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March 13, 2023

Andres Garcia
Internal Revenue Service
1111 Constitution Avenue NW, Room 6526
Washington, DC 20224

RE: Comment Request for Forms 8857 and 8857(SP), 88 FR 1630

Dear Mr. Garcia:

Thank you for the opportunity to submit comments on Forms 8857 and 8857(SP) to the Internal Revenue Service (“IRS”). The Federal Tax Clinic at the Legal Services Center of Harvard Law School submits the following comments on behalf of our Clinic and the client communities that we serve.

In its request placed in 88 FR 1630, the IRS has requested comments on five topics. Our response will focus on topic (c): “ways to enhance the quality, utility, and clarity of the information to be collected” by Forms 8857 and 8857(SP). Our comments apply equally to both Form 8857 and Form 8857(SP), and so we will refer to both as simply “Form 8857” or “the form.”

Clinic Background

The Federal Tax Clinic (“Clinic”) was founded in 2015. It is currently directed by Audrey Patten, who joined the clinic in 2017 and has over ten years of experience providing legal services to underserved communities.¹ As part of the Legal Services Center at Harvard Law School, the Clinic works with low- and moderate-income taxpayers from the Greater Boston area and nationwide to provide a variety of legal services related to issues before the IRS and the Massachusetts Department of Revenue.² The Clinic is a recognized Low Income Taxpayer Clinic (“LITC”) program and receives a grant under 26 U.S.C. (“IRC”) § 7526, administered by the Taxpayer Advocate Service within the IRS.³

The Clinic handles a large volume of cases in which our clients seek relief from joint and several liability under IRC § 6015 (“innocent spouse relief”). Our clients are predominately low- or

¹ Harvard Law School, *Audrey Patten: Lecturer on Law* (last accessed March 4, 2023), <https://hls.harvard.edu/faculty/audrey-patten/>.

² Federal Tax Clinic, *Legal Services Center of Harvard Law School* (last accessed March 4, 2023), <http://www.legalservicescenter.org/students-clinics/federal-tax-clinic/>.

³ IRC § 7526. *See also* Taxpayer Advocate Service, *Low Income Taxpayer Clinics* (last accessed March 4, 2023), <https://taxpayeradvocate.irs.gov/about/litc>.

moderate-income taxpayers. Many are recent immigrants or have limited or no English-speaking ability. While they come to us for help with tax controversies, our clients are often attempting to navigate many other complex and difficult circumstances that bear upon their tax issues. These include, but are certainly not limited to, poverty, limited access to financial institutions and capital, homelessness, and domestic violence.

As part of our advocacy, we represent individuals seeking innocent spouse relief in administrative processes, before the United States Tax Court, and on appeal before the United States Circuit Courts of Appeal. Our representation often begins by preparing and submitting Form 8857 for our clients. In other cases, we enter cases during the administrative review of an already-submitted Form 8857 or after an administrative or judicial decision has been made on the basis of information contained in a Form 8857. Because we see innocent spouse cases with various procedural postures and underlying facts, we are acutely aware of how even small changes in Form 8857 can lead to differences in the ultimate outcome of a request for innocent spouse relief.

Pursuant to this mission, both the Clinic and our clients have a deep interest—shared with the IRS—in improving Form 8857. Thus, we respectfully submit the following comments on Form 8857, on how to improve the “the quality, utility, and clarity” of collected information. The first comment offers suggestions to Form 8857 itself to improve the quality and clarity of the information collected. The second comment focuses on the need for updated training around the issue of domestic violence to make the information collected by Form 8857 more useful for the IRS in carrying out its statutory duty to review claims for relief.

