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September 14, 2026 | **By Kris Cox, Shelby Gonzales, Samantha Jacoby, and Claire Zippel**

In Radical Departure From Long-Standing Policy and Federal Law, Trump Administration Proposes New Regulation to Take Tax Credits Away From Many Families That Include Immigrants With Lawful Status

The Treasury Department has proposed a rule that would take away the refunded portion of certain tax credits from many individuals with lawful immigration status.[1] Only individuals who have one of a narrow list of immigration statuses defined as "qualified" will remain eligible.[2] The proposed changes would take away access to the Child Tax Credit and/or the Earned Income Tax Credit (EITC) from roughly 1 million people, including citizens, who are in families whose members do not meet the eligibility criteria in the proposed rule. We estimate that hundreds of thousands of U.S. citizen children would have their credit access taken away.

This proposed rule is yet another harmful anti-immigrant action taken by the Trump Administration that will create harm for citizens and people with lawful immigration statuses alike. The rule would upend 30 years of precedent, and it disregards express language in the tax code providing eligibility for non-citizens if they have a Social Security number (SSN). It would also impose new filing burdens on everyone claiming these refundable tax credits, creating significant potential for filer and IRS errors and likely causing eligible people to miss out on credits.[3]

For 30 years, no administration, Democratic or Republican, has treated refundable tax credits this way. The proposed rule includes a misguided reinterpretation of a 1996 law that created restrictive immigration-related eligibility standards for "federal public benefits," taking away access to basic needs programs from many immigrants with lawful statuses.[4] The Trump Administration is seeking to apply those same immigration-related restrictions — which require people to have a "qualified" immigration status — to the refunded portion of certain tax credits. This contradicts both the clear reading of the statutory text and congressional intent, which Congress has demonstrated by legislating on immigrant eligibility for tax credits several times since the 1996 law, most recently in 2025. But it follows the Trump Administration's efforts to expand immigration-related restrictions to additional programs, such as Head Start, child welfare services, and health centers; all of these efforts are being challenged in the courts.[5]

Specifically, to receive certain refundable tax credits, a tax filer (or at least one spouse, if married filing jointly) must have a “qualified” immigration status as defined in the 1996 law. The affected tax credits include the refunded portions of the EITC; Additional Child Tax Credit (ACTC, which is the refundable portion of the Child Tax Credit); American Opportunity Tax Credit (AOTC), a credit for higher education costs; and the adoption tax credit. (Future rulemaking is expected to similarly restrict eligibility for the Saver’s Match Credit to people with a “qualified” immigration status.) The rule would take away credits from people (and their families) in the following immigration categories:

- Children granted special immigrant juvenile status, who have been abused, abandoned, or neglected by one or both parents;
- Survivors of serious criminal activity who have cooperated with law enforcement;
- People with Deferred Action for Childhood Arrivals (DACA)[6], who arrived in the United States as children;
- People granted Temporary Protected Status (TPS) because the situation in their home countries poses serious safety concerns or significant, but temporary, disruptions to living conditions, such as armed conflict or environmental disaster; and
- Many others who are living and working lawfully in the United States.

In many cases, the affected families will have children, including children who are U.S. citizens.

Proposed Rule Would Take Away Credit Access From Roughly 1 Million People, Including U.S. Citizens and Individuals With a Lawful Immigration Status

We estimate that the proposed rule would take away access to the refundable portion of the Child Tax Credit and/or Earned Income Tax Credit from roughly 1 million people, including U.S. citizens and people with a lawful immigration status, who are in families whose members who do not meet the eligibility criteria in the proposed rules.[7] Data limitations and fluctuating immigration statuses mean our estimates are rough. The proposed rule estimates that “a range of 200,000 to 700,000 taxpayers… would likely be ineligible.”[8] But that estimate appears to account only for tax filers, when in fact, everyone in the family – including citizens and immigrants, children and adults – is affected by the loss of the tax credit.

Our estimates, by contrast, count everyone in a family that loses access to the credits. For example, the rule would take access to refundable credits away from hundreds of thousands of U.S. citizen children if both parents — or their parent, for single-parent families — have an immigration status that is not a “qualified” status.[9] The estimate in the proposed rule is incomplete; it is wrong to leave out the impact on the children in families who will now have fewer resources available to provide for their needs.

Congress Has Defined Tax Credit Eligibility Through Legislation; Proposed Rule Disregards Congressional Intent

Redefining immigrant eligibility for refundable tax credits through regulation is a radical departure from both the law and congressional intent. Since 1996, Congress has specified the eligibility criteria for non-citizens for each of these tax credits *through legislation*. Congress has never indicated that it understood the restrictions already in the 1996 law applied to tax credits. The 1996 law itself required tax filers claiming the EITC (and their spouses and children, if claimed on a return) to have a work-authorized Social Security number (SSN). If Congress had intended for refundable tax credits to be considered "federal public benefits," there would have been no reason to separately create an SSN-based requirement for claiming the EITC.

Congress has also changed the eligibility criteria for the Child Tax Credit in multiple pieces of legislation since the 1996 law, including in the 2017 tax law *and* the harmful 2025 Republican reconciliation law. In both of these laws, Congress successively narrowed eligibility for the Child Tax Credit. First, in 2017, congressional Republicans took away the credit from children who are non-citizens and use an Individual Taxpayer Identification Number (ITIN) rather than an SSN when claimed on a tax return. In 2025, congressional Republicans took away eligibility from children who are U.S. citizens or have a lawful immigration status, but whose parents file taxes using an ITIN because they lack a Social Security number.

Congress also enacted changes to eligibility for the AOTC in the 2025 Republican reconciliation law by imposing new SSN requirements for claiming the credit.

