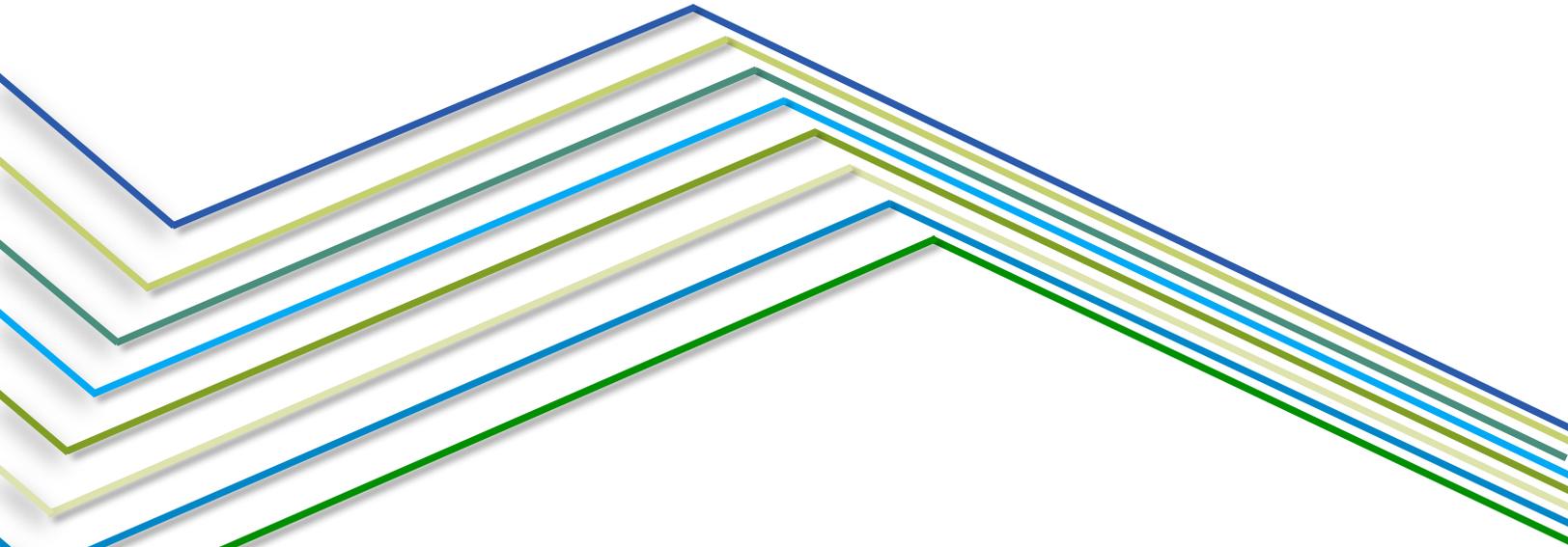




CENTER FOR SURVIVOR
AGENCY & JUSTICE

GUIDEBOOK ON CONSUMER & ECONOMIC CIVIL LEGAL ADVOCACY FOR SURVIVORS

A COMPREHENSIVE AND SURVIVOR-CENTERED GUIDE FOR
DOMESTIC VIOLENCE ATTORNEYS AND LEGAL ADVOCATES



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The Center for Survivor Agency and Justice is a national organization dedicated to enhancing advocacy for survivors of intimate partner violence. CSAJ envisions a world where all people have equal access to physical safety, economic security, and human dignity. CSAJ develops and promotes advocacy approaches that remove systemic barriers, enhance organizational responses, and improve professional practices to meet the self-defined needs of domestic and sexual violence survivors.

The Consumer Rights for Domestic and Sexual Violence Survivors Initiative (Consumer Rights Initiative) is a national project of CSAJ that seeks to enhance consumer rights for domestic and sexual violence survivors by enhancing the capacity of and partnerships between domestic/sexual violence and consumer law and advocacy. Consumer and other economic civil legal remedies have the potential to provide survivors with the legal tools to address issues such as debt collection, credit discrimination, bankruptcy, damaged credit, tax liability, and foreclosure. To achieve survivors' joint goals of physical and economic safety also requires purposeful cross-training, networking, and sustained partnership building on the local and national levels. Therefore, CSAJ's Consumer Rights Initiative offers technical assistance to lawyers, advocates, programs, and communities across the nation through: advocacy tools and resources, webinar trainings, national conferences, individual technical assistance, and Building Partnerships Demonstration Sites.

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This project is supported by Grant No. 2014-TA-AX-K023 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in the publication are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

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Identity Theft & Survivors of Domestic Violence

STRATEGIES FOR RESOLUTION & PROTECTION

By Amy Cao

Introduction

One of the fastest growing white-collar crimes in the country today is identity theft. In 2014, the Bureau of Justice reported an estimated 17.6 million Americans were victims of identity theft.¹ Later that year, identity theft topped the Federal Trade Commission's national ranking list of consumer complaints for the 15th consecutive year, with nearly half a million complaints.² Identity theft victims often suffer severe losses, both financially and emotionally. Two-thirds of identity theft victims claim direct financial losses, including substantial out-of-pocket losses by those who had fraudulent new accounts opened in their name.³ For many, the resulting distress compounds a great burden of emotional strain and anxiety around work and personal relationships. Although government agencies, credit bureaus, and law enforcement have made recent strides in improving identity theft prevention strategies and protocols for resolution, victims can spend months or even years resolving the financial problems that identity theft causes.

¹ U.S. Dept. of Justice, Bureau of Justice Statistics, Victims of Identity Theft, 2014 (September 2015). Accessed at <http://www.bjs.gov/content/pub/pdf/vit14.pdf>.

² "Identity Theft Tops FTC's Consumer Complaint Categories Again in 2014," Federal Trade Commission (FTC) 2014 (February 2015). Accessed at <https://www.ftc.gov/news-events/press-releases/2015/02/identity-theft-tops-ftcs-consumer-complaint-categories-again-2014>.