Comment 1: Suggested Changes to Form 8857

It is widely known that taxpayers, particularly those who do not have access to professional assistance, find the tax system extremely complex.⁴ This is true even though the IRS, for example, makes guidance publicly available on its website. Some studies divide tax complexity usefully into two types: the substantive complexity of the Internal Revenue Code and procedural complexity of various IRS forms and processes.⁵ Research drawing upon behavioral science has shown that increases in both types of complexity lower compliance rates.⁶ Furthermore, procedural complexity contained in forms like Form 8857 runs the risk of lowering information quality because of misunderstanding around the IRS’s requests. This in turn could lead to a higher administrative burden as the IRS has to interpret the faulty information. Among other consequences, this complexity has also contributed to the creation of an over \$11 billion tax preparation industry, which requires the IRS to use administrative resources to regulate.⁷

⁴ See, e.g., Taxpayer Advocate Service, *2022 Annual Report to Congress*, 45–58 (2022), <https://www.taxpayeradvocate.irs.gov/reports/2022-annual-report-to-congress> (last accessed March 9, 2023).

⁵ Thomas, Kathleen, *User-Friendly Taxpaying*, 92 Ind. L. J. 1509, 1516–19 (2017).

⁶ *Id.*, at 1512.

⁷ Patel, Kush, *IBISWorld Industry Report 54121d: Tax Preparation Services in the US* (2019), <https://www.gsa.gov/cdnstatic/54121D%20Tax%20Preparation%20Services%20in%20the%20U>

We suggest that the IRS should focus on two specific areas in future revisions to Form 8857. We also provide an example for each category of revision based on the current forms.

Minimize cross-references within Form 8857

While cross-references can act as an aid to understanding complex tax forms, it takes the taxpayer time to cross-check the reference and interrupt the flow of reading. For instance, Form 8857 repeatedly refers to the non-requesting spouse as “the person on line 6.” Instances include the information at the beginning of the form which comes before Line 6 and the important warning that the IRS is legally obligated to contact the non-requesting spouse. Line 6 asks the requesting spouse: “who was your spouse for the tax years you want relief,” i.e., the non-requesting spouse. This indirect reference based on information filled out elsewhere on the form should be changed to language that more clearly identifies the person. A possible change could be to change the instructions in the box “IMPORTANT THINGS TO KNOW” to read (edits in bold):

*The IRS is required by law to notify the **non-requesting spouse that you have requested this relief. That person was your spouse for the years for which you want innocent spouse relief, even if that person is no longer your spouse. The non-requesting spouse will have the opportunity to participate in the process by completing a questionnaire about the years for which you want innocent spouse relief.***

This modification should make Form 8857 easier to understand as the requesting spouse reads through the sections in order. For instance, the taxpayer at line 2 would not have to skip to line 6 to understand the instructions, and then go back to line 2. Furthermore, the suggested change aligns with current IRS terminology. Publicly available IRS material such as the Internal Revenue Manual uses the term “Non-Requesting Spouse.”⁸ Perhaps more notably, other innocent spouse forms and letters sent to the parties later in the determination process use the term as well.⁹ Such a change would make for a more natural reading experience, reducing time spent and errors made on Form 8857.

Add context to Form 8857 around the process for determining innocent spouse relief

The Clinic appreciates the challenges that the IRS encounters in maintaining a balance between information to include in forms and the increase in length and complexity that arises from additional information. However, without understanding the reasons why the IRS is asking for certain information, a taxpayer is likely to include either extraneous or partial information, which affects their case and increases the interpretative burden on the IRS.

[S%20Industry%20Report.pdf](#) (last accessed March 9, 2023) (U.S. tax preparation industry estimated to have \$11.3B in revenue in 2019).

⁸ IRM 25.15.18.

⁹ IRM 25.15.18 refers to the non-requesting spouse throughout. *See also* IRS Form 12508 (“Questionnaire for Non-Requesting Spouse”); IRS Letter 3284-C (“Non-Requesting Spouse Initial Contact”); IRS Letter 3660-C (“Non-Requesting Spouse Preliminary Determination”).

