route benefits to those who need them.

12.2.5 Perceptions of complexity

In addition to literal time and administrative costs, there is the more intangible impact all of this has on perceptions of the tax code.

Americans widely perceive that the tax code is too complex for humans to understand; rather than a simple reflection of the desires and needs of the body politic, the code (and the agency that enforces it) is a trick designed to catch them in unwitting mistakes, they think. And it is this very complexity that drives taxpayers with otherwise straightforward tax situations to pay handsomely for tax software or private paid preparers, who promise to handle the complexities. The misperception that normal human beings can't do their own taxes is, unfortunately, based on reality.

Frustration over taxpayers' reliance on often-unscrupulous paid preparers is ubiquitous in the tax field. But policymakers should take seriously the role an impenetrable tax code plays in pushing taxpayers to such measures. The complexity of dependency rules hits close to home for families, and no amount of technology or pre-population will be able to save us from rules that don't match taxpayers' intuitions.

The complexity of the rules is, to again use Secretary O'Neill's words, simply "not worthy of our free society." In addition to saving time and money, fixing them can begin a virtuous cycle of rebuilding trust.

12.3 User research findings

Over the years, user research for Direct File and other tax products has learned much about taxpayer's attitudes toward tax filing, and about the challenges products would need to overcome. Usually, these exercises treated tax law itself as an immovable object: working with taxpayers, the team might find ways to better explain the law, but not to change it. But what if we were to apply the same methods to tax policy? What would happen if we worked

with taxpayers to redesign the Internal Revenue Code? What rules would they find confusing or intuitive?

This is the project we set out to do with the dependency rules during user research in summer 2025. We aimed to understand how taxpayers *do* interact with dependent-claiming today, how they expect it to work, how they would prefer it to work. We explored this question in four ways:

- We asked taxpayers how they have dealt with child claiming decisions to date.
- We showed taxpayers a list of possible criteria they might use to prioritize child claims, and asked them to respond to the list, telling us about the relative importance of each.
- The core exercise: We showed taxpayers six scenarios where two different tax units might plausibly claim a child, asking who should be able to claim the child and why. The cases are hypothetical, but based on real situations that can occur. We did not explain to participants what current law would say about the scenarios.
- We showed taxpayers two plausible sets of rules (one modeled on the U.S. code and one modeled primarily on the Canadian code), and asked which made more sense.

For all but the first question, we asked taxpayers to set aside their understanding of the rules as they exist today. We wanted to learn: what do taxpayers think the process of claiming a child ought to be? We asked: if you were forming a new country and building the tax rules from scratch, what would be a reasonable, intuitive, or fair approach for determining who should be able to claim a child?

Eight of our user research participants had personal lived experience claiming dependents on their taxes; seven did not. We hypothesized that these different groups might have divergent opinions, and in the results that follow we generally distinguish whether a given participant has relevant lived experience — though we generally find little difference between the two groups.

The first set of findings from this user research were presented above, in Section 12.1.6, covering how taxpayers currently claim dependents. Below, we cover first taxpayers' responses to the scenarios, and then abstract from the scenarios and other comments to a handful of insights: meta insights about the exercise itself; procedural insights about *how* claiming decisions should get made; and substantive insights about what factors taxpayers look at in making prioritization decisions.

12.3.1 Scenarios

The table below summarizes the six scenarios and participants' responses. When using names in the scenarios, we intentionally used gender-neutral names (though participants often imputed gender to the claimants). We urge the reader not to get too lost in the details of each case; we will present more on participants' rationales and unified theories of their intuitions in Section 12.3.4.

Scenario	Participant responses	Treatment under current law
1. Taylor and Cameron are **separated parents**. Child lives 305 nights with Taylor and 60 with Cameron. Cameron pays child support and the majority of expenses.	***A. Taylor (parent with more time): 2 votes*** *(1 with lived experience)* ***B. Cameron (parent providing financial support): 10 votes*** *(5 with lived experience)* ***C. Other: 3 votes*** *(2 with lived experience)* — 50-50 split — Depends on who pays the house's expenses — Depends on who would get the biggest benefit	**Only Taylor can claim child.** *(Residency test; 152(c)(1)(B).)* Exception: Taylor can cede *some* claiming rights to Cameron via Form 8332.
2. Casey and Jordan are a **non-married couple** who move in together in February. Casey pays all household expenses. Jordan does not work and has a child from a previous relationship.	***A. Casey (pays costs): 7 votes*** *(4 with lived experience)* ***B. Jordan (bio parent): 8 votes*** *(4 with lived experience)*	**Only Jordan can claim the child for most benefits.** *(Relationship test; 152(c)(2).)* Exception: if the couple lived all year together with the child, Casey would be able to claim the child for *some* benefits (as a qualifying relative).
3. Child began the year living with their parent but **moved in with their aunt in March**. The parent lives in another state for the rest of the year, but sends money to support the child and aunt.	***A. Parent: 9 votes*** *(5 with lived experience)* ***B. Aunt: 3 votes*** *(3 with lived experience)* ***C. Other: 3 votes*** *(0 with lived experience)* — Family should sort it out — Depends whether mother's money fully covers costs — Depends whether parent has effectively abandoned child	**Only the aunt can claim the child.** *(Residency test; 152(c)(1)(B).)*
4. A married couple who file jointly (#1) and their child move in with a grandparent (#2) in March. The grandparent provides the majority of the grandchild's support for the whole year.	***A. Parent: 2 votes*** *(1 with lived experience)* ***B. Grandparent: 12 votes*** *(7 with lived experience)* ***C. Other: 1 vote*** *(0 with lived experience)* Family should sort it out; if not, an equation that weighs parenthood	**Only the parents can claim the child for most benefits** (though grandparents claim for HoH QP). *(Parent gets priority in tiebreaker; 152(c)(4)(A)(i).)*

Scenario	Participant responses	Treatment under current law
	against financial contributions.	Exception: If grandparent has higher income, parent can cede claiming rights to grandparent.
5. The child moves from the home of their parent (#1) to their grandparent (#2) in August, when their parent is deployed overseas. The grandparent provides the majority of financial support all year.	***A. Parent: 4 votes*** *(2 with lived experience)* ***B. Grandparent: 10 votes*** *(6 with lived experience)* ***C. Other: 1 vote*** *(0 with lived experience)* Family should sort it out.	**Only the parent is eligible to claim the child**. *(Residency test; 152(c)(1)(B).)*
6. Three children of never-married, now-separated parents spend equal amounts of time with each parent.[20]	***A. Split tax benefits 50-50: 6 votes*** → + default to father if needed: 1 vote → + default to mother if needed: 2 votes ***B. Split kids across the two returns, and trade years for odd-numbered children: 4 votes*** → but follow divorce decree first: 2 votes ***C. Come to an agreement: 1 vote*** ***Other: 3 votes*** — A or B — A or C — Depends on other details	**Current law has no notion of "equal amounts of time."** Whichever parent had 183 days of co-residency (to the other's 182) can claim the child. *(Residency test; 152(c)(1)(B).)*

12.3.2 Meta insights

12.3.2.1 The current rules are not popular

Out of 89 total votes,[21] only 19 votes actually matched current law. Of course, these were complex scenarios designed to probe the edges of the law. But, 21% is still a remarkably low rate. **We think we can reject the null hypothesis that the current rules map well to taxpayers' intuitions.**

[20] Scenario #6 was added after the first interview, so there were only 14 total votes.
[21] We added Scenario #6 after completing the first interview.

12.3.2.2 Taxpayers often disagree about who should claim a child

The most obvious but perhaps most important insight from this exercise: **it is probably impossible to generate a single set of determinative tests whose outcome will please every taxpayer and cover every situation.**

For one thing, taxpayers themselves, as they went through the scenarios, often increasingly realized they could not define consistent principles they would want to apply in each case:

- *"I hadn't realized how complicated and challenging it is to come up with a fair answer for this. The more you try to make it fair, the more complicated and convoluted the process gets."* — Participant #6
- *"These scenarios, man. I thought my life was complicated. The grass is not greener on the other side."* — Participant #9
- *"I feel like, oh, man, so many nuances. I mean, there's probably a lot of people getting audited for doing their taxes wrong. I worry right now reading all these scenarios."* — Participant #1

Sometimes, participants explicitly appealed to the idea that any hard-and-fast rule was going to return the wrong answer in some scenarios:

- *"I think it really still at the end of the day depends on the situation between each parent."* — Participant #9
- *"I say that every situation is different. And so you can't say that whatever works for this person is going to work for the other... Every situation, I think, should be taken differently."* — Participant #5

Commonly, taxpayers gave answers that implicitly contradicted earlier answers. One participant,[22] for example, found for Cameron and Casey on account of financial expenses; but then found for the aunt on the grounds that the mother was just too uninvolved, and the financial expenses weren't enough.