³ U.S. Dept. of Justice, Bureau of Justice Statistics, Victims of Identity Theft, 2014 (September 2015). Accessed at <http://www.bjs.gov/content/pub/pdf/vit14.pdf>.

Overwhelmingly, these dubious crimes are conducted remotely and anonymously. Most identity theft victims know nothing about their offender and never discover who is committing the crime.⁴

Personal information now proliferates across the Internet, fueled by large consumer demand to exchange information quickly and easily. Perpetrators appropriating sophisticated security tactics for cyber crime have helped usher in a new reality where data breaches, computer hacking, phishing attempts, and so-called suspicious activities are common threats to an individual's financial security. Close friends, family, or intimate partners can also simply steal one's personal information. Sometimes known as "friendly fraud" or "familiar fraud," identity theft can be an insidious form of intimate partner financial abuse, through which an abusive partner steals a survivor's personal information for his or her gain, and toward the survivor's undoing.

This chapter describes the significance of identity theft and its impact on survivors of domestic violence. It highlights some of the most common identity theft issues survivors face regarding their credit, tax situation, and banking safety. The chapter also discusses strategies, legal remedies, and tips for survivor-centered consumer advocacy essential to both survivors dealing with identity theft and their advocates. The purpose of this chapter is to present common situations and possible solutions without designating a single model, as there is no single sweeping approach to ameliorate the financial consequences survivors endure in the face of identity theft. It is important that these advocacy strategies be read in the context of a survivor's particular situation, heeding all appropriate security considerations to ensure a survivor's safety.

Survivors are Uniquely Vulnerable

Survivors may come from relationships where their abusive partners exert dominance in different ways, including controlling combined resources by restricting a partner's access to assets, opening credit lines without permission and accruing massive debts, or filing false taxes. With abusive partners having total access to a partner's personal information and financial history, survivors of domestic violence and financial abuse are particularly vulnerable to identity theft. The numbers are significant: 16 percent of survivors are victims of identity theft and, of these, 24 percent report they know the thief as a family member, friend, partner, or spouse.⁵

Financial abuse, or economic abuse, occurs when an abusive partner takes control of or limits access to shared or individual assets or restricts the current or future earning potential of the survivor as a means of exerting power and control.⁶ It is a pervasive component of the cycle of physical and emotional intimate partner violence and occurs in 98 percent of abusive relationships.⁷

Identity theft is one common tactic of financial abuse that exploits the accessibility of a survivor's personal information. It is defined as the unauthorized procurement of

⁴ Ibid.

⁵ Identity Theft: The Aftermath 2009, Identity Theft Resource Center (ITRC), 2010. Accessed at http://www.idtheftcenter.org/images/surveys_studies/Aftermath2009.pdf.

⁶ NCADV. (2015). Facts about domestic violence and economic abuse. Retrieved from www.ncadv.org.

⁷ https://www.gtcuw.org/_asset/yrrnws/2013-Domestic-Violence-Report.pdf.

Key Terms

Identity theft: unauthorized procurement of someone's personal or financial information to fraudulently obtain goods or services in the victim's name, or misuse for other fraudulent purposes.

Credit report: the physical representation of the information from the credit file in the format that is presented to consumers and businesses. Credit-related information for the credit reports is collected, stored, and summarized by Credit Reporting Agencies (CRAs).

Police report: also called an incident report, a police report is a document generated by law enforcement at a local police department or precinct that details a crime or incident of potentially illegal activity. It is often initiated or requested by the victim or witness of a crime, and used to initiate an investigate or provide formal documentation of an incident in court or with insurance companies.

Affidavit: a written statement confirmed by oath or affirmation, meaning it is signed by a person swearing the information is true, for use in evidence in court.

Dispute letter: a letter written by a consumer to a credit reporting agency challenging an error and providing supporting evidence for the purposes of correcting the error as reflected in one's credit report.

Tax fraud: occurs when a filer falsely reports information on a tax return to obtain a larger refund or decrease a tax bill.

Federal Trade Commission (FTC): the FTC is a bipartisan federal agency with the dual mission to protect consumers and promote market/business competition. FTC's mission is: to prevent business practices that are anticompetitive or deceptive or unfair to consumers; to enhance informed consumer choice and public understanding of the competitive process; and to accomplish this without unduly burdening legitimate business activity.

someone's personal or financial information to fraudulently obtain goods or services in the victim's name, or misuse for other fraudulent purposes.⁸

Devastating consequences

Identity theft not only threatens to re-traumatize and re-victimize those who have survived prolonged physical and emotional abuse -- resolution also poses significant costs. The average identity theft victim spends 60 hours and over \$1,300 resolving new accounts and other frauds.⁹ A study by the Federal Trade Commission found that victims who spent more time resolving financial problems relating to their identity theft reported experiencing serious problems with work and family relationships causing severe emotional distress.¹⁰

Distinct from other forms of financial abuse, survivors often confront identity theft crimes even after they have left their abusive partner. The ramifications are longstanding. In some cases, the theft occurred during the relationship, but the survivor later experiences harassment from debt collectors and lengthy dispute processes. The abusive partner may also continue to commit fraud by opening new credit lines in the survivor's name and running up large debts or taking out loans in the survivor's name with no intention of paying them back. In all cases, these practices effectively sabotage the survivor's credit score. Precarious finances and poor credit foment difficult and confounding barriers for survivors who seek safe transitions into stable employment and housing for themselves and for their families.

Survivor Identity Theft looks like:

- Opening credit cards in a survivor's name
- Getting a loan in a survivor's name
- Stealing public benefits from a survivor
- Accruing debt in a survivor's name
- Withdrawing funds using a survivor's information
- Forging a spouse's signature on joint tax returns or filing without permission

Source: Federal Trade Commission

Impacts of Misuse:

- Denial of credit and loans
- Denial of public benefits
- Denial of medical care
- Federal tax debt or loss of refund
- Loss/denial of employment
- Wage garnishment
- Harassment by debt collectors
- Lawsuits
- Emotional distress and anxiety
- Time and money spent on resolution

⁸ Adapted definition by the U.S. Department of Justice.