In Part I (“Should you file this form?”), Form 8857 contains a succinct description of innocent spouse relief and which taxpayers may be eligible for it. A short preamble like this for other parts of the form should be added to improve the information collected in those parts. For example, Part II (“Tell us about yourself and the person listed on line 6 for the tax years you want relief”) asks requesting spouses to fill out information about themselves and non-requesting spouses. The information in this part serves at least three different purposes. Lines 4-5 ask for logistical information such as preferred language and contact information for the requesting spouse. Line 6 asks for information about the non-requesting spouse. Lines 7-9 ask for information that relates to the first,¹⁰ third,¹¹ and seventh¹² equitable factors considered by the IRS in Rev. Proc. 2013-34, respectively. A short statement of how the information in Part II will be used by the IRS will allow the requesting spouse to better tailor their answers to the IRS’s review. An example statement to be added directly below “Tell us about yourself and the person listed on line 6 for the tax years you want relief” could read:

The information requested in this part will help us better communicate with you and assess whether your personal situation may qualify you for innocent spouse relief. If you would like to know more about how we consider the information collected here, see Revenue Procedure 2013-34 (<https://www.irs.gov/pub/irs-drop/rp-13-34.pdf>).

In other cases, Form 8857 contains clarifying statements, but should impart fuller context around the process with only a sentence or two. For instance, in line 7, the form correctly states that “[a] divorce decree stating that your former spouse must pay all taxes does not necessarily mean you qualify for relief.” While that is true, this note could be an opportunity to communicate IRS guidelines for a wider variety of scenarios. In particular, a sentence such as “*We will consider a divorce decree as supporting your case for relief, but you may still qualify for relief if you are still married,*” could offer the requesting spouse greater clarity and enhance the quality of the information provided.¹³

Comment 2: Suggested Additions to IRS Training on Weighing Abuse in Determining Innocent Spouse Relief

In general, it is well known that inadequate training has a highly detrimental impact on the IRS’s ability to fulfill its mission. The Taxpayer Advocate Service in its 2022 Report to Congress included training among its list of “most serious problems.”¹⁴ In its comments in the same report,

¹⁰ Rev. Proc. 2013-34 § 4.03(1)(a).

¹¹ Rev. Proc. 2013-34 § 4.03(1)(c)(iii).

¹² Rev. Proc. 2013-34 § 4.03(1)(g).

¹³ See Rev. Proc. 2013-34 § 4.03(1)(a) (“[i]f the requesting spouse is still married to the nonrequesting spouse, this factor is neutral.”)

¹⁴ Taxpayer Advocate Service, *2022 Annual Report to Congress*, 59–73 (2022), <https://www.taxpayeradvocate.irs.gov/reports/2022-annual-report-to-congress> (last accessed March 10, 2023).

the IRS has agreed that “recruitment, hiring, and training are foundational to its ability to provide taxpayers with quality service and fair enforcement.”¹⁵

This general concern applies to innocent spouse relief as well. Even the clearest and most accurate information must be interpreted if it is to be useful for the IRS—that is, useful for carrying out the IRS’s statutory authority to review equitable relief from joint liability based on the facts and circumstances of each individual innocent spouse case.¹⁶ This is particularly important for IRS employees at both the examiner and appeals levels who are weighing equitable relief using the factors listed in Rev. Proc. 2013-34. Empirically-supported trainings are crucially important if the IRS is to carry out this task successfully.

With these concerns in mind, the IRS should more explicitly identify the presence of abuse as an independently important equitable factor. The language of Rev. Proc. 2013-34 §4.03(c)(iv) indicates that “abuse may result in certain factors weighing in favor of relief when otherwise the factor may have weighed against relief.” However, because it is couched under the “knowledge factor” in §4.03(c), our Clinic has seen that “abuse” often gets treated by employees as only a special circumstances affecting the requesting spouse’s knowledge of the preparation of the return.

In the Clinic’s experience, a large percentage of innocent spouse cases involve abuse as defined by the IRS in Rev. Proc. 2013-34 and the IRM. Our experience is not an anomaly; in fact, it is the norm. There are extremely strong and well-documented correlations between domestic violence and the presence of other equitable factors that weigh in favor of granting relief.

