

NEW IRS “PRE-CERTIFICATION” REQUIREMENTS COULD PREVENT MANY ELIGIBLE FAMILIES FROM RECEIVING THE EARNED INCOME TAX CREDIT

The Internal Revenue Service has proposed major changes, beginning this year, in the application procedures for the Earned Income Tax Credit. Many EITC claimants would be required to “pre-certify” their eligibility by verifying both their relationship to the child they are claiming for the credit and the fact that the child lived with them for more than half of the year. The new procedures, which would be phased in over several years, could ultimately make it more difficult for up to four to five million low-income working families — as many as 25 percent to 30 percent of all families with children applying for the EITC — to receive the credit.

Based on the latest information that the IRS has released, the new procedures impose requirements that many eligible taxpayers may find impossible to satisfy despite their best efforts. This risks undermining the EITC’s basic purpose by reducing substantially the proportion of eligible working-poor families that receive the EITC. Such a development would have serious consequences: the EITC currently lifts more children out of poverty than any other social program or category of programs and has been found to be highly effective in inducing and enabling low-income people who are raising children to move from welfare to work.

Who would be affected? Under the IRS plan, all EITC filers who claim children — other than married parents or single female parents claiming their own children — ultimately would be subject to the new pre-certification procedures as a condition of receiving the EITC. The affected group includes all grandparents, aunts, uncles, and other such relatives who are raising their grandchildren, nieces, or nephews, as well as single fathers raising their children, stepparents, and foster parents.

The latest available draft IRS forms and instructions on precertification are dated March 28. (IRS officials have said that some changes subsequently have been made in these forms, and we will update our materials when the revised forms become available.) According to the March 28 documents, filers subject to the pre-certification procedures would have to meet various burdensome new requirements. For example:

- Many filers would be required to provide marriage certificates for marriages that did not include the filer (and may have taken place decades ago). Some states will not provide these documents to people who are not immediate family members. Other states, while providing these documents, warn that doing so will take several months, which could prevent some filers from meeting IRS deadlines.
- Many filers would be required to provide an affidavit from a third party, signed under penalty of perjury, attesting that the person completing the affidavit has “personal knowledge” that the filer and the child lived together at a specific address during certain months of the year. The difficulty here is that the IRS would strictly limit the types of people permitted to fill out the affidavit. Neighbors and building managers or supervisors, who in many cases will be the only people who possess this personal knowledge, would not be permitted to complete these affidavits. Individuals who would be permitted to complete the affidavits, such as clergy, employers, landlords,

or school officials, often will not have the necessary personal knowledge of the filer's living arrangements.

These requirements are considerably more rigid than those imposed by other federal programs. No other major federal program demands that applicants furnish documents such as marriage certificates, for example. Other federal programs encourage use of neighbors and other knowledgeable individuals as a source of third-party information.

The IRS plans to subject 45,000 families who received the EITC in 2003 to the new procedures for the 2004 tax filing season. These families will receive IRS pre-certification notices and forms this fall. The IRS says it intends to subject up to two million EITC filers to these procedures in the following year. At a March 20 meeting of IRS-selected "stakeholders," IRS officials indicated that within a few years, the IRS intends to reach a goal of applying these procedures to four to five million filers. This goal appears to be under discussion within the IRS, however, and the ultimate scope of the initiative is likely to be affected by the IRS' experience in implementing and administering the new procedures in the next year or two.

Is it too late to influence the implementation of these changes? Information about the pre-certification initiative first became public in March 2003, after the IRS request for \$100 million to administer the new procedures was included in the President's budget. Serious concerns about the plan have been expressed by some Members of Congress, outside analysts and tax policy experts, and community-based organizations that conduct EITC outreach and provide free tax-preparation assistance to low-income families.

The IRS has said it needs no new legislation or regulations to implement the plan. The IRS did send the new pre-certification forms and related documentation requirements to two IRS advisory committees for review and convened a meeting of "stakeholders"; also, the IRS stated recently that it would allow a public comment period on the new forms and requirements, as the IRS generally does for all new tax forms. It is not clear when the comment period will occur or whether it will be before the forms have been sent to the first group of 45,000 families.

In addition, the IRS has said it will evaluate the implementation of the new procedures in the 2004 filing season but that it does not intend to await the results of the evaluation — including whether the new procedures do more to reduce participation among eligible families than ineligible ones — before applying the procedures to up to two million families the following year.

Provided here are three reports that examine the issue of erroneous EITC claims (which is the basis of the pre-certification initiative) and analyze the March 28 draft IRS forms and instructions on the initiative. Revised versions of these forms and instructions are expected to be made available when the public comment period is announced. As noted, we will update our analysis when the revised forms become available.

Also provided here are Center recommendations regarding implementation of the proposed changes. One recommendation is that the IRS not expand the pre-certification initiative beyond 45,000 EITC claimants until its evaluation of the initial phase of the initiative is complete, it has been determined that pre-certification is successful in reducing overpayments and does so without harming significant numbers of eligible filers, and appropriate changes in pre-certification rules and procedures have been made, based on the evaluation findings.