To the degree that taxpayers identified sound principles, they often began to hinge on minute distinctions that cannot be specified at scale. For example, several participants were more sympathetic to a parent's claim if they failed the residency test because they were deployed overseas (Scenario #5) than if they were living in another state for less clearly defined reasons (Scenario #3). Or, similarly, participants said the stylized facts we provided were insufficient given how such decisions should be based on less cut-and-dry facts:

- *"Tax isn't, you know, black or white; there's gray area."* — Participant #10 (who works as a tax accountant)

Moreover, even if individual taxpayers were clear and consistent, they certainly did not universally agree with one another. *No* scenario had consensus; scenario 2 even divided participants exactly eight to seven. Even when a single principle commanded a large

[22] Participant #5.

majority of responses, as with the prioritization of a support test in Scenario #3, there was still a 25% faction who disagreed. 75% is a commanding majority in the context of, for example, electoral politics, but it's far from unanimity in the case where we seek 100% compliance with the law.

This dynamic mirrors the reflections of policy experts we have spoken to who were involved in earlier dependency streamlining efforts. It is not that previous simplification efforts were not well-intentioned, or were not cognizant of the existence of a huge variety of family and caregiving arrangements in the modern United States. It is that coming up with a single standard that can apply in every case is nigh on impossible.

12.3.3 Procedural insights: how the decision should be made

The above insights might cause policymakers to despair: how can we write good dependent rules if no one agrees, even with themselves, on what those rules should be?

The insights in this section should be reassuring. While taxpayers may not be able to agree on how to write determinative rules that yield the correct prioritizations in every case, they also do not generally see the need to: **most taxpayers think there should be wide latitude for claims to be resolved ad hoc by families, rather than codified in statute.**

12.3.3.1 Within reason, families should be able to decide among themselves who claims a child

As they went through scenarios, despite the provisional conclusions they came to in each case, many participants' answers began to return to a familiar solution: reaching an agreement among family members and caregivers. It's the way many of them had already been approaching child claiming themselves, or how they had seen friends and family approach it (usually not realizing it is technically unlawful today), and they thought it was the right approach:

- *"I think if you can come to an agreement, I think each person's situation is likely very unique... And so to me, it just makes more sense to have those conversations internally. And if you can, then just do that."* — Participant #9
- *"I think there needs to be an agreement between adults or else you're just going to be bickering for the next 18 years... And if there's anything that changes, communicate as adults... I think it's better to just give people information and then let them decide, you know, how they want to go about claiming their children for tax season."* — Participant #8
- *"I almost feel like this is one where I would hope the family could sort it out themselves and choose what seems the most right for them...because they're family members and there seems to be some level of collaboration here, maybe there's an opportunity to just allow them to make that decision about who's going to claim the child."* — Participant #6, reflecting on Scenario #3

- *"Agreement between the family, that's important... It needs to be in writing...because feelings change... 'You said this'...No, we put it in writing and this is what we're sticking to. doing. Anytime that agreement changes, we need to actually update it, even if it's informal, even if it's just something in Word, and we all have a meeting of the minds and we all sign it just so there's understanding... Deciding who claims kids when you're sharing responsibility, that is a very tricky thing. And I think people make it gray and it's not. It's very black and white. The problem is no one talks about it at the beginning of the year. They just all want to fight for who's going to claim the kids when it's time to file the taxes."* — Participant #11

Often, participants explicitly called out that an agreement among the family should supersede other principles, even if they were committed to the alternative principle:

- *"I think the parent [should claim], because that's the original mother... If it was forced onto the aunt, or it was an agreement between them, or if the parent abandoned their child, that's a bit of a different case."* — Participant #14, discussing Scenario #3 (emphasis added)
- *"And again, if you already had a prior agreement, that agreement should stand, whether it be verbal or written.* — Participant #3

Not only would working things out within the family allow the child's caregivers to determine who was really caring for the child, but it would also support more multidimensionally-optimal arrangements. It could allow different family members to allocate costs and benefits in different ways, and it could even take into account the *needs* of the various caregivers, something current law considers completely irrelevant:

- *"I have a male cousin who was not able to financially support his daughter for a variety of reasons, but he had a good relationship with the girlfriend who had full custody of the daughter. In the end, even though she was gracious enough to say, hey, if you want, you can claim the child, he's like, you know what, why don't you do that? Because I was not able to really give you as much money as I wanted to on this monthly basis. They did not have a child support agreement. They just had a verbal agreement."* — Participant #8
- *"I guess it just depends on the situation and how the aunt is living at the time and if she really needs that amount."* — Participant #3, discussing Scenario #3
- *"I think it should be case-by-case type of thing, because maybe they came to an agreement with this, like you pay all of this [cost], and I'll take care of saving, and maybe one day we buy a house or something like that."* — Participant #5

We asked some participants what they would expect to have happen if someone else claimed their children. Again, probably unsurprisingly, participants told us they would want to have a conversation about it:

- *"If it was their mother, I would talk to her about it, see what was going on, especially if we had a prior conversation about who was going to claim them."* — Participant #3

These insights of course dovetail well with Section 12.3.2.2: it's probably impossible to create a set of rules that picks the best claimant in every case. But taxpayers are generally comfortable with the idea that the rules don't have to.

12.3.3.2 Credit maximization / "gaming," reimagined

In discussing how a family might decide among themselves who should claim a child, participants sometimes described the credit maximization / "gaming" behavior so concerning to policymakers: taxpayers described allocating the child to the claimant who would get the largest tax benefit. But, universally, they did not consider this to be shady or immoral behavior; rather, it was an extension of the process of figuring out what works best for the family in general.

- *"Cameron makes more sense to me in this particular scenario. But if Cameron doesn't benefit from the claimage, then Taylor."* — Participant #9, discussing Scenario #1
- *"Mom, without any work, wouldn't be able to get their earned income credit...but the non-biological person would be able to get those [credits]. So it would make better sense as a unit in a household to have the bill-paying person claim the child."* —Participant #12, discussing Scenario #2
- *"Well, because if you're filing taxes, it's based on income. She doesn't work. So she's not going to have any income. So everything would be zeroed out. So plus, I mean, he's the one with the income coming in and he's the one that's paying the expenses."* — Participant #4, discussing Scenario #2
- *"When there's an amicable relationship between the parents, at times the parents decide who's going to claim the child based on their income. And sometimes when there are those really positive relationships between these two adults, then it's kind of like, you know, maybe it'll benefit you because you're in this position."* — Participant #8

It is worth taking this insight seriously. "Gaming" can — and does — occur. Generally, though, taxpayers simply don't see it as wrong. Policymakers may object that taxpayers aren't sufficiently understanding the costs and injustice of this gaming. But, in a democracy, there is a logic to writing rules that match citizens' ethical commitments, instead of fighting them.

12.3.3.3 Legal agreements — principally including divorce decrees, and rotating-year scenarios — should come first, and are seen as a special case of families working it out for themselves

We have already covered the fact that many families — probably millions across the country — have divorce decrees or other legal paperwork stipulating child claiming rights, paperwork families trust and assume must be legal.

The key insight we want to add here is that these legal agreements are often seen as a special case of the family agreements discussed above. **In taxpayers' mental models, agreements among the family come first. When informal agreements are insufficient, family negotiations might be escalated to the legal domain, where they become**

formalized in family court. The latter is merely an extension of the former: taxpayers often discussed informal verbal agreements and written legal ones in the same breath.