For example, there is a very strong and empirically demonstrated connection between abuse and financial control. One study has found that no fewer than 99% of cases of domestic violence also include economic abuse to varying degrees.¹⁷ Another study showed that 80% of domestic violence agencies have clients who are or were required by their abusive partner to obtain permission to spend sums less than \$50.¹⁸ In a significant amount of cases, studies found that economic abuse also includes abusive partners withholding access to financial accounts and documents, lying about shared assets, and restricting access to bank accounts.¹⁹ This element of economic abuse—sometimes called economic control in the literature—directly implicates a requesting spouse’s knowledge or reason to know, another equitable factor under Rev. Proc. 2013-34.²⁰

¹⁵ *Id.*, at 69.

¹⁶ IRC §§ 6015(b)(1)(D) & 6015(f).

¹⁷ Adams, Adrienne E., Sullivan, Cris M., Bybee, Deborah, and Greeson, Megan R. “Development of the Scale of Economic Abuse,” 14 *Violence Against Women*, 563, 571 (2008).

¹⁸ Office of the Manhattan Borough President et al., *Economic Abuse: the Untold Cost of Domestic Violence*, 6 (2012), <https://archive.ilr.cornell.edu/sites/default/files/Economic-Abuse-Untold-Cost-of-DV.pdf> (last accessed March 10, 2023).

¹⁹ Adams et al., *supra* n. 18, at 566.

²⁰ Stylianou, Amanda, “Economic Abuse Within Intimate Partner Violence: A Review of the Literature,” 33 *Violence and Victims* 1, 3, 4 (2018).

Other consequences of abuse also are implicated by various equitable factors identified in the Revenue Procedure. For example, Rev. Proc. 2013-34 takes into account the requesting spouse's mental or physical health when the return at issue was filed.²¹ Domestic violence often leads to lifetime physical and mental health consequences.²² According to the CDC, the mental and physical health consequences of domestic abuse are so pervasive that in a single year they generated an estimated \$4.1 billion dollars in health care costs.²³ This research is consistent our experience at the Clinic: we quite often find that abuse leads to devastating follow-on effects on the requesting spouse's mental and/or physical health.

Another factor linked with abuse is economic hardship. The IRS will take into account any economic hardship that the requesting spouse will experience if relief is not granted, whether under the "streamlined" analysis in section 4.02 or the fuller analysis in section 4.03.²⁴ Although this is a separate factor from abuse in current IRS guidance, empirical work has shown that abuse is tied to economic hardship in many cases. People with annual household incomes lower than \$50,000 are statistically more likely to experience physical or emotional abuse in a relationship.²⁵ Abuse also has many downstream economic effects. Abusive partners often foster economic dependence during the relationship, and so even after leaving an abusive relationship, many survivors of abuse cannot obtain credit and experience decreased standards of living.²⁶

Domestic abuse also has complicated effects on marital status. It is well understood that many circumstances may work together to keep a spouse unwillingly in an abusive marriage and living situation.²⁷ Economic pressures may pose an unworkable decision between leaving the marriage and destitution. Cultural and social pressures also can have a large impact. These are just a few considerations, as the question is quite complex. In theory, the IRS's methodology for considering innocent spouse cases should account for this complexity, because marital status should only be taken as a positive or neutral factor.²⁸ However, it has been our experience that marital status can act as a de facto negative factor when abuse is present. In these situations, even when marital status is listed as "neutral," the overall impact of abuse is lessened when

²¹ Rev. Proc. 2013-34 § 4.03(1)(g).

²² Centers for Disease Control and Prevention, *Costs of Intimate Partner Violence Against Women in the United States*, 2–4 (2003), <https://www.cdc.gov/violenceprevention/pdf/ipvbook-a.pdf> (last accessed March 10, 2023).

²³ *Id.*, at 2.

²⁴ Rev. Proc. 2013-24 § 4.02(2); 4.03(2)(g).

²⁵ Centers for Disease Control and Prevention, *Intimate Partner Violence in the United States — 2010*, 32 (2010), https://www.cdc.gov/violenceprevention/pdf/cdc_nisvs_ipv_report_2013_v17_single_a.pdf (last accessed March 10, 2023).

²⁶ *Economic Abuse*, *supra* n. 19, at 3.

