

MODEL REFUND ANTICIPATION LOAN ACT

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December 2008

Introduction

Refund anticipation loans (RALs) are short term loans secured by and repaid from the proceeds of a consumer's tax refund from the Internal Revenue Service (IRS). Instead of waiting to receive tax refunds, RAL customers borrow against part or all of their expected tax refund, often at a high cost.

RALs speed up receipt of cash from tax refunds, but not by much. A RAL puts cash into the consumer's hand in one or two days, or even on the same day for an extra fee, accounting for its appeal. However, consumers who use electronic filing and have a bank account into which the refund can be direct deposited will usually receive a refund in 8 to 15 days.¹ Thus, RALs are extremely short-time loans of only one to two weeks.

RALs drain billions from the pockets of consumers and the U.S. Treasury. They are targeted at the working poor who receive the Earned Income Tax Credit (EITC). Approximately 9 million consumers paid nearly \$1 billion in RAL and associated fees in 2006.² Nearly two-thirds of these RAL consumers, or 5.7 million, were working poor families who receive the EITC.³

RALs Can Be High Cost

Consumers pay a loan fee to get a RAL that varies depending on the lender and the size of the loan, and ranges from \$33 to \$137. In 2008, a consumer receiving a typical refund of about \$2,600 could pay anywhere from a low of \$58 to a high of \$110.⁴

Consumers may pay additional fees. Tax preparers will sometimes charge one or more fees called "application," "administrative," "electronic filing," "service bureau" or "transmission fees. The major tax preparation chains, such as H&R Block and Jackson Hewitt, do not charge these "add-on" fees, but independent preparers are free to do so. Our reports have found add-on fees from \$10 to as high as \$300.⁵ These fees are charged for both RALs and other tax-related financial products, such as refund anticipation checks.

¹ IRS, *2009 IRS e-file Refund Cycle Chart*, Publication 2043, October 2008.

² Chi Chi Wu and Jean Ann Fox, *Coming Down: Fewer Refund Anticipation Loans, Lower Prices from Some Providers, But Quickie Tax Refund Loans Still Burden the Working Poor*, National Consumer Law Center and Consumer Federation of American, March 2008, at 5-7 ("NCLC/CFA 2008 RAL Report").

³ NCLC/CFA 2008 RAL Report at 13.

⁴ NCLC/CFA 2008 RAL Report at 9-11.

⁵ Chi Chi Wu, Kerry Smith, Peter Skillern, Adam Rust, and Stella Adams, *Tax Preparers Take a Bite Out of Refunds: Mystery Shopper Test Exposes Refund Anticipation Loan Abuses in Durham and Philadelphia*, National Consumer Law Center, Community Reinvestment Association of North Carolina, Community Legal Services of Philadelphia, April 2008, at Attachment 2 ("Durham/Philadelphia Mystery Shopper Report").

Thus, what the consumer receives in hand is the refund minus the loan fee, the add-on fees, and the tax preparation fee (averaging \$165). For the typical refund of about \$2,600, the total amount of the two or three fees could be from \$221 to \$313,⁶ or some cases nearly \$500.⁷

Some RALs carry triple digit Annual Percentage Rates (APRs), because as stated above, they are extremely short term. Based on a 10 day period,⁸ typical RAL loan fees translate into APRs of about 50% to over 500%. However, tax preparers and RAL lenders will often report lower APRs by "unbundling" charges in order to make the loans look less expensive.⁹

How RALs and Other Tax Refund Bank Products Work

RALs are usually not made by the tax preparer, but by a separate lender, usually a bank. Tax preparers facilitate the loans in partnership with the banks. There are two reasons for this partnership. First, the IRS rules do not permit tax preparers to act as RAL lenders.¹⁰ Second, banks have the ability to ignore state laws setting interest rate caps and to charge the rate allowed by their home states due to the doctrine of rate exportation. The bank is invariably chartered in a state with no interest rate caps.¹¹ This federal preemption of state laws is the key issue in developing any state law protecting RAL consumers.

RALs work like this: When the loan is made, the bank prepares to collect on the loan by opening a temporary or "dummy" bank account to receive electronic deposit of the refund. The documents signed by the borrower instruct the IRS to direct deposit the refund into that account. The contract usually contains a right of set-off, which means that the creditor can take the money directly out of the dummy account without the consumer's authorization. Thus, the creditor is repaid when the refund appears in the dummy account.

RAL lending banks also offer other tax-related refund products, such as a "refund anticipation check" (RAC). With a RAC, the bank opens a dummy bank account, then waits for the IRS to direct deposit the consumer's refund. After the refund is received, the bank issues the consumer a paper check, prepaid debit card or makes a direct deposit to the consumer's own bank account, then closes the dummy account. Because there is no loan, RACs take about 8-15 days, *i.e.*, the same amount of time as if the consumer electronically filed and had the IRS direct deposit the refund into the consumer's own bank account. RACs are used as the default product if the consumer is denied a RAL. They also are used if the consumer doesn't choose a RAL but wishes to have the tax preparation fee deducted from his or her refund. RACs generally cost about \$30. In 2006, nearly 10.8 million consumers received RACs, actually exceeding the number of RALs made that year.¹²

⁶ NCLC/CFA 2008 RAL Report at 12

⁷ Durham/Philadelphia Mystery Shopper Report at Attachment 2.

⁸ Since the estimated time to receive a refund with e-filing and direct deposit is 8 to 15 days, the median time would be 11.5 days, plus the loan itself takes one or two days to process.

⁹ This unbundling is explained and challenged in Chi Chi Wu and Jean Ann Fox, *All Drain, No Gain: Refund Anticipation Loans Continue to Sap the Hard-Earned Tax Dollars of Low-Income Americans*, January 2004, at 5.

¹⁰ IRS Publication 1345.

¹¹ For a full explanation of federal preemption of state laws that regulate banks, see National Consumer Law Center, *The Cost of Credit: Regulation, Preemption, and Industry Abuses*, Ch. 3 (3d ed. 2005 and Supp.)

¹² NCLC/CFA 2008 RAL Report at 17.

The Tax Preparation Market

One of the most surprising facts about paid tax preparers industry is the lack of regulation over the industry. Except for a handful of states, there are no licensing requirements for paid tax preparers.¹³ There are no educational standards, minimum training, testing, or certification required of preparers, except for these few states. The IRS has a handful of rules governing providers of electronic filing, but they mostly do not address competency.¹⁴

The major tax preparation chains, such as H&R Block, do provide training for their staff. However, the chains only make up about a quarter of the paid preparer market; independent preparers constitute the other three-quarters.¹⁵ Independent preparers can range from highly qualified licensed professionals, such as attorneys and certified public accountants, to any person who wishes to hang a “shingle” and make money preparing taxes. While independent preparers constitute the vast majority of paid preparers, they make about 40% of RALs.¹⁶

While many independent preparers are just as experienced and well trained (if not more so) as commercial chains, there is a sector of independent preparers that is extremely problematic – fringe preparers. Fringe preparers include businesses that are historically associated with the exploitation of consumers, such as payday loan stores, check cashers, and used car dealers. Some retailers, such as jewelry and furniture stores, are fringe tax preparers. In immigrant communities, businesses that offer travel services, “notario” services, and quickie divorces also often offer tax preparation of varying quality.¹⁷

One of the biggest problems with fringe preparers is the questionable quality of tax preparation. While software providers do offer software and back office support, often the retail salesperson at the fringe preparer is actively engaged in the preparation.¹⁸ Mystery shopper testing conducted by Community Legal Services of Philadelphia and Community Reinvestment Association-North Carolina found several instances of incompetent tax preparation, including by one fringe preparer who essentially advised the tester to commit tax fraud.¹⁹ Fringe tax preparers also have been known to file tax returns without a W-2.²⁰

¹³ These states are California (Cal. Bus. & Prof. Code § 22251 et seq.); Maryland (Md. Code Bus. Occ. & Prof. §§ 21-101 to 21-502) and Oregon (Oregon Rev. Stat. § 673.010 et seq.).

¹⁴ Chi Chi Wu, Jean Ann Fox, and Elizabeth Renuart, *Tax Preparers Peddle High Priced Tax Refund Loans: Millions Skimmed from the Working Poor and the U. S. Treasury*, National Consumer Law Center and Consumer Federation of America, January 31, 2002, at 17, available at www.consumerlaw.org/issues/refund_anticipation/content/RAL_final.pdf

¹⁵ See Comments of NCLC, CFA, et al., on IRS Advance Notice of Proposed Rulemaking - Guidance Regarding Marketing of Refund Anticipation Loans (RALs) and Certain Other Products, April 2008, at 29, available at http://www.consumerlaw.org/issues/refund_anticipation/content/comments_040708.pdf (“NCLC/CFA RAL Comments to IRS”).

