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February 7, 2023

The Honorable Janet Yellen  
Secretary of the Treasury  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, N.W.  
Washington, D.C. 20220

## **Re: Tax Offset of EITC and CTC Benefits and Implications for Justice-Involved Individuals**

Dear Secretary Yellen:

We write to express our continued concern about the Treasury Department's practice of using the Treasury Offset Program (TOP) to reduce or eliminate payments made through refundable Child Tax Credits (CTC) and Earned Income Tax Credits (EITC) when paid as part of a federal tax refund. These tax credits are intended to support families and low-income workers, lifting millions of children out of poverty. However, due to Treasury's practice of offsetting tax refunds to collect government debt, millions of low-income families—particularly those of color—are at risk of not receiving these critical lifelines.

The National Consumer Law Center has previously highlighted this problem in the context of the collection of student loan debt.<sup>1</sup> We write today to very briefly highlight some of the implications of CTC and EITC offsets for justice-involved individuals and their families and related equity concerns.

### **Collection of Criminal Court Debts Through TOP**

Most justice-involved individuals accrue court debt in the form of various fines, fees, and restitution that are typically imposed in the criminal justice system without any assessment of their ability to pay.<sup>2</sup> Because justice-involved people and their families are disproportionately poor, many are not able to afford repayment and their debts become past due.<sup>3</sup> Treasury currently uses TOP to collect past-due federal criminal court debt and monetary sanctions.<sup>4</sup> Additionally, federal regulations governing the

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<sup>1</sup> TICAS, CLASP, NCLC, Joint Memo: Recommendation to Amend IRC § 6402 to Prohibit Offset of Refundable Tax Credits that Support Low-Income Workers and Families (Feb. 10, 2022), <https://www.nclc.org/resources/joint-memo-recommendation-to-prohibit-offset-of-refundable-tax-credits-that-support-low-income-workers-and-families/>.

<sup>2</sup> Consumer Financial Protection Bureau, Justice-Involved Individuals and the Consumer Financial Marketplace pp.37-38 (Ja. 2022), [https://files.consumerfinance.gov/f/documents/cfpb\\_jic\\_report\\_2022-01.pdf](https://files.consumerfinance.gov/f/documents/cfpb_jic_report_2022-01.pdf).

<sup>3</sup> *Id.* at 39; see also Report from the President's Council of Economic Advisors on Fines, Fees, and Bail (Dec. 2015), [https://obamawhitehouse.archives.gov/sites/default/files/page/files/1215\\_cea\\_fine\\_fee\\_bail\\_issue\\_brief.pdf](https://obamawhitehouse.archives.gov/sites/default/files/page/files/1215_cea_fine_fee_bail_issue_brief.pdf).

<sup>4</sup> 31 U.S.C. § 3701(b)(1). See also U.S. Gov. Accountability Office, Federal Criminal Restitution: Most Debt Is Outstanding and Oversight of Collections Could Be Improved p. 28 (Feb. 2018), <https://www.gao.gov/assets/gao-18-203.pdf>.

definition of “debt” under TOP’s State Reciprocal Program are broad enough to allow referral of state criminal court debts for collection by offset.<sup>5</sup> Currently eleven states and the District of Columbia participate in the State Reciprocal Program.<sup>6</sup>

### **Seizure of EITC and CTC Hinders Successful Reentry**

Debt hinders successful reentry of formerly incarcerated people<sup>7</sup> but financial assistance programs, including public benefits, lower recidivism and help justice-involved parents meet their families’ needs.<sup>8</sup>

The EITC in particular may support successful reentry of justice-involved parents by both helping them to provide for their children and supporting participation in the formal labor market. The EITC is intended to increase employment in the formal labor market by increasing incentives for such work.<sup>9</sup> Seizure of the EITC undermines this incentive. Justice-involved individuals already face significant barriers to employment, including their criminal records.<sup>10</sup> Undermining the incentive to work by seizing the EITC may exacerbate existing pressures to drop out of the formal labor market—greatly jeopardizing reentry.

### **Many Justice-Involved People Have Minor Children Likely to Rely on the EITC or CTC to Meet Basic Needs**

Nearly half of U.S. children (33 million) have at least one parent with a criminal record.<sup>11</sup> 47% of state prisoners and 58% of people incarcerated in federal prisons have one or more minor children.<sup>12</sup> Earlier research found that more than 1.1 million justice-involved parents in state and federal prisons would have a minor child at their expected release date.<sup>13</sup>

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<sup>5</sup> 31 CFR § 285.6(b)(2) (“State debt means any amount of money, funds or property that has been determined by an appropriate State official to be owed to that State by a person”).

<sup>6</sup> Dept. of Treasury, U.S. Government Non-Tax Receivables and Debt Collection Activities of Federal Agencies: Fiscal Year 2021 Report to Congress p. 19 (Nov. 2022), <https://www.fiscal.treasury.gov/files/dms/debt21.pdf>.

