THE HIDDEN THREAT

IDENTITY THEFT AND SURVIVORS OF DOMESTIC VIOLENCE

I. INTRODUCTION

In 2010, the United Way of New York City launched a large-scale financial development integration initiative called Ready, Set, GreenLight. Alongside the New York City Human Rights Administration's Office of Domestic Violence and Emergency Intervention Services, The Financial Clinic (the "Clinic") has been a proud partner to help achieve GreenLight's dual mission to (a) train domestic violence advocates at all levels of the domestic violence shelter system in financial development work and (b) provide consumer law legal services to domestic violence survivors ("survivors") associated with shelters. To date, the initiative has:

- 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.

In the project's second year, the Clinic continues to provide introductory and advanced trainings to domestic violence shelter case workers, while also offering high-quality, free legal services to survivors. Capitalizing on the lessons learned from two years of training and direct advocacy, the Clinic has created 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. This field report also sets forth several policy recommendations that local, state and national decision makers should adopt to better protect the rights and the financial security of survivors.

II. IDENTITY THEFT AMONG SURVIVORS OF DOMESTIC VIOLENCE

One of the fastest white-collar crimes in the country today is identity theft. In 2010, the US Federal Trade Commission (FTC) received 250,854 complaints about identity theft—nearly one-fifth of the entire number of complaints received by the agency. Although most do not discover who is committing this crime, a study run by the FTC finds that about half are perpetrated by close family members or friend. Survivors come from homes where their abusers often exert dominance by controlling the household's resources, including unabridged access to the survivor's personal and financial information.

THE FINANCIAL CLINIC

United Way
United Way of New York City

A. A UNIQUELY VULNERABLE GROUP

Identity theft is an insidious and serious crime. Incidents of identity theft have ballooned due to accessibility of information through the Internet. Survivors are particularly vulnerable to identity theft at the hands of their abusers. In addition to inflicting physical and emotional violence, many abusers also engage in financial abuse in order to maintain control in their relationship. The most common forms of financial abuse involve:

- restricting access to bank accounts and other financial assets,
- demanding details of income earned and spent, and
- using survivors' personal information to obtain credit or secure employment.

The numbers are significant: 14 percent of survivors are victims of identity theft and 24 percent indicate that they know the thief as a family member, friend, or spouse/ex-spouse.[1]

"The abuser keeps the assets in his name and the debts in the name of the survivor."
– ADRIANA, DOMESTIC VIOLENCE ADVOCATE (NYC, NY)

B. DEVASTATING CONSEQUENCES

The costs of identity theft to the survivor are real. The average identity theft victim spends 68 hours and $527 trying to remedy the financial mess that the crime creates.[2] For victims who have had new financial accounts opened in their name, it takes an average of $2,104 and 141 hours to remedy the situation.[3] The opportunity costs from prospective employers and landlords screening survivors' job and apartment applications through credit reports is an added burden with incalculable costs on survivors, their families and communities.

SURVIVOR SPOTLIGHT: Sandra has three children and receives public assistance. Her abuser recently went to a major commercial bank and opened up an account for their two youngest children using Sandra's name and Social Security number. The abuser deposited enough funds into the account to force public assistance to close Sandra's benefits case, and then withdrew all of the funds leaving a negative balance in the account. Because the account has a negative balance, Sandra cannot close it. She is working with an advocate to rectify these issues, but in the meantime, Sandra has no income or resources to support her family.

Identity theft prevents a survivor from opening or closing a bank account, obtaining public assistance, and clearing up credit—all threatening to re-traumatize and re-victimize those who have survived physical, emotional and financial abuse. The consequences of identity theft create entrenched financial insecurity that may force survivors to stay in dangerous relationships or prompt them to return to abusers for financial reasons. This field report will highlight some of the most common identity theft issues that we see in credit, debt, banking and taxes. Additionally, it will present concrete remedies and policy recommendations to change current regulations and practices.

III. UNTANGLING A SURVIVOR'S FINANCIAL LANDSCAPE: IMPROVING CREDIT AND REDUCING OR ELIMINATING DEBT FOR IDENTITY THEFT VICTIMS

Establishing financial security is critical for anyone who is fleeing an abuser or contemplating leaving an abusive relationship. Yet, even establishing the financial landscape for a survivor can be difficult. Many abusers use control over household finances as a means to intimidate. The abuse can be both overt and hidden. In the most extreme situations, abusers force victims into depositing wages, refunds and other income into bank accounts that they cannot access. They create a cloud of mental abuse and physical repercussions, making victims feel as if they have no choice but to sign whatever is placed in front of them.

The abuser does not need to rely on physical coercion alone; after all, an abuser is uniquely positioned to know, watch and wreck his partner's finances. The abuser knows when his partner gets a new job, files her taxes, gets a bonus or pay raise. The abuser has easy access to financial documents, bank account numbers, balances and basic personal identification like passport and Social Security numbers. With this reach, it is not unusual for an abuser to use a survivor's name and Social Security number to obtain a credit card, a car loan, or even a mortgage. A skilled identity thief runs up large debts using fraudulently obtained credit, but then skips out on the bill. Abusers may also hide mail from survivors, thus shielding them from financial statements, bills and legal notices.