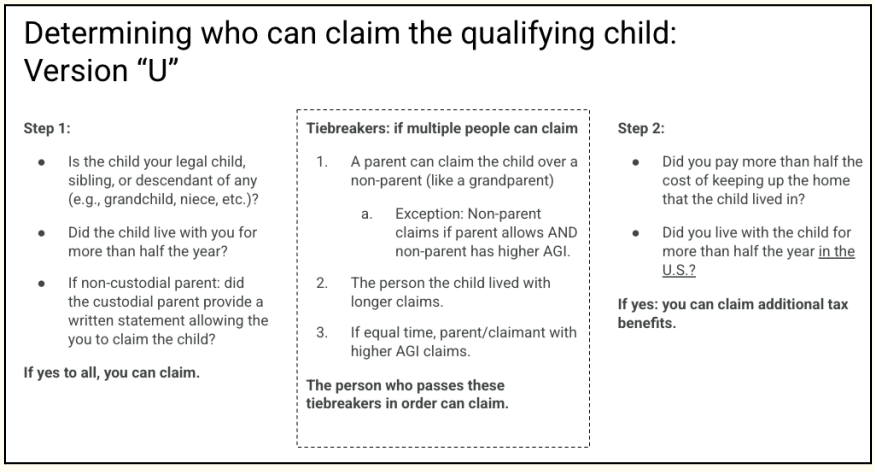
- *"What happens if people can't agree on these terms? This is why people have divorce paperwork, I think. That's exactly why lawyers exist... I'd say probably most people have a divorce agreement, which if you have a good lawyer should stipulate how this is going to go. If not, then I'm guessing you probably should have a good co-parenting relationship to have a discussion, like an amicable discussion to agree on who does this."* — Participant #1
- *"They [the potential claimants] may not be able to come to an agreement about that particular thing, and that might be something they'd have to go to court over."* — Participant #12

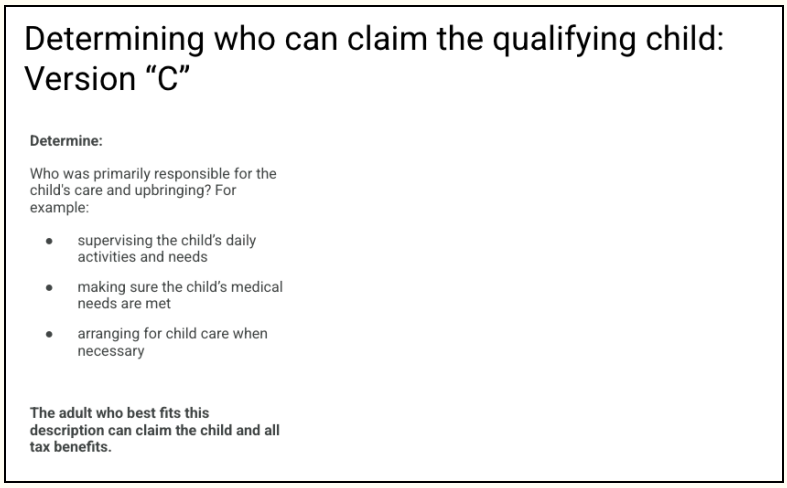
Indeed, taxpayers' intuition seems to be that it is in court that child claiming conflicts are definitively resolved, not in the office of an IRS auditor applying the rules of IRC 152. The notion that courts — agents of the state — are freelancing opinions that the IRS does not respect does not occur to most taxpayers. Why wouldn't the (presumed monolithic) government trust its own determinations?

12.3.3.4 But if there is conflict, there need to be firm rules

There is, however, an important caveat to taxpayers' general belief in a case-by-case, non-legalistic approach to child claiming rules.

We hypothesized taxpayers might prefer a more laissez-faire rules framework in general. After showing them the six scenarios, showed taxpayers (a) a set of rules resembling the existing definition of a qualifying child and (b) an alternate set of rules based on Canada's simpler and more "vibes-based" framework. (Neither was identified as belonging to a particular country).





We expected that taxpayers would prefer the more straight-forward Canadian-inspired framework. To our surprise, participants usually preferred the more complex and prescriptive U.S. rules, provided they did not get distracted objecting to any specific aspect of them. (The tiebreaker of awarding the child to the parent with the higher AGI, in particular, drew several taxpayers' ire.[23]) Taxpayers felt that the Canadian version was too vague to actually be helpful in resolving a conflict:

- *"I think they really need to have a list of questions that they need to answer within themselves and possibly with the other parent or grandparents... There need to be more questions for people to really start to think about, because sometimes you start researching something, and you're like, oh, I didn't think about that, or oh, I didn't know that that was also part of an expense."* — Participant #8
- *"The more yes or no questions, the better... I still think there should be some kind of thing that you fill out throughout the year, kind of force people to pay attention to what they're doing, because you're going to get to tax filing time and this stuff is going to frustrate you."* — Participant #13
- *"I feel like version C does not really go into depth like the previous version does. I almost feel like version C, both parents could be like, oh, yeah, that's me... [I'd choose] version U, only because I feel like it gives more information, whereas version C is very vague."* — Participant #1
- *"It's just that it's more clear cut and more concise and less room for potential self-interpretation. [With Version C, you] could send that to each party and they could say, I do that."* — Participant #9
- *"[I'd pick] Definitely the first scenario [Version U], because it takes a little bit more information to assess that out. And sometimes in families, there are dynamics where*

[23] A number of participants remarked on the AGI tiebreaker. Some did not understand what it had to do with child claiming at all. Some thought it was written backwards: surely the law meant the *lower* AGI, so that families would be able to claim the EITC. Some ascertained that the law was using AGI as a proxy for the amount of financial support provided by the household, and objected that this was not a good assumption: *"It doesn't mean, just because you earn more, that you're going to contribute more."* — Participant #5.

one person is a stronger personality than another, and maybe that other person wouldn't speak up [under Version C]." — Participant #12
- "*The more detail, the better it is.*" — Participant #3

Importantly, though, participants did not prefer Version U *in lieu* of a family-decides framework. Several reiterated their preference for ad-hoc family decision over formulaic determinations, even after reviewing the two frameworks. The distinction appeared to be that, in the case where families cannot agree, there must be concrete rules to fall back on. Put differently, taxpayers would prefer if families can work it out for themselves, based on existing legal processes, or based on their own informal negotiations. But if the holistic vibes-based process of family negotiation fails to yield consensus, there needs to be something *less* vibes-based.

12.3.4 Substantive insights: whose child is this?

Putting aside taxpayers' stated preference for case-by-case resolution, if taxpayers *did* have to specify deterministic rules, what would those rules be? How are taxpayers reasoning through these decisions? The table below summarizes the principal arguments mounted for the selected adult in each case (not including Scenario #6, which does not lend itself to the same type of considerations):

Scenario	Participant responses
1. Taylor and Cameron are **separated parents**. Child lives 305 nights with Taylor and 60 with Cameron. Cameron pays child support and the majority of expenses.	***A. Taylor (parent with more time): 2 votes*** *(1 with lived experience)* Care can't be calculated, and it can outweigh financial contributions. *"I would resort to the parent that provides the most care because I think we can't put a quantitative price tag on what providing care looks like."* — Participant #12 ***B. Cameron (parent providing financial support): 10 votes*** *(5 with lived experience)* Because Cameron is providing the most money. *"Taxes are about money."* — Participant #2
2. Casey and Jordan are a **non-married couple** who move in together in February. Casey pays all household expenses. Jordan does not work and has a child from a previous relationship.	***A. Casey (pays costs): 7 votes*** *(4 with lived experience)* Taxes are about money; it's about who is paying, and Casey is providing the financial support. *"It should be the de facto parent."* — Participant #2 *"It may be Jordan's child, but I think it goes down to who's paying for the expenses."* — Participant #15 ***B. Jordan (bio parent): 8 votes*** *(4 with lived experience)* The biological relationship should take precedence; there is no formal connection to Casey. *"Casey and Jordan can break up in March."* — Participant #10 *"In this instance, only the parent, the actual parent, should be able to. I mean, if they were married, it might be a little bit different."* — Participant #1

Scenario	Participant responses
3. Child began the year living with their parent but **moved in with their aunt in March**. The parent lives in another state for the rest of the year, but sends money to support the child and aunt.	***A. Parent: 9 votes*** *(5 with lived experience)* Most say that tax benefits should follow the money. Some participants also say the parent should take precedence, or that the aunt's involvement is probably contingent. *"Living with someone isn't as quantifiable as actual financial payments."* — Participant #15 ***B. Aunt: 3 votes*** *(3 with lived experience)* Time with the child makes the aunt the real parent. *"Taking care of a child is not an easy task. Yes you're helping out financially but I'm thinking about all the emotional and the investment that it takes. This aunt is basically taking the parent role."* — Participant #5 *"Once a parent lives in another state, I'm going to say aunt gets to claim the child, hands down. You cannot put a financial monetary amount on time, and she is spending nine months out of the year caring for this child while the parents are out of state."* — Participant #12
4. A married couple who file jointly (#1) and their child move in with a grandparent (#2) in March. The grandparent provides the majority of the grandchild's support for the whole year.	***A. Parent: 2 votes*** *(1 with lived experience)* Parental claims take some precedence. *"I mean, that's their child. The grandparent is just kind of being charitable, I think, there. The married couple should be able to claim the child, but whatever refund they get, it'd just be a nice thing to give it to the grandparent."* — Participant #13 ***B. Grandparent: 12 votes*** *(7 with lived experience)* Most point out the grandparents are covering most of the child's costs. Also because they are paying *and* co-residing for *most* of the year. *"The grandparent is practically being the parent at this point."* — Participant #5
5. The child moves from the home of their parent (#1) to their grandparent (#2) in August, when their parent is deployed overseas. The grandparent provides the majority of financial support all year.	***A. Parent: 4 votes*** *(2 with lived experience)* Not fair to penalize parent for being deployed; and parent *did* have the child most of the year, but *"if it was earlier in the year, then that's a different story."* — Participant #11 ***B. Grandparent: 10 votes*** *(6 with lived experience)* They are providing the most money.