¹⁶ H&R Block and Jackson Hewitt account for about 5.3 million of the 9 million RALs made in 2006. Liberty Tax Service accounts for another 260,000. NCLC/CFA 2008 RAL Report at 22, 24, 26.

¹⁷ NCLC/CFA RAL Comments to IRS at 29-35.

¹⁸ *Id.* at 30, 33-35.

¹⁹ Durham/Philadelphia Mystery Shopper Report at 9-10.

²⁰ NCLC/CFA RAL Comments to IRS at 33-34.

Fringe preparers also aggressively promote RALs and RACs. While commercial chains have made efforts to improve their disclosures that RALs are loans, fringe preparers sometimes don't even bother trying. Some fringe preparers give their businesses names that deceptively promote "fast refunds," such as 'AA Next Day Tax Cash', 'ASAP Rapid Refund Tax Service', 'Instant Refund', 'Quick Refunds', 'Rapid Tax Refund' and 'Super Fast Express Refunds'.²¹

Consumer Confusion Over RALs

Historically, there has been a great deal of consumer confusion over the fact that RALs are loans, some of it caused by deceptive advertising. In late 2004, an NCLC-sponsored telephone survey found that 70% of RAL borrowers had not realized they had received a loan.²²

While commercial chains have improved their disclosures since then, there are still preparers who emphasize RALs as "quick refunds," not loans. Furthermore, implementation of these improved disclosures and practices seems uneven at best. Many preparers continue to use deceptive advertising of RALs by aggressively emphasizing the "fast refund" or "instant money" aspect, but only disclosing in fine print that the product is a loan.

More importantly, if consumers do not understand that RALs are loans, they do not understand that they are liable for the full amount of the loan if they do not receive all or part of their refund from the IRS. A consumer might not receive the full amount of the claimed refund, for example, the IRS disallows a dependency exemption.

Current Regulation of RALs

The IRS has a handful of regulations governing RALs.²³ They require tax preparers to disclose that a RAL is an interest bearing loan, a RAL is not a substitute for or faster way to receive a refund; and if the refund is not received by the RAL lender within the expected time frame, the taxpayer may be liable for additional interest on the RAL. The IRS regulations prohibit the tax preparer from receiving a fee for a RAL unless it is a flat fee.²⁴

As of 2008, 14 states and New York City had passed laws regulating RALs.²⁵ Most of these laws focus on the tax preparers who facilitate RALs. These laws, some of which were based on industry-supported models, primarily require disclosures about the nature, costs and risks of RALs. A few of these laws also require wall postings and registration of RAL facilitators. North Carolina RAL law authorizes the Commissioner of Banks to find that a RAL

²¹ *Id.* at 12.

²² Chi Chi Wu and Jean Ann Fox, *Picking Taxpayers' Pockets, Draining Tax Relief Dollars: Refund Anticipation Loans Still Slicing Into Low-Income Americans' Hard-Earned Tax Refunds*, National Consumer Law Center and Consumer Federation of America, January 2005, at 7-8.

²³ The IRS rules are set forth in IRS Publication 1345, an IRS document that governs providers of electronic tax return filing or "e-file providers." E-file providers include tax preparers who engage in the electronic filing of returns.

²⁴ IRS Publication 1345. A more detailed summary of these IRS regulations is available in the NCLC/CFA 2002 RAL Report at 17-18.

²⁵ A list and summary of these laws is included in Appendix A.

loan fee is unconscionable and prohibits facilitators from charging such a fee.²⁶ The Connecticut RAL law limits RALs to establishments whose principal business is tax preparation.²⁷ The Oregon RAL law requires RAL facilitators to be licensed as tax preparers under that state's preparer licensing law.²⁸ The Texas RAL law requires RAL facilitator to be primarily involved in tax preparation or financial services and be authorized as an e-file provider with IRS.²⁹

Two states – Connecticut and New Jersey – passed laws that, among other provisions, regulated RAL fees by prohibiting tax preparers from “facilitating” or arranging for these loans if they exceed the rate cap. These laws attempted to avoid preemption by targeting the third-party non-bank facilitator and not the bank. Unfortunately, even these provisions that merely prohibited the third party for being involved in a usurious loan were held to be preempted,³⁰ although other provisions such as disclosures were not preempted. A third state – Maryland – attempted to apply its state Credit Services Organization Act (which prohibits arranging for credit over a certain rate cap) to preparers who facilitated RALs. A federal court held that the fee caps and contract requirements in the Maryland law were preempted. However, the court held that the licensing, bonding, and disclosure provisions were not preempted.³¹

Goals of the Revised Model RAL Act

This version of the Model Act was written after the federal courts held that the Connecticut, Maryland, and New Jersey RAL fee caps were preempted. The Model Act is designed to reduce some of the problems associated with RALs, especially those posed by the relatively unregulated field of tax preparers. However, it cannot address the amount of the RAL loan fee due to preemption. Thus it is a state statute primarily targeted at fees charged by the facilitators of RALs and RACs.³²

The Model Act can be enacted on a stand alone basis, or it can also be enacted as part of a comprehensive set of regulations governing tax preparers. An example of a strong tax preparer licensing law is the law passed by Maryland in 2008.³³

The protections of the Model Act will benefit not only consumers, but also the U.S. Treasury, which pays out the EITC benefits that are drained by RALs every year.

²⁶ N.C. Gen. Stat. §§ 53-245 to 53-254.

²⁷ Conn. Gen. Stat. § 42-480(c).

²⁸ Or. Rev. Stat. § 673.615(3).

²⁹ Texas Fin. Code § 350.002(a). Washington State requires the facilitator to be a tax preparer, but is not limited to persons whose “primary” business is tax preparation. Wash. Rev. Code § 19.265.020(1)(a).

³⁰ Pacific Capital Bank, N.A., v. Conn., 542 F.3d 341 (2nd Cir. 2008); Pacific Capital Bank, N.A. v. Milgram, 2008 WL 700180 (D.N.J. Mar. 13, 2008).

³¹ H&R Block Eastern Enterprises, Inc. v. Turnbaugh, Civ. Ac. No. 07-1822 (D. Md. July 30, 2008).

³² The Second Circuit has held that state regulation of fees charged by non-bank third parties is not preempted by federal banking law. SPGGC, LLC v. Blumenthal, 505 F.3d 183 (2nd Cir. 2007)

³³ Maryland Individual Tax Preparers Act, Md. Code Bus. Occ. & Prof. §§ 21-101 to 21-502.

Summary of Provisions

The heart of the Model Act are the provisions that prohibit RAL and RAC add-on fees charged by tax preparers. While states cannot limit the amount of the fees charged by banks, they can limit the fees charged by the tax preparer.

The Model RAL Act requires registration and bonding by RAL facilitators, unless they are financial institutions, certified public accountants, attorneys, or Volunteer Income Tax Assistance sites. These requirements designed to ensure state oversight and assure compliance with the Act. Another key element of the Act is its restriction of registration to preparers whose primary business is tax preparation (or restricted to licensed preparers, if the state licenses preparers). This restriction is intended to keep fringe preparers, such as used car dealers, payday loan stores, and other retailers from offering RALs.

The Model Act also prohibits debt collection abuses by facilitators, and prevents referrals to check cashers. It provides for mandatory disclosures orally, in wall postings, and in a disclosure sheet accompanying the RAL application. Importantly, the Model Act grants consumers a private right of action to recover damages, costs, and attorneys fees. A private right of action is essential to ensuring that the Act has a meaningful impact, since many agencies do not have sufficient resources to investigate all violations and undertake enforcement actions.

MODEL REFUND ANTICIPATION LOAN ACT

with Commentary
National Consumer Law Center

Section 1. **Title and scope.**

(a) Title. This Act shall be known and cited as the "Refund Anticipation Loan Act". This Act shall be liberally construed to effectuate its purpose. The purpose of the Act is to protect consumers who enter into refund anticipation loan and refund anticipation check transactions and to limit fees charged by tax preparers who facilitate these loans in this state. This Act is to be construed as a consumer protection statute for all purposes.

