



To: U.S. Department of Education; Negotiated Rule Making Committee
From: Erika Sussman, Center for Survivor Agency and Justice
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(Scranton, PA), Texas Council on Family Violence
Date: April 28, 2015

Re: Testimony for student loan calculations on behalf of married survivors of domestic violence

To the Committee:

The Administration's 2016 student loan proposal is motivated by a number of laudable goals: lowering costs for student borrowers, reducing debt burdens, making higher education more affordable, and improving loan system efficiencies.

Currently a married borrower who files income taxes as "married filing separately" can exclude their spouse's income from all other income-driven repayment plan calculations. Unfortunately, the proposal for the new REPAYE program would eliminate this option, requiring all married student borrowers to include their spouse's income, citing it as a "loop hole" that married borrowers take for tax benefits.

We oppose this requirement because of its adverse impact on domestic violence survivors. The Center for Survivor Agency and Justice is a national organization that advocates for the complex needs of domestic violence survivors who are living in poverty. Domestic violence leads to economic hardship, and poverty in turn leads to increased vulnerability to future violence. CSAJ addresses the structural barriers facing survivors that impair their access to economic security and long-term safety. CSAJ's Consumer Rights for Domestic and Sexual Violence Survivors Initiative is a national project that enhances economic justice for survivors by building the capacity of and forging partnerships between domestic violence and anti-poverty advocates and by advocating for systems and policy changes that target the inequalities that impair survivors' access to economic security and safety.

Survivors of domestic violence are among the poorest and most vulnerable student borrowers. Given the coercive tactics of their abusive partner, domestic violence victims are far less likely than other married individuals to have access to the income of their spouses. As such, survivors are often well-advised to use the status

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“married filing separately” to protect themselves from further economic abuse by those spouses.

It is widely recognized by agencies we work with, including by the Internal Revenue Service, that economic abuse is just as prevalent in violent relationships as physical and psychological abuse. Economic abuse is defined as “controlling a partner’s ability to acquire, use, and maintain economic resources.” Economic abuse may involve the abuser controlling all household assets and income, using the victim’s identity to accumulate debt thereby ruining the victim’s credit, preventing the victim from working or attending school, and engaging in tax abuse. Tax abuse may take a number of forms. Some abusers will use the spouse’s identity to file a joint tax return without her knowledge. Often victims are saddled with crushing tax debt because the abuser with whom they have filed a joint return has lied about income and deductions.

Here are some real illustrations of what low-income survivors are burdened with:

- 1) Frannie was married to a high level executive, while she earned a much smaller salary. While married, Frannie experienced domestic abuse and isolation, including her husband’s control of all their finances and assets. When her husband left Frannie for his secretary, she was left to figure out things for herself. As part of their divorce, he was supposed to file their income taxes while in separation. She was earning a far smaller wage alone and would never be able to pay the huge student loan payment required by a standard repayment plan. After 5 years, the IRS knocked on her door and informed her that she was being audited and would need to file the income taxes and then pay the tax. She immediately filed married-separately and was able to dig her way out of the awful situation. Her husband still refuses to cooperate and it looks like their divorce will never be final. Should she be penalized for this? She is in an Income Based Repayment plan with an amount that she can afford.
- 2) Carol’s situation is a little different, she fled from her abusive husband in North Carolina and found a home for her and her two children in Pennsylvania. Thanks to a pro-bono attorney, she was able to start the divorce proceedings; but now they can’t find her husband to serve him with the divorce papers. At this point, she is stuck filing separately. She is currently in an Income Based Repayment plan. Should she be excluded?
- 3) Darla’s spouse had his own roofing business while Darla worked for minimum wage in a restaurant. When they lived together, her spouse controlled the household finances. She had no access to their financial records and knew nothing about his income. If she asked questions, he became physically and verbally abusive. He also did not allow her to meet their tax preparer or review their joint returns prior to signing them. IRS



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audited two of those joint returns, assessing additional tax, penalties and interest because Darla's spouse could not document all claimed business expenses. Darla was eventually able to escape her spouse but now can't afford a lawyer to file for divorce. The legal aid offices will not accept her case because she has no children. She's also afraid her spouse will harm her if she files on her own. She gets collection notices from IRS for the joint tax debt, although she has recently learned that she may qualify for innocent spouse relief. For the foreseeable future, her only filing option is married filing separately. Should her spouse's income count in determining her student loan payments?