As we look longitudinally across the scenarios, some participants tended to gravitate toward some version of a relationship test, which created a universe of plausible claimants. Within the universe of plausible claimants — whether or not limited by relationship — some version of a support test was usually the tiebreaker. But views differed on how restrictively

to define the relationship test, and on how to define the support test at all. The participants broke down roughly as follows:[24]

Participant	Scenario				
	1	2	3	4	5
1A. Follow the money, regardless of relationship					
11	Cameron ($)	Step-parent ($)	Parent (~$)	Grandparent ($)	Parent (for contingent reasons)
4*	Cameron ($)	Step-parent ($)	Parent ($)	Grandparent ($)	Grandparent ($)
2*	Cameron ($)	Step-parent ($)	Parent ($)	Grandparent ($)	Grandparent ($)
1B. Follow who is responsible (broader test than $), regardless of relationship					
12*	Taylor (care)	Step-parent ($/care)	Aunt (care)	Grandparent (care)	Grandparent (care)
7	Taylor (care)	Step-parent ($)	Parent ($)	Grandparent ($/care)	Grandparent ($)
5*	Cameron ($)	Step-parent ($)	Aunt (care)	Grandparent (care)	Grandparent (care)
Group 2A. Within the set of biological/legal relatives, follow the money					
15	Cameron ($)	Parent	Parent	Grandparent	Grandparent
14	Cameron ($)	Parent	Inconclusive	Grandparent ($)	Grandparent (responsibility)
3*	Cameron ($)	Parent	Parent ($)	Grandparent ($)	Grandparent ($)
10	Cameron ($)	Parent	Parent ($/ responsibility)	Grandparent ($)	Grandparent ($)
Group 2B. Within the set of biological/legal relatives, follow who is responsible (broader test than $)					
8*	Probably Cameron ($)	Parent	Aunt	Grandparent	Grandparent
Group 3A. Strong presumption for parents; among parents, follow the money					
1*	Cameron ($)	Parent	Parent	Parent	Parent
13	Cameron ($)	Parent	Parent ($)	Parent	Parent
Group 3B. Strong presumption for parents; among parents, follow who is responsible					

[24] One participant gave too-contingent answers across the board to classify properly.

9*	Inconclusive	Parent	Parent (responsibility)	Grandparent (for contingent reasons)	Parent (responsibility)
No classification					
6	Inconclusive	Parent	Inconclusive	Inconclusive	Inconclusive

* Had relevant lived experience

In other words, we can summarize taxpayers' view as varying along two different dimensions, as follows:

		Relationship test		
		Any relationship	Any legal/bio relationship	Parents first
Support / responsibility test	Follow the money	Group 1A **3 participants** *2 w/lived exp*	Group 2A **4 participants** *1 w/lived exp*	Group 3A **2 participants** *1 w/lived exp*
	Multidimensional care/responsibility	Group 1B **3 participants** *2 w/lived exp*	Group 2B **1 participant** *1 w/lived exp*	Group 3B **1 participant** *1 w/lived exp*

12.3.4.1 Relationship

Participants were all over the map regarding the importance of a child's legal/biological relationship to their claimant:

- *Group 1. Relationship does not matter, as long as the claimant is providing the most care/support:* 6 participants (4 with lived experience)
- *Group 2. Claimants should be legally/biologically related; beyond that, any relationship is fine:* 5 participants (2 with lived experience)
- *Group 3. Parents get meaningful priority over other potential claimants:* 3 participants (2 with lived experience)

Participants in Group 1 simply did not see the claimant's nominal relationship to the child as meaningful. Any adult in the child's life was a potential claimant, provided they were actually the de facto parent:

- *"I hate that it must be a legal parent or step-parent. It should be the de-facto parent."* — Participant #2

One participant was a non-biological, non-legal father, as his de facto son's father had disappeared, and so he could not legally adopt his child:

- *"Situations like mine — obviously I'm not the only one — where one of the parents has gone missing: it stops you from doing so many other things... I provide everything for*

this child. I love this child... and in those situations, just because... you can't prove [your legal relationship to the child] doesn't mean that you shouldn't be able to claim him or her." — Participant #5

This group represented just under half of participants, and fully half of those with lived experience in claiming children.

Participants in Group 2 drew the line at claimants with no explicit relationship. This came up frequently when discussing Scenario #2, regarding bio parent Jordan and Jordan's new co-resident partner Casey. It was thanks to this second group that the grandparents in Scenario 4 and 5 got more votes (10 and 12 votes, respectively) than the non-biological parent in Scenario 2 (7 votes).

- *"It's hard to know whether to draw the line at moving in together as the place that the household is blended, and therefore Jordan's child becomes in some way Casey's child — or whether, like, marriage or some sort of legal agreement or establishment of shared household needs to happen before that makes sense. I think without more information I would say Jordan can exclusively claim the child because it's their child and not Casey."* — Participant #6
- *"Casey doesn't really have any blood ties or marriage ties or anything. So, to me, that would just be considered charity. You're letting them not work and you're paying all expenses — like, well, sorry, you need to fix that before you can make any legal claim, like a deduction for the child."* — Participant #13
- *"I would say Jordan, because that's his kid, you know what mean, that's his biological kid, so it's like, why would she [Casey] be able to claim? I understand she pays all the expenses, but yeah, Jordan, for sure."* — Participant #3
- *"The biological relationship matters more than some of the more financial elements."* — Participant #9
- *"Casey and Jordan can break up in March. So, you know, there's not a lot of legal bindings to the situation."* — Participant #10

Participants in Group 3, meanwhile, were strongly biased toward biological parents claiming their children, even in situations where the child doesn't live with the parent and other family members are shouldering day-to-day responsibilities or providing financial support, and even if those other family members were biological relatives. For taxpayers who still gravitated toward the parent, they often articulated a principle that there comes a point the parent explicitly transfers responsibility, in contrast to a family member just temporarily "stepping up."

- *"[Regarding Scenario #3] I assume the aunt has stepped up and it's not a legal situation, so I would say the parent... [Scenario #5] I think I'm still going to go with the parent in this one, too. Because, again, sometimes as family members, you step up to do things; that doesn't necessarily mean you get to change up people's rights."* — Participant #9, discussing Scenarios #3 and #5

- *"[Regarding Scenario #3] Why is the child living with the aunt? What's the aunt's jurisdiction? Like, does the aunt have the decision making authority to make decisions on behalf of this child? I would probably need a little more information, even though my gut reaction is kind of leaning me towards that the parent is responsible for taxes in regard to that child. However, if the parent's not taking care of the child and the aunt has some kind of legal — I don't know if conservatorship is the right word. ... [Regarding Scenario #4] Again, my gut reaction is kind of telling me that the biological parent is responsible here, not necessarily a grandparent."* — Participant #1, discussing Scenarios #3 and #4

One participant who ultimately was better classified as Group 1 did still give voice to the idea of a parent presumption:

- *"Of course, biological parents should always have first say. If there's some sort of agreement that goes on with other guardians, grandparents, maybe they receive help."* — Participant #11

This parent-first group was, though, the smallest.

12.3.4.2 Financial versus multidimensional support

Within the bounds of the relationship test, most participants favored a clear-cut financial support test, but some favored a more multidimensional care/responsibility test:

- *Group A. Financial support matters most*: 9 participants.
- *Group B. Care/responsibility are not just financial:* 5 participants.

For the taxpayers who favored a financial support standard, the question was straight-forward:

- *"Whoever has the biggest financial influence on the child is the most important thing... Because taxes are about money. So if you are paying the money, then you should get that tax benefit back to you."* — Participant #15
- *"It really comes down to who's paying more out of pocket. ... If we were divorced and I was stay at home and I wasn't bringing in any money at all or I was only doing gig work and he was paying child support and it was covering like 90% of what was needed, and it was also helping with utilities and everything else, he should be the one who's allowed to actually claim the children, because he's the one that's financially out of pocket, even though I'm the one doing all the day to day."* — Participant #11
- *"The person who's paying the expenses, it's his money, and taxes have to do with money... It should be financial because taxes is based on money, what comes in and what gets paid out, or expenses and stuff like that. So whoever is financially money-wise paying, I think, should get the deduction."* — Participant #4

As much as this may fly in the face of policymakers' intuitions and experiences, some even contended that a financial standard was preferable because it is *more* objective, and *easier* to observe:

- *"I just feel like there's a lot more subjectiveness with [the question of residency], and how would you report that? It'd probably be hard on families to do that. But you can see physical evidence with child support or the expenses."* — Participant #14

This is not to say that research participants are right on this score; support is in practice prohibitively difficult to observe, a rationale for introducing the residency test in the first place. But it is worth understanding taxpayers' intuitions that it would be an appropriately objective measure.

