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October 5, 2020

The Honorable Steven T. Mnuchin
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Dear Secretary Mnuchin,

We write to request an immediate reversal of the Department of the Treasury (Treasury) policy to deny economic impact payments (EIPs) to incarcerated individuals and their families as well as a meeting with you as soon as possible to discuss the racially-discriminatory nature of this policy.

On July 17, 2020, we wrote Internal Revenue Service (IRS) Commissioner Rettig indicating our strong opposition to this policy and voicing alarm regarding its disproportionate harm to African Americans. The response from a senior Treasury official on September 21, 2020, was callous in its characterization of incarcerated Americans as undeserving of EIPs given that they are "insulated from the economic effects of the pandemic," offensive in its failure to address our central concern regarding the racially-discriminatory nature of the policy, erroneous in justifying the policy as consistent with Congressional intent, and misleading in its omission that the Treasury also denied EIPs to families of the incarcerated. In the days since we received your staff's letter, a federal judge ruled that Treasury, indeed, is required to issue EIPs to incarcerated Americans. Given the gravity of this matter, your asserted zero tolerance for discrimination of any type within Treasury, and a likely second round of EIPs in the near future, we request an immediate reversal of this policy and a meeting with you to discuss our concerns.¹

Treasury Response to July Letter from Congressional Black Caucus

The Treasury response made two justifications for denying EIPs to incarcerated Americans: (1) The denial was consistent with Congressional intent to provide EIPs only to workers whose economic livelihoods were threatened by the pandemic and to exclude the incarcerated because they are not harmed by the pandemic because "their basic needs such as food, shelter, and health care are already being provided by the state"; and (2) The denial was consistent with its authority to address fraud.

¹ Khadeeja Safdar, "Treasury Probes Claims of Racial Discrimination at U.S. Mint," Wall Street Journal (Sept. 18, 2020), <https://www.wsj.com/articles/treasury-probes-claims-of-racial-discrimination-at-u-s-mint-11600433826>.

Congressional Intent

As we stated previously, the Coronavirus Aid, Relief, and Economic Security (CARES) Act is clear: “any individual” is eligible to receive an EIP other than a nonresident alien individual, an estate or trust, or an individual who can be claimed as a dependent. The statute therefore includes the incarcerated who remain individuals even while serving a sentence. Contrary to the claims of your staff, the law does not limit EIPs to “workers whose economic livelihood were being threatened by the COVID-19 pandemic” nor does Treasury deny EIPs to other “non-workers” such as retirees and individuals without income. Contrary to the claims of your staff, the law does not limit EIPs to individuals “insulated from the economic effects of the pandemic” or those whose “basic needs such as food, shelter, and health care are already being provided for by the state.”

Treasury does not have the power to rewrite a statute passed by Congress and signed by the President. The CARES Act does not empower Treasury to decide who does and does not *need* an EIP; that is why Congress articulated clear eligibility criteria. Treasury cannot contravene statutory language simply because its staff feel an eligible individual is not sufficiently worthy of a tax credit or refund. Treasury is acting far outside the scope of its authority in denying EIPs to incarcerated individuals who otherwise are eligible to receive payment under the CARES Act and is setting a dangerous precedent for executive overreach. The recent federal court ruling affirms the Administration’s statutory requirement to issue EIPs to incarcerated Americans.

In addition to acting contrary to Congressional intent and outside the scope of its authority, the justification for denying EIPs to incarcerated individuals because they have no economic need is offensive, inaccurate, and a callous disregard of the pandemic’s toll on the incarcerated and their families. Prison is not an all-inclusive resort. As is detailed in our July 17 letter, incarcerated populations have been severely affected by the coronavirus pandemic. Indeed, the incarcerated experience a COVID-infection rate over five times greater than that of the nation.² As of September 15, there were more than 125,000 incarcerated individuals confirmed to be infected, and over 1,000 had died.³ The incarcerated need money to purchase items necessary to keep themselves safe and to prevent the spread of infection to prison employees and visitors. These items include personal protective equipment, soap, toilet paper, and over-the-counter medicines; these are basic necessities and not luxury items. In the absence of an EIP, incarcerated persons must instead rely on family members, many of whom are unemployed or in severe financial distress as a result of the pandemic. Exacerbating the financial hardship on families of the incarcerated does not “help stabilize the economy,” as the Treasury’s letter suggests.

Treasury’s alleged justification further ignores the hundreds of thousands of individuals who currently exit custody weekly. Each week, approximately 200,000 Americans are released from jails across the country, and more than 10,000 are released from state and federal prisons.⁴ As these Americans reenter a crippled job market, they need life-saving assistance now to survive one of the worst economic crises in our history.

