

# CLAIM THE CREDIT

## EMBEDDING TAX PREPARATION IN DOMESTIC VIOLENCE PROGRAMS

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### I. INTRODUCTION

In 2010, the United Way of New York City launched a large-scale financial development integration initiative called Ready, Set, GreenLight (“GreenLight”). Alongside the New York City Human Resources Administration’s Office of Emergency & Intervention Services, The Financial Clinic (the “Clinic”) has proudly partnered to help: (a) train domestic violence advocates at community based domestic violence shelters & organizations in financial development work and (b) provide consumer law legal services to domestic violence survivors (“survivors”) associated with shelters. In its two-year run, the GreenLight Initiative:

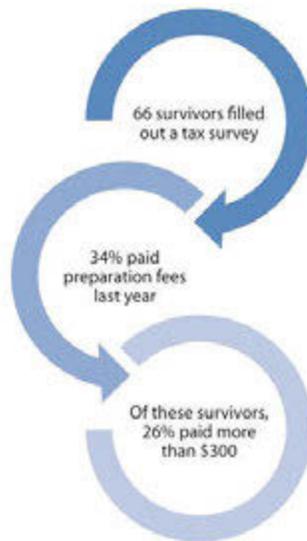
- ▶ Trained 257 advocates at 28 organizations from 66 different shelter and non-residential programs;
- ▶ Helped survivors eliminate more than \$90,000 of debt; and
- ▶ Provided “Know Your Rights” workshops to more than 150 survivors.

Capitalizing on the lessons learned from two years of training and direct advocacy through GreenLight, the Clinic issued a Field Report series to provide advocates with concrete strategies and tools to overcome the many barriers that survivors encounter on their path to financial security. The Field Reports also set forth several policy recommendations that we encourage local, state, and national decision makers to adopt to better protect the rights and the financial security of survivors.

### II. THE NEED FOR FREE TAX PREPARATION SERVICES

Many low-income New Yorkers look forward to filing their taxes because they may receive a sizeable refund (mostly made up of refundable tax credits), which can account for as much as 40 percent of their annual income. The Clinic leverages the tax moment to help low-income New Yorkers maximize their refunds so that they last all year. Securing a refund is particularly important for survivors of domestic violence because the refund may allow survivors to establish an emergency fund, flee an abuser, or transition out of shelter by putting a deposit down on an apartment. With each step, the survivor builds her financial independence.

Every winter, thousands of paid tax preparers pop up in low-income neighborhoods, promising rapid and large refunds. Paid preparers often set their fees based on a filer’s estimated refund—the bigger the refund, the bigger the fee. To ensure the heftiest fees, cunning paid preparers routinely inflate a filer’s income, fudge records about dependents, or adjust a filer’s status. By the time filers receive their refunds, which are smaller than promised, the paid preparers have disappeared with their fees and a substantial portion of filers’ money. Sadly, the filers who are meant to benefit from powerful tax credits instead fall prey to unscrupulous paid tax preparers who capitalize on the crucial role taxes plays in the survivors’ lives.



In 2012, the Clinic brought free tax preparation directly to survivors by setting up mobile tax preparation sites at both residential and non-residential programs in Manhattan, Queens, and Brooklyn. Bringing free tax preparation services to the survivors not only helped this vulnerable population access their much-needed refunds, but also allowed the Clinic to unearth and identify the unique barriers that survivors face at tax time. Finally, the Clinic offered each participating site with technical assistance on how to embed tax issue-spotting questions into the site's intake process, thereby ensuring that case managers will continue to ask residents about tax preparation needs well after tax season and the GreenLight Initiative officially ended.

Filers who received free tax preparation services at the City's domestic violence programs each secured, on average, federal refunds of \$2,240 and state refunds of \$665. Preliminary internal data revealed the most common obstacles that plagued survivors, which are outlined below. Relying on the lessons learned through the GreenLight Initiative, this paper provides practitioners with a best practices approach to overcoming those obstacles. In addition, we have included local, state, and federal policy recommendations intended to help maximize the tax-filing moment for survivors of domestic violence.

### III. THE COSTS OF TAX FRAUD

Most abusers control survivors using fear, intimidation, and physical and mental abuse. This imbalance of power in an abusive relationship often results in abusers gaining unfettered access to survivors' personal and financial information. Knowing that a sizeable tax refund may be issued, abusers exploit the control they wield over survivors at tax time, often committing tax fraud against survivors in order to benefit themselves. One common form of tax fraud that abusers engage in is using the survivors' personal information (including their Social Security Number) without their consent to reduce the taxes that the abuser owes or to obtain a larger tax refund to benefit the abuser. Abusers 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 the survivors.

Of the filers who received free tax preparation services on site this year, 15% of survivors and/or their children have been claimed on someone else's tax return without their permission.