(b) Scope. No person (including any officer, agent, employee or representative) may individually or in conjunction or cooperation with another person: (a) solicit the execution of, process, receive, or accept an application or agreement for a refund anticipation loan or refund anticipation check, or (b) in any other manner facilitate the making of a refund anticipation loan or refund anticipation check unless the person has complied with the provisions of this Act. The provisions of this Act shall apply to any person who seeks to evade its applicability by any device, subterfuge, or pretense whatsoever.

Commentary

Subsection (a) sets the stage for the remainder of the Act by clearly announcing that the legislature intends that: the Act must be liberally construed to effectuate its purpose; it enunciates a specific purpose; and it is a consumer protection law. Subsection (b) defines a broad scope of coverage for the Act, and makes clear that the scope includes those who attempt to evade the Act. These directives will give guidance to the courts when the Act's provisions are applied and interpreted.

Section 2. **Definitions.**

The following definitions apply in this Act:

- (a) "Applicant" shall mean a person who applies for registration as a facilitator of refund anticipation loans or refund anticipation checks.
- (b) "Commission" shall mean the State _____ Commission.
- (c) "Commissioner" shall mean the Commissioner of _____.
- (d) "Consumer" shall mean any natural person who, singly or jointly with another consumer, is solicited for, applies for, or receives the proceeds of a refund anticipation loan or refund anticipation check.
- (e) "Creditor" shall mean any person who makes a refund anticipation loan or who takes an assignment of a refund anticipation loan.
- (f) "Facilitator" shall mean a person who individually or in conjunction or cooperation with another person: (i) solicits the execution of, processes, receives, or accepts an application or agreement for a refund anticipation loan or refund anticipation check, (ii) services or collects upon a refund anticipation loan or refund anticipation check; or (iii) in any other manner facilitates the making of a refund anticipation loan or refund anticipation check. If there is no third party facilitator because a creditor directly solicits the execution of, receives, or accepts an application or agreement for a refund anticipation loan or refund anticipation check, that creditor shall be considered a facilitator.
- (g) "Market" or "advertise" shall mean to produce, distribute, broadcast, or otherwise display or have displayed written materials, oral statements, or visual materials describing products and services.
- (h) "Person" shall mean an individual, a firm, a partnership, an association, a corporation, or another entity.
- (i) "Refund anticipation check" shall mean a check, stored value card, or other payment mechanism: (i) representing the proceeds of the consumer's tax refund; (ii) which was issued by a depository institution or other person that received a direct deposit of the consumer's tax

refund or tax credits; and (iii) for which the consumer has paid a fee or other consideration for such payment mechanism.

(j) “Refund anticipation loan” shall mean a loan that is secured by or that the creditor arranges to be repaid directly or indirectly from the proceeds of the consumer's income tax refund or tax credits. A refund anticipation loan also includes any sale, assignment, or purchase of a consumer's tax refund at a discount or for a fee, whether or not the consumer is required to repay the buyer or assignee if the Internal Revenue Service denies or reduces the consumer's tax refund.

(k) “Refund anticipation loan fee” shall mean the charges, fees, or other consideration charged or imposed directly or indirectly by the creditor for the making of or in connection with a refund anticipation loan. This term includes any charge, fee, or other consideration for a deposit account, if the deposit account is used for receipt of the consumer's tax refund to repay the amount owed on the loan.

(l) “Refund anticipation loan interest rate” shall mean the interest rate for a refund anticipation loan calculated as follows: the total amount of refund anticipation loan fees divided by the loan amount (minus any loan fees), then divided by the number of days in the loan term, then multiplied by 365 and expressed as a percentage. The total amount of the refund anticipation loan fee used in this calculation shall include all refund anticipation loan fees as defined in subsection (k). If a deposit account is established or maintained in whole or in part for the purpose of receiving the consumer's tax refund to repay the amount owed on a refund anticipation loan:

(i) the maturity of the loan for the purpose of determining the refund anticipation loan interest rate shall be assumed to be the estimated date when the tax refund will be deposited in the deposit account; and

(ii) any fee charged to the consumer for such deposit account shall be considered a loan fee and shall be included in the calculation of the refund anticipation loan interest rate.

If no deposit account is established or maintained for the repayment of the loan, the maturity of the loan shall be assumed to be the estimated date when the tax refund is received by the creditor.

(m) “Registrant” shall mean a person who is registered as a facilitator of refund anticipation loans or refund anticipation checks under this Act.

Commentary

There are a number of critical definitions in the Act:

(b) “Commission” is the state agency charged with the responsibility of enforcing the Act.

(c) “Commissioner” is the head of the state agency defined in (b).

(e) “Creditor” includes both the entity that makes a RAL as well as any assignees.

(f) “Facilitator” is defined broadly to include any person who solicits for, processes, receives or accepts a RAL or RAC application, or otherwise facilitates a RAL or RAC. This definition is similar to the definition of “facilitator” in the several existing RAL statutes, including Connecticut (Conn. Gen. Stat. § 42-480(a)(2)), North Carolina (N.C. Gen. Stat. § 53-246(6)), Texas (Tex. Fin. Code § 350.001(2)), and Washington State (Wash. Rev. Code § 19.265.010(4)). It is meant to cover tax preparers and any other entities that broker RALs or RACs; however, only tax preparers can be lawfully registered as facilitators under the Act.

The concept of the RAL facilitator is a critical concept in the Model Act. States are limited in their ability to regulate fees charged by banks for RALs due to preemption by federal banking statutes and regulations. In particular, the doctrine of rate exportation preempts state usury laws by allowing banks to charge the maximum interest rate permitted in the banks’ own home states – to avoid usury caps, banks simply charter in a state without one. The Model Act deals with the limitations of state regulatory power by having the concept of a “facilitator” and regulating the fees charged by and the conduct of that facilitator.

Some RALs are not made through tax preparers by banks, but directly by the creditor (such as the storefront lender in the case of *State ex rel. Salazer v. The Cash Now Store*, 31 P.3d 161 (Colo. 2001)). In these cases, the creditor will also be the “facilitator” because it solicits and accepts the RAL application directly. The last sentence of subsection (f) is intended to cover such creditors as facilitators when no third-party facilitator is involved.

(i) “Refund anticipation check” includes the non-loan bank product that many RAL creditors and tax preparers offer in addition to RALs. With refund anticipation checks (RACs), the bank opens a temporary or “dummy” bank account into which the IRS direct deposits the refund check. After the direct deposit of the consumer’s refund, the bank issues the consumer the monies in the form of a check, prepaid debit card, or direct deposit. The bank then closes the dummy account. It is important to regulate RACs because they are closely related to RALs, and are used as the default product if the consumer is denied a RAL. Furthermore, RACs carry their own fees, which consumers could avoid by having their refunds direct deposited into their own bank accounts. Consumers without bank accounts should be encouraged to open permanent bank accounts instead of paying significant fees for a temporary account.

(j) “Refund anticipation loan” is defined broadly and includes loans in which either the loan is secured by a tax refund or the creditor arranges for the loan to be repaid from a tax refund or tax credits. The definition also includes those loans made by non-bank entities that are styled as an assignment or a “chase in action,” such as the loan at issue in the case of *State ex rel. Salazer v. The Cash Now Store*, 31 P.3d 161 (Colo. 2001).

(k) “Refund anticipation loan fee” is defined to include any fees that are associated with the making of a RAL. The definition specifically includes any fee for a temporary or “dummy” bank account used to receive a direct deposit of the consumer’s tax refund to repay the RAL. Many RAL lenders have disaggregated or “unbundled” an amount they denominate to be a fee for this dummy bank account, making the finance charge and Annual Percentage Rate (APR) under the federal Truth-in-Lending Act (TILA) look lower. However, inclusion of this amount in the RAL fee will give a more accurate picture of the true costs of a RAL. Similarly, RAL lenders and tax

preparers have “unbundled” other fees by imposing them on RAC customers, such as add-on fees. RAL lenders presumably rely on an argument that these fees are not RAL finance charges under the TILA definition because they are the same as those imposed in “comparable cash transactions,” i.e., RACs. As a result, many RAL lenders disclose deceptively low APRs for what is really a very high-cost short-term loan. Thus, the definition of a RAL fee excludes tax preparation or other fees only when these fees are also charged to customers who do not receive either a RAL or a RAC. It is critical that the scope of this exclusion remain narrow.

