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CONGRESSIONAL BLACK CAUCUS

July 17, 2020

The Honorable Charles P. Rettig

Commissioner

Internal Revenue Service

1111 Constitution Avenue, NW

Washington, D.C. 20224

Dear Commissioner Rettig,

We write today regarding a determination by the Internal Revenue Service (IRS) that incarcerated Americans are not entitled to economic impact payments (EIPs). This position is inconsistent with the Coronavirus Aid, Relief, and Economic Security (CARES) Act, unfairly harms the incarcerated, and disproportionately discriminates against African Americans. The IRS guidance should be reversed immediately.

Earlier this year, Congress authorized EIPs in the CARES Act in order to provide critically-needed financial assistance to Americans affected by the ongoing pandemic. The language of the CARES Act is clear: "any individual" is eligible to receive payment, other than a nonresident alien individual, an estate or trust, or an individual who can be claimed as a dependent. A person does not cease being an "individual" simply because they are incarcerated. Accordingly, under the CARES Act, incarcerated Americans rightfully are entitled to EIPs. Indeed, inmates around the country had already begun receiving their EIPs before the IRS issued guidance that these payments had to be returned. The IRS's position is both arbitrary and unlawful and must be corrected to conform with the CARES Act.

As you are aware, incarcerated populations have been severely affected by the coronavirus pandemic as outbreaks continue to occur in prisons across the country. Earlier this year, the Cook County jail in Illinois was reported to be the largest-known source of coronavirus infections in the country. A recent study found that, when adjusted for age and gender, the coronavirus death rate in prisons is three times higher than in the general population. Just like non-incarcerated Americans, inmates require hygiene products and medicine to keep themselves safe during the ongoing crisis. Necessary items like toilet paper, soap, and over-the-counter medicine cost real money at prison commissaries. By denying incarcerated Americans their EIPs, the IRS unfairly hampers their ability to purchase items necessary to fight off the virus. This is a dangerous and misguided policy that will have negative impacts on public health.

Sadly, family members must instead bear the financial cost of keeping their loved ones in prison safe. The impact of incarceration on the emotional and financial well-being of family members is difficult to overcome, and, because of the pandemic, many of these family members are also sick, unemployed, and facing severe financial distress. It is unconscionable to place an additional financial burden on these families and deny them the full support authorized by Congress under the CARES Act. With so many cash-strapped families around the nation, it is confounding that the IRS would foreclose this additional assistance to families in need.

The IRS's position also is certain to cause irreversible harm to incarcerated Americans who are soon to be released from custody. States across the country have started releasing inmates due to overcrowding, and the unexpected timelines make it difficult for individuals to financially plan for their release. Just like other Americans, these individuals will need money urgently to pay rent, buy food, care for their children, and handle unexpected medical bills. With record unemployment levels, their need for financial assistance is dire, and it is irresponsible to make these Americans wait until 2021 to receive the EIPs they were promised at the start of this pandemic.

Further, as you no doubt are aware, 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. The IRS's position unequivocally discriminates and harms African Americans, especially African American men. The systemic racism inherent in the U.S. criminal justice system is well-documented. According to the Bureau of Justice Statistics,¹ the rate of Black imprisonment in 2018 was almost twice that for Latinos and over five times the rate for Whites. The disproportionate incarceration of Black men is even more pronounced with Black men in certain age groups being incarcerated at 8 to 13 times the rate of their White peers, for 20-to-24-year-olds and 18-to-19-year-olds, respectively. The disparities in sentencing are even greater. Although African Americans make up just 12 percent of the adult population in the country, they represent 33 percent of those sentenced – nearly triple their representation in the population. In sharp contrast, Whites represent 63 percent of the adult population but only 30 percent of inmates or half their representation in the population. Alarming, these statistics underestimate the true racial disparities given that these federal data exclude inmates in local jails or those sentenced to less than one year. Racial disparities persist upon release, and formerly incarcerated Black men and women struggle with severe rates of unemployment. We cannot allow these disparities to become further entrenched by the IRS's racially-discriminatory position, particularly when EIPs were intended to provide aid to *all* struggling Americans.

In this instance, the IRS has gone beyond its mandate to implement the CARES Act, as written, and appears to be attempting to rewrite the law. This is unacceptable. Recent news reports indicate that state corrections departments around the country are seizing the EIPs of incarcerated Americans in reliance on the IRS guidance. Some facilities have even threatened inmates with criminal prosecution if they do not return funds received. These actions have no legal justification and must stop. Indeed, when asked about this position, an IRS spokesperson admitted, "I can't give you the legal basis."

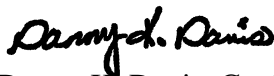
Accordingly, we urge the IRS to immediately rescind its racially-discriminatory guidance on incarcerated Americans and clarify that the CARES Act does, in fact, authorize EIPs for these individuals. These Americans must receive the financial assistance they are due.

Thank you for your prompt attention to this important matter.

Sincerely,



Karen R. Bass
Chair, Congressional Black Caucus



Danny K. Davis, Co-Chair
CBC Budget, Appropriations, & Taxation Taskforce



Robert C. "Bobby" Scott, Co-Chair
CBC Budget, Appropriations, and Taxation Taskforce

Cc: John Lewis, Chairman of the Oversight Subcommittee of the Committee on Ways & Means

¹ Carson, E. A. (April 2020). *Prisoners in 2018 (NCJ 253616)*. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. Washington DC.

**Members of the Congressional Black Caucus Cosigning Letter to Commissioner Rettig
July 17, 2020**

Alma S. Adams, Ph.D.

Joyce Beatty

Lisa Blunt Rochester

André Carson

Wm. Lacy Clay

Val Demings

Dwight Evans

Marcia L. Fudge

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