These women's experience highlight that not all domestic violence survivors are able to divorce their abusive spouses or divorce them as quickly as they would like. This is true for a number of reasons:

- Some survivors justifiably fear that filing a divorce action will endanger them or their children by alerting the abusive spouse to their whereabouts.
- Many other survivors of domestic violence are unable to afford the cost of legal assistance required to obtain a divorce and are unable to obtain free counsel. It is well established that the demand for free legal assistance, particularly in cases involving domestic violence, far outstrips the supply.
- Still other survivors must devote all of their resources and energy to survival and have nothing left over with which to address their marital status.
- And some survivors avoid the family courts because they fear that they will lose custody of their children to their abusive spouse or suffer from abusive litigation tactics, if they file against their spouse for divorce.

It would be a true injustice to include in the calculation of the loan repayment amount for these survivors the income of their abusive spouses. The use of the "married filing separately" status by survivors is almost always evidence of financial estrangement. The Department of Education should not add to this financial burden. It should not assume that spouses who file tax returns using the "married filing separately" status continue to have access to each other's income. In almost all instances, the choice to select "married filing separately" is less advantageous to a married couple as it makes them both ineligible to claim a range of tax benefits such as the Earned Income Credit, Child & Dependent Care Credit, Tuition and Fees Deduction, Student Loan Interest, Hope or Lifetime Learning Educational Credits, and tax-free Exclusion of Social Security Benefits.¹ Despite these costs, domestic violence survivors will endure them and file "married filing separately" for the added protection from an abusive spouse.

¹ See IRS Publication 501 (2014), pp. 7 – 8.

² See IRS Publication 501 (2014), pp. 8 - 10.



There are other tax and safety issues that would be impacted based on this decision, which warrant comment:

- While some married survivors may be able to use the head of household filing status as an alternative to establishing financial hardship, this option is not available to all. In fact, many survivors who go to file as head of household find that their abuser has already claimed this status in order to reap benefits, or maintain some level of economic control.
- Furthermore, survivors who are childless or whose dependents are living with others do not qualify for head of household. Nor do those whose public benefits pay more than half of their household expenses or those who have been separated from their spouses for less than half the year.²

Indeed, penalizing DV survivors who use the married filing separately status conflicts with federal statutory protections that have been created for DV survivors in other contexts. For example, under the Affordable Care Act survivors who were still legally married to abusers but physically separated would not otherwise have been entitled to the tax credits made available so that low-income families can afford health insurance. The IRS, acknowledging the risks to survivor's safety, created an exemption *that permitted* domestic violence survivors to file separate tax returns in order to claim the premium tax credit. They simply check a box to certify that domestic violence prevents the filing of a joint return.³ Eliminating the option to file separately would have denied these survivors access to healthcare for themselves and their children.

A possible response of this committee might be to create an exemption or appeal process for survivors in order to qualify for the program while filing separately. We urge the committee to resist choosing such an alternative. An appeal process would place the onus on survivors (who are already in a difficult situation) to know about the exemption, gather required documentation, and access legal services they cannot afford to file the appeal. Similarly, loan servicers and financial counselors should not have to bear the burden of abuse disclosure and documentation. The ACA simply requires that survivors check a box and complete a supplement; it does not require further documentation. The Pay As You Earn program should follow the ACA's lead at a minimum, though we urge you to reinstate the "married filing separately" option to negate this issue altogether for low-income individuals and survivors.

Given the overwhelming evidence demonstrating the link between poverty and domestic violence, and the stated intention of this program to support low-income

² See IRS Publication 501 (2014), pp. 8 - 10.

³ See IRS Form 8962 (2014); 2014 Instructions for Form 8962, pp. 3, 4.



student borrowers, the DOE should take steps that facilitate rather than impede survivors' access. Low-income individuals should not have to disclose abuse, nor should survivors have to bear the burden of their former partner's financial abuse; many low income taxpayers have experienced domestic abuse and their access to loan repayment assistance is critical to their future economic security and physical safety. Creating an exception or an appeal process for one group would inevitably impact vulnerable individuals at large. With only 2% of borrowers in an income driven repayment plan who file separately, very few choose this option for any financial gain. We have demonstrated today that the vast majority have justifiable reasons for doing so, all linked to their future economic security and physical safety.

Thank you for the opportunity to address this issue. The Department of Education should not include the income of a spouse when the borrower's filing status is married filing separately. While we expect that the change we have requested will have a negligible impact on the student loan repayment system, it will make a profound difference to those domestic violence survivors who cannot safely qualify for a filing status other than married filing separately.

The Center for Survivor Agency and Justice