(l) “Refund anticipation loan interest rate” is the annualized rate for a RAL that includes all RAL fees defined in (k) above, including the dummy account fee. The RAL interest rate may differ from the APR disclosed by RAL creditors under TILA, if the creditors exclude various fees (such as the dummy account fee) from the TILA finance charge and APR calculation. The legality of such exclusions is arguable under TILA. This Act avoids the necessity to resolve this issue under TILA by mandating a separate and different annualized interest rate disclosure, using a term other than “APR,” to reflect the true cost of credit for a RAL.

The definition of the RAL interest rate provides for a formula to calculate the rate. The definition requires that the RAL interest rate be based upon the estimated time period for when the consumer’s tax refund is direct deposited into the dummy account. The following is an example of how this formula works.

Formula: RAL fees divided by loan amount, divided by days in loan term, then multiplied by 365 and expressed as a percentage.

Example:

Amount of refund - \$2,000

Total amount of RAL fees - \$52

Loan amount - \$2,000 minus \$52 = \$1,948

Days in loan term (based on estimated receipt of consumer’s tax refund into dummy account) – 10 days

$\$52$ (total RAL fees) divided by $\$1,948$ (loan amount) = 0.0267

Divided by 10 (days in loan term) = 0.00267

Multiplied by 365 = 0.9743

Multiplied by 100 (to express as a percentage) = 97.43%

Section 3. **Registration and bond requirement.**

(a) Registration Requirement. No person may solicit the execution of, process, receive, or accept an application or agreement for a refund anticipation loan or refund anticipation check without first being registered with the Commissioner and posting a bond in accordance with the procedures provided in this Act.

(b) Bond. Each facilitator must post a bond in the amount of \$50,000, which must continue in effect for 5 years after the facilitator ceases operation in the state. Such bond must be available to pay damages and penalties to consumers harmed by any violation of this Act.

(c) Exemption. This section does not apply to persons:

(1) doing business as a bank, thrift, savings association, or credit union, under the laws of the United States or of this state;

(2) licensed as a certified public accountant in this state;

(3) licensed as an attorney in this state; or

(4) employed by or serving as a volunteer with a nonprofit organization that provides free tax preparation services to low and moderate income taxpayers, such as a Volunteer Income Tax Assistance program.

Commentary

*This section ensures that tax preparers who facilitate RALs are registered with a state agency so that there is regulatory oversight of facilitators. The registration requirement is similar to the requirements in the North Carolina RAL statute, N.C. Gen. Stat. § 53-247. Other states with registration requirements include Texas (Tex. Fin. Code § 350.003), the Maryland Credit Services Organization Act (the licensing provisions of which were held to be not preempted by federal law in *H&R Block Eastern Enterprises, Inc. v. Turnbaugh*, Civ. Ac. No. 07-1822 (D. Md. July 30, 2008)), and Washington State (Wash. Rev. Code § 19.265.020).*

This section also mandates that facilitators post a bond in the amount of \$50,000 that can be used to pay damages and penalties to consumers harmed by any violations of the Act. Only one bond is required per entity. The bond is important because it provides a source of compensation to harmed consumers. Without this protection, these businesses could sell, transfer, or skim off their assets and leave nothing from which a consumer could satisfy a judgment obtained due to the illegal acts of a company.

Section 4. Registration procedure; informal hearing.

(a) Initial Registration. An application to become registered as a facilitator shall be in writing, under oath, and in a form prescribed by the Commissioner. The application shall contain all information prescribed by the Commissioner. Each application for registration shall be accompanied by a fee, payable to the Commissioner, of _____ (\$___).

(b) Qualifications for registration. Upon the filing of an application for registration, if the Commissioner finds that:

(1) the primary business of the applicant is the preparation of taxes [or the person is licensed as a tax preparer, if the state requires preparers to be licensed]; and

(2) the responsibility and general fitness of the applicant are such as to command the confidence of the community and to warrant belief that the business of facilitating refund anticipation loans or refund anticipation checks will be operated within the purposes of this Act,

the Commissioner shall register the applicant and shall issue and transmit to the applicant a certificate attesting to the registration. If the Commissioner does not so find, he shall not register the applicant and shall notify the applicant of the reasons for the denial.

(c) Renewal. Each registration as a facilitator of refund anticipation loans and refund anticipation checks shall expire on December 31 following the date it was issued, unless it is renewed for the succeeding year. Before the registration expires, the registrant may renew the registration by filing with the Commissioner an application for renewal in the form and containing all information prescribed by the Commissioner. Each application for renewal of registration shall be accompanied by a fee of _____ dollars (\$_____).

Upon the filing of an application for renewal of registration under this Act, the Commissioner shall renew the registration, provided that no registration shall issue if the Commissioner finds that the registrant has violated this Act or determines that the registrant no longer meets the qualification for registration under subsection (b). If the Commissioner makes such a finding or determination, he shall so notify the registrant, stating the reasons for the determination.

(d) Within five days of receipt of the Commissioner's notice, as required by subsections (b) and (c) of this section, the applicant may make written demand of the Commissioner for a hearing. The hearing before the Commissioner shall be an informal hearing and shall be held with reasonable promptness.

Commentary

The overall registration scheme is similar to that in the North Carolina RAL statute, N.C. Gen. Stat. § 53-248. The Act puts the burden on the Commissioner to make certain findings in order to register a RAL/RAC facilitator or to renew a registration. The most critical finding is that the primary business of the applicant is to preparation of taxes. This provision prevents used car dealers, check cashers, payday lenders, and other fringe preparers from facilitating RALs. It is similar to a provision in the Connecticut RAL law that limits RALs to establishments whose principal business is tax preparation, which was not held to be preempted in Pacific Capital Bank, N.A., v. Conn, 542 F.3d 341 (2nd Cir. 2008). It is also similar to a provision in the Texas RAL law that limits RAL facilitation to tax preparers and financial service providers in that state. Texas Fin. Code § 350.002(a). However, the Texas law's inclusion of "financial service providers" allows check cashers and payday lenders to make RALs.

In states that have enacted a preparer licensing requirement, the finding could simply be that the applicant is a licensed preparer. For example, Oregon requires RAL facilitators to have a

license under that state's preparer licensing law. Or. Rev. Stat. § 673.615(3). In the alternative, a comprehensive licensing scheme for tax preparers could take the place of these registration requirements. However, any such scheme should include a provision that a registration cannot be renewed if the registrant has violated the provisions of the Act governing RALs and RACs.

In general, the key finding for registration renewals is the determination as to whether the registrant has violated the provisions of this Act. This finding ensures that facilitators who violate the Act are prevented from continuing to facilitate RALs and RACs. The Act also requires the Commissioner to find that the applicant's characteristics are sufficient to "command the confidence of the community" and to warrant belief that the applicant will abide by the provisions of the Act. These findings are intended to screen out tax preparers that are otherwise questionable due to their promotion of inflated refunds or other dubious conduct.

Section 5. Posting of Fee Schedule and Disclosures

(a) Every facilitator shall display a schedule showing the current fees for refund anticipation loans or refund anticipation checks facilitated at the office.

(b) Every facilitator shall display on each fee schedule examples of the refund anticipation loan interest rates for refund anticipation loans of at least five (5) different amounts, such as three hundred dollars (\$300.00), five hundred dollars (\$500.00), one thousand dollars (\$1,000), one thousand five hundred dollars (\$1,500), two thousand dollars (\$2,000), and five thousand dollars (\$5,000). The refund anticipation loan interest rate shall be calculated as set forth in section 2(1) of this Act.

(c) Every facilitator shall also prominently display on each fee schedule: (i) a legend, centered, in bold, capital letters, and in one-inch letters stating: NOTICE CONCERNING REFUND ANTICIPATION LOANS; and (ii) the following verbatim statement: "When you take out a refund anticipation loan, you are borrowing money against your tax refund. If your tax refund is less than expected, you will still owe the entire amount of the loan. If your refund is delayed, you may have to pay additional costs. YOU CAN GET YOUR REFUND IN 8 TO 15 DAYS WITHOUT PAYING ANY EXTRA FEES AND TAKING OUT A LOAN. You can have your tax return filed electronically and your refund direct deposited into your own bank account without obtaining a loan or paying fees for an extra product."

(d) The postings required by this section shall be made in no less than 28-point type on a document measuring no less than 16 inches by 20 inches. The postings required in this section shall be displayed in a prominent location at each office where the facilitator is facilitating refund anticipation loans.

(e) No facilitator may facilitate a refund anticipation loan or refund anticipation check unless (i) the disclosures required by this section are displayed; and (ii) the fee actually charged for the refund anticipation loan or refund anticipation check is the same as the fee displayed on the schedule.