⁹ <https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-identity-theft-program/synovatoreport.pdf>.

¹⁰ Ibid.

Jenna's Story

Survivors like Jenna from New York City have fallen prey to her partner's exploitation of her personal and financial information. Jenna's story illustrates some of the impact identity theft can have on survivors and their personal credit.

Jenna was victim to an abusive boyfriend named David. David opened eight credit cards in her name over the past six years without her consent or knowledge by setting account preferences to electronic communications after he received the cards in the mail. Jenna was unaware that he had ever even opened accounts in her name until she reviewed her credit report with her financial coach. Jenna's boyfriend would use the cards to finance his drinking habit, his leisure activities, and even his business travel. Even though his employer would fully reimburse him for his business travel, David would only pay the minimum monthly payment on each card, pocketing the rest of the reimbursement into his individual bank accounts. He made sure that her minimums were always paid on time, prompting no correspondence via mail regarding overdue payments or collections that would alert her to the existence of the accounts. Thus the fraud went on for years.

Upon executing the safety plan created with her social worker, Jenna left her abusive boyfriend while he was at work. When you meet with her, she has just found out that what should have been a pristine credit file is tarnished with overwhelming debt. With \$60,000 of debt in her name, Jenna's credit limits are maxed out. This has left her with large debts that are exclusively in her name, and a credit file that's considered to be too heavily weighted in debt, paralyzing her ability to use her credit for things she needs. To protect the payment history portion of her accounts, Jenna began paying the minimum payments because David ceased paying them since her departure. But she's not sure how long she can keep it up.

Think About It

What are your reactions? What do you want to do? What else do you want to know about Jenna's relationship with David? What else would be helpful to know about Jenna as you discuss options? How does Jenna prioritize her economic and safety needs? What are her goals?

Combating Identity Theft on a Credit Report: Step-by-Step

Case Scenario: *David's abusive control over Jenna's financial situation magnifies the harrowing experience of domestic abuse with the additional trauma of undermining her economic potential. Identity theft as financial abuse can be both overt and hidden. David did not need to rely on physical coercion alone; after all, he was uniquely positioned to know, watch, and wreck his partner's finances. Because they lived together for a number of years, he had easy access to financial documents, bank account numbers, balances, and basic personal identification like Jenna's passport and Social Security number. Although continuing to make monthly credit card payments allows Jenna to maintain a positive payment history, for now, she is not legally responsible for any debts incurred by someone who used her personal information without her explicit permission.¹¹*

¹¹ The Fair Credit Reporting Act (FCRA)

The most common false assumption survivors make is that an identity theft victim is responsible for repaying debts when the identity thief is his or her spouse. This is not true, regardless of whether the identity thief is a spouse or a complete stranger committing the crime over the Internet. Survivors often mistakenly believe that they are accomplices to their abusive partners' crimes because they have not been able to prevent them from opening up fraudulent accounts, or have not reported their unconfirmed suspicions of identity theft to the police. This is not true.

Assessing identity theft

To assist the conversation about finances and identity theft, a full and open assessment of the survivor's experiences, needs, and priorities is essential. The screening and assessment questions presented here are for issue spotting (often called "intake questions"), are not meant to be prescriptive, and conversations around identity theft should not be limited to these questions. For a fuller description of a survivor centered approach to economic assessment, see the **Introductory** chapter in this Guidebook (pg. 11).

The questions below may help you screen for potential identity theft and support the assessment of your client's credit, debt, and financial situation:

- Do you have access to all of your personal documents and financial statements?
- Are you restricted from accessing your documents?
 - If not, does your partner have access to your personal identifying information, documents, or financial statements?
- Do you have a bank account? Is it a joint or individual account?
- Can your partner physically or electronically access your bank account or statements?
- Have you ever seen your credit report? Have you seen it recently?
- Was there anything on it that you did not recognize?
- Do you know or suspect that someone has used your personal information or your children's personal information to obtain credit or other goods?
- Have you ever received calls or letters from debt collectors about accounts that you didn't recognize?
- Have you ever been forced to sign for credit and/or large purchase?
- Have you or your children ever been claimed on a tax return without your permission?
- Has a tax preparer ever told you that the IRS rejected or was unable to accept your tax return?
- Have you ever received letters from the IRS or your State Tax Department stating that you had a problem with your taxes?¹²

Recovering from the fallout of an abusive relationship exacerbates the challenges of identity theft resolution, so it is important for advocates to ensure survivors understand that they are victims of identity theft, the financial harm is not their fault, and that there are some options to undo the damages to their finances. In taking steps toward resolution, survivors and their advocates should carefully assess moves that might put a survivor at greater risk for retaliation from their abusive partner. Resolving identity theft can alert an abusive partner to the action steps a survivor is taking, or even a survivor's whereabouts. Safety should always be considered the highest priority.

¹² The New York City Domestic Violence Economic Justice Taskforce's Financial Development Subcommittee created all of the screening questions. If you have any questions about the Taskforce, please email Kate Reeves at kreeves@thefinancialclinic.org or Jana Morace at jmorace@qls.is-nyc.org.

Pull credit reports

A critical first step in uncovering identity theft is reviewing one's credit report. By asking survivors if they have recently reviewed their credit report, domestic violence service providers and advocates may help survivors start to take control of their financial lives. If the survivor has reviewed their report, the advocate should explain that accounts that the survivor did not willingly open are not their responsibility and should be disputed with the creditor. If the survivor has not recently reviewed their credit report--or has never seen it--the advocate should help the survivor retrieve free annual credit reports online at

Practice Tip

While accessing an online credit report, the survivor should be mindful of their safety. A cunning identity thief can find ways to obtain someone else's credit report. If the thief is also their abusive partner, and if the survivor is living in a secret location, the survivor should be careful not to reveal their current address and instead use a P.O. box or the address of a trusted friend or family member.

annualcreditreport.com or through the mail from the three main credit bureaus: Equifax, Experian, and Transunion.¹³

See the **Credit Reporting and Repair** chapter of this Guidebook for detailed advocacy strategies on pulling and repairing credit.