A. DISPELLING IDENTITY THEFT MYTHS

One of the most valuable first steps in building a survivor's financial security and confidence is helping her understand her rights. We find that survivors often make financial decisions based on false assumptions and misinformation, especially regarding liabilities that the abuser incurred through identity theft. The worst abusers can achieve a dubious hat trick: open up credit cards through identity theft, rack up debts on these fraudulent accounts, and then convince survivors that they are legally responsible for paying back these same debts. The most common false assumption is that an identity theft victim is responsible for repaying the debts when the identity thief is her spouse. This is not true. No identity theft victim is legally responsible for repaying the debts incurred by someone who used her personal information without her explicit permission. This stands true regardless of whether the identity theft victim is married to the thief, or doesn't even know the thief.

Many survivors also mistakenly believe that they are accomplices to their abusers' 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 also untrue.

Best Practice: Advocates should ensure survivors understand that they are victims of identity theft and that there are a number of options to undo the damages to their finances. Never assume that survivors know their legal rights.

B. COMBATING IDENTITY THEFT ON A CREDIT REPORT

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 her report, the advocate may consider explaining that accounts which the survivor did not willingly open are not her responsibility and **should be disputed with the creditor**.
- If the survivor has not recently reviewed her credit report (or if she has never seen it), the advocate should help the survivor **pull all three credit reports from annualcreditreport.com**.[4]

Best Practice: While accessing an online credit report, the survivor should be mindful of her safety. A cunning identity thief will also have access to her credit report. If the thief is also her abuser, and if the survivor is living in a confidential location, the survivor should be careful about revealing her current address or location.

- Once the survivor has a credit report in hand, she should **review it carefully and mark off any accounts that she does not recognize as her own**. Accounts that an abuser forced her to open should also be highlighted.
- Once these items are identified, the survivor should **contact the creditor for each account** and explain that she is the victim of identity theft. Most creditors will ask a victim of identity theft to do one of the following:
    - Send the identity theft victim an affidavit to complete and return. The affidavit generally asks the identity theft victim to describe the circumstances that led to the identity theft and to assert that she is telling the truth; or
    - Ask identity theft victims to complete and submit the Federal Trade Commission's Identity Theft Affidavit form, which is accessible online at **http://www.ftc.gov/bcp/edu/resources/forms/affidavit.pdf.**
- **Obtain a police report** to document the identity theft.
- After the identity theft affidavit has been completed and sent to the creditor, a creditor will generally relieve an identity theft victim of any responsibility of paying debts associated with fraudulent accounts. Further, **fraudulent accounts should be removed from a credit report altogether.**

Best Practice: If the creditor does not remove fraudulent information automatically, survivors and their advocates should write a credit report dispute letter to the consumer reporting agency demanding that the account(s) be removed. The sample Credit Report Dispute Letter appendix is a helpful guide for writing effective letters. After submitting the dispute letters, advocates should evaluate whether it would be necessary to put a fraud alert or a security freeze on the survivors' credit reports.

Policy Recommendation: Filing a police report to document the identity theft is a daunting task. In larger urban areas, such as New York, it may be difficult.[5] Because of the bureaucratic obstacles preventing identity theft victims from filing these reports, the Clinic recommends that a rule or law be passed eliminating creditors' power to require identity theft victims to file police reports in order to have fraudulent accounts removed from a report.

IV. SAFE BANKING FOR VICTIMS OF IDENTITY THEFT

Establishing and maintaining a secure bank account for survivors is another critical piece of becoming financially secure. Bank accounts provide a reliable and safe place to receive paychecks, pay bills and begin savings. They can bolster a survivor's confidence that she can manage her finances on her own.

A. SECURING EXISTING BANK ACCOUNTS

Survivors should immediately change ATM or online passwords to any existing bank accounts even if they are the only account holders. A survivor may consider opening up a brand new account to ensure that abusers cannot access a survivor's funds. There are some excellent free checking accounts available online and area banks.

Best Practice: Encourage survivors to open "lifeline accounts." Lifeline accounts, which can be opened with less than $25 and have very low maintenance fees, must be offered by law by all banks and financial institutions in New York.

B. CLOSING JOINT ACCOUNTS

Some survivors and identity theft victims may have joint bank accounts with their abusers. This is extremely dangerous as it gives the abuser unfettered and authorized access to the survivor's finances and whereabouts. Authorized access to this sensitive information makes it easier for an abuser to commit identity theft and harder for the identity theft victim to prove the crime. Therefore, survivors holding joint accounts with their abusers should withdraw all monies from the account and close the account immediately.

Policy Recommendation: Some banks require both account holders to give permission to close a joint account. In order to eliminate the effects of identity theft and begin building financial security, survivors of domestic violence must be able to unilaterally withdraw funds from a joint account and close it immediately. The Clinic recommends that financial institutions and their governing agencies establish rules permitting survivors to take this important step without securing the permission of their abuser.