Commentary

The Act requires postings so that consumers who enter a facilitator's office immediately know the nature, costs, and risks of RALs. Having postings in addition to application disclosures are important because, in some instances, consumers may not be given sufficient opportunity or time to review application disclosures. Postings will catch a consumer's eye and ensure that critical information is brought to the consumer's attention. The Act has mandatory size and font requirements to ensure that the disclosures are of a sufficiently large size to be prominent and legible. About five RAL statutes have some posting requirement. Cal. Bus. & Prof. Code § 22253.1(b); Nev. Rev. Stat. § 604B.200; N.C. Gen. Stat. § 53-249; Tenn. Code § 62-29-202; and Va. Code § 6.1-475. Some of these laws specify a minimum size for the posting but do not use mandatory language.

The Act's mandatory language requirements are meant to ensure that information is conveyed in language that is understandable to most consumers. A significant percentage of the taxpayers who get RALs and RACs, including EITC recipients, have limited educational attainment or literacy skills.³⁴

The mandatory warnings advise consumers of the following:

- *That a RAL is a loan.*
- *If the consumer's tax refund is less than expected, the consumer is liable for the full amount of the loan and must repay any difference.*
- *If the consumer's refund is delayed from the IRS, additional costs (such as late fees or additional interest) may be charged.*
- *Consumers can get their tax refunds in 8 to 15 days without paying extra, with electronic filing and direct deposit.*

To prevent misrepresentation, this section makes it unlawful to charge a RAL or RAC fee that is different from the fee disclosed on the postings.

Section 6. Application Disclosures.

(a) At the time a consumer applies for a refund anticipation loan or check, the facilitator or creditor shall disclose to the consumer on a form separate from the application in 14-point type, unless otherwise noted:

- (i) The fee for the refund anticipation loan or refund anticipation check.
- (ii) The fee for tax preparation and any other fee charged to the consumer.

³⁴ For example, an estimated 46 to 51% of the general population and 76% of food stamp recipients do not have adequate literacy skills to complete the multiple tax forms necessary to claim the EITC itself. Michael O'Connor, *Tax Preparation Services for Low Income Filers*, 90 Tax Notes 231, January 8, 2001.

(iii) The time within which the proceeds of the refund anticipation loan or check will be paid to the consumer if the loan or check is approved.

(iv) For refund anticipation loans, the following disclosures: (i) a legend, centered, in bold, capital letters, and in 18-point type stating: **NOTICE**; and (ii) the following verbatim statement: “This is a loan. You are borrowing money against your tax refund. If your tax refund is less than expected, you will still owe the entire amount of the loan. If your refund is delayed, you may have to pay additional costs. **YOU CAN USUALLY GET YOUR REFUND IN 8 TO 15 DAYS WITHOUT GETTING A LOAN OR PAYING EXTRA FEES.** You can have your tax return filed electronically and your refund direct deposited into your own bank account without obtaining a loan or other paid product.”

(v) For refund anticipation loans, disclosure of the refund anticipation loan interest rate. The refund anticipation loan interest rate shall be calculated as set forth in section 2(l) of this Act.

(vi) For refund anticipation checks, the following disclosures: (i) a legend, centered, in bold, capital letters, and in 18-point type stating: **NOTICE**; and (ii) the following verbatim statement: “You are paying [amount of refund anticipation check fee] to get your refund check through [name of issuer of refund anticipation check]. **YOU CAN AVOID THIS FEE AND STILL RECEIVE YOUR REFUND IN THE SAME AMOUNT OF TIME BY HAVING YOUR REFUND DIRECT DEPOSITED INTO YOUR OWN BANK ACCOUNT.** You can also wait for the IRS to mail you a check. If you do not have a bank account, you may wish to consider getting one.”

(b) The facilitator shall provide to the consumer, prior to consummation of the loan or check transaction in a form that can be kept by the consumer: (i) the disclosures required by subsection (a); (ii) a copy of the completed loan or check application and agreement; and (iii) for refund anticipation loans, the disclosures required by the federal Truth-In-Lending Act.

(c) The disclosures required by subsection (a) shall be provided in English and in the language used primarily for oral communication between the facilitator and the consumer.

Commentary

This section describes the disclosures that must be given to consumers prior to entering into a RAL or RAC agreement. These disclosures must be made in a document that is separate from the RAL/RAC application or agreement, and must be made in 14 point type unless otherwise indicated. This type size requirement is intended to ensure that consumers will actually be able to read the disclosures. Some current state RAL laws permit disclosures to be made in 10 point type sizes, which is difficult to read (especially for older consumers). Other states do not require minimum type sizes. To demonstrate the impact of the type sizes, compare

14 point type

12 point type

10 point type

8 point type

The Minnesota RAL statute, Minn. Stat. § 270.30, and New York City RAL ordinance, N.Y.C. Admin. Code § 20-741.1, both use 14 point type. They also both include mandatory warnings.

The disclosures required by this section include:

- *The fee for the RAL or RAC.*
- *The fee for tax preparation and any other fee charged to the consumer. Note that section 8(a) below prohibits the tax preparer from charging any other fee for a RAL or RAC, unless the fee is charged to all of the preparer's customers, including those that do not receive a RAL or a RAC.*
- *When the consumer can expect to receive the RAL or RAC check if approved.*
- *For RALs, the RAL loan interest rate as calculated in section 2(l) of the Act. This disclosure is in addition to (and may differ from) the disclosure of the Annual Percentage Rate under the federal Truth-in-Lending Act for the reasons discussed in the Commentary to section 2(l).*
- *For RALs, a mandatory warning very similar to the posting warning in section 5(c).*
- *For RACs, a mandatory warning that the consumer is paying an extra fee for the RAC to receive their tax refund monies, and information on how to receive a refund without paying the RAC fee.*

Subsection (b) requires the facilitator to give the consumer a retainable copy of these disclosures, as well as the loan application/agreement, and the TILA disclosures. Subsection (c) requires that the disclosures be provided in both English, and if oral communications between the facilitator and the consumer were made primarily in another language, in the other language. The last duty is to ensure that limited English speakers are given the opportunity to read the application disclosures.

Section 7. Oral Disclosures.

(a) If a consumer applies for a refund anticipation loan, the facilitator shall orally inform the consumer in the language primarily used for oral communications between the facilitator and consumer:

- (i) That the product is a loan that only lasts 1 to 2 weeks;
- (ii) If the consumer's tax refund is less than expected, the consumer is liable for the full amount of the loan and must repay any difference;
- (iii) The amount of the refund anticipation loan fee; and
- (iv) The refund anticipation loan interest rate.

(b) If a consumer applies for a refund anticipation check, the facilitator shall orally inform the consumer in the language primarily used for oral communications between the facilitator and consumer:

(i) the amount of the refund anticipation check fee;
(ii) that the consumer can receive a refund in the same amount of time without a fee if the tax return is filed electronically, and the consumer chooses direct deposit to the consumer's own bank account.

(c) If the facilitator at any time provides an estimate of the amount that the consumer will receive after deducting tax preparation and RAL or RAC fees, the facilitator shall describe the options that the consumer can choose from as:

“You can receive (state the full refund amount) dollars in 3 to 8 weeks”

“You can receive (state the full refund amount) dollars in 8 to 15 days with electronic filing and direct deposit to your own bank account. This option will not cost you a fee to receive your refund.”

“You can receive (state the refund amount minus RAC fee, tax preparation fee, and any other fee charged) dollars in 8 to 15 days, but you will not receive anything in 3 to 8 weeks. This option will cost you (state the amount of RAC-related fees) dollars, plus your tax preparation fees are deducted from the refund.”

“You can receive (state refund amount minus RAL fee, tax preparation fee, and any other fee charged) dollars in one to two days, but you will not receive anything in 8 to 15 days or 3 to 8 weeks. This option will cost you (state RAL-related fees) dollars, plus your tax preparation fees are deducted from the refund.”

These disclosures can be used to fulfill the requirements of subsection (a)(iii) or (b).

Commentary

This section describes the disclosures that must be given to consumers prior to entering into a RAL or RAC agreement. Oral disclosures are important because written disclosures are simply inadequate to ensure that consumers have meaningful knowledge and understanding of the nature of a RAL or RAC, the costs of these products, and their risks. Even if a separate piece of paper, written disclosures are simply another document in a stack of papers thrust upon taxpayers at the end of a long tax preparation session.