Review credit reports and submit an affidavit

Once the survivor has a credit report in hand, they should review it carefully and mark off any accounts that they do not recognize as their own. Accounts that an abusive partner forced the survivor to open should also be highlighted. Once these items are identified, the survivor should contact the creditor for each account to explain that they are a victim of identity theft. Most creditors will ask a victim of identity theft to complete an affidavit, on which the survivor can describe the circumstances that led to the identity theft. The creditor may ask the identity theft victim to complete an affidavit of his or her own or to submit the Federal Trade Commission's Identity Theft Affidavit Form.¹⁴ To complete the affidavit, the survivor will need a non-relative witness and Section 20 filled out by a law enforcement officer, which can be requested when filing a police report. Depending on the creditor, this form may also require notarization.

File a Police Report: Checklist

- Photo Identification
- Credit Report
- Related bank statements
- Affidavit
- FTC Memo
- Advocate letter
- Ask for a detective or a Domestic Violence Officer on-site if there is one

Obtain a police report

Of the 68 percent of identity theft victims who contacted a credit bureau to remove fraudulent accounts, 18 percent provided a police report.¹⁵ Although it is not a requirement, it is highly recommended that

¹³ Under the Fair and Accurate Credit Transactions Act (FACTA) passed as an amendment to the Fair Credit Reporting Act (FCRA), each of the three credit reporting agencies must provide, upon request, a free credit report every twelve months to every consumer. These reports can be pulled from annualcreditreport.com. If the survivor cannot pull a credit report from annualcreditreport.com, they should mail away for hard copy reports. Follow this link for the mail-in form and instructions: <https://www.consumer.ftc.gov/articles/pdf-0093-annual-report-request-form.pdf>.

¹⁴ The ID Theft Affidavit is a model form that can be used to report information to many creditors and reporting agencies and simplifies the process of alerting companies where a new account was opened in an identity theft victim's name. All major credit issuers, retailers, banks, and other financial institutions accept this form. For a copy of the ID Theft Affidavit, follow this link: <https://www.consumer.ftc.gov/articles/pdf-0094-identity-theft-affidavit.pdf>.

¹⁵ <http://www.bjs.gov/content/pub/pdf/vit14.pdf>

victims of identity theft obtain a police report to document the identity theft. In fact, some creditors may delay removing fraudulent accounts from a victim's credit report if it is not accompanied by a police report. These can be obtained at a local police department, or precinct in the vicinity of where the identity theft took place.

For survivors who decide to get a police report, there are some important documents to bring and things to remember. In addition to taking the affidavit and fraud investigation documents to the precinct, the survivor should also bring their credit report and any statements they have from the credit card companies. Attending police officers may want to review the affidavit before following through with the report. If survivors reach this step, advocates should help make sure the police officer completes the portion near the end--section 20--that is designated for law enforcement. Filing a police report to document identity theft can be a daunting task. Advocates should do their best to empower survivors to be assertive and advocate for themselves at the police station. If the police are unwilling to cooperate, survivors can show them the FTC's Memo to Law Enforcement.¹⁷ If a survivor is still unable to file a police report, they should explain the circumstances in the affidavit before submitting their documents to the Federal Trade Commission, to each creditor affected, and to the three credit bureaus.

Advocates should make sure that survivors document dates, police officer names, badge numbers, jurisdiction and any relevant case number in the event changes are made as their case funnels through the judicial system. It is worth noting that by submitting an affidavit and police report, the survivor is alerting authorities to a crime that could lead to criminal charges. If a survivor is living with the abusive

Think About It

For survivors, this step may be challenging for several reasons, including unfamiliarity, distrust, or aversion to law enforcement. The Bureau of Justice Statistics reports that less than 10 percent of identity theft victims report their incident to the police. Among them, 26 percent believed it was not important enough to be reported to law enforcement, and 21 percent did not know how to file a report.¹⁶ Survivors can fill out an FTC report with or without a police report.

Practice Tip

How would you talk and decide with Jenna whether filing a police report is a good idea? For survivors concerned about filing a police report, or for survivors who would be at a greater safety risk by reporting the identity theft to the police, consider other strategies in credit repair. For example, setting up consumer fraud alerts or credit freezes may be an option for survivors still with abusive partners. Additionally, together with Jenna, weigh the benefits and tradeoffs of filing the FTC Affidavit with and without a police report. See the Credit Reporting and Repair chapter of this Guidebook for additional strategies to account for the particular safety risks in credit repair and involving the police.

Practice Tip

Organization should keep track of police officers, departments, or precincts that are unhelpful or poorly treat survivors looking to address identify theft. Organizational leaders and advocates can schedule meetings and do other systems advocacy, demonstrating the extent of barriers in accessing police reports quickly, safely, and in ways that do not re-traumatize survivors.

¹⁶ Ibid.

¹⁷ <https://www.consumer.ftc.gov/sites/default/files/articles/pdf/pdf-0088-ftc-memo-law-enforcement.pdf>

partner or believes they might be in danger of retaliation, he or she should take additional precautions. Talk with Jenna about the possible outcomes. How would David react if he found out she went to the police? What would happen if he was charged?

Remove or dispute fraudulent accounts

Sending these documents should trigger the credit bureaus to open a dispute and remove the fraudulent accounts from her credit file; and the creditors to relieve the identity theft victim of any responsibility paying debts associated with fraudulent accounts. Further, fraudulent accounts should be removed from a credit report altogether. If the creditor does not remove fraudulent information immediately, survivors and their advocates should write a credit report dispute letter to the consumer reporting agency demanding that the

Practice Tip

Survivors should immediately stop making payment on debt or accounts that are not theirs and once they submit a dispute letter. While survivors may want to maintain good payment history, continuing to make payments on a fraudulent account might cause a problem when trying to get it removed in the future. The fraudulent account and any negative payment history that ensues should be removed from their report altogether after the dispute.

account(s) be removed (See **Credit Reporting and Repair** chapter).