In Group B, some participants were equally convinced financial support was the right standard, but they felt co-residency was probably the best possible proxy. They argued that in practice, the person spending more time with the child is going to be spending more money on that child, because of the sum of smaller expenses that may not go into a general calculation of financial support.

- *"I'd argue it's whoever the child is living with. You're not calculating how much more toilet paper that child is using and all those little things... At the end of the day, it's whoever provides the most financial support. I think that the person who provides the most financial support will always be who that child's living with, because of all of those tiny little expenses... If you live with a child, it's so many expenses, like there's so many expenses that I don't think most people calculate."* — Participant #7

But some participants in Group B also argued that responsibility for a child is a multidimensional proposition, of which financial support is just a piece, and not the whole picture.

- *"Taking care of a child is not an easy task. Yes, you're helping out financially, but I'm thinking about all the emotional and the investment that it takes."* — Participant #5
- *"Once a parent lives in another state, I'm going to say aunt gets to claim the child, hands down. You cannot put a financial monetary amount on time, and she is spending nine months out of the year caring for this child while the parents are out of state."* — Participant #12, discussing Scenario #3

One participant made both of these arguments, though coming out more on the value of care per se:

- *"I still think that the custodial parent should be the default in a perfect world. If they're providing the most care, they're putting out the most expenses, even if that other parent is paying child support and paying bills. If you put a monetary amount on that person's time... they would be paying way more, like way more in taxes, way more in everything — because you can write down expenses, but so much comes up in raising a child. It is astronomically expensive on a day-to-day basis... But the day-to-day care of*

another human being is a huge commitment, and that person should have that benefit because they have the biggest burden… I would resort to the parent that provides the most care because I think we can't put a quantitative like price tag on what providing care looks like. Time is money and that is a tremendous amount of supervision and time spent putting kids to bed and taking them to doctors. And there's no financial price tag or payback for that. Care is something that you can't put a price on." — Participant #12

For all the range of opinion on this question, though, one smaller throughline is clear: participants were far more bearish on residency tests than the current law. Participants either used residency as an incomplete proxy for support, or eschewed it as a consideration entirely. The gulf between participants' rejection of a residency test and the current law's strong reliance on a strict residency test generated most of the differences between participants' intuitions and the law, in practice.

12.3.4.3 No support for defining tax benefits differently; limited support for splitting benefits

Perhaps just as important as what we did hear is what we didn't.

While we heard a lot of different takes about support and responsibility tests, no participant cited the real-world existence of, or suggested there should be, different support/responsibility tests for different benefits. For example, at present, the qualifying relative tests require a taxpayer to have provided for half of their dependent's support,[25] whereas the Head of Household rules require the claimant to have paid most of the costs of the household itself. Such a distinction never came up in our conversations. More broadly, despite some interest in being able to split the financial benefits across two households, no participant suggested that one tax unit should get certain benefits while another gets other benefits, or suggested they knew this was possible under current law. **Every participant had a one-to-one view: if a household claims a child, they are claiming the child for all relevant benefits.**

There was some limited support, though, for the idea that all the benefits from claiming a child ought to be allowed to be split across multiple households. One participant proposed splitting the benefits throughout all six scenarios, either 50-50, or ideally even according to a formula, though recognizing this might not be feasible in practice:

- *"I think if I were trying to optimize for fairness and not efficiency, it would be something along the lines of…an equation where you put in what your relationship is to the child, how much financially you're supporting them, how much you live with them, and how much you're looking after their day-to-day needs, and then get sort of an output of a percentage."* — Participant #6

Meanwhile, when it came to the last scenario, of two parents who spend equal time, nearly every participant wanted to split the benefit across the parents, though only about half

[25] Or 10-50% under a multiple support agreement.

explicitly proposed an explicit 50-50 splitting of the benefits; the rest were satisfied with trading off year by year, or letting the family settle it internally. For one participant, this made him rethink his previous answers, and wonder if a split might have been fairer for earlier scenarios too:

- *"Smarter minds than myself, but you know what, even if it was just 50-50, you know, an even split, that ultimately could be the fairest thing... in the different scenarios that you've shown us. I think having a split benefit would be fair."* — Participant #10

12.4 Recommendations

Overall, we recommend a regime in which families (broadly construed) have fairly wide latitude within which to decide for themselves (or defer to existing formal or informal agreements) who should claim a given child, and all tax programs follow the same rules. More detailed rules to prioritize competing claimants should exist, but these would only come into play if, empirically, competing claims are actually made. On the implementation side, the IRS will need to make it easier to actually make competing claims, and create a new process to rapidly and humanely identify and adjudicate conflicts. In all, this is a simpler regime; and this simplicity itself facilitates compliance.

This framework is far from our work alone, and builds on and borrows from the work of many colleagues in this field.

This overall framework comes with two meaningful disadvantages: the cost of administering increased conflicting claim resolutions, and an increased potential for gaming (on which more in Section 12.4.7). But the framework would resolve nearly all the problems outlined in Section 12.2.

12.4.1 All tax programs should use a common dependency definition, without programs split across households

We believe that, as much as possible, the dependent definitions for all principal tax benefits should generally match — to promote clarity, match taxpayer intuitions, reduce accidental non-claims, and facilitate cross-domain linkages.

In practice, such harmonization could be achieved in various ways, and the details could well depend on other reforms laid out in the following sections. But, under today's law, harmonization would require some version of the following changes:

- Removing the Form 8332 process, whereby custodial claims are waived for some, but not other, benefits. There should not be a process to elect to split the benefits across households, as 8332 allows. (The proposed child rules outlined below will obviate the need for the 8332 per se, as well.)
- Removing distinctions between HoH Qualifying Person and dependent.

- Removing one-off carve-outs, e.g., removing the provision whereby EITC waives the qualifying child support test that applies to CTC and other programs (or, similarly, waiving that support test across the board).
    - More controversially, policymakers should end the policy of dependency eligibility varying according to immigration status. In practice, though, given the partisanship of this issue, this change could be hard to implement, with neither immigration hawks or doves interested in ceding ground to the other in order to align on a universal standard.
- Variation across programs may continue to exist in the form of child-specific standards; it is understandable that, for example, CDCTC is only relevant for younger children. Still, policymakers should endeavor to align age tests as much as possible. The gap between CTC available through age 16 and EITC through age 18 (with exceptions), for example, introduces unnecessary complexity, and should probably be removed (though hopefully by increasing the CTC gap upwards or meeting in the middle, rather than by cutting EITC support for older children). If policymakers want to achieve a smoother step-down in support as children age out of the tax system, they can do this in more explicit and tractable ways than by introducing arbitrary and confusing variance across programs.

There are, admittedly, good policy reasons to consider drawing eligibility distinctions across programs. On a theoretical level, as Goldin and Jurow Kleiman point out, different programs have different policy goals (sometimes driven by income phase-ins/phase-outs) that point in different directions. In more practical terms, it is easy to picture sympathetic cases where household splits could make sense. For example, consider a world with universal fully-refundable CTC, and an EITC (as today) with a phase-in; and consider a child whose primary carer is a parent with no earned income, and who also gets significant support from a parent in another household with some earned income. It might make intuitive sense for the first parent to claim the CTC, and the second parent the EITC.

As appealing as these considerations may be, though, we think the preponderance of considerations point toward the simpler approach:

- **If the discussions above have illustrated anything, we hope they have shown that complexity is per se damaging.** It creates administrative burdens, it creates opacity in the minds of taxpayers, and it can generate unforeseen and hard-to-observe problems. Even if a new regime avoided some of the worst excesses of the current system, it could unintentionally introduce new distortions, equally hard to unwind. And even if a new regime only featured limited deviations from simplicity, those limited deviations could easily become a slippery slope toward greater complexity.[26]

[26] For example, policymakers might feel justified in introducing yet more deviations from a common definition each time they create a new policy. An interesting version of this dynamic arose in the final editing stages of this paper, when the IRS released draft guidance for the new 530A accounts (also known as “Trump accounts”), which introduced a new relationship prioritization for qualified individuals to claim children for purposes of the accounts (adapted from a rule applied to 529A

- Advocates and policymakers have long sought to promote take-up and reduce burden by creating automatic (or nearly-automatic) cross-enrollment schemes between tax and other public benefits. It is well understood that the difference in household definitions between tax and benefits programs puts a limit on how much integration there can be. What has received less attention is that the balkanization of the child definitions *within tax* is a blocker, too. Suppose tax-benefits automation advocates could wave a magic wand, and conform benefits definitions to tax definitions. Which tax definition would they conform to? **If we aspire to align taxes and benefits on a common definition, surely we must start with taxes themselves aligning on a common definition.**
- Most importantly, **splitting children across multiple returns for multiple programs simply does not match taxpayers' intuitions**. With one exception (discussed below), the idea that different programs might assign dependents to different returns did not come up at all in our user research. This too is consistent with anecdotal evidence from VITA sites, where even parents who have formally filed Form 8332 to cede their claims are often hesitant to claim the non-cede-able benefits they are still entitled to; the idea that benefits might split across returns is just too unintuitive. While the abstract policy logic might point to splitting benefits, such logic does not, we think, survive contact with the real world (especially when the program divergence is driven by income phase-ins and phase-outs which are themselves probably opaque to most taxpayers). We believe the evidence shows that taxpayers think of a child as claimed by one person (or couple), and we would do well to respect the integrity of their intuitions. And while opponents may object here that a handful of user research and anecdata does not make the point conclusively, we do at least believe the burden of proof is on anyone arguing for the less intuitive regime.

