

Congress of the United States
Washington, DC 20515

July 31, 2020

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

Dear Secretary Mnuchin,

We write to express our ongoing concerns about racial inequities in the administration of the Internal Revenue Code (Code) and the Coronavirus Aid, Relief, and Economic Security (CARES) Act. As our country focuses on identifying and eliminating systemic racism, we have a duty to ensure that our tax laws do not perpetuate racial injustice.

While none of the provisions in the Code or the CARES Act explicitly reference race, it has become apparent that the Administration's tax policies result in unacceptable racial disparities. Our concerns are particularly urgent in light of the ongoing pandemic, as minority communities bear the brunt of its devastating effects. A recent report by the Urban Institute indicated that non-Hispanic White families received their economic impact payments (EIPs) faster than Black and Hispanic families.¹ Similarly, it was reported that only 12 percent of Black and Hispanic business owners who applied for Paycheck Protection Program (PPP) loans received the amount requested. Sadly, one-half of these businesses are expected to permanently close soon.² We must do better. It is unacceptable to leave these communities behind.

At a time of racial reckoning for our nation, it is imperative that the Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) review current policies and take immediate action where policies perpetuate discrimination. In particular, we request that you review the following areas, which have come to the attention of the Committee on Ways and Means (Committee) through hearings and oversight work:

¹ Janet Holtzblatt and Michael Karpman, *Who Did Not Get the Economic Impact Payments by Mid-to-Late May and Why?* (July 2020), https://www.urban.org/sites/default/files/publication/102565/who-did-not-get-the-economic-impact-payments-by-mid-to-late-may-and-why_1.pdf.

² Tommy Beer, "Minority-Owned Small Businesses Struggle To Gain Equal Access To PPP Loan Money," *Forbes* (May 18, 2020), <https://www.forbes.com/sites/tommybeer/2020/05/18/minority-owned-small-businesses-struggle-to-gain-equal-access-to-ppp-loan-money/#18b29d65de3f>.

The CARES Act

- EIP Distribution Efforts. As you know, Congress authorized EIPs in the CARES Act in order to promptly deliver emergency assistance to *all* struggling Americans, regardless of race or ethnicity. However, not all Americans have been treated equally by the Administration’s implementation of this key relief provision. As noted above, the Urban Institute found “significant disparities” in payment receipt and concluded that non-Hispanic White adults were “about 5 percentage points more likely to receive the payment than non-Hispanic Black adults . . . and 10 percentage points more likely to receive the payment than Hispanic adults.” This disparate implementation is layered on top of the CARES Act’s unfair exclusion of taxpayers who use Individual Taxpayer Identification Numbers, many of whom are Hispanic, from receiving EIPs.

Treasury’s policies also have created an unacceptable lack of parity between individuals who were paid by direct deposit and those who were paid either by paper check or prepaid debit card. Unbanked and underbanked Americans, who disproportionately are Black and Hispanic,³ have struggled to access their EIPs. For starters, Treasury did not begin mailing paper checks and prepaid debit cards until after a substantial number of Americans had been paid first by direct deposit. According to data from Treasury, 98 percent of direct deposits were successful upon the first delivery attempt, and, of the two percent that bounced back to Treasury, 99 percent have been reissued.

To contrast, as of July 22, only 86 percent of paper checks mailed had been deposited or cashed and only 81 percent of EIP debit cards had been activated by recipients. Furthermore, the EIP debit cards are subject to various fees and limitations, including fees for cash withdrawals and daily limits on how much can be spent using the card, how much can be spent on a single transaction, and how much cash can be withdrawn from the card. It is unfair for Treasury to impose such fees and limitations on emergency financial assistance, especially when it is done in such a disproportionate manner.

The Administration’s implementation efforts also have left behind some of the most economically vulnerable Americans, namely non-filers whose incomes are too low to trigger a tax filing obligation. In order to receive an EIP, these individuals were burdened with the additional requirement of having to proactively register using an online portal. However, as the Urban Institute reported, many potentially eligible non-filers have no internet access at home, and facilities that generally offer free internet access (such as libraries or volunteer tax assistance sites) have been closed because of the ongoing pandemic. This is a particularly unsurmountable hurdle for those experiencing homelessness, who are acutely impacted by this crisis. Further, due to problems with the portal, nearly half a million non-filers who were able to register on the portal did not receive payments

³ Federal Deposit Insurance Corporation, *FDIC National Survey of Unbanked and Underbanked Households: Executive Summary* (2017), <https://www.fdic.gov/householdsurvey/2017/2017execsumm.pdf>.

for their dependents. To date, these Americans still await the full payment to which they are entitled, and the IRS has provided no timeline for when they will be paid.

- EIP Guidance on Incarcerated Americans. With no legal basis, Treasury unilaterally determined that incarcerated Americans are not entitled to receive EIPs. This policy is inexcusable and contrary to the plain language of the CARES Act. In efforts to implement this policy, Treasury's Bureau of the Fiscal Service created a "pseudo offset" to stop payments going to incarcerated Americans and, in the case of joint filers, to their spouses as well.⁴ In this way, Treasury's policy not only unfairly targeted inmates, but also their families who may be relying on only one income and are very much in need of financial support. Though Treasury acknowledges that it must issue new payments to these spouses, it has provided no timeline for when these individuals will be paid.

On July 17, Members of the Congressional Black Caucus wrote to the IRS Commissioner on this topic, stating, "communities of color have disproportionately borne the brunt of this pandemic, and it is deeply troubling that the IRS's position only exacerbates these disparate effects." We reiterate their concern that Treasury is arbitrarily and cruelly targeting a population in which Black and Hispanic families are overrepresented due to systemic inequities in our criminal justice system. This policy must be reversed immediately, and both incarcerated Americans and their spouses must promptly receive the funds to which they are entitled under law.