² Brendan Saloner, Kalind Parish, and Julie A. Ward, “COVID-19 Cases and Deaths in Federal and State Prisons,” (July 8, 2020, *JAMA*, 324 (6), pp. 602-603),

<https://jamanetwork.com/journals/jama/fullarticle/2768249#247266758>.

³ The Marshall Project, *A State-by-State Look at Coronavirus in Prisons* (updated Sept. 18, 2020),

<https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons>.

⁴ Anna Flagg and Joseph Neff, “Why Jails Are So Important in the Fight Against Coronavirus,” (Mar. 31, 2020, updated May 20, 2020), <https://www.nytimes.com/2020/03/31/upshot/coronavirus-jails-prisons.html>.

Authority to Address Fraud

Treasury further points to “frivolous’ tax activity” to justify depriving all incarcerated Americans of EIPs. This argument is a red herring, and we fear its only purpose is to characterize all incarcerated individuals as fraudsters. Just as the incarcerated receive tax refunds despite fraud concerns, so too must they receive their EIPs. Although the Treasury Inspector General for Tax Administration (TIGTA) has noted that prisoner fraud is a problem, TIGTA’s recommendations in the reports cited by Treasury focus on strengthening the IRS’s processes for screening and verifying tax returns of incarcerated individuals each year to identify and reduce fraud *not* an abject denial of tax refunds. The IRS has procedures in place to verify the very tax return on which an incarcerated person’s EIP is based. TIGTA’s reports in no way state that incarcerated individuals should be ineligible to receive tax refunds due to fraud concerns. In fact, in testimony before Congress on this issue in 2005, TIGTA noted that “Prisoners, like all other taxpayers, have a legal obligation to pay their taxes and *have the legal entitlement to a refund of overpaid taxes.*”⁵ It is unacceptable for Treasury to use vague and misconstrued concerns about fraud to deprive millions of Americans of an EIP to which they are entitled under law.

Economic Harm to African American Families

Treasury’s letter also misleadingly omits any discussion of the financial harm inflicted upon the spouses and children of incarcerated individuals by Treasury’s illegal policy. To implement this policy, Treasury created a “pseudo offset” to stop payments going to incarcerated individuals and, as reported in the news, asked state corrections departments to seize EIPs that had been mailed to these persons. When an incarcerated individual had filed a joint return with their spouse, the *entire* payment was suspended or seized, including the spouse’s portion and any portion for dependent children. This fact shatters any of the justifications offered by Treasury for this discriminatory policy. More than six months after the CARES Act became law, Treasury still has no timeline for paying these families, according to information recently received from the Government Accountability Office. Treasury has unilaterally excluded entire families from the EIP program contrary to Congressional intent, inflicting economic harm and suffering to vulnerable families, and then attempted to justify this harm to Members of Congress by saying these individuals did not deserve the aid because they are not working, had no economic need, or were fraudulent.

Another glaring offense of the Treasury response to our letter is the complete disregard of our very serious concerns about the racially-discriminatory implications of this policy. As we noted in our earlier letter, Treasury’s policy unequivocally harms African Americans who are vastly overrepresented in the prison population due to the systemic racism inherent in our criminal justice system. The denial of EIPs to these individuals as well as their families during a historic economic crisis has exacerbated the pandemic’s disproportionate effects on communities of color and the systemic inequities that have long plagued American democracy. Failure to address in your response letter our concerns regarding the suffering inflicted on African Americans by denying EIPs to the incarcerated is deeply troubling because it suggests that such concerns are irrelevant to Treasury and the IRS. We hope that meeting with us will give you an opportunity to clarify Treasury’s position on the disparate harm caused to African Americans by your policy.

⁵ Written Statement of J. Russell George, Inspector General, TIGTA, before the House Ways and Means Subcommittee on Oversight (Jun. 29, 2005), https://www.treasury.gov/tigta/congress/congress_062905.htm (emphasis added).

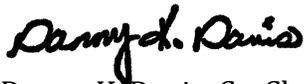
On September 24, 2020, a federal judge granted a preliminary injunction requiring Treasury to stop withholding EIPs from incarcerated individuals. Accordingly, we demand that, within the next two weeks, Treasury issue EIPs to all incarcerated individuals and their spouses who wrongfully were denied payment earlier this year. These individuals have struggled long enough without the assistance they are owed, and Treasury cannot continue to leave them behind.

Thank you for your attention to this important matter.

Sincerely,



Karen R. Bass
Chair, Congressional Black Caucus



Danny K. Davis, Co-Chair
CBC Budget, Appropriations, & Taxation Taskforce



Robert C. "Bobby" Scott, Co-Chair
CBC Budget, Appropriations, & Taxation Taskforce

Cc: Bill Pascrell, Jr., Chairman of the Oversight Subcommittee of the Committee on Ways & Means

**Members of the Congressional Black Caucus Cosigning Letter to Treasury Secretary Mnuchin
October 5, 2020**

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