There is one version of cross-household splitting that came up in user research: as noted in Section 12.3.4.3, when participants considered two separated parents who split child duties exactly down the middle, some said there should be a way to split the children across two returns. Leaving aside for a moment the arithmetic challenges of such a policy,[27] is it worth creating an option for a 50-50 split?

We think the answer is still probably not. Again, policymakers should resist even well-founded deviations from simplicity as a slippery-slope back to large-scale complexity; and, again, the ability to collaborate across domains is compelling. Perhaps most important, most participants were very comfortable with using alternating years to effectuate a split.

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accounts). In a world where each benefit already has slightly different rules, it is easier for policymakers to casually create yet new ones for each new program.

[27] Splitting a credit is simple enough in theory, but what if the credit is worth different amounts (due to different income levels) depending on which return claims it? Still more complex, how does one "split" Head of Household status, with all the downstream tax consequences this creates? One possible option would be to calculate the return with and without the dependents, and take the arithmetic average of the two options. But this calculation would be challenging to implement, challenging to explain to taxpayers, and still may not actually map to anything like a 50-50 splitting of the benefit.

Alternation is a workable solution, already at hand, familiar to nearly everyone, and probably enshrined in millions of legal documents. Even if a true 50-50 split were preferable, is it really preferable enough to be worth overcoming this inertia?

Though this is speculative, we also think the existence of a 50-50 split could create opportunities for foul play in some cases of divorced parents. In a world without 50-50 splits, non-custodial divorced parents who are little involved with raising the children probably often concede they do not have the better claim to the children. But in a world with 50-50 splits, these parents might abusively pressure their ex-partners to split the children, as a fig leaf, painting the split as the fair move, and the winner-take-all alternative as selfish. The existence of a 50-50 split might also raise the question of why there is not a 60-40 split, and a 70-30 split, which would of course fracture and complicate the picture still further.

For all these reasons, we believe the best answer is a world where one dependent belongs to one tax return, and as much as possible, all the benefits on the return follow the same eligibility logic (with the possible exception of age and immigration tests).

12.4.2 Define a permissive class of claimants, within which family decides

Rather than try to identify the single best claimant for a given child, we believe the law should instead define a relatively permissive class of claimants who are allowed to claim a child, within which the family (and/or guardians) get to decide who will claim the child. Any claimant within this class would be considered a valid claim. (The next sections cover what to do in the case that multiple members of this class make conflicting claims.)

We think this is a clear conclusion from our user research on dependency:

- **Many participants explicitly argued for a child's family having meaningful latitude to decide who will claim them.** Such a regime best matches taxpayers' intuitions.
- **Most participants cited divorce decrees or other legal agreements as valid instruments to determine who claims a child; without a permissive claim structure, these allegedly legal instruments would remain legally dubious**, wreaking havoc with families' intuitions.
- **Most participants were not able to distill a universal principle that adequately handled every case; much less did participants agree on what the principles should be.** Even from the small sample size of our user research, we think it is clear that creating a single, determinative standard to adjudicate the best possible claimant in every single case, especially in as large and varied a country as the modern United States, is a fool's errand. Even if policymakers ignore the two considerations above, and seek to specify the single best claimant in statute, this last consideration should give them pause: they will probably fail.
- Finally, despite the above point, even if it *were* possible to distill a widely-acceptable standard to adjudicate every case, it is quite plausible that such a standard might

> not, in practical terms, be administrable, requiring the government to observe and audit complex quantities it is in no position to do. At that point, **the rough proxies policymakers would necessarily resort to in building an administrable system might again fail to attract widespread support or understanding**.[28]

We also think this basic framework ought to be able to appeal to a range of ideological commitments. For the left, it means the law does not discriminate against non-traditional families, disproportionately families of color, that do not conform to inherited Eurocentric intuitions of family. For the right, it means getting the government out of the business of meddling with families about who is *really* in charge of a child's well-being. For partisans of any stripe, these rules respect the fundamental diversity of family arrangements and lifestyles inherent in a free society. And, finally, for small-c conservatives, it means preserving many elements of the de facto status quo, since many families in practice do decide among themselves, often without those determinations being contested by the IRS.

This basic idea — a more permissive set of claimants, who decide among themselves — is also broadly the framework endorsed by Goldin and Jurow Kleiman.

Of course, the question becomes: How should this relatively permissive class be defined? Here, we do not have a definitive answer, and can picture any of several proposals being valid choices. It is the shape of the solution, more than its precise contour, that we are committed to. Some possible choices:

- ***Relationship OR residency.***
    - Note that this would still bar a non-co-resident non-legal parent from claiming a child. This seems in practice like a rare case; in most cases, it seems that a carer without a proper legal relationship to the child is providing their care on the basis of co-residence.
    - In this instance, policymakers should consider widening the definition of relationship to include, for example, cousins.
- ***Parenthood OR residency (or, put differently, residency with a carve-out for parents).***
    - This may be a more appealing option for policymakers who find the previous option too broad.

Either of the above scenarios might require an amended residency test relative to the one in 152(c)(1)(B) — "who has the same principal place of abode as the taxpayer for more than one-half of such taxable year." Such a stringent test ends up causing problems for housing-unstable children who live in each of several households for a number of months. Moreover, providing documentation proving 183 days of co-residency can be challenging even for claimants who pass the test. And, in practice, the regulations implementing the

[28] This is, to a degree, the story of the residency test as it exists today. Co-residency plays a significant role in Section 152 in part because it is an observable proxy for support. But taxpayers who favor a support test do not seem to recognize it as such; they, in fact, say they would prefer a true support test.

provision create various esoteric carve-outs, like temporary absences for certain purposes but not for others. An amended test might allow a dependent to pass if the child lived at the claimant's household *either* for six months,[29] or at least as long as any other home.[30]

Notably, Goldin and Jurow Kleiman define their permitted sets of claimants much more narrowly than the above proposals. In the scenario of a universal child benefit (with no income requirements), they propose a pure residency test, and only allow non-relative co-residents to claim a child if the parents are not present. We think this definition too restrictive, since it would do nothing to address improper claims in which the residency test is failed, which represent the vast majority of EITC improper claims. In the scenario of the current EITC/CTC, with income phase-ins and outs, they propose (a) parents, (b) co-residents with income above the parents, or (c) non-co-residents who provide support for the child. This definition, meanwhile, is in practice close to the ones we suggest, but it is complex, and relies on a hard-to-explain and hard-to-administer support test, which was intentionally omitted from the early-2000s redraft of the qualifying child definition, specifically for administrability.

Skeptics may understandably object that our proposal would sanction poor targeting, or even coordinated outright abuse. For example, a wealthy family may choose to have their 20-year-old child, who earns a little money from a summer job, claim their 12-year-old child on a separate return, thereby claiming EITC. This is indeed a risk, and policymakers may explore ways to carve out such scenarios without creating undue complexity for the vast majority of claimants (see Section 12.4.7). But we would note that, in practice, the present law is not well understood, and the usually-lax implementation regime means that such abuses are probably possible, today, too. At least in the case of this updated regime, it would be easy for more appropriate claimants to register rival claims (Section 12.4.4), moving the conflict into a domain where it can be correctly resolved.

On the other hand, other skeptics might argue that this is still too restrictive: perhaps there should be no rules at all about who can claim a child, and the government should only get involved in cases of conflict. Such an approach would eliminate the risk of any claimants being ruled ineligible on technicalities. But we contend that this approach is a bridge too far. No taxpayers seem to have the intuition that anyone at all ought to be able to claim a child, and such a radically permissive structure would seem to open the door to foul play. We believe it is possible to create a broad enough set of permitted claimants as to reduce to near-zero the possibility that sympathetic claimants are barred from claiming, without

[29] Policymakers might be inclined to remove this first part of the sentence, and simply allow households where the child has lived at least as long as any other. Such a rule, though, would actually be *more* stringent in some cases than the current residency test. Consider a world where two parents are filing independently, but in fact each spent a large portion of the year living with the child, such that one parent lived with the child eight months, and one for 10 months. Under a 'at least as long as any other household' rule, the eight-month household could not claim the child.

