

A roadmap to delivering Economic Impact Payments/Rebate Recovery Credit to Victims of Domestic Violence

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Issue: Victims of domestic violence and abuse (DVAA) have not received Economic Impact Payments (EIPs) for themselves or their qualifying children under the CARES Act because the IRS has already issued an EIP based on a joint return and (1) either directly deposited the EIP into an account controlled by the abusive spouse, who has converted it for his or her own use, or (2) issued a check based on the joint return, which was then cashed by the abuser, often under a forged signature of the victim, or deposited into an account to which the victim has no access. Even where DVAA victims have filed timely superseding returns, the IRS has declined to issue EIPs, because such payments have already been issued. DVAA victims will likely be denied the Rebate Recovery Credit (RRC) on their 2020 returns because IRS records show an EIP has been paid in 2020. DVAA victims are unable to use legal means to secure their share of the EIP, such as small claims courts, because it will expose them to further abuse and risk of harm. For more information on the cycle of domestic violence and abuse, and its various manifestations, see [Center for Disease Control, *Preventing Intimate Partner Violence Across the Lifespan: a Technical Package of Programs, Policies, and Practices*](#).¹ For more information on the economic impact of domestic violence and abuse, see Institute for Women’s Policy Research, [Dreams Deferred: A Survey on the Impact of Intimate Partner Violence on Survivors’ Education, Careers, and Economic Security](#).² These publications make clear the necessity and urgency for the IRS to issue replacement EIPs to DVAA victims.

¹ “IPV [intimate partner violence] (also commonly referred to as *domestic violence*) includes ‘physical violence, sexual violence, stalking, and psychological aggression (including coercive tactics) by a current or former intimate partner (i.e., spouse, boyfriend/ girlfriend, dating partner, or ongoing sexual partner).’ Some forms of IPV (e.g., aspects of sexual violence, psychological aggression, including coercive tactics, and stalking) can be perpetrated electronically through mobile devices and social media sites, as well as, in person.” CDC, *Preventing Intimate Partner Violence Across the Lifespan: a Technical Package of Programs, Policies, and Practices*, at 7.

² The survey reveals how the economic dimensions of abuse permeate survivors’ lives, creating a complex set of needs that make it difficult to exit abusive relationships and move forward in recovery. Seventy-three percent of respondents said they had stayed with an abusive partner longer than they wanted or returned to them for economic reasons. Many of those surveyed, however, expressed optimism that with the right resources, they will flourish and thrive. Institute for Women’s Policy Research: *Dreams Deferred: A Survey on the Impact of Intimate Partner Violence on Survivors’ Education, Careers, and Economic Security*, at 8.

Recommendation: The IRS should implement a procedure whereby DVAA victims (i) may attest they are victims of domestic violence and abuse, similar to the procedures adopted by IRS and Centers for Medicare and Medicaid Services (CMS) pursuant to Treas. Reg. 1.36B-2(b), and (ii) may submit an affidavit, similar to that used for victims of identity theft (Form 14039) and return preparer fraud (Form 14157A) and (iii) may provide supporting information or documentation similar to that requested on Form 8857, Part V (see also, Part II, Questions 8 and 10).

If the IRS is unable to implement this procedure in time to issue replacement EIPs by December 31, 2020, the IRS should announce and implement this procedure for 2020 returns filed in the 2021 filing season. If, based on the 2020 Form 1040, the DVAA victim is eligible for a RRC that is less than the EIP she or he would be entitled to in 2020, the IRS should issue a replacement payment of the EIP equal to the difference between the RRC and the EIP. This is consistent with the IRS's approach to replacement checks during the 2008 Economic Stimulus Payment (ESP)/2009 RRC, as explained in the IRS Chief Counsel memorandum issued on July 9, 2009.

Background:

The IRS has the authority to issue replacement payments where refunds have been stolen or otherwise converted.