**Best Practices for Practitioners:** Because tax fraud is common among survivors of domestic violence, advocates should encourage survivors to file at the beginning of each tax season and to file their taxes every year. Filing early can prevent an abuser from fraudulently filing for the survivor and/or claiming her dependents. If the abuser has already filed, filing every year can help the Internal Revenue Service (IRS) and the Treasury Department keep a record of the fraud. Domestic violence advocates can support victims of tax fraud by helping them contact the IRS and Treasury Department to report the fraud, and assist them in providing any documents needed to secure any tax credits that they are due. 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 VITA site to back file their taxes.<sup>1</sup>

**Policy Recommendations:** We encourage decision-makers and elected officials in New York State to follow the lead of the IRS and provide victims of identity theft with special PIN numbers to use when filing their taxes. The PIN number will help survivors avoid being repeated victims of tax fraud (as well as general identity theft) and allow them instead to access the tax credits and benefits that they have rightfully earned as workers, caretakers, and parents. Creating separate PIN numbers for these filers' children will further protect a family's tax refund from being stolen by former abusers and other unscrupulous actors.

## IV. SUBSTANTIAL DIFFICULTIES IN CLAIMING THE EARNED INCOME TAX CREDIT

**The Earned Income Tax Credit (EITC):** A tax credit for individuals who work and earn low to moderate income. The EITC is the largest anti-poverty program in the United States. For some New Yorkers, the state, federal, and local EITC can amount to as much as 40 percent of their annual income. Individuals who are married are eligible to claim the EITC if they have not lived with their spouse for at least 6 months of the tax year.

### FILING STATUS

Survivors may face difficulty in obtaining crucial poverty-alleviating tax credits, including the EITC, if they are married to their abuser but are not filing taxes with the abuser. In order to qualify for the EITC and other child-based credits, married filers must file their taxes with the status "Married Filing Jointly." When filing joint returns, filers must have access to each other's financial information and both signatures will be needed on the return. As a result, survivors who live in emergency shelter are reluctant to file taxes jointly with their abusers from whom they have so recently fled. Even if the survivors are willing to file jointly in order to claim the EITC, doing so could put their children and themselves in danger or future abuse.

The IRS does permit some married couples who have been living apart to file their taxes separately and still claim the EITC. But, the couple must have lived apart for at least six months prior to the end of the calendar year. Overall, survivors living in emergency shelter have only just fled their abusers and thus don't qualify for the six-month exception. Knowing that they will not qualify for a substantial refund, many survivors are discouraged from filing their taxes. This is unfortunate given that even a modest refund could help survivors build the savings needed to get out of shelter and secure safe housing, go back to school, or provide for their children.

**Best Practices for Practitioners:** Advocates should encourage survivors to file their taxes even if they may not be eligible for the EITC and provide survivors with referrals to nearby free tax preparation sites. We encourage advocates to speak with survivors about EITC eligibility requirements and how to plan to secure the credit the following year.

**Policy Recommendations:** The Clinic recommends that married survivors living in emergency shelters or accessing services in other programs be permitted to file their taxes separately from their spouses and still qualify for the EITC and other poverty-alleviating tax credits. Domestic violence programs could help survivors access the credits by certifying that the survivors are receiving assistance from them. By allowing survivors greater access to the EITC, the state and federal governments will help survivors secure funds that enable them to establish financial independence and break the vicious cycle of violence that had previously entrapped them.

## V. CHALLENGES TO OPENING BANK ACCOUNTS TO RECEIVE DIRECT DEPOSIT

The fastest and safest way for survivors to receive their tax refunds is via direct deposit into a safe bank account. Securing a safe bank account may be difficult for many survivors. Federal law requires all financial institutions to implement and execute their own Customer Identification Program (“CIP”).<sup>2</sup> As part of the CIP, all customers are required to submit, at minimum, a valid photo identification card, Social Security Number or Individual Tax Identification Number (“ITIN”), and proof of a physical address, before they can open accounts. Survivors who have fled their abusers and homes may not have access to their valid photo IDs or know their Social Security/ITIN information. Additionally, those survivors living in shelter cannot provide financial institutions with their physical address because the location of the shelter is confidential. For safety reasons, residents are prohibited from revealing where they live.

**Best Practices for Practitioners:** Each financial institution has its own CIP protocol. In most cases, financial institutions will allow a survivor to use a domestic violence service provider’s physical address in order to open a bank account. If the survivor can use the service provider’s address, she may enroll in online services (such as online statement delivery, bill pay, and auto-save) to receive all banking services and documents directly through email. Advocates may have to intervene on behalf of support survivors to open bank accounts and set up online services by speaking directly with bank branch managers. This can be a time-consuming process for what should be a routine task.