<sup>7</sup> Harper, A., Ginapp, C., Bardelli, T. et al. Debt, Incarceration, and Re-entry: A Scoping Review. *Am J Crim Just* 46, 250–278 (2021). <https://doi.org/10.1007/s12103-020-09559-9>.

<sup>8</sup> D. Thompson & A. Burnside, Center for Law and Social Policy, No more double punishments: Lifting the ban on SNAP and TANF for people with prior felony drug convictions (2021), <https://www.clasp.org/sites/default/files/>.

<sup>9</sup> See, e.g., National Bureau of Economic Research, The Earned Income Tax Credit Raises Employment (Aug. 2006), available at: <https://www.nber.org/digest/aug06/earned-income-tax-credit-raises-employment>.

<sup>10</sup> See, e.g., K. Nikolaidis, *Berkeley Journal of Criminal Law*, Collateral Consequences of Conviction: Barriers to Employment (Aug. 2022), <https://www.bjcl.org/blog/collateral-consequences-of-conviction-barriers-to-employment>; Leah Wang and Wanda Bertram, Prison Policy Initiative, New data on formerly incarcerated people’s employment reveal labor market injustices (Feb. 8, 2022), <https://www.prisonpolicy.org/blog/2022/02/08/employment/>; NCLC and Collateral Consequences Resource Center, The High Cost of a Fresh Start: A State-by-State Analysis of Court Debt as a Bar to Record Clearing pp. 2-3 (Feb. 2022), <https://www.nclc.org/wp-content/uploads/2022/08/Report-High-Cost-of-Fresh-Start.pdf>.

<sup>11</sup> R. Vallas et al., Ctr. for Am. Progress, Removing Barriers to Opportunity for Parents with Criminal Records and Their Children: A Two-Generation Approach 1 (December 2015), <https://www.americanprogress.org/wp-content/uploads/2015/12/CriminalRecords-report2.pdf>.

<sup>12</sup> Laura M. Maruschak, Bureau of Justice Statistics, Parents in Prison and Their Minor Children: Survey of Prison Inmates, 2016 (Mar. 2021), <https://bjs.ojp.gov/library/publications/parents-prison-and-their-minor-children-survey-prison-inmates-2016>.

<sup>13</sup> Lauren E. Glaze and Laura M. Maruschak, Bureau of Justice Statistics, Parents in Prison and Their Minor Children p. 3 (Aug. 2008), <https://bjs.ojp.gov/content/pub/pdf/pptmc.pdf>.

Children of justice-involved parents are more likely to become poor, and a parent's incarceration exacerbates economic instability.<sup>14</sup> Indeed, people who have spent time in prison see their subsequent annual earnings reduced by an average of 52 percent, earning nearly half a million dollars less over the course of their careers.<sup>15</sup> Unsurprisingly, “[t]he overwhelming majority of children with incarcerated parents have restricted economic resources available for their support.”<sup>16</sup> As a result, children of justice-involved parents may be more likely to rely on the EITC or CTC to meet basic needs.

### **Seizure of the EITC and CTC Compounds the Devastating Adverse Impact of Incarceration and Justice-Involvement Already Experienced by Children**

The EITC and CTC are particularly important to the children of justice-involved individuals because justice-involvement exacerbates economic instability and may lead to denial of other government benefits like Supplemental Nutrition Assistance Program (SNAP) and Temporary Assistance for Needy Families (TANF) due to certain types of prior convictions.<sup>17</sup> Families that are unable to access these benefits are particularly likely to depend upon access to the EITC and CTC.

Children are not responsible for, and cannot help, whether their parents or guardians are behind on criminal court debt or other debts, and should not be punished through government seizure of payments meant to support children and alleviate childhood poverty.

### **Seizure of EITC and CTC for Court Debts is Likely to Disproportionately Harm Children of Color**

The EITC and CTC “disproportionately serve Black, Latina, and Native American women [and] . . . have long-term benefits for the life trajectories of children in families that receive them.”<sup>18</sup> But though Black, Latinx, and Native families disproportionately rely on the EITC and CTC, these same families are disproportionately likely to lose out on these payments as a result of collection of criminal court debt, undermining the potential of the tax credits to advance racial equity.

This is due to substantial racial disparities in the criminal justice system. “People of color are more likely to be arrested, convicted, and sentenced more harshly than are white people, which amplifies the impact

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<sup>14</sup> Leila Morsy and Richard Rothstein, Economic Policy Institute, Mass incarceration and children's outcomes: Criminal justice policy is education policy (Dec. 15, 2016), <https://www.epi.org/publication/mass-incarceration-and-childrens-outcomes/>.

<sup>15</sup> Terry-Ann Craigie, et. al., Brennan Center for Justice, Conviction, Imprisonment, and Lost Earnings: How Involvement with the Criminal Justice System Deepens Inequality (Sept. 15, 2020), <https://www.brennancenter.org/our-work/research-reports/conviction-imprisonment-and-lost-earnings-how-involvement-criminal>.

<sup>16</sup> Eric Martin, National Institute of Justice, Hidden Consequences: The Impact of Incarceration on Dependent Children (March 1, 2017), <https://nij.ojp.gov/topics/articles/hidden-consequences-impact-incarceration-dependent-children>.