On multiple occasions the IRS has concluded it has the authority to issue a payment where the original payment was issued as a result of fraud or duress, or was converted. Moreover, in each of these instances, there is *no explicit statutory authorization* for issuance of a replacement check. For example, a taxpayer who is a victim of tax-related identity theft (*e.g.*, an identity theft filing and obtaining a refund by posing as the taxpayer) may submit an identity theft affidavit ([Form 14039](#)) to the IRS along with or after filing his or her paper Form 1040. Upon review of the affidavit and any accompanying information and validation of the taxpayer's identity, the IRS shall adjust the taxpayer's account by removing the false return, posting the incorrect payment to a holding/dummy account, and process the taxpayer's correct return and issue the correct refund. (*See generally*, IRM 25.23, Identity Protection and Victim Assistance.) The basis for these corrections is that the false return filed by the identity thief (or altered return filed by a return preparer) does not meet the *Beard* requirements for constituting a valid return of the taxpayer.³

On the other hand, where a taxpayer alleges a return preparer has altered the return by directing the refund to the preparer's account and then not paying over that refund to the

³ *Beard v. Commissioner*, 82 T.C. 766 (1984) "First, there must be sufficient data to calculate tax liability; second, the document must purport to be a return; third, there must be an honest and reasonable attempt to satisfy the requirements of the tax law; and fourth, the taxpayer must execute the return under penalties of perjury."

taxpayer (aka “return preparer fraud”), per IRM 25.24, the taxpayer may file an affidavit ([Form 14157A](#)) with the IRS along with a police report, and after reviewing accompanying information and documentation, the IRS may move the original, converted refund payment to a separate account and issue a correct refund to the taxpayer. Although the return in question may meet the requirements of the *Beard* test and constitute a return of the taxpayer, IRS Chief Counsel has concluded there is no legal prohibition to issuing a replacement refund where the taxpayer can show the refund was converted. Thus, for example, IRM 25.24.1.1.4(1)(i)(4) provides as follows:

Category 4: Misdirected Refund Only and Taxpayer Requesting Additional

Refund. The taxpayer was in contact with a preparer for the year of filing and did authorize a return filing, but states although no tax data was altered, the direct deposit information or mailing address for the refund check was altered diverting all or a portion of the refund to the preparer.

The taxpayer states that he/she only received a portion of the refund or he/she received no refund.

Potential relief/resolution: The IRS will administratively remove the portion of the refund misdirected to the preparer and the taxpayer shall receive a refund for the entire amount due from the original valid return, less any amounts already received. [Emphasis added.]

In the context of the 2008 Economic Stimulus Payment (ESP), the IRS had procedures to issue replacement payments to victims of identity theft, where payments were issued based on returns submitted by identity thieves or were sent to bank accounts controlled by the identity thief. The IRS has similar procedures in place for the 2020 EIP. (“Additionally, if individuals have not received the EIP because they suspect they are victims of identity theft, taxpayers should submit Form 14039, Identity Theft Affidavit, and notate “Stolen EIP” at the top of the form.” National Taxpayer Advocate, Fiscal Year 2021 Objectives Report to Congress, at 58). For example, IRM 25.23.4.20.4(9) provides:

When the amount of EIP allowed based on an invalid (IDT) return, mixed entity (MXEN), or invalid joint election (IJE) is the **same as** the amount of EIP the valid taxpayer is entitled to, an adjustment to EIP is not necessary. Input TC 290 .00 with BS 05, SC 0, and HC 3. Use RC 139 for IDT cases. Use RC 099 for MXEN and IJE cases. When the EIP has been issued to someone other than the CN owner, follow the applicable procedures below:

- **Streamline IDT cases:** Follow procedures in IRM 25.25.4.7, Reversing Identity Theft (IDT) Lost Refunds, to resolve an EIP issued to the invalid taxpayer.
- **Non-streamline IDT cases:** Create a Dummy tax year 2020 module for the IRSN. Follow procedures in IRM 21.5.2.4.23.10, Moving Refunds, to move the EIP to the 2020 module for the IRSN.

- MXEN and IJE cases: Create a Dummy tax year 2020 module for the other TIN. Follow procedures in IRM 21.5.2.4.23.10, Moving Refunds, to move the EIP to the 2020 module for the other TIN.