**Customer Spotlight:** Patrice is living in a domestic violence emergency shelter. When she entered shelter, her only bank account was a joint account belonging to herself and her abuser. She wanted to file taxes, but she was afraid that her abuser would withdraw the refund check if it went into their joint bank account. Her advocate was able to support her in opening an account in her name using the shelter address. As a result, Patrice was able to safely receive her tax refund in her own bank account.

**Policy Recommendations:** One way to ensure that survivors of domestic violence are able to open up bank accounts in New York is for the Secretary of State to promulgate a rule requiring financial institutions to allow survivors to use addresses from the newly established “Address Confidentiality Program” or “ACP” in order to comply with all CIPs. As of June 23<sup>rd</sup> of this year, survivors may obtain a confidential address through the Office of the Secretary of State. Their mail will be routed through the Secretary’s office, which will also be able to accept service of process on behalf of enrolled survivors. Approved applicants should be able to use this address when creating records at local and state government agencies.

In 2009, the Financial Crime Enforcement Network (“FCEN”), a bureau of the Treasury Department charged with addressing financial crimes, issued guidance regarding the use of ACPs in acquiring bank accounts. The guidance explicitly permits financial institutions to accept addresses from an ACP as part of verifying a customer’s identity when obtaining a bank account. As the memo reasons, the FCEN “understands the need to protect [domestic violence] victim anonymity” and is empowered to authorize exceptions to the CIP provisions implemented by the USA PATRIOT Act.<sup>3</sup> In the interests of justice and in compliance with the ACP programs, financial institutions “should collect the street address of the ACP sponsoring agency for the purposes of meeting the CIP requirement.”<sup>4</sup>

Survivors living in confidential shelters should sign up to obtain a secure, non-identifiable address. Once the address is obtained, it should be used to acquire a bank account at any financial institution in New York. The FCEN’s guidance memo may be provided to the financial institutions to confirm that accepting an address from an ACP will keep the institutions in compliance with federal regulation.

## VI. UNIQUE ISSUES FOR UNDOCUMENTED FILERS

Many survivors living in shelter are undocumented, lack a Social Security Number, and work off the books. Even though these undocumented survivors do not have Social Security Numbers, they may still file taxes using an ITIN issued by the IRS. The ITIN allows undocumented individuals to file taxes for wages they have earned but may not have been reported by their employer. Those undocumented workers with children may even qualify for the Child Tax Credit, a refundable credit designed to benefit children and to help keep them out of poverty.<sup>5</sup>

Most undocumented workers are afraid to file their taxes because they mistakenly believe immigration officials will use the returns to track them down and deport them. What the filers do not know is that federal law prohibits the IRS and state tax agencies from sharing tax return information with any outside agency or individual unless it has the taxpayer’s permission to do so, or unless one of the narrow exceptions applies.<sup>6</sup> The exceptions to the rule on confidentiality mainly involve suspicions and findings of tax fraud. Undocumented survivors may be relieved to know that filing a return with an ITIN does not qualify as tax fraud.<sup>7</sup>

The state and federal governments encourage all workers (undocumented or not) to file their taxes every year. Doing so not only minimizes the risk of accruing tax penalties and fines for not filing, but may help an undocumented filer demonstrate responsibility and good moral character when applying for permanent residency or citizenship in the future. Sadly, the fear of being tracked through a tax return and the stigma associated with not having legal status in the United States prevents many undocumented individuals and families from filing their taxes.

**Customer spotlight:** Leah is an undocumented immigrant from Trinidad with 2 children. Leah’s husband was arrested for brutally assaulting her in 2002 and was deported. As a result, Leah has had the responsibility of raising her two kids entirely on her own. Before tax season, she and her two kids lived in an unsuitable, illegal attic apartment. For years, Leah has been working off-the-books as a home health aide. She filed her taxes every year. In December of 2012, Leah obtained a social security number and was eligible for the first time, to file her taxes as a citizen. Working with her GreenLight advocate, she was able to amend her tax returns for the last 3 years and claim the EITC and other credits that obtaining citizenship allowed her to claim. Leah received over \$2,000 and used this money to place a security deposit and first month’s rent on a new apartment.

**Best Practices for Practitioners:** Reassure undocumented filers that federal and state laws prohibit tax agencies from sharing personally identifying information with any other government agency unless a narrow exception applies.<sup>8</sup> Undocumented filers should file taxes using an ITIN. The IRS does not report information to immigration authorities so undocumented survivors should not worry unnecessarily about the risk of deportation as a consequence of filing taxes. An undocumented filer can apply for an ITIN at some VITA sites or through the mail. Filing taxes with an ITIN can help an undocumented survivor apply for citizenship and can help obtain access mainstream banking products.

