

## Racial Bias in the Tax Code Needs More Transparent Research

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When President Joe Biden took office, one of his first executive orders directed federal agencies, including the Treasury Department and IRS, to audit federal data sets to determine whether and how factors such as race, ethnicity, and gender are included in policymaking. Since then, Treasury researchers have made important progress in developing methodologies for analyzing how race and ethnicity [are reflected](#) in the US tax system.

This kind of tax research is uniquely challenging from a data perspective because tax returns don't collect specific demographic information on race, ethnicity, or gender. Also, tax privacy rules [prevent the IRS](#) from sharing tax data with other agencies that do track demographic data. There's also a pervasive perception that the tax code is neutral or colorblind when it comes to IRS enforcement or tax policy, a position that tax experts such as Dorothy Brown and Jeremy Bearer-Friend have refuted.

At the same time, more policymakers and IRS officials are willing to concede that racial or ethnic bias—even if unintended—is reflected in the US tax system, particularly in the face of overwhelming evidence.

Earlier this year, researchers at Stanford [published a study](#) showing that despite race blind audit selection practices, IRS audited Black households 2.9 to 4.7 times more often than non-Black taxpayers. Although the IRS had been accused of racial bias in audit practices prior to the Stanford study, these latest findings were notable in that Treasury worked “in partnership” with the Stanford team in conducting the study.

The findings attributed the audit bias practices to internal IRS algorithms. Nevertheless, the study has been widely reported, and the implications of bias in the tax system have surfaced repeatedly [in tough questioning](#) from members of the US Senate Committee on Finance during IRS Commissioner Daniel Werfel's nomination hearings, as well as during budget hearings where Treasury Secretary Yellen testified.

But it's not surprising that the US tax system is riddled with bias—that's by design. There's no

question that Congress chooses winners and losers in tax policymaking when they decide which taxpayers qualify for a credit, deduction, or exemption. For example, millions of working low-income taxpayers are eligible for the earned income tax credit, while others aren't.

For far too long, taxpayers have been assured that choices reflected in the tax code aren't the result of racial or gender bias because eligibility requirements generally aren't based on race, gender, or ethnicity. Except for when they are, as in the case of tax provisions targeted to members of Indian Tribal Governments or Alaska Native Corporations.

The willful ignorance of racial, ethnic, and gender bias in the US tax system is compounded by the fact that, for the most part, civil rights protections and data transparency guardrails requiring federal agencies to collect data on beneficiaries of federally funded programs don't expressly apply to tax expenditures—that is, the special provisions that provide some taxpayers more favorable treatment than regular income tax. In other words, civil rights laws don't mandate that Treasury or the IRS collect demographic data on who benefits from tax breaks.

So while federal and state housing agencies must track and publish data on the race, ethnicity, family composition, age, income, use of rental assistance, disability status, and monthly rental payments of households residing in low-income housing tax credit funded properties, neither Treasury nor Congressional tax writers have any idea of what the racial or gender implications are for the corporations that are profiting from them.

In recent decades, Congress has increasingly turned to tax expenditures to deliver anti-poverty programming or stimulate business activity through deductions for accelerated depreciation and individuals with business income. Keep in mind that Congress treats tax expenditures similarly to direct spending programs that function as entitlements for budget purposes, but not necessarily for oversight purposes.

However, the absence of inclusive demographic data for tax expenditures raises both equity issues and oversight challenges for Congress. How can lawmakers know if the programs they're funding through the US tax code are working as intended if they don't track who benefits? How can they effectively conduct their oversight function of these "entitlement" programs?

Notwithstanding these challenges, legal researchers have been using data from the private sector and federal agencies—other than the IRS—to estimate the [discriminatory racial and gender implications for various tax breaks](#). In recent years, economists and some members of Congress

have been more insistent on the need for additional research and demographic data on the how taxpayers benefit from—or are penalized by—different tax provisions and administrative policies.

Now, Treasury and IRS researchers are working to enable tax expenditure data transparency. Congress still needs to do its part to normalize the use of inclusive tax data in the legislative process.

In the coming weeks, Congress once again [will wrestle over](#) when and by how much to raise the debt ceiling. This is a must-do item on the congressional agenda, and the implications of a debt ceiling default could be disastrous for the economy.

In engaging in the deal making that is sure to go on, Congress will be well aware of the equity implications of spending cuts some lawmakers are sure to demand for federal spending programs while operating blindly when it comes to tax expenditures. And that's assuming tax expenditures are even on the table.

Congress has an oversight responsibility when it comes to tax programs in the US tax code. Taxpayers and voters are entitled to transparency when it comes to tax entitlement programs.

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