Survivors and their advocates should check that each item disputed as fraudulent is made abundantly clear in the dispute letter and the attached credit report.

Think About It

When taking these steps, survivors should be aware of any consequences that they might suffer if an abusive partner is still using a card or line of credit. Discuss with Jenna, for example, how David might react if a credit card is declined or he learns an account is frozen?

Restate the circumstances already documented in the affidavit and request that all errors are corrected. Dispute letters should also include copies police reports and photo ID, and sent via certified mail, "return receipt requested," to track its delivery.¹⁸ Credit reporting agencies have 30 to 45 days to investigate disputed trade lines and confirm the amended results in writing and will issue a free, updated copy of the credit report.¹⁹

Practice Tip

After submitting the dispute letters, advocates should help survivors evaluate whether it would be necessary to put a fraud alert or a security freeze on the survivor's credit file. See the **Credit Reporting & Repair** chapter for details on putting these in place.

¹⁸ The Federal Trade Commission (FTC) has a sample dispute letter that should serve as a helpful guide for writing effective letters. It is available online at <https://www.consumer.ftc.gov/articles/0384-sample-letter-disputing-errors-your-credit-report>.

¹⁹ The FTC declares that a free credit report issued by a reporting agency to reflect changes resulted by a dispute does not count as the consumer's annual free report. Upon request, the credit reporting agency must send notices of these corrections to anyone who has pulled the report in the past six months. Additionally, a corrected copy of the report may be sent to anyone who received a copy during the past two years for employment purposes.

Add a personal statement

While undergoing the process of reporting fraud to creditors, survivors may still need to make purchases on credit. Credit checks are also common for applying for jobs or housing. Therefore, a survivor may want to consider adding a free personal statement to their credit report to explain their extenuating circumstances more thoroughly and provide a human element to bare data on their report that does not reflect an accurate credit history.

For victims of identity theft, particularly survivors, personal statements provide an opportunity to disclose any pending or ongoing disputes to demonstrate awareness and initiative. Personal statements are not necessary, but they express proactivity and a survivor's education about their consumer rights, which make them less vulnerable to debt collectors.

Practice Tip

When it comes to writing personal statements, advocates can help survivors craft them. Some tips include: keeping them concise, under 100 words, and presenting specific details regarding dates and other supporting information to support the survivor's case. Personal statements, when written effectively, could help distance a survivor from their compromised accounts and trade lines.

Safe Banking for Survivors

Abusive partners may exert control over household finances as a means to intimidate. Controlling combined assets may manifest as restricting bank account access, forcing a survivor to write bad checks or over-drafting accounts. In the most extreme situations, abusive partners demand survivors to deposit wages, refunds, and other income into bank accounts that they cannot access. In addition to reviewing their credit report, survivors should also review their bank account statements to detect any fraud or misuse.

Case Scenario: *Brendan has two children and receives public assistance. His abusive partner went to a major commercial bank and opened up an account for their youngest child using Brendan's name and Social Security number. His abusive partner deposited enough funds into the account to force public assistance to close Brendan's benefits case and then withdrew all of the funds leaving a negative balance in the account. Because the account has a negative balance, Brendan cannot close it. He is working with an advocate to rectify these issues, but in the meantime, Brendan has no income or resources to support his family.*

With nearly 30 percent of Americans unbanked or underbanked, there has been increasing recognition that financial security depends on financial access.²⁰ Without secure banking, survivors pay hefty transaction fees for check cashing, prepaid debit cards, or other banking substitutes. Survivors in shelters often report large sums of money kept in their rooms stolen, particularly during the tax season. Bank accounts provide a reliable and safe place to receive paychecks, pay bills, and begin savings.

²⁰ 2013 FDIC National Survey of Unbanked and Underbanked Households
<https://www.fdic.gov/householdsurvey/2013report.pdf>

Closing joint accounts

Some survivors and identity theft victims have joint bank accounts with their abusive partners. This is extremely dangerous as it gives the abusive partner unfettered access to the survivor's finances. Especially after a survivor has fled, access to a joint account allows an abusive partner to monitor transaction statements to track down survivors who are living in secret locations. Authorized access to this sensitive information makes it easier for an abusive partner to commit identity theft and harder for the identity theft victim to prove the crime.

Some banks require both account holders to give permission to close a joint account. Survivors holding joint accounts with their non-spouse abusive partners should withdraw

Think About It

What do you think Jenna should do in this situation? How might David react? Now, what should Brendan do? How might Brendan's strategies and safety risks be different than Jenna's?

all monies from the account and close the account immediately to minimize their culpability for the abusive partner's financial actions.

If a survivor has a joint account with an abusive partner and is married, they should

consult a family law attorney to determine their rights and obligations for accessing shared funds (See **Family Law** chapter in this Guidebook).

Like in Brendan's situation, abusive partners often overdraw accounts, leaving survivors penniless and the accounts in poor standing in ChexSystems. ChexSystems, a check verification service and consumer credit reporting agency reports on a consumer's deposit account usage, explicitly indicating negative usage indicators such as check overdrafts, unsettled balances, depositing fraudulent checks, or suspicious account handling. The resulting "poor standing" designation precludes survivors from closing down current accounts and prevents them from opening new ones. On the other hand, unilaterally withdrawing funds from a joint bank account and closing it could anger an abusive partner

Practice Tip

If it is too dangerous for the survivor to withdraw money and close the account, consider the option, weighing the benefits, of opening an individual account at a separate financial institution.

and put a survivor in danger. As with all other aspects of working with survivors of domestic violence, safety should be of paramount concern.