²⁷ See, e.g., Barnett, O. W., "Why battered women do not leave, Part 1: External inhibiting factors within society," 1 *Trauma, Violence & Abuse* 4, 343–372 (2000); Barnett, O. W., "Why battered women do not leave, Part 2: External inhibiting factors—Social support and internal inhibiting factors," 2 *Trauma, Violence & Abuse* 1, 3–35 (2000).

²⁸ Rev. Proc. 2013-34 §4.03(2)(a).

employee bias treats documented abuse as less severe if the requesting spouse did not leave an abusive household or obtain a divorce.

We believe that further training around the realities of abuse within marriages is critical if actual innocent spouse decisions are to faithfully apply current IRS guidance.

As this short overview shows, abuse is closely connected to many of the equitable factors considered by the IRS in determining innocent spouse relief. In particular, research shows that it impacts other equitable factors, such as economic hardship, mental health problems, and lack of knowledge of the abuser's financial behavior. These findings are completely consistent with our experience at the Clinic: few cases where abuse is present will lack the presence of other equitable factors in favor of relief.

We appreciate that IRS guidance has recently given greater deference to the presence of abuse.²⁹ For instance, the IRS realizes that the fear of retaliation by an abusive spouse can coerce the requesting spouse's acquiescence and adjusts the "knowledge or reason to know" factor accordingly.³⁰ We also note that the IRS recognizes that not all financial control rises to the level of abuse, but may entitle the requesting spouse to relief.³¹ But we believe that more should be done to reflect the ways that abuse feeds into other factors. For example, the Internal Revenue Manual instructs examiners not to treat the presence of abuse as a "'blanket' factor to grant relief."³² While nothing in the law suggests that abuse should be treated as a dispositive "blanket factor," this formulation ignores the ways in which abuse often permeates other factors in practice. The language in the Manual should be updated to reflect this fact, preferably with citations to empirical support. It is also notable that abuse is not a factor that is considered in the streamlined process of 4.02, despite its proven impact on factors that do appear in 4.02.

We also believe that the IRS could profitably examine other models for evaluating domestic violence. For instance, the IRM says that documentation of abuse showing that the requesting spouse was also abusive toward the non-requesting spouse "could reduce the weight given to the abuse factor and make it neutral."³³ The treatment of such "mutual abuse" misses the mark. Abuse is relevant in the context of innocent spouse relief because it is fundamentally inequitable to hold a requesting spouse liable for deficiencies or understatements that were outside their control and forced upon them by the non-requesting spouse. If such a pattern of control by a non-requesting spouse exists, it is necessarily one-sided, regardless of whether the requesting spouse also has engaged in sporadic acts of abuse. While the IRS's current framework does not recognize this distinction, other models do. In particular, one influential model draws this very distinction between "situational couple violence" and "intimate terrorism" (i.e., a one-sided pattern of control).³⁴

²⁹ Rev. Proc. 2013-34 §3.01.

³⁰ Rev. Proc. 2013-34 § 4.03(2)(c)(1)(A). *See also* IRM 25.15.3.12.1(7).

³¹ Prop. Treas. Reg. § 1.6015-3(c)(vi).

³² IRM 25.15.3.12.1(8).

³³ IRM 25.15.3.12.1(3).

³⁴ Johnson, Michael P., *Typology of Domestic Violence: Intimate, Terrorism, Violent Resistance, and Situational Couple Violence* (2008). Abstract available at <https://www.ojp.gov/ncjrs/virtual->

RE: Comment Request for Forms 8857 and 8857(SP), 88 FR 1630
March 13, 2023

Currently the IRM conflates the two, which leads it to undervalue the presence of abusive control if the requesting spouse has engaged in situational violence. Other typologies based on empirical research could help the IRS better engage in its examination of innocent spouse cases.

Conclusion

Thank you for the opportunity to submit comments on Forms 8857 and 8857(SP). Please feel free to contact the Harvard Federal Tax Clinic with any further questions.

Sincerely,

/s/Tyler Mayo

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[library/abstracts/typology-domestic-violence-intimate-terrorism-violent-resistance](#) (last accessed March 10, 2023).