Taxpayers depend on the advice of paid preparers, and will rely on what the preparer tells them. As shown by mystery shopper testing³⁵ and legal cases,³⁶ some preparers rush consumers, depriving them of the opportunity to actually read, digest and understand written disclosures. Even without overt rushing, very few consumers are willing to make a tax preparer wait so they can read all of the disclosures. Consumers may have little inclination to read a stack of documents after spending a significant amount of time waiting to see a preparer, and getting

³⁵ Durham/Philadelphia Mystery Shopper Report at 7-8.

³⁶ Complaint, Hood v. Santa Barbara Bank & Trust, Case No. 1156354 (Cal. Super. Ct. County of Santa Barbara March 18, 2003), available at www.consumerlaw.org/action_agenda/cocounseling/content/s_barbara_case.pdf.

*their returns prepared. Finally, even if they wanted to read the disclosure, some taxpayers may not be able to do so. About 14% of consumers are functionally illiterate.*³⁷

Testing conducted by consumers has found that tax preparers sometimes orally solicit consumers for RALs by stating the amount of funds that the consumer will receive in hand with each option, without stating the amount of the fee. For example, in one test, the preparer informed a tester of her options for receipt of her refund in the following manner:

“KH's federal tax refund was \$1392, and her state refund was \$302. With a RAL, KH would receive \$915.25 through direct deposit within 24-48 hours, and a \$302 state refund direct deposit. With the "Refund Deposit" option, she would receive \$950.05 within 10-14 days, and a \$302 state refund direct deposit. At no point did the preparer show the total fee amount for these options; the fees were always disaggregated in a long list of various charges.”

Durham/Philadelphia Mystery Shopper Report at Attachment 1.

*Thus, subsection (c) prescribes the language that a facilitator must use if providing an estimate of the funds that a consumer will receive in hand. It requires the facilitator to state the amount of the RAL or RAC fee. It also requires the facilitator to disclose that the consumer will not receive any cash in hand later on, when the refund would have arrived from the IRS. While such a disclosure might seem extraneous, research by Stanford University psychologists has shown that it actually has a significant impact on whether consumers choose a faster option that provides less money. Eran Magen, Carol S. Dweck, and James J. Gross, The Hidden Zero Effect: Representing a Single Choice as an Extended Sequence Reduces Impulsive Choice, *Psychological Science*, Vol. 19, No. 7, July 2008.*

Section 8. Prohibited activities.

No person (including any officer, agent, employee or representative) shall:

(a) Charge or impose any fee, charge or other consideration in the making or facilitating of a refund anticipation loan or refund anticipation check apart from the fee charged by the creditor or bank that provides the loan or check. This prohibition does not include any charge or fee imposed by the facilitator to all of its customers, such as fees for tax return preparation, if the same fee in the same amount is charged to the customers who do not receive refund anticipation loans, refund anticipation checks, or any other tax-related financial product.

(b) Engage in unfair or deceptive acts or practices in the facilitating of a refund anticipation check or a refund anticipation loan, including making any oral statements contradicting any of the information required to be disclosed under this Act.

(c) Fail to comply with any provision of this Act.

³⁷ National Center for Education Statistics, *National Assessment of Adult Literacy: A First Look at the Literacy of America's Adults in the 21st Century*, Dec. 15, 2005, available at <http://nces.ed.gov/NAAL/PDF/2006470.PDF>.

(d) In facilitating of a refund anticipation loan or refund anticipation check, threaten to take any action that is prohibited by this Act or by any other law, or that the person does not actually intend to take.

(e) Directly or indirectly arrange for any third party to charge any interest, fee or charge related to a refund anticipation loan or refund anticipation check, other than the refund anticipation loan or refund anticipation check fee imposed by the creditor, including but not limited to: (i) charges for insurance; (ii) attorneys fees or other collection costs; or (iii) check cashing.

(f) Include any of the following provisions in any document provided or signed in connection with a refund anticipation loan or refund anticipation check, including the loan application or agreement:

(i) A hold harmless clause;

(ii) A confession of judgment clause;

(iii) A waiver of the right to a jury trial, if applicable, in any action brought by or against the consumer;

(iv) Any assignment of or order for payment of wages or other compensation for services;

(v) A provision in which the consumer agrees not to assert any claim or defense arising out of the contract, or to seek any remedies pursuant to section 12 of this Act;

(vi) A waiver of any provision of this Act. Any such waiver shall be deemed null, void and of no effect;

(vii) A waiver of the right to injunctive, declaratory, other equitable relief, or relief on a class-wide basis; or

(viii) A provision requiring that any aspect of a resolution of a dispute between the parties to the agreement be kept confidential. This provision shall not affect the right of the parties to agree that certain specified information is a trade secret or otherwise confidential or to later agree, after the dispute arises, to keep a resolution confidential.

(g) Take or arrange for a creditor to take a security interest in any property of the consumer other than the proceeds of the consumer's tax refund to secure payment of a refund anticipation loan.

(h) Directly or indirectly, individually or in conjunction or cooperation with another person, engage in the collection of an outstanding or delinquent refund anticipation loan for any creditor or assignee, including soliciting the execution of, processing, receiving, or accepting an application or agreement for a refund anticipation loan or refund anticipation check that contains a provision permitting the creditor to repay, by offset or other means, an outstanding or delinquent refund anticipation loan for that creditor or any creditor from the proceeds of the consumer's tax refund.

(i) Refer, facilitate, or solicit consumers on behalf of a third party engaged in check cashing for a fee, or permit third party check cashing for a fee, in any place of business in which refund anticipation loans or refund anticipation checks are facilitated.

(j) Facilitate any loan that is secured by or that the creditor arranges to be repaid directly from the proceeds of the consumer's state tax refund from the State Treasury.

(k) Make a misrepresentation of fact in obtaining or attempting to obtain a registration as a facilitator.

(l) Engage in any other action prohibited by rules promulgated by the Commission.

Commentary

The list of prohibited acts in this section is crucial to protecting consumers from abusive behavior, and provides the real teeth of the Act. The most important prohibited act is subsection (a), which prohibits tax preparers from charging any fee for a RAL or RAC on top of the fee charged by the creditor or bank.

This ban is the crux of the consumer protections of the Act. It is designed to curb the exorbitant add-on fees and charges that some preparers have been known to impose, ranging from \$25 to in some instances, over \$300.

The protections of the ban on non-bank, add-on fees charged by the facilitator at subsection (a) must be combined with subsection (e), which prohibits RAL facilitators from padding the cost of a RAL by arranging for third parties to add fees for insurance, check cashing, or other services. Otherwise, such fees could be paid to third parties so as the escape inclusion in ban in subsection (a), but then a portion paid back to facilitator in the form of a “referral” fee or other kickback from the third party. By prohibiting such padding, subsection (e) ensures the effectiveness of the ban on preparer add-on fees.

The next most important prohibited act is subsection (h), which prohibits RAL facilitators from engaging or assisting in debt collection for any RAL creditor. Most of the RAL creditors and facilitators engage in a particularly abusive debt collection practice involving set-offs from the dummy account. These RAL creditors/facilitators have included a provision in their RAL and RAC agreements allowing them to take a consumer’s tax refund and use it to pay back any prior RAL debts for any RAL lender. Thus, if a taxpayer owes money to one RAL lender from a prior year and applies for a RAL or RAC, the lender will seize her refund at the time it is deposited by the IRS into the dummy account, and use it to repay the prior RAL debt to itself or the other RAL lender. Very few consumers actually understand the risk of this type of debt collection when they apply for a RAL or RAC. Subsection (h) would prohibit this abusive practice.

Several other protections are critical, including the prohibitions against:

- *Unfair or deceptive acts or practices, including false threats.*
- *Inclusion of certain legal provisions in a RAL or RAC contract that are abusive toward consumers, such as a confession of judgment or a wage assignment clause.*
- *A RAL secured by a state tax refund.*
- *Violation of the Act or any regulations promulgated by the Commission under the Act.*

Section 9. **Interest Rate Cap for Non-Bank Refund Anticipation Loans**

(a) No person shall make or facilitate a refund anticipation loan for which the refund anticipation loan interest rate is greater than [36% per annum or the rate set forth in other applicable state law, if any, whichever is lower]. The refund anticipation loan interest rate shall be calculated as set forth in section 2(1) of this Act. Any refund anticipation loan for which the refund anticipation loan interest rate exceeds [36% per annum or the rate set forth in other applicable state law, if any, whichever is lower] shall be void ab initio.