[30] Such a rule would also obviate the need for explicit workarounds during the year of a child's birth, which are currently required, as a child born in October did not live anywhere at all for more than six months during the tax year.

opening Pandora's box to deeply unintuitive outcomes. At the very least, this permissive structure would be a significant improvement over the status quo. Policymakers could study the impacts and consider whether there indeed are cases that militate in favor of expanding the set of permitted claimants still further.

12.4.3 Tiebreaker rules

Within the permissive set of potential claimants defined in Section 12.4.2, the law must further define how ties will be broken in the case that multiple valid claimants attempt to claim a child.

But we must be clear: these are not tiebreakers in the same way as the current rules in 152(c)(4). The tiebreaker rules in that section generally ensure that there is only ever one valid claimant per child; if a claimant passes the general rules but fails the tiebreakers, they are not a valid claimant. **The tiebreakers we are discussing here come into play *only* if there are, empirically, multiple claimants who pass the general rules *and* make a claim. If there are not multiple valid claimants, these tiebreakers do not come into play**, even if another adult *could* in principle have had a superseding claim. Suppose mom and dad live in separate households and are both, by the Section 12.4.2 rules, valid claimants; suppose further that the tiebreakers proposed here would privilege dad's claim. If mom claims and dad doesn't, this tiebreaker determination is of no import; mom's claim is valid and uncontested.

What should these tiebreakers be? Here we do not have a firm proposal, but rather a series of considerations:

- *The tiebreakers should be determined in conjunction with the resolution process as described in Section 12.4.5.* These tiebreakers will only work if they can be administered well and resolved quickly. A slightly inferior rule should be preferred to a superior rule if it will lead to dramatically faster and more dignified resolution processes.
- *Taxpayers appear to have a preference for precision*. Though the context was slightly different, and this insight is worth confirming in future research, we conclude from our user research exercise showing versions "U" and "C" that taxpayers prefer that the rules be more precise than gestural when it comes to the question of resolving a conflict. A general preponderance-of-the-evidence test based on the child's "primary carer" seems appealing from a policy level, but appears to fly in the face of taxpayers' intuitions. (There is also the administrative concern that a more vibes-based tiebreaker regime could foment, or at least fail to root out, prejudice in adjudications.)
- *Existing legal instruments and agreements should be reflected in the tiebreaker rules*. Though policy wonks may not like it, we believe that child-claiming agreements defined in divorce decrees and other legal agreements are here to stay, and it is better to embrace taxpayers' (understandable) intuition that these agreements are valid than to fight against it. The first line of defense in a reconciliation should be

such a legal instrument. If the instrument supports an unjust outcome, this is unfortunate, but as with any poor legal instrument, the right answer is to amend it, not simply pretend it does not exist. In the long run, dismissal of legal agreements will weaken the perception of justice and the rule of law, not strengthen it. Note, though, that these instruments would only have sway here in Section 12.4.3, in the category of tiebreakers rules. We believe the legal instruments and agreements should probably *not* be allowed to move the claim outside the permissive class defined in Section 12.4.2.

- *Relative income should probably not be a tiebreaker*. Though a relative income tiebreaker makes some sense given the income structure of the EITC and CTC, our user research suggests that a relative income test is deeply unintuitive to taxpayers, who understandably do not see what relative income has to do with the question of who is parenting a child.
- *Tiebreakers should probably be based on a combination of closeness of relationship and amount of care/responsibility/support for the child.* As discussed in Section 12.3.4, opinions differ on the relative import and boundaries of these tests, and a tiebreaker that provides some weight to both is probably most likely to please most taxpayers. We do not, though, take a firm position on how the care/responsibility/support test should be defined.

12.4.4 Implementation; distinguishing tiebreakers from non-conflicts

A policy regime based on a permissive set of potential claimants and tiebreakers among actual claimants naturally requires it to be easy for potential claimants to actually make conflicting claims.

The first step is straightforward: MeF should accept conflicting dependent claims, not just for dependents with IP PINs, but for all dependents. As one of us proposed in 2023, it may be desirable for taxpayers to be warned they are making a conflicting claim before filing their return. In a world where tax filing software may not be able to query the IRS pre-submission about the status of a dependent,[31] MeF could consider a system whereby returns with conflicting dependent claims *are* rejected, as at present — but where the returns can be resubmitted with an override parameter, which would suppress the conflicting-dependent error. This way, taxpayers could be warned about the conflict; they might realize they had sought to claim the child in error, or they might touch base with the other adults in the child's life and opt not to make the conflicting claim. But, if they want to go forward, they simply have to indicate their intention to contest the claim, and re-submit the return. This resubmission would kick off the resolution process, discussed in more detail in the next section.

[31] Direct File, if it exists, could shortcircuit this clunky process by querying IRS systems during the return preparation process to warn a taxpayer pre-submission if a conflict occurs, as discussed in Section 2.2.3.

But there is a problem: what if the first claimant has already been paid out on account of their dependent claim? Suppose, in other words, that one guardian claims a child on February 15, and another claims on April 10 — but of course, the April claim has not been made yet when the February return is submitted. What should the IRS do in February? There are three broad options, all of them with drawbacks. The following section should be seen as a presentation of possibilities and considerations, rather than a concrete recommendation:

- *Pay the February claim when received; but claw back the money if the April claim ultimately supersedes the February claim*. This option is the most straightforward to implement, and in many ways is most reflective of how the tax system works in general — accepting claims at face value until there is evidence of a problem. But it opens up the possibility of widespread clawbacks, which could be financially damaging for many taxpayers. They could also be quite unpopular, tending to undermine trust in the new regime.
- *Pay the February claim when received, and privilege this claim over future claims, so it is hard to override and hard to claw back.* This option, though, is not in keeping with the proposed new statutory framework, and persists with the current problem of implementing a de facto first-come-first-served system without basis in law.
- *Hold the February claim for some set of February claimants, leaving time to find out if another contested claim will come in.*[32] In particular:
    - Define an easy-to-understand set of child claims that are likely to be contested. These might be claims by first-time claimants; claims on children who were subject to conflicted claims in the past; and claims by non-parents (with parents defined via SSA Enumeration-At-Birth data held by IRS).
        - One statistically appealing option would be to define this risk probabilistically, on the basis of a number of different risk factors and a prediction algorithm. This would probably more accurately identify the set of likely-conflicted claims. However, we believe such a system would be less effective in human terms. It is one thing to tell a taxpayer the claim is being held because they are a first-time claimant. It is much another to say the claim is being held because of the output of an opaque, uninterrogable, and maybe even biased black-box algorithm. As such, we prefer 'risky' claims being defined according to a few simple and human-readable rules.
    - If a claim is classified as 'risky,' the IRS would recalculate the return as if no dependents were claimed, and issue any remaining portion of the refund immediately.[33] The IRS would explain in plain language to the taxpayer the reason the child claim is being held.

[32] This section is written under the supposition of up to two conflicting claims. There may, of course, be three or more. The logic can be extended to these scenarios by analogy.
[33] Direct File's tax logic engine would be very helpful in making this calculation.

- Once April 15 comes, if there are no other claimants, the original claim is treated as valid. Given the refund delays implemented in the PATH Act, this would have the effect of delaying payouts by up to two months for some taxpayers who choose not to take follow-up action.
- There could, meanwhile, be additional optional procedures for taxpayers who do not want to wait until April 15.
    - One relatively simple possibility would be that taxpayers making 'risky' claims can optionally submit additional documentation with their return, substantiating that they are the only valid claimant. A challenge here, though, is that the statutory regime we propose makes it very hard for a taxpayer to conclusively prove they are the only valid claimant. The taxpayer could prove they meet the qualifications to be in the permitted class, but this does not prove that no one else meets them, or that their claim would beat another's in the case of a tiebreaker.
    - Another possibility is that the earlier claimant would have the option of pre-indicating their intent to claim through some sort of pre-certification process. Prior to January 15, for example, they could document their intent to claim, triggering a communication to all other potentially-impacted taxpayers to register their own intent by February 15. If two taxpayers intend to claim, both claims are held until they are both received. If only one intent-to-claim is filed, the claim can be paid out on February 15 (the earliest that child claims are paid under the status quo). This option, though, requires taxpayers to take an action before the filing season starts, and also does nothing to protect guardians whose attachment to the child is not yet known, who would not be reached by the IRS's pre-season communication. So, while it would protect a guardian who claimed the child in the past, it would not protect a guardian who is newly in the picture this year.
- Meanwhile, a corollary to the above point about April payouts is that taxpayers would at least partially lose their ability to make contested claims after April 15. Taxpayers might either be barred from making the claim outright (unless they allege that the earlier claimant was not in the class of proper claimants at all); and/or they may have to go through a more complex process to make the claim; and/or there would be a thumb on the scale in favor of the earlier claimant for a late dispute. A similar consideration applies to later (but still pre-4/15) contested claims where the earlier claim was not determined to be risky.
    - To avoid compromising taxpayers' right to request an extension, they would need to be permitted to register an intent to claim either through filing a full return or as part of an extension request.
    - To reduce the risk of the post-4/15 taxpayer's rights being compromised, the IRS may send a notice to any other taxpayers with a

documented connection to the claimed child, noting that a return has been filed claiming their child, and reminding them to file on time if they want to lodge a dispute. These notifications, though, would be subject to the same drawbacks as the intent-to-claim communications discussed above.