Securing existing accounts

When an abusive partner has access to a survivor's personal and financial information, including their Social Security number, abusive partners may still be able to attain access to personal bank accounts. To protect their assets, survivors should immediately change ATM pins, mailing address and passwords to any existing bank accounts, even if they are the sole account holders. For some, it may be wise to withdraw all individual funds, close the account, and open an account at another bank.

Opening a new account

Whether a survivor is living with an abusive partner or has left the relationship, it is important to establish a safe place to keep money in case of an emergency. If a survivor is concerned about the security of an existing account or would like to begin saving independently, they should consider opening up their own bank account to ensure that

their abusive partner cannot access their funds. What are alternative, safe banking options for Jenna?

To protect limited resources, minimize financial transaction costs, safely obtain any benefits assistance, deposit a tax refund, or simply to better manage spending, reliable banking services are essential.

Consumers without secure bank accounts spend approximately \$600 each year on expensive

fringe financial services including check cashers, pawnshops, and payday lenders. For survivors who have not had any prior experience with banking, it is essential for advocates to discuss banking options and their alternatives.

Think About It

Place matters in banking. What if Jenna lives in a dense, urban, but resource poor neighborhood with few or no banking institutions? What if she lives in a rural area, far from bank branches? What is she's in a shelter or homeless and cannot provide a physical address? What might some alternative options be? How can you help plan with her ways to access banks, given her community context?

Common barriers to banking

Establishing and maintaining a secure bank account for survivors is a critical piece of becoming financially secure, yet there exist many barriers that prevent survivors from easily opening up or securing existing bank accounts. For instance, survivors living in shelters are often denied bank accounts because they are unable to provide a physical address. In fact, one shelter director indicated that over 90 percent of its residents are unable to open bank accounts either because the survivor was unable to provide appropriate documents or a physical address.

Federal regulations require all financial institutions to establish their own Customer Identification Programs (CIP). At a minimum, a bank's CIP must collect proof of identity, mailing address, Social Security number or Individual Tax Identification Number (ITIN), and physical residential address from all who apply to open a bank account.²² Passed as part of the USA Patriot Act, the requirement was implemented to prevent terrorists from holding contraband funds in the United States.

Unfortunately, the practical

implication of these rules also thwarts survivors of domestic violence from opening much-needed bank accounts. In most cities, domestic violence shelters are in confidential locations to maintain the safety of all its residents and staff. As a result, shelter residents are asked to not disclose their physical addresses to any person or institution--for their own best interest. (See the **Debt** chapter in this Guidebook for ways to establish confidential addresses.)

Practice Tip

Alternative addresses to consider are those of an employer, relative, friend, post office box, or the shelter business address if the other party consents. Advocates can support survivors by writing advocacy letters on behalf of survivors that explain that under the federal regulations that require banks to develop Customer Information Programs (31 C.F.R. 103.121), banks may use the "business street address of next of kin or of another contact individual" for customers who do not have a physical address. See the sample document in the appendix for a template.²¹

²¹ See Documenting Physical Address to Open Bank Account Letter Template in appendix

²² See 31. CFR 103.121. "Customer Identification Programs for Banks, Savings Associations, Credit Unions, and Certain Non-Federally Regulated Banks."

Banking advocacy

Since each bank has its own CIP federal compliance guidelines, the physical residential address requirement varies. Therefore, there are opportunities for survivors and their advocates to confer with individual bank branch managers and local credit unions to determine if alternative addresses would suffice.

Systems Tip: Develop a Relationship with a Local Bank

Establishing a friendly rapport with a local bank branch may help survivors tremendously. One shelter reports that it built a relationship with a local bank that developed streamlined procedures so that shelter residents could more easily open up accounts. The bank has even come to the shelter to present on safe, affordable banking options for residents.

Another common barrier is a lack of documents necessary to open an account because they have been lost, stolen or made inaccessible. Replacing these documents will prove invaluable, not only for getting started with a new bank account, but also to secure a job and public benefits. See the tip sheet in the appendix for a list of requirements and contact information for various agencies to contact to replace lost documents.²³

Tax Fraud is a Form of Identity Theft

Tax fraud occurs when a filer falsely reports information on a tax return in order to obtain a larger refund or decrease a tax bill. Knowing a sizeable tax refund or dispersed tax debt burden may be issued if the abusive partner claims a survivor and/or their dependents on their taxes, abusive partners misuse survivors' personal information without their explicit permission. Abusive partners also often commit tax fraud when they claim children who do not live with them and who they do not financially support, but who live with and are supported by survivors.

Tax fraud is common in financially abusive relationships where one partner has control over financial information and income records. Tax fraud is also a form of identity theft. The Financial Clinic, a non-profit organization that works to build the financial security of working poor Americans, found that 15 percent of survivors and/or their children in New York City had been claimed on someone else's tax return without their knowledge or consent. Advocates and service providers should ask survivors whether they have

Practice Tip

Survivors should attempt to obtain copies of Social Security cards, birth certificates, school records and medical records that confirm their identities, the relationships between the household members and that the survivor is the head of the household. Survivors should also consider procuring a PIN number from the IRS, which can protect their identity at tax time. The PIN number can help survivors avoid being repeated victims of tax fraud and allow them instead to access the tax credits and benefits that they rightfully earned as workers, caretakers, and parents. Creating separate PIN numbers for children will further protect a family's tax refund from being stolen from abusive partners and other unscrupulous actors.

previously filed their taxes and whether they prepared the taxes themselves. Advocates should also inquire about whether survivors have received notices from the Internal Revenue Service (IRS) or their state tax department.

²³ See How to Replace Lost Documents

A notice could signal that the survivor's return has been flagged for an audit, or reveal that the survivor has a tax debt. See the **Tax Advocacy** chapter of this Guidebook for a comprehensive list of screening and assessment questions related to tax fraud and other tax concerns. Advocates can support victims of tax fraud by helping them contact the IRS and Treasury Department to report any instances of tax identity theft, and assist them in providing the documents needed to secure any tax credits they are due.