<sup>17</sup> Nazgol Ghandnoosh, et al., The Sentencing Project, Parents in Prison pp. 2-3 (Feb. 2021), <https://www.sentencingproject.org/app/uploads/2022/09/Parents-in-Prison.pdf>; U.S. Comm'n on Civ. Rts., Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on Communities p. 134 (2019), <https://www.usccr.gov/files/pubs/2019/06-13-Collateral-Consequences.pdf> (“Restrictions on public housing and public benefits, including TANF and SNAP, make people acutely vulnerable upon leaving prison. Many people who leave prison do so without money and resources for basic living expenses, which are not easily obtained in part due to the restrictions on public benefits and housing.”).

<sup>18</sup> Chye-Ching Huang and Roderick Taylor, Center on Budget and Policy Priorities, How the Federal Tax Code Can Better Advance Racial Equity (July 25, 2019) (emphasis removed), <https://www.cbpp.org/research/federal-tax/how-the-federal-tax-code-can-better-advance-racial-equity>.

of collateral consequences on this population.”<sup>19</sup> As with other collateral consequences, “criminal fees fall . . . disproportionately on Black, Indigenous, and Latinx people.”<sup>20</sup> Although demographic data on criminal court debt is limited, the assessment of criminal court debt in the federal system is likely to mirror the demographic trends in the federal prison population: In federal prison, 38.4% of inmates are Black and 30.3% are Hispanic,<sup>21</sup> although Black and Hispanic people make up 13.6% and 18.9% of the U.S. population, respectively.<sup>22</sup>

Similarly, the impact of parental justice-involvement and parental incarceration is disproportionately borne by children of color. As one study notes, “[b]y the age of 14, approximately 25 percent of African American children have experienced a parent—in most cases a father—being imprisoned for some period of time. The comparable share for white children is 4 percent.”<sup>23</sup>

### **Spouses of Justice-Involved Individuals Face Seizure of CTC and EITC**

The spouses of justice-involved individuals may also have their EITC and CTC seized if they file a joint tax return with a partner who owes criminal justice debt, including a partner who is currently incarcerated.<sup>24</sup> While the IRS provides an Injured Spouse Allocation form that the non-debtor spouse can use to ask for the return of a portion of the funds,<sup>25</sup> a partial refund may provide incomplete relief and navigating this additional step and administrative burden is likely to significantly decrease access to EITC and CTC funds for the families of justice-involved individuals.

### **Recommendations**

We therefore urge you to consider ways to protect the EITC and CTC from offset, and to work with others in the Biden Administration to develop solutions. Specifically, we ask you to:

- Include recommendations for legislative protection of the EITC and CTC from offset in the Administration’s FY 2024 request to Congress (the Greenbook);
- Direct the IRS to make maximum use of its existing authority to waive offsets;
- Update IRS systems to make it easier to identify tax credits that should be protected in refunds; and

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<sup>19</sup> See, e.g., U.S. Commission on Civil Rights, *Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on Communities* 19 (June 2019) <https://www.usccr.gov/files/pubs/2019/06-13-Collateral-Consequences.pdf>.

<sup>20</sup> Cortney Sanders and Michael Leachman, Center on Budget and Policy Priorities, *Step One to an Antiracist State Revenue Policy: Eliminate Criminal Justice Fees and Reform Fines* (Sept. 17, 2021) <https://www.cbpp.org/research/state-budget-and-tax/step-one-to-an-antiracist-state-revenue-policy-eliminate-criminal>.

<sup>21</sup> Federal Bureau of Prisons, *Inmate Statistics* (Jan. 21, 2023) [https://www.bop.gov/about/statistics/statistics\\_inmate\\_age.jsp](https://www.bop.gov/about/statistics/statistics_inmate_age.jsp) (viewing data on Race and Ethnicity).

<sup>22</sup> U.S. Census Bureau, *Quick Facts*, available at: <https://www.census.gov/quickfacts/fact/table/US#> (data from July 1, 2022).

<sup>23</sup> Leila Morsy and Richard Rothstein, Economic Policy Institute, *Mass incarceration and children’s outcomes: Criminal justice policy is education policy* (Dec. 15, 2016) <https://www.epi.org/publication/mass-incarceration-and-childrens-outcomes/>.

<sup>24</sup> Internal Revenue Service, *Internal Revenue Manuals, Part 25*, [https://www.irs.gov/irm/part25/irm\\_25-018-005](https://www.irs.gov/irm/part25/irm_25-018-005).

<sup>25</sup> Internal Revenue Service, *Instructions for Form 8379: Injured Spouse Allocation* (Nov. 2021), <https://www.irs.gov/instructions/i8379>.

- Provide data to allow policymakers and the public to better understand the scope of EITC and CTC offset and how it is used to collect criminal court debt.

We welcome the opportunity to meet with you and Treasury Department staff to discuss ways to address this problem and ensure that children and families are not driven into poverty by the Treasury Offset Program.

Sincerely,

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