Some may look askance at this entire section — requiring, on one hand, some taxpayers (who may be badly in need) to wait longer for their refunds or be subject to clawbacks, while also curtailing the appeal rights of certain late claimants, who themselves may be sympathetic. We believe, though, that some balance must be struck between the rights of the earlier and later claimants. There is no option here that affords maximum rights to all parties; any possible solution weighs the rights of one party against the rights of another, and we believe policymakers ought to strive for a reasonable balance. Policymakers should also keep in mind that the status quo puts a very heavy hand on the scale in favor of earlier claimants — and runs the risk of clawing back funds for a wide range of reasons less sympathetic than the ones envisioned here.

Depending on the details policymakers land on, the statute defining valid child claims may need to take this section explicitly into account, ensuring that claims are retroactively defined as absolutely valid on the basis of these contingent procedural actions.

12.4.5 Resolution process

The rubber fully meets the road in the question of what the IRS actually does when it receives multiple valid claims for the same child, and must identify the best claimant. The details of this process will, again, interact with the precise tiebreakers laid out in Section 12.4.3. But, we can outline some of the key principles:

- **Taxpayers should be able to go through this process online.** A few decades into the 21st century, it is unacceptable for dependent dispute processes to be a snail-mail-only affair.
- **As at present, the first step in the resolution would be to give both taxpayers the opportunity to rescind their claim — and indeed encourage them to do so.** This proposed system is built on the supposition that, often, families can and should decide whose child is whose. The IRS ought to encourage both (or, if more than two, all) claimants to communicate with their family members, if possible, and come to an understanding. The communications with claimants at this stage would also explain how the conflicting claims would be adjudicated, thereby helping taxpayers informally understand who is more likely to prevail, again as a way of encouraging amicable settlement without having to go through the onerous and administratively costly resolution. The process only continues if multiple claimants double down.
- **For taxpayers in general, and for those who are proceeding with a resolution in particular, the IRS should communicate clearly about what the process entails and how long it is expected to take.** The IRS should set a humane standard for how long a resolution generally takes (perhaps 90 days), and publish data about how long

resolutions are, in fact, currently taking. Taxpayers with a live resolution should be able to view the status of their process in their taxpayer account online.
- It will also be critical to determine what recourse taxpayers have to appeal any decisions of the resolution process.

Note that most of this section is relevant even if the dependent laws remain entirely unchanged from the status quo. The proposed changes in earlier sections would increase the frequency and import of resolutions, but even today hundreds of thousands of dependents are subject to dispute resolution every year, and those claimants deserve a better process and more transparency.

12.4.6 Enforcement and reporting

To restate the obvious, in this new regime, any claimant within the new wider set of valid claimants would be considered a proper claim under IRS enforcement and reporting. Even if another household might, in principle, appear to have a stronger claim to the child, the claiming household would be considered a proper payment, and the non-claiming household would not be considered an underclaim. Improper claims exist only when the claimant is not in the broader group of valid claimants, and underclaims exist only when no one claims a particular child; in this latter case, it is the most likely claimant household who would be deemed to have underclaimed, and no other household.

The IRS should, especially in early years of the new regime, track and report on the details of the child claiming process. How many children are subject to conflicting claims, and how does this compare to the previous regime? How long do the resolution processes take, and are there any patterns in how they are resolved? How frequently does the IRS pay out a claim that is later contested by another claimant? Relatedly, how frequently do 'risky' claims attract a second, conflicting claim *before* the first claim is paid out (and can the risky claim rules be amended)? How frequently do conflicting claims come in after April 15? But it is critical to separate these reports from any present notion of improper payments or underclaims. This would be a new analysis under a new system.

12.4.7 Considerations regarding gaming

As noted above, this regime does admittedly increase the capacity for "gaming." How much of a problem is this?

We would first of all encourage policymakers to take seriously the findings in Section 12.2.2.3 and Section 12.3.3.2: plenty of "gaming" is very sympathetic, some of the most egregious cases of gaming are not quite what they seem, and taxpayers widely do not appear to perceive such gaming behavior as nefarious or immoral. Are we talking about bad actors perpetrating fraud against the United States or just families figuring out together how to raise their children?

Policymakers might also consider whether they can amend the tax law to remove gaming incentives. A flat child benefit separated from a work incentive would reduce the incentive

to game. Perhaps less controversially, the EITC currently maxes out at three children; if EITC continued to increase at arbitrary margins of number of children (like the CTC), it would remove the incentive to game for fourth and higher children.[34]

We would also encourage policymakers to recognize that there are many unknowns about the prevalence of gaming even under the status quo — and still more under the prospective new regime. Policymakers could consider first observing and researching gaming under the new regime before considering passing any amendments.

If policymakers were to introduce anti-gaming measures into the new regime, a couple considerations about how it might be done:

- The concrete restriction most likely worth making would be to limit the permissive class in the case where there exists a custodial parent earning more than a certain threshold — perhaps $100,000. This would prevent wealthy taxpayers from creatively claiming the EITC by, for example, assigning a younger child to an older sibling just getting started in the labor market. Social Security data and prior-year return data would make it feasible for the IRS to detect cases where wealthy parents had likely shifted their child claims in violation of this rule. Taxpayers, meanwhile, likely have a pretty good intuition of whether there is a custodial parent in the picture earning over $100,000. But the high income limit means — intentionally — that the much more sympathetic low- and middle-income "gaming" we discussed earlier would be permitted.
- Especially given the unknowns about gaming under the new system, Congress could grant the IRS authority to issue rules limiting the permissive class of claimants in order to achieve specified policy objectives. This would allow the IRS to make adjustments responsively based on empirical issues in the system, more easily than through an act of Congress.

In any of these cases, though, policymakers must be careful not to simply end up back where we started. If the government knew exactly who the optimal claimant was in every case, we could write rules defining that claimant. The trouble is, as this whole chapter has shown, we are not able to do so, and policymakers must take seriously the implications of a more laissez-faire system. Anti-gaming procedures, if they are needed at all, should be easy-to-understand, minor carve-outs, designed to prevent the worst abuses; policymakers should not get themselves on the slippery slope back to re-inventing the determinative tiebreaker rules of 26 USC 152.

12.4.8 Alternatives

Developing a perfect dependent regime is challenging, and surely many readers will find portions of this proposal unconvincing, becoming tempted to keep the status quo

[34] The incentive to game kicks in to a degree before the third child, since the marginal payment for second and third children are increasingly small.

unchanged. To these readers, we simply reiterate a handful of the aspects of the status quo, each of which we think badly unstable and fundamentally unacceptable:

- Widespread existence of divorce decrees — understood by judges and taxpayers alike to be legal documents — that in fact violate the tax law.
- Taxpayers being subject to audit, having funds clawed back, and perhaps becoming banned from claiming the EITC or CTC for up to ten years, for claiming a child under a process they thought valid — perhaps even on the advice of a judge or a divorce lawyer.
- A stubborn crisis of overpayments, engendering a variety of onerous bureaucratic "solutions" that do cause taxpayers headache and burden, without of course solving the alleged problem.
- The inability to actually close the stubborn tax benefits coverage gap, due to the intractable and probably at least in part illusory population of alleged non-claimants.

Finally, there is the rampant misunderstanding of the current system. Despite the current rules being in place for over 20 years, understanding of them is relatively sketchy, and policymakers have not succeeded in making taxpayers understand. Even widespread audits and negative consequences have not gotten people to think about the situation 'correctly.' Even if policymakers think there are abstract benefits to the more complex status quo, at what point will they throw in the towel and concede that taxpayers cannot be brought around to it? How many more taxpayers need to be audited in service of bringing the culture around to a definition of child it does not accept?