(b) This section does not apply to persons facilitating for or doing business as a bank, thrift, savings association, or credit union, for which the laws of the United States preempt the prohibition set forth in subsection (a).

This is a RAL interest rate cap that applies to non-bank creditors. As discussed above, federal banking laws preempt state laws that cap interest rates for RAL that are made by banks. Thus, this section specifically exempts banks and facilitators when federal law preempts the application of a state law limiting interest rates. This section is intended to regulate interest rates for RALs made by non-bank creditors such as the storefront lender in the case of State ex rel. Salazer v. The Cash Now Store, 31 P.3d 161 (Colo. 2001)).

Section 10. **Advertising and Marketing**

(a) No facilitator shall market or advertise a refund anticipation loan without including this language verbatim:

“[Name of product] is a loan. You can get your refund in 8 to 15 days without a loan or extra fees if you use e-file and direct deposit.”

For print advertisements, this information must be printed in type size one-half as large as the largest type size in the advertisement. For radio and television advertisements, this information must receive at least 7 seconds of airtime.

(b) No facilitator shall market or advertise a refund anticipation check without including this language verbatim:

“The [name of product] costs [fee for RAC]. You can get your refund in the same amount of time without this fee if you use e-file and direct deposit.”

For print advertisements, this information must be in type size one-half as large as the largest type size in the advertisement. For radio and television advertisements, this information must receive at least 7 seconds of airtime.

Section 11. **Administrative remedies**

(a) Cease and Desist Order. Whenever the Commission believes or has notice that any action of a facilitator may be in violation of this Act or the rules or regulations promulgated thereunder, or

that the facilitator has engaged in an unfair or deceptive act or practice, the Commissioner shall give reasonable notice to the facilitator of the suspected violation or unfair or deceptive act or practice, and an opportunity for the facilitator to be heard. If, following the hearing, the Commissioner finds that an action of the facilitator is in violation of this Act or the rules or regulations promulgated thereunder or that the facilitator has engaged in an unfair or deceptive act or practice, the Commissioner shall order the facilitator to cease and desist from the action. The Commissioner may make investigations, subpoena witnesses, and require audits and reports, in preparation for such hearings, and shall make findings of fact and conclusions of law. All such hearings shall be open to the public.

If the facilitator continues to engage in an action in violation of the Commissioner's order to cease and desist from the action, the facilitator shall be subject to a penalty of one thousand dollars (\$1,000) for each action it takes in violation of the Commissioner's order.

(b) Revocation of Registration. After notice and hearing, and upon the finding that a registrant has (i) engaged in a course of conduct that is in violation of this Act or the rules or regulations promulgated thereunder or (ii) continued to engage in an action in violation of a cease and desist order of the Commissioner that has not been stayed upon application of the registrant, the Commissioner may revoke the registration of the registrant temporarily or permanently at the discretion of the Commissioner. No revocation, suspension, or surrender of any registration shall relieve the registrant from civil or criminal liability for acts committed prior thereto.

(c) Complaint Process. The Commissioner shall maintain a list of registrants which shall be available to interested persons and the public. The Commissioner shall create a toll-free telephone number and an Internet page whereby consumers may obtain information about registrants and complaint forms. The Commissioner shall establish a complaint process whereby an aggrieved consumer or any member of the public may file a complaint against a registrant or non-registrant who violates any provision of this Act. All complaints shall be considered public records pursuant to [cite for state public records law] with the exception of the complainant's name, address, or other personal identifying information. The Commissioner shall hold a hearing pursuant subsection (a) upon the request of a party to the complaint. The Commissioner may after such hearing issue cease and desist orders pursuant to subsection (a), or suspend or revoke a registration as provided in subsection (b).

Commentary

This section gives the Commissioner the power to impose penalties for violation of the Act. A single violation will result in a cease and desist order. Continuing violations will result in a civil penalty. This section also gives the Commissioner the power to revoke a facilitator's registration for continued violations of the Act. These provisions are similar to the administrative remedies in the North Carolina RAL statute, N.C. Gen. Stat. § 53-251.

This section requires the Commissioner to establish a complaint process for consumers. The complainant or the facilitator is entitled to seek a hearing on the complaint. This section gives the public the right of access to both the list of registrants and all complaints against registrants, except for the personal identifying information of complainants.

Section 12. **Private Right of Action**

- (a) The remedies provided herein are cumulative and apply to registrants and to unregistered persons to whom this Act applies and who fail to register.
- (b) Any violation by a facilitator of any state law prohibiting unfair or deceptive acts or practices constitutes a violation of this Act.
- (c) Any violation of this Act constitutes a violation of any state law prohibiting unfair or deceptive acts or practices.
- (d) Any violation by a facilitator of the federal Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* constitutes a violation of this Act.
- (e) Damages. A facilitator who fails to comply with any provision of this Act is liable to the consumer for: (i) actual and consequential damages; (ii) statutory damages of \$2,500 (to be increased annually based proportionally on changes in the Consumer Price Index, with fractional amounts rounded to the nearest dollar) or three times the amount of the refund anticipation loan fee or other unauthorized charge, whichever is greater; and (iii) reasonable attorney's fees and costs.
- (f) Any person may sue for injunctive or other appropriate equitable relief to enforce this Act.
- (g) Any consumer may bring a class action suit to enforce this Act. In any such class action, a facilitator who fails to comply with any provision of this Act is liable for: (i) actual and consequential damages for each class member; (ii) statutory damages as set forth in subsection (d)(ii) for each class member; and (iii) reasonable attorney's fees and costs.
- (f) The remedies provided in this section are not intended to be the exclusive remedies available to a consumer nor must the consumer exhaust any administrative remedies provided under this Act or any other applicable law.

Commentary

The private right of action gives consumers the ability to enforce the provisions of the Act, allowing them to directly sue RAL and RAC facilitators, both registered and unregistered. A private right of action is essential to ensuring that the Act has a meaningful impact. Agency enforcement through the complaint process alone is sometimes inadequate, given the fact that many agencies do not have sufficient resources to investigate all violations and undertake enforcement actions. Many of the current state RAL statutes have some form of private right of action. Cal. Bus & Prof. Code § 22257; Conn. Gen. Stat. § 42-480(e); 815 Ill. Comp. Stat. § 177/15; Minn. Stat. § 270.445, subd. 7; N.C. Gen. Stat. § 53-251(c); Va. Code § 6.1-479; Wash. Rev. Code § 19.265.070; Wisconsin Stat. § 421.310(3); and N.Y.C. Admin. Code § 20-743.1.

This section permits consumers to seek actual and consequential damages, including costs and attorney's fees. It also imposes a statutory penalty of \$2,500 per violation, or three times the RAL fee, whichever is greater. The statutory penalty is important because the actual damages in these cases may be small, and alone might not deter a business from violating this Act. The statutory penalty is indexed to the Consumer Price Index to prevent its deterrent effect from being eroded by inflation. Statutory penalties of this type are common in the federal consumer protection acts. This section includes injunctive relief as another method of discouraging violations by businesses that may not be deterred by damage awards alone. For the same reason, and to assist groups of borrowers who have been injured by violation, this section includes a provision allowing for class actions.

Section 13. Rules

The Commission may adopt rules as necessary to effectuate the purpose of this Act, to provide for the protection of the borrowing public, and to assist facilitators in interpreting this Act. The Commission may modify the disclosures in subsections 5(c), 6(a), 7(a), and 7(c) to the extent that a revision of the estimate for receiving a refund from the Internal Revenue Service (with electronic filing and direct deposit) is appropriate.

Commentary

This Section gives the Commission the power to establish regulations to implement the Act. This Section also gives the Commission the power to modify the estimate of 8 to 15 days for an e-filed, direct deposit refund in the mandatory warnings at subsections 5(c), 6(a), 7(a), and 7(c). The IRS has stated that in a few years, it plans to reduce the amount of time for an e-filed, direct deposit refund to 3 or 4 days. If and when this reduction in time occurs, this section permits the Commission to modify the disclosures in subsections 5(c), 6(a), 7(a), and 7(c) to inform consumers of this improvement.

Section 14. Annual reports.