As with all other aspects of working with survivors, safety should be of paramount concern. Withdrawing funds from a joint bank account could anger an abuser and put the survivor in danger. If it is too dangerous for the survivor to withdraw money and close the account, she should be advised to open an account for herself at a separate financial institution immediately.

V. TAX FRAUD IS A FORM OF IDENTITY THEFT

Tax fraud occurs when a filer lies on a tax return in order to obtain a bigger refund or reduce their tax bill. Using someone else's personal information, or claiming another person's dependents, are also forms of tax fraud.

Tax fraud is common in abusive relationships where one partner has control over financial information and income records. Tax fraud is also a form of identity theft. Advocates and service providers should ask survivors whether they have 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. A notice could signal that the survivor's return has been flagged for an audit, or reveal that the survivor has a tax debt.

A. UNCOVERING IDENTITY THEFT DURING TAX FILING

Since survivors have such a high risk of having themselves or their dependents claimed on their abuser's tax returns, advocates should encourage survivors to prepare for this issue. 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. In the event of an audit or request for more information, these records will help survivors verify who they are and help them exercise their rights to claim their children on their tax returns.

Best Practice: Help survivors protect their identity at tax time by obtaining a special PIN number from the IRS for identity theft victims.

B. INNOCENT SPOUSE RELIEF

An individual whose federal tax debt was incurred without her knowledge may try to eliminate the tax liability with the IRS by applying for innocent spouse relief. In order to secure this relief, a filer must show that when she signed a joint tax return, she was unaware or had no reason to know that an understated tax existed and that it would be inequitable to hold her liable for that unpaid tax. 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 proving that the filer had "no knowledge or reason to know" that an understated tax existed. How does a filer prove a negative? The United States Treasury, which oversees the IRS, does provide some relief for survivors in obtaining innocent spouse relief. If a survivor can prove that she was the victim of abuse before she signed a joint tax return, she will not have to prove that she had no knowledge of an understated tax. Although most states have adopted innocent spouse relief provisions, they have not adopted the Treasury's exception to the knowledge requirement for survivors of domestic violence.

Policy Recommendation: State tax departments should adopt domestic violence-specific exceptions to the knowledge requirement in innocent spouse relief rules. Without this exception, a survivor may be held responsible for a tax debt that she did not knowingly incur and for which she bears no personal or moral responsibility.

CLIENT SUCCESS STORY: Katherine had endured decades of physical and emotional abuse at the hands of her husband. She had been working in the banking industry for 15 years before getting laid off in 2010. Katherine began applying for new banking jobs and kept getting rejected. With the help of her domestic violence shelter advocate, Katherine pulled her credit report for the first time. On it, she saw two credit card accounts that she did not recognize. Katherine soon learned that her abuser-husband used her personal information to obtain the two credit cards in her name and without her knowledge. Katherine's abuser stopped making payments on the card and they appeared as negative accounts. Prospective employers reviewed Katherine's credit report after she submitted her job applications and immediately rejected her for banking jobs because of the negative accounts. Katherine and her advocate were able to have the negative accounts removed from her credit report, which improved her credit profile substantially. Katherine recently obtained an entry-level position as a financial services associate at a major commercial bank.

VI. CONCLUSION

Survivors of domestic violence are at increased risk of becoming victims of identity theft. Because the crime of identity theft is so pervasive, and because it can prevent a survivor 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. 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.

The Clinic encourages all domestic violence service providers to help survivors pull their credit reports, dispute negative or incorrect information, and file police reports to document the identity theft. The United Way of New York City, the Clinic, and the domestic violence service community calls upon decision-makers in all levels of government to participate in these efforts, by making the following policy changes:

- eliminating credtor's power to require identity theft victims to file police reports to remove fraudulent accounts from reports;
- permitting survivors to unilaterally close joint accounts with abusers; and
- providing more outreach so survivors learn about the special protections under the federal and state tax codes.

The overall experience will not only empower survivors and arm them with the tools to protect their credit and finances in the future, it will also help them break the brutal cycle of violence and financial control once and for all.

NOTES

[1] *Identity Theft: The Aftermath 2009*, Identity Theft Resource Center, 2010, p. 3, available at http://www.idtheftcenter.org/artman2/uploads/1/Aftermath_2009_20100520.pdf accessed on March 31, 2012.

[2] Consumer Sentinel Network Data Book for January–December 2010, Federal Trade Commission, March 2011, p. 14, available at http://www.ftc.gov/sentinel/reports/sentinel-annual-reports/sentinel-cy2010.pdf accessed on March 31, 2012.

[3] *Ibid.*

[4] If the survivor cannot pull a credit report from annualcreditreport.com, she should mail away for hard copy reports. For more information on how to retrieve credit reports by mail, visit www.thefinancialclinic.org.

[5] Al Baker and Joseph Goldstein, "A Police Tactic: Keeping Crime Reports Off the Books," *New York Times*, Dec. 30, 2011, available online at: http://www.nytimes.com/2011/12/31/nyregion/nypd-leaves-offenses-unrecorded-to-keep-crime-rates down.html?scp=1&sq=Police%20Tactic:%20Keeping%20Crime%20Reports%20Off%20the%20Books&st=cseDecember 30, 2011 accessed on December 30, 2011.