Advocates should also encourage survivors to file their taxes every year at the beginning of each tax season. Filing early can prevent an abusive partner from fraudulently filing for the survivor and claiming their dependents. Additionally, filing every year allows the IRS to keep a record of the fraud, which serves as added proof for the survivor's case in obtaining proper credits or absolving them of their abusive partner's tax liabilities. If survivors have not filed their taxes recently, they are eligible to back file for the last three years. Advocates should refer survivors to a Volunteer Income Tax Assistance (VITA) site to back file their taxes for free.²⁴

See the **Tax Advocacy** chapter of this Guidebook for strategies on determining filing status, filing income taxes, and tips for undocumented and cash-only earners.

Survivor Protection Against Identity Theft

One of the most valuable first steps in building a survivor's financial security is helping them understand their rights. Caught up in tangled financial predicaments, survivors often make financial decisions based on false assumptions and misinformation, especially regarding liabilities that the abusive partner incurred through identity theft.

Know your rights

Survivors dealing with identity theft often face complex legal issues. Resolving these issues can empower survivors to rebuild their lives. Advocates can help assess a survivor's needs and discuss possible routes for legal assistance that can help along the way to identity theft recovery. Survivors and advocates should be informed about these legal strategies, but note that the following is not a comprehensive guide to legal provisions and is not intended to provide legal advice or the complete statutory provisions. For specific legal questions, survivors and their advocates should arrange for advice from legal counsel (See also the **Tax Advocacy** chapter in this Guidebook).

Tax liability: If a survivor's signature was forged or obtained by coercion, the return is not valid. If a survivor signed a joint tax return under duress, there is substantiation for identity theft. To prove duress, a survivor must show that, at the moment the return was signed, they were unable to resist the demands of the abusive partner to sign the return, and that they would not have signed the return otherwise.

Innocent spouse relief: A survivor whose federal tax return was incurred without their knowledge, through identity theft or coercion, can eliminate their tax liability by applying for innocent spouse relief. To qualify, a filer must show that when they signed a joint tax return, they were unaware or had no reason to know that an

²⁴ Many, but not all, VITA programs have the capacity to help customers with tax filings for previous years. It is best to contact a VITA site directly to ask if they have volunteers that can help with tax filings for previous years. For a list of VITA sites in your community, consult the IRS website: <http://irs.treasury.gov/freetaxprep/>.

understated tax existed and that it would be inequitable to hold identity theft victim liable for the unpaid tax. **Keep in mind:** Innocent spouse relief is a powerful remedy that the IRS invokes sparingly. It is difficult for any filer, especially survivors of domestic violence, to prove the elements required for innocent spouse relief. The most challenging part is showing that the filer had "no knowledge or reason to know" that an understated tax existed.

Premium tax credit: New procedures announced by the IRS Notice 2104-23 allow eligible taxpayers to claim the Sec. 36B premium tax credit even when married filing separately.²⁵ The IRS has rightly recognized that many abused spouses do not meet the six-month separation requirements, particularly survivors who recently fled their abusive spouses and sought emergency shelter. Under new regulations, a married survivor and taxpayer may file a return as "Married Filing Separately" and take the premium tax credit (PTC) if the filer is living apart from their spouse when filing and is unable to file a joint return because the filer is a survivor of domestic violence or spousal abandonment.²⁶ A survivor claiming PTC must also declare on the tax return that she or he meets these criteria by checking the box on Form 8692.

Address confidentiality program: Executive Law § 108 establishes an Address Confidentiality Program (ACP) that allows survivors of domestic violence to apply for a substitute address through the Office of the Secretary of State. Approved applicants can use this address to receive mail, apply for licenses, apply for banking products, access benefits, register to vote and create records at local and state government agencies -- all while keeping their actual address undisclosed. Through the program, mail is received by the Secretary of State and is immediately forwarded to the address specified by the participating survivor.

Specific ACP guidelines differ by state, but they are all intended to issue additional protections to survivors of domestic violence who fear for their own and their children's safety and are designed to comply with bank customer identification programs (CIPs).²⁷ The Financial Crime Enforcement Network (FinCEN) provides a guidance memo regarding the use of ACPs in acquiring bank accounts.²⁸ The guidance explicitly permits financial institutions to accept addresses from an ACP as part of verifying a customer's identity and thus CIP compliant. Survivors and their advocates can provide the guidance memo to financial institutions to confirm that accepting an address from an ACP will keep the institutions in accordance with federal regulation.

²⁵ Notice 2014-23 Eligibility for Premium Tax Credit for Victims of Domestic Abuse, accessible at <https://www.irs.gov/pub/irs-drop/n-14-23.pdf>.

²⁶ This exception for the PTC is limited to "victim[s] of domestic abuse or spousal abandonment." The IRS defines domestic abuse as "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 an abuse of the individual. Full text accessible online at <https://www.irs.gov/pub/irs-pdf/i8962.pdf>.

²⁷ The Office of the Secretary of State has the authority to designate state, local, or nonprofit agencies that provide counseling, referral, shelter, or other specialized services to survivors and assist them with applying to the program. A compendium of state and local laws regarding housing for domestic violence survivors, including relevant ACP laws is made available by the National Housing Law Project and is accessible at <http://nhlp.org/files/CombinedD-HousingStateLawCompendium.pdf>.

²⁸ US Department of Treasury, Financial Crimes Enforcement Network, "Ruling on Customer Identification Program Rule -- Address Confidentiality Programs," Nov. 3, 2009. The guidance memo can be accessed at https://www.fincen.gov/statutes_regs/guidance/pdf/fin-2009-r003.pdf.

Fraud Alert or Security Freeze: When a survivor suspects they are at risk for identity theft impacting their credit, the two main options for immediate redress are either a fraud alert or a security freeze. See the **Credit Reporting & Repair** chapter of this Guidebook for details on setting up these protections.