- Minority Businesses Excluded from the PPP. As noted above, there have been troubling reports that minority-owned businesses have been unable to access the relief offered by the PPP. In fact, it was reported that up to 90 percent of minority- and women-owned businesses were shut out of the initial tranche of PPP funding, an inevitable consequence of conditioning the program on existing banking relationships.⁵ It is entirely unacceptable that, despite \$659 billion in funding, minority businesses continue to struggle without the government assistance they deserve.

The Code

- Audits of Low-Income Taxpayers. A tax return with an Earned Income Tax Credit (EITC) claim is more than twice as likely to be audited as other individual tax returns. These low-income taxpayers are more likely to be minority households, as nearly 40 percent of Black

⁴ Treasury Inspector General for Tax Administration, 2020-46-041, *Interim Results of the 2020 Filing Season: Effect of COVID-19 Shutdown on Tax Processing and Customer Service Operations and Assessment of Efforts to Implement Legislative Provisions* (June 30, 2020), <https://www.treasury.gov/tigta/auditreports/2020reports/202046041fr.pdf>.

⁵ Megan Cerullo, "Up to 90% of minority and women owners shut out of Paycheck Protection Program, experts fear," CBS News (Apr. 22, 2020), <https://www.cbsnews.com/news/women-minority-business-owners-paycheck-protection-program-loans/>.

households and 30 percent of Hispanic households earn less than \$30,000 (compared to only 22 percent of White households that earn less than \$30,000).⁶

The IRS Commissioner previously has testified that these low-income taxpayers are audited at a higher rate because returns filed by low-income taxpayers are cheaper and easier to examine. This is no excuse for racially unjust tax policy. It is inexcusable that the Black Belt—which is comprised mainly of black farmers, many of whom are living below the federal poverty level—includes 10 counties with the highest audit rates⁷ while high-income taxpayers and corporations—who account for 60 percent of the tax gap—are experiencing declining audit rates amidst historic levels of income and profit.

- EITC/Additional Child Tax Credit (ACTC) Refunds Unnecessarily Delayed. Under the provisions of the Protecting Americans from Tax Hikes (PATH) Act, the IRS cannot refund an overpayment of taxes to a taxpayer who claimed the EITC or ACTC on their return before February 15. The Committee is aware that most EITC/ACTC refunds are verified well before this date and, as such, could be paid on February 15. Yet, this year, the IRS did not start the refund process for these returns until February 15, and, consequently, taxpayers did not receive their refunds until early March, which was two to three weeks later than required by the PATH Act. The IRS kept 10 million low-and middle-income families waiting weeks for their refunds. There was no justifiable reason for this delay, and, as noted above, Black and Hispanic households are impacted disproportionately by policies that unfairly hurt taxpayers claiming refundable tax credits.
- High-Income Non-filers Left Unaddressed. The Treasury Inspector General for Tax Administration (TIGTA) reported that the IRS needs to do more to address high-income non-filers. TIGTA found that the IRS is not working over 350,000 non-filer cases (with an estimated \$20 billion in taxes), and over 500,000 cases (with an estimated \$25 billion in taxes) are sitting in the collection inventory unlikely to be pursued. These disparities suggest there are two systems of enforcement—one for the wealthy and well-connected and another for everyone else.
- Limited-English Taxpayers Unserved. The U.S. Government Accountability Office (GAO) reported that IRS services to taxpayers with limited-English proficiency are very limited, inaccurate in some cases, and difficult to access.⁸ GAO further noted that the IRS has not assessed whether to translate vital tax products, such as the Form 1040. Further, the IRS

⁶ Alexis Gravely, “How Trump’s Tax Cuts Favor Whites over Minorities,” The Center for Public Integrity (Aug. 21, 2018, updated Nov. 17, 2018), <https://publicintegrity.org/inequality-poverty-opportunity/how-trumps-tax-cuts-favor-whites-over-minorities/>.

⁷ Brentin Mock, “IRS Audits Target the Wealth-Depleted Southern Black Belt,” Bloomberg (Apr. 3, 2019), <https://www.bloomberg.com/news/articles/2019-04-03/map-reveals-more-irs-audits-in-southern-black-belt>.

⁸ Government Accountability Office, GAO-20-55, *2019 Tax Filing: IRS Successfully Implemented Tax Law Changes but Needs to Improve Service for Taxpayers with Limited-English Proficiency* (Jan. 15, 2020), <https://www.gao.gov/products/GAO-20-55>.

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has not evaluated the Free File program to provide options for taxpayers with limited-English proficiency.

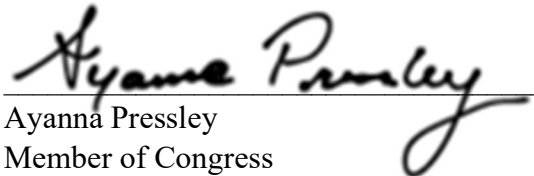
We respectfully request a report by August 15, 2020, on what policies and programs you have identified for review as part of efforts to reduce systemic racism. Please include the current status of these policies and programs, and the steps you have taken or plan to take to address your findings. For the implementation choices outlined above, please provide the rationale used to inform issued guidance, including, but not limited to, any legal precedent, data collection or analysis, and consultation with relevant groups.

Thank you for your prompt consideration of this urgent matter. We look forward to your response.

Sincerely,



Richard E. Neal
Chairman
Committee on Ways and Means
United States House of Representatives



Ayanna Pressley
Member of Congress
United States House of Representatives