None of the examples and procedures cited above are based on explicit statutory authority. They are based on determinations of fraud or conversion perpetrated by third parties, whether that fraud involves the filing of a false return that does not constitute the return of the taxpayer or the conversion of a refund due to the taxpayer.

The IRS has decades of experience determining when a taxpayer is or has been a victim of domestic violence or abuse.

The Internal Revenue Code has long provided some form of relief from joint and several liability for taxpayers whose spouses have been less than honest and who have a resulting tax liability. IRC § 6013(e) was enacted in 1971, updated in 1984, and finally replaced by § 6015 of the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98). Leading up to the enactment of RRA 98, at a hearing dedicated to “innocent spouse” relief, the Senate heard from both victims and their representatives about the situations that should warrant relief, including domestic violence and abuse.

In June 2000, as the IRS was implementing innocent spouse relief, The Community Tax Law Project, (the low income taxpayer clinic founded in 1992 by Nina E. Olson) convened a day-long Continuing Legal Education Program titled “Life After Domestic Violence: Escaping the Tax Consequences.”⁴ As a result of the program, the IRS invited the conference’s domestic violence experts to help the IRS train its Innocent Spouse Project employees on the cycle of domestic violence and its impact on tax filing.

In later years, the IRS Cincinnati Centralized Innocent Spouse Operation (CCISO) partnered with the National Taxpayer Advocate and the Taxpayer Advocate Service to develop training materials and a video for the CIS employees handling IRC § 6015 relief. The video included the Executive Director of the Washington, DC Coalition on Domestic Violence, an LITC attorney specializing in representation of victims of domestic violence and abuse, the National Taxpayer Advocate, and a Taxpayer Advocate Service attorney-advisor.

The IRS now has procedures in place to determine if someone has been the victim of domestic violence or abuse in the context of granting relief from joint and several liability, upon submission of Form 8857, *Request for Innocent Spouse Relief*. Because IRC § 6015 requires the

⁴ The faculty for that program included the Chief Special Trial Judge for the United States Tax Court; the Deputy Associate Chief Counsel, Domestic Field Services; the Counsel to the National Taxpayer Advocate (later the Deputy Commissioner, Services and Enforcement); the Senior Project Manager for the IRS Innocent Spouse Project; the analyst for the IRS Innocent Spouse Project; and the Assistant District Counsel for the IRS Virginia-West Virginia District. The program faculty also included representatives from the Virginia Poverty Law Center, the Catholic Legal Immigration Network, Inc., and the Wellspring Psychotherapy Center, all of whom worked with victims of domestic violence. Nina Olson was the moderator of the program.

IRS to provide the non-requesting spouse an opportunity to submit information, the IRS centralizes innocent spouse abuse claims to protect the location of the requesting taxpayer. The IRS has a procedure by which its phone assistants may place a DVAA victim indicator on the taxpayer's account to protect against disclosure of the victim's location to the abuser. (IRS refers to this notation as the Victim of Domestic Violence (VODV) indicator. See IRM 21.1.2.11.2 and IRM 25.25.18.9.2.6.) IRM 25.15.1.2 has procedures for adjusting returns where the return was filed under duress or there was a forged signature, as well as obtaining a married filing separate return if the taxpayer may be entitled to a refund. (IRM 25.25.18.5.2.13 sets forth the procedures the IRS should follow where relief is fully allowed and a refund is due to the requesting spouse.)

In Publication 3865, last revised in October 2017, the IRS provides "Tax Information for Survivors of Domestic Abuse." This publication states, "Domestic abuse is not just physical abuse. It often includes economic control. As a survivor of domestic abuse, you can take control of your finances. An important part of managing your finances is understanding your tax rights and responsibilities." The publication then outlines many of the rights available to DVAA victims, including relief from joint and several liability under IRC § 6015.

The IRS and Treasury have created special administrative provisions for DVAA victims to provide exceptions to statutory requirements that would otherwise exclude them from receiving tax benefits.