Safety and Prevention

The consequences of identity theft create entrenched financial insecurity that frequently compels survivors to stay in dangerous relationships or drive them to return to abusive partners for financial dependency. Survivors and their advocates should consider taking necessary precautions to defend themselves against identity theft. However, before taking action towards prevention, credit resolution, bank account closures, alleviating unlawful tax burdens, or any legal process, it is important to consider each individual's situation and plan around their particular safety concerns.

Guard your digits

It is important that survivors reclaim their personal identification information to utilize as the bearings for their independence, including employment, tax preparation, housing, or credit to buy the things they need. Personal information also includes contact information which could be used to track down survivors and could put them perhaps at greater risk if found. Shred important documents before throwing them away. Keep account numbers, checkbooks and passwords protected in a safe place and changed regularly.

Just opt out!

For many people, banks and credit card companies pull "soft" inquiries dozens of times per year to screen them for credit card offers. They use this information to send unsolicited credit card offers to those with sufficient credit. This becomes a risk for identity theft because anyone could accept an offer as long as they have access to a survivor's Social Security number. Especially if a survivor wants to decrease the amount of mailings they receive to reduce their paper trail or because they lack permanent housing, they should simply opt out. To discontinue unwanted credit inquiries and offers, visit optoutprescreen.com or call 1-888-5OPT-OUT.

Conclusion

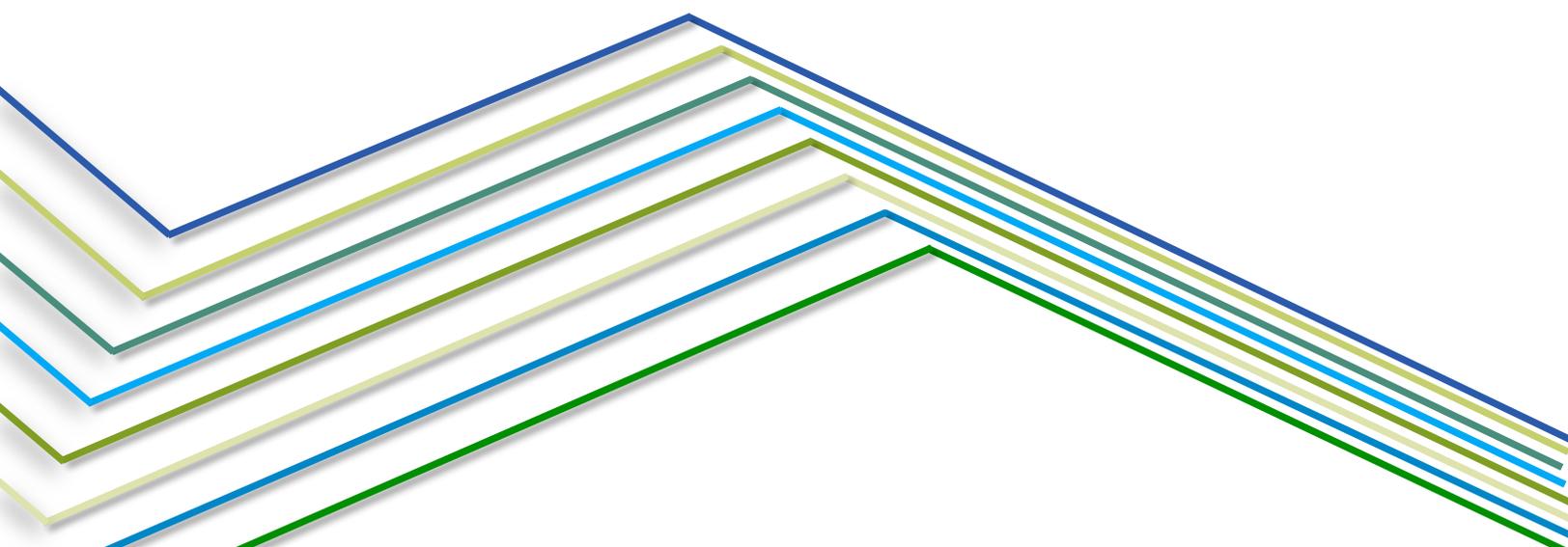
The pervasion of identity theft as an increased consumer risk makes it ever critical to identify risks and impose effective prevention strategies. Because it can thwart survivors from obtaining safe housing, securing gainful employment, and establishing financial security, survivors should begin addressing the harmful effects of identity theft as soon as it is detected. Building financial security is critical for anyone who is fleeing an abusive partner or contemplating leaving an abusive relationship. Advocates at domestic violence service organizations may help survivors take concrete steps to redress identity theft while making the survivor more financially secure along the way.

Laying the groundwork for a new financial landscape can be difficult, but the support of strong advocates can arm survivors with the tools to protect their credit and finances in the future. It will also help them break the cycle of violence and financial control once and for all so that they can strive for their goals and personal priorities again.

Additional Resources

- CSAJ webinar, [Identity Theft in the Context of Domestic Violence](#)
- [Identity Theft and Police Reports](#), The Financial Clinic
 - More resources from the Financial Clinic
 - Resources for the [Domestic Violence Field](#) (particular focus on New York City)
 - Resources on [Financial Security](#)
- The American Bar Association, [Identity Theft: A Low-Income Issue](#)





GUIDEBOOK ON CONSUMER & ECONOMIC CIVIL LEGAL ADVOCACY FOR SURVIVORS

A COMPREHENSIVE AND SURVIVOR-CENTERED GUIDE FOR
DOMESTIC VIOLENCE ATTORNEYS AND LEGAL ADVOCATES



**CENTER FOR SURVIVOR
AGENCY & JUSTICE**

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This project is supported by Grant No. 2014-TA-AX-K023 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in the publication are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

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The Center for Survivor Agency and Justice is a national organization dedicated to enhancing advocacy for survivors of intimate partner violence. CSAJ envisions a world where all people have equal access to physical safety, economic security, and human dignity. CSAJ develops and promotes advocacy approaches that remove systemic barriers, enhance organizational responses, and improve professional practices to meet the self-defined needs of domestic and sexual violence survivors.



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