On or before July 1 of each year, beginning July ____, each registrant shall file an annual report with the Commissioner pursuant to procedures that the Commissioner shall establish. An annual consolidated report shall be prepared by the Commissioner and made available to the public. These reports shall include the following information for the time period of April 15 of the prior year to April 15 of that year:

- (a) The total number and dollar amount of refund anticipation loans facilitated by the registrant.
- (b) The total number and dollar amount of refund anticipation checks facilitated by the registrant.
- (c) The average number of days for which refund anticipation loans facilitated by the registrant were outstanding before being repaid.
- (d) The name and address of any creditor or person for whom the registrant facilitates refund anticipation loans or refund anticipation checks.

(e) Any other information required by the Commissioner.

Commentary

Registrants must file an annual report in which they must list, among other things, the number of RALs and RACs, the volume of RALs and RACs in dollars, and the average loan period for the RALs they facilitated. This information will be compiled by the Commissioner and made available to the public, the governor, and the legislature. This information is critical in gauging the status of the industry and in determining if the Act serves the purposes for which it is intended.

Section 15: Severability

If any portion of this Act is determined to be invalid for any reason by a final nonappealable order of any court of this state or of a federal court of competent jurisdiction, then it shall be severed from this Act. All other provisions of this Act shall remain in full force and effect.

APPENDIX A

APPENDIX A – SUMMARIES OF STATE RAL LAWS

The following are summaries of the RAL laws from 14 states and New York City. Most of these laws are limited to requiring disclosures for RALs. A number of them have been supported and even promoted by the RAL industry.

1. California Business & Professions Code § 22251 et seq.

Applicability: Tax preparers (the RAL statute is part of the chapter requiring tax preparer registration)

Exemptions: Attorneys, CPAs, enrolled agents, financial institutions

Licensing or registration requirements: None, but California requests tax preparers to be registered and bonded.

Loan Terms: None.

Disclosures

Posting. Tax preparers who make RALs must display a schedule of current RAL fees, electronic filing fees, “dummy” account fees, and other related RAL fees. The posting must also state that the consumer may have the return filed electronically without a RAL. Postings must be in 28 point type on a 16 inch by 20 inch document displayed in a prominent location.

Written disclosures. Prior to completion of the application, the preparer must disclose: (1) the RAL loan fee schedule (2) the fact that a RAL is a loan and not the actual refund; (3) that the consumer may have the return filed electronically without a RAL; (4) the estimated time in which the consumer could expect to receive the refund with electronic filing and direct deposit/mail or with paper filing and direct deposit/mail; (5) that the IRS does not guarantee the amount or time of the payment of a refund; (6) that the consumer is responsible for repayment of the loan in the event the refund is not paid or is not paid in full; (7) the estimated time when the consumer will receive the loan proceeds; and (8) the fee if the RAL is not approved.

Prior to consummation of the loan, the preparer must disclose: (1) the estimated total RAL fees; (2) the estimated APR under the Truth in Lending Act; (3) a comparison of the costs of receiving a refund directly from IRS, with a RAL, with a RAL, and with any other tax financial product.

There are no mandatory type size or mandatory language for the written disclosures.

Advertising. Any advertisement that mentions a RAL must state conspicuously that it is a loan, that a fee or interest will be charged, and the name of the lending institution.

Prohibited Acts: (1) Representing the loan as a client's actual refund; (2) requiring the consumer to obtain a RAL to complete tax preparation; (3) misrepresenting a material factor or condition of the RAL; (4) failing to process the RAL application promptly; or (5) engaging in fraud in connection with a RAL.

Civil/Criminal Penalties: Violation is a misdemeanor punishable by \$1,000 fine or 1 year in jail.

Private Right of Action: Yes. "Any person" may seek injunctive relief or \$1,000 civil penalty plus attorney's fees. (Violation might also constitute violation of Cal. Bus & Prof. Code § 17200.)

Other Provisions The RAL contract must be translated into Spanish, Chinese, Tagalog, Vietnamese, or Korean if the RAL was negotiated in that language.

2. Connecticut Gen. Stat. § 42-480

Applicability: "Facilitators" of RALs, defined as anyone who makes a RAL or "processes, receives or accepts for delivery" a RAL application, issues a check in payment of RAL proceeds, or in any other manner acts to allow the making of a RAL.

Exemptions: Financial institutions.

Licensing or registration requirements: None, but RALs can only be made in a location in which the principal business is tax preparation.

Loan Terms: No RAL shall exceed sixty percent per annum (this provision was held to be preempted by federal law in *Pacific Capital Bank, N.A., v. Conn*, 542 F.3d 341 (2nd Cir. 2008)).

Disclosures

Written disclosures. At the time of application, the facilitator must provide a separate document disclosing: (1) the tax preparation and electronic filing fees; (2) the loan fee schedule; (3) the APR under TILA; (4) the estimated total cost of the RAL; (5) the estimated date for receiving the RAL; (6) a statement that the consumer is responsible for repaying the RAL if the IRS does not issue the expected tax refund; and (7) the availability of e-filing, plus the estimated time for receiving a refund with e-filing and direct deposit. There are no mandatory language or font requirements.

Civil/Criminal Penalties: \$500 fine.

Private Right of Action: Yes. An “aggrieved borrower” may seek three times RAL fee plus reasonable attorney’s fees.

3. Illinois Comp. Stat. Ann. ch. 815, § 177/1, et seq

Applicability: “Facilitators” of RALs, defined as anyone who makes a RAL or “processes, receives or accepts for delivery” a RAL application, issues a check in payment of RAL proceeds, or in any other manner acts to allow the making of a RAL.

Exemptions: Financial institutions.

Licensing or registration requirements: None.

Loan terms: None

Disclosures

Written disclosures. At the time of application, the facilitator must provide a separate document disclosing: (1) the RAL loan fee schedule; (2) the APR using a 10 day loan period; (3) tax preparation and electronic filing fees; (4) the total cost of a RAL; (5) estimated date for receiving the RAL; (6) a statement that the consumer is responsible for repaying the RAL if the IRS does not issue the expected tax refund; and (7) the availability of e-filing, plus the estimated time for receiving a refund with e-filing and direct deposit.

There are no mandatory font or language requirements.

Civil/Criminal Penalties: \$500 fine.

Private Right of Action: Yes. An “aggrieved borrower” may seek three times RAL fee plus reasonable attorney’s fees.

4. Minnesota Stat. § 270C.445

Applicability: Any person who offers or facilitates RALs in connection with tax preparation.

Exemptions: Preparers who have less than six tax preparation clients per year; tax preparation by relatives; employees acting within their scope of employment. The statute is not enforceable against attorneys, CPAs, registered accounting practitioners, enrolled agents, and fiduciaries acting in that capacity.

Licensing or registration requirements: None.

Loan Terms: None.

Disclosures

Written disclosures. Disclosures must be made in a separate document and must include the following verbatim statements:

(1) "This is a loan. The annual percentage rate (APR), based on the estimated payment period, is (fill in the estimated APR)."

(2) "Your refund will be used to repay the loan. As a result, the amount of your refund will be reduced by (fill in appropriate dollar amount) for fees, interest, and other charges."

(3) "You can get your refund in about two weeks if you file your return electronically and have the Internal Revenue Service send your refund to your own bank account."

(4) if additional interest is charged when a refund is delayed, the following: "If you choose to take this loan and your refund is delayed, you may have to pay additional interest."

Disclosures must be made in 14 point type, double-spaced between statements, and four spaces between statements.

Prohibited Acts: (1) Requiring the consumer to obtain a RAL to complete tax preparation; (2) failing to provide an itemized statement of fees, including RAL fees.

Civil/Criminal Penalties: \$1,000 per violation. The Commissioner of Revenue may also terminate the preparer's authority to e-file with the state.

Private Right of Action: Yes. Violation of the RAL statute is a violation of the Minnesota UDAP statute. A court may award damages, attorney's fees, and equitable relief.

Other Provisions: The Minnesota statute also contains standards of conduct for tax preparers in general.

5. Nevada Rev. Stat. §§ 604B.010 to 604B.910

Applicability: "Facilitators" of RALs, defined as anyone who makes a RAL or "processes, receives or accepts for delivery" a RAL application, issues a check in payment of RAL proceeds, or in any other manner acts to allow the making of a RAL.

Exemptions: Financial institutions; servicers thereof; intermediaries who do not deal with customers.

Loan terms: None.

Licensing or registration requirements: None.

Disclosures

Posting. Facilitators must display a schedule of current RAL fees in a conspicuous place in every location at which the facilitator conducts business. There are no font or language requirements for this posting.

Written disclosures. Prior to completion of the application, the facilitator must disclose: (1) the RAL loan fee schedule (2) the fact that a RAL is a loan that creates a legally enforceable debt and