Congress's actions — from the original 1996 law through numerous pieces of legislation culminating in the 2025 reconciliation law — make no sense if Congress thought the 1996 restrictions applied to tax credits. Congress's actions have been clear about tax credit eligibility for non-citizens, and do not demonstrate an intent for refundable tax credits to be covered by the 1996 law's "federal public benefit" rules.

Proposed Rule Would Create Additional Burdens for Tax Filers

Additionally, the proposed rule would introduce a new burden for *all tax filers* who claim these refundable tax credits. All filers claiming the refundable portion of one of these tax credits would be required to attest to being a U.S. citizen or having a "qualified" immigration status on their tax return. A tax filer's ability to claim "qualified" immigration status depends on technical immigration law rules that are not easy for tax filers — or tax preparers — to understand. And a tax filer's immigration status may change over time, causing further confusion about whether their status is a "qualified" status at the legally relevant time for both tax filers and the IRS, which will face the additional burden to ensure compliance.

The rule would likely create fear and confusion for filers and may lead people who remain eligible for tax credits not to file for or receive the credits, fearing they could make a mistake or believing that they aren't eligible.

Moreover, the rule would give the IRS more sensitive personal information about tax filers. A district court recently found – and a circuit court upheld – that the IRS unlawfully provided confidential tax filer data to the Department of Homeland Security (DHS) in 2025, likely to help carry out the Administration's harmful deportation and detention policies.[10] Many filers may have serious concerns about the security of their personal data, and the IRS's unlawful actions are likely to drive down or "chill" voluntary tax filing among non-citizens, including for people in families with varied immigration statuses.

Proposed Rule Would Harm Children and Fails to Recognize Contributions of Immigrants

Taking away these tax credits would harm people who are immigrants and their families, including many U.S. citizen children, who are critical to the nation's future prosperity. A large number of studies of tax credits for low- and moderate-income families with children find evidence linking additional income from tax credits to improved health and educational outcomes during childhood, as well as increased educational attainment, employment, and earnings in young adulthood.[11]

People who are immigrants and their families contribute to our communities and nation in immeasurable ways. These restrictions on tax credits create a higher effective tax rate for people who are filing their taxes solely based on their immigration status.

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1 Proposed Rule by the Internal Revenue Service, "Application of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 to the Refunded Portion of Certain Federal Refundable Tax Credits," August 20, 2026, https://www.federalregister.gov/documents/2026/08/20/2026-16985/application-of-the-personal-responsibility-and-work-opportunity-reconciliation-act-of-1996-to-the. People generally receive the refunded portion of these tax credits as refunds when they file their taxes if they qualify for a credit that exceeds their federal income tax liability.

2 8 U.S.C. § 1641 defines certain immigration statuses as "qualified" statuses: https://uscode.house.gov/view.xhtml?req=(title:8%20section:1641%20edition:prelim)%20OR%20(granuleid:USC-prelim-title8-section1641)&f=treesort&edition=prelim&num=0&jumpTo=true.

3 The IRS released a draft of the form that will be required for anyone claiming the refunded portion of one of the tax credits specified in the proposed rule. 2026 1040 Form, Schedule 3-A, https://www.irs.gov/pub/irs-dft/f1040s3a--dft.pdf.

4 8 U.S.C. § 1611, https://uscode.house.gov/view.xhtml?req=(title:8%20section:1611%20edition:prelim)%20OR%20(granuleid:USC-prelim-title8-section1611)&f=treesort&edition=prelim&num=0&jumpTo=true.

5 Margot Dankner, "Trump Administration Seeks to Take Away Head Start, Medical Care, and Other Vital Services From Lawfully Present Immigrants," CBPP, July 16, 2026, https://www.cbpp.org/research/federal-budget/executive-action-watch?item=30181.

6 Estimates show that "158,000 people who are either DACA recipients, or living and filing tax returns with DACA recipients, would be harmed" by the proposed rule. Carl Davis, Erika Frankel, and Emma Sifre, "The Impact of Proposed New Tax Credit Restrictions for Immigrant Filers: An Updated Analysis of the DACA Recipient

Population," Institute for Taxation and Economic Policy, August 26, 2026, https://itep.org/tax-credit-restrictions-immigrant-filers-daca-2026/.

[7] We estimated the number of people in families who would have their credit access taken away by the proposed rule using Department of Homeland Security data on the population with immigration statuses that are not "qualified" statuses and American Community Survey-based estimates of refundable tax credit eligibility among non-citizens and the typical tax unit size of non-citizens modeled to be eligible for refundable tax credits.

[8] "Affected Taxpayers," in Proposed Rule by the Internal Revenue Service, "Application of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 to the Refunded Portion of Certain Federal Refundable Tax Credits," August 20, 2026, https://www.federalregister.gov/d/2026-16985/p-89.

[9] We estimated the number of U.S. citizen children who would have their credit access taken away by the proposed rule using Department of Homeland Security data on the population with immigration statuses that are not "qualified" statuses and American Community Survey-based estimates of refundable tax credit eligibility among non-citizens and the typical number of U.S. citizen children in the tax unit of non-citizens modeled to be eligible for refundable tax credits.

[10] Ctr. for Taxpayer Rts. v. Internal Revenue Serv. 815 F. Supp. 3d 1 (D.D.C. 2025), https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2025cv0457-54; Ctr. for Taxpayer Rts. v. Internal Revenue Serv., No. 26-5006 (D.C. Cir. Sept. 8, 2026), https://media.cadc.uscourts.gov/opinions/docs/2026/09/26-5006-2191763.pdf.

[11] Katherine Michelmore, "Tax Credits and Child Outcomes: Lessons from the U.S., U.K., and Canada," May 2025, https://www.nber.org/papers/w33822.