While IRC § 6015 is a statutory provision, in other instances Treasury and the IRS have created special, non-statutory procedures for DVAA victims in order for them to claim federal benefits administered through the Internal Revenue Code. For example, in order to obtain the Affordable Care Act's (ACA) Premium Tax Credit (PTC) under IRC § 36B (and the associated Advanced Premium Tax Credit (APTC)), married persons must claim Married Filing Jointly (MFJ) status on the return for the year used to calculate the PTC and the APTC. However, Treasury and the IRS early recognized that there will be instances where a taxpayer would not be able to file MFJ because of the risk of domestic violence or abuse. Accordingly, without any explicit statutory authorization, it developed procedures whereby DVAA victims could inform the IRS and CMS that they could not file jointly; under these procedures the DVAA victims would still be eligible for the PTC/APTC.

According to these non-statutory procedures, CMS allows persons who are victims of spousal abuse to qualify for a special enrollment period to get health insurance for themselves, and thus qualify for the APTC and PTC (*see [Assisting Victims of Domestic Violence \(August 2019\)](#)*). These taxpayers are then supposed to file MFS (unless they qualify for Head of Household status) and attach IRS [Form 8962](#) to their Forms 1040. Also, the August 2019 CMS publication states that to obtain the special enrollment period, persons do *not* "have to show medical or legal records or other proof that they have experienced domestic violence or spousal abandonment in order to qualify for this special enrollment period."

The first line of IRS Form 8962 states, “You cannot take the Premium Tax Credit if your filing status is married filing separately unless you qualify for an exception (see instructions). If you qualify, check the box —>”

The instructions to Form 8962 have a definition of domestic abuse and then say “*Do not attach any documentation you may have with your tax return.* Keep any documentation you may have with your tax return records. For examples of what documentation to keep, see Publication 974.” (Emphasis added)

Publication 974 provides the following information about the (non-statutory) exception to the requirement for MFJ status:

Domestic abuse. Domestic abuse includes physical, psychological, sexual, or emotional abuse, including efforts to control, isolate, humiliate, and intimidate, or to undermine the victim's ability to reason independently. All the facts and circumstances are considered in determining whether an individual is abused, including the effects of alcohol or drug abuse by the victim’s spouse. Depending on the facts and circumstances, abuse of an individual’s child or other family member living in the household may constitute abuse of the individual.

Spousal abandonment. A taxpayer is a victim of spousal abandonment for a tax year if, taking into account all facts and circumstances, the taxpayer is unable to locate his or her spouse after reasonable diligence.

Records of domestic abuse and spousal abandonment. If you checked the box in the upper right corner of Form 8962 indicating that you are eligible for the PTC despite having a filing status of married filing separately, you should keep records relating to your situation, like with all aspects of your tax return. What you have available may depend on your circumstances. However, the following list provides some examples of records that may be useful. (Do not attach these records to your tax return.)

- Protective and/or restraining order.
- Police report.
- Doctor’s report or letter.
- A statement from someone who was aware of, or who witnessed, the abuse or the results of the abuse. The statement should be notarized if possible.
- A statement from someone who knows of the abandonment. The statement should be notarized if possible.

Thus, at least with respect to the PTC and APTC, the IRS and Treasury have determined that DVAA victims do not have to provide advance documentation of domestic violence or abuse in order to receive these credits. It relies on its fraud detection and audit selection algorithms to identify abuses, rather than imposing burden on all DVAA victims. (See also, Department of Treasury Fact Sheet: Addressing the Needs of Domestic Abuse under the Affordable Care Act, March 6, 2014: “For victims of domestic abuse, contacting a spouse for purposes of filing a joint return may pose a risk of injury or trauma or, if the spouse is subject to a restraining order, may be legally prohibited.”)

Explanation of Recommendation:

The IRS has ample administrative authority to address the needs of DVAA victims in the context of the EIP/RRC. IRC § 6428(e)(2) provides that “with respect to a joint return, half of such refund or credit shall be treated as having been made or allowed to each individual filing such return,” thus creating an individual property interest of each joint filer in his or her share of the credit.