**Policy Recommendations:** Local, state, and federal tax agencies should promote filing taxes among undocumented populations, especially survivors of domestic violence. We encourage the agencies to launch a coordinated print, electronic, and media campaign (targeted where undocumented filers work and live) on the benefits of filing taxes even when undocumented. The campaign should reassure would-be filers that their tax return information will not be shared with immigration officials and that filing taxes may even help a filer who wishes to apply for citizenship later on. A well-coordinated campaign would not only generate millions in tax revenue for local, state, and federal governments, but it would help distribute millions in much-needed tax credits to workers and their families living on the brink of poverty.

## VII. CASH EARNERS: HOW TO DOCUMENT INCOME?

Many of the survivors in domestic violence shelters earn wages in cash only. Few employers who pay these cash wages deduct payroll taxes for their workers or report the paid income to tax agencies. Since earned income is not formally recorded, cash earners have a difficult time proving that they are eligible to receive much-needed tax credits (including the EITC) that they have earned as a result of their paid work.

**Best Practices for Practitioners:** Cash earners with social security numbers are still eligible to receive advantageous tax credits, including the EITC. Advocates should help cash-earning survivors prepare for tax season by encouraging survivors to track their working hours and earnings in a daily log, deposit earnings in a bank account, and save receipts from job-related expenses.

**Policy Recommendations:** In New York State, cash earners who claim the state EITC are at increased risk of being audited and denied their tax credits because they have failed to sufficiently document their income. We urge the State Legislature to establish fair and clear income documentation standards that cash earners may follow in order to successfully claim the EITC. These standards should permit cash earners to prove their income using documentation other than bank statements, W-2 or letters from employers. The legislation should also put the burden on the Department of Tax and Finance, rather than the filer, to verify a filer's income for EITC purposes.

## VIII. CONCLUSION

Embedding free tax preparation services into existing domestic violence service programming will help thousands of survivors reclaim their financial lives and establish lasting independence. With low-income filers already being targeted by unscrupulous tax preparers, New York must act quickly to ensure that survivors living in shelter, a population vulnerable to predatory services, receive the best and most beneficial free tax preparation available. With the generous support of UWNYS, the Clinic and its partners are well-poised to transform a pilot program into a national model for domestic violence programming.

## NEXT STEPS

**Provide Domestic Violence Trainings for VITA Programs:** Until free tax preparation services are fully embedded in domestic violence services, New York City's VITA programs remain the best resource for low-income survivors in need of tax preparation services. Unfortunately, many VITA sites are ill-equipped to deal with survivor-specific questions. Further, because VITA volunteers may not be trained to screen for or respond sensitively to domestic violence problems, these sites unknowingly discourage filers who may, for example, be asked to contact an abuser to retrieve missing information. Finally, the chaotic nature of the VITA sites makes it difficult to engage in discreet discussions, leaving survivors reluctant to open up about domestic violence issues. Still, survivors who are already connected with domestic violence service programs would greatly benefit from receiving integrated tax preparation services.

**Embed Free Tax Preparation Pilot Programs in New York's Domestic Violence Programs:** In order to serve the greatest number of survivors, New York City, New York State, and the IRS should collaborate with partners such as UWNYC and the Clinic to embed tax preparation pilot programs in domestic violence programs in the upcoming tax seasons. These future pilots will help the Clinic and its partners determine:

- ▶ Whether offering free tax preparation services results in an increased number of survivors getting their taxes filed for free;
- ▶ How integrated VITA programming in domestic violence service organizations improves the outcomes for those organizations; and
- ▶ Which barriers survivors of domestic violence regularly face in filing their taxes and safely securing their refunds.

## NOTES

<sup>1</sup> 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 it 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/>.

<sup>2</sup> See 31 CFR 103.121. "Customer Identification Programs for Banks, Savings Associations, Credit Unions, and Certain Non-Federally Regulated Banks." Passed as part of the USA PATRIOT Act, these regulations were intended to prevent terrorist activity through money laundering. Unfortunately, the practical application of the rules also prevents survivors living in shelter from opening much-needed bank accounts.

<sup>3</sup> U.S. Dep't. of Treasury, Financial Crimes Enforcement Network, "Ruling on Customer Identification Program Rule—Address Confidentiality Programs," Nov. 3, 2009, pp. 2.

<sup>4</sup> Ibid.

<sup>5</sup> Eligibility to claim the credit is tied to the child and not to the parent. The child being claimed must be under the age of 17, a legal dependent of the tax filer, have lived with the filer for more than half of the year, and be a U.S. citizen, a U.S. national, or a U.S. resident alien. The tax code explicitly requires documentation of the child's citizenship or residency, but not the claimant's. Excerpt from: [http://www.americanprogress.org/issues/2012/05/myths\\_ctc.html](http://www.americanprogress.org/issues/2012/05/myths_ctc.html)

<sup>6</sup> 26 U.S.C. § 6103, "Confidentiality and Disclosure of Returns and Return Information." Available online at <http://www.law.cornell.edu/uscode/text/26/6103>.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.