As IRS IRM 25.15 acknowledges, joint returns may be filed as a result of duress, or under forged signatures. It is well established in case law that these returns do not constitute a valid return of the taxpayer. In these instances, similar to the procedures under Identity Theft and Return Preparer Fraud, the taxpayer should be able to file an original MFS return (or Head of Household return, if eligible) and receive her or his own EIP or RRC. In some instances, DVAA victims may already have filed superseding returns claiming that status.

If the joint return from 2019 or 2018 that was used to determine eligibility for the EIP is a valid return, the DVAA victim’s circumstances may have changed since the filing of that return; specifically, the DVAA victim may have fled the abuser and is now living apart (with relatives or friends, in a shelter, or even homeless) and has lost access to the financial accounts in which the EIP was deposited. (Note that, as the IRS has recognized, financial abuse and control is one common aspect of DVAA. Therefore, even when the victim was living with the abuser, he or she may not have had access to the financial account.) As Treasury, IRS, and CMS acknowledge, the DVAA victim cannot contact the abuser without serious risk of harm to self or to their children. The abuser has essentially converted the EIP, similar to the identity thief or the fraudulent return preparer.

As outlined above, the IRS has ample procedures to address these situations. The best course of action would be to allow the DVAA victim to submit a simple affidavit, modelled after the [Form 8857](#), Part II, questions 8 and 10, and Part V. This form acknowledges the taxpayer may be afraid to provide documentation, and the IRS has procedures under IRM 25.15 to handle such situations. The IRS either can route these affidavits to the CCISO for review or have them reviewed by some other Accounts Management unit; this review should adopt the approach taken by the PTC/APTC procedures, namely accepting the claims at face value except where the evidence indicates fraud or attempts to game the system.

Unlike IRC § 6015, there is no requirement, nor need, to notify the other spouse. The CARES Act contemplates overpayments of the EIP. IRC § 6428(e)(1) provides: “The amount of credit which would (but for this paragraph) be allowable under this section shall be reduced (*but not below zero*) by the aggregate refunds and credits made or allowed to the taxpayer under subsection (f).” (Emphasis added.) The IRS can utilize erroneous refund procedures under IRC § 7405 to recoup the refund from the other spouse, if it desires.

Because of the December 31, 2020 deadline for issuance of EIPs, the IRS may not be able to implement these procedures before this date. However, it stills needs to put in place these procedures because the DVAA victim’s 2020 account reflects the payment of an EIP and thus his or her claim for a RRC on the 2020 Form 1040 will be denied. The affidavit could flag these returns for the appropriate IRS unit to review and adjust. The IRS should route these returns/claims to a specific unit or group in order to minimize delays, because by then these DVAA victims will have been waiting a year or more for the EIP/RRC.

Moreover, as discussed in the July 9, 2009 Office of Chief Counsel Memorandum, *Replacement Checks for 2008 Economic Stimulus Payments*, the IRS can provide replacement checks to taxpayers whose circumstances changed between 2019 (or 2018) and 2020, and either are not eligible for the 2020 RRC or for a lesser amount than the EIP based on 2019/2018 returns. The key issues are whether the EIP was “made or allowed” before January 1, 2021. Under the Chief Counsel memorandum’s reasoning, if an EIP payment was made or allowed before January 1, 2021, the IRS can issue a replacement check in the amount of the difference between the RRC claimed on the 2020 return and the amount of the EIP originally made or allowed to the taxpayer in 2020 – namely the DVAA victim’s share of the 2020 EIP that she or he never received.

While all of these steps require some dedication of resources, they are all things that should have been anticipated by the IRS based on its experience with the 2008 ESP and 2008 RRC. The procedures proposed here build upon policies and procedures already used by the IRS, with employees already trained in these matters. It has a cadre of employees already experienced with DVAA victim circumstances, and it has other employees trained to make adjustments to returns that involve identity theft and return preparer fraud. There are already procedures in place for processing returns that include Form 14039 for victims of identity theft. It can adopt those procedures for returns from victims of domestic violence and abuse; failure to do so perpetuates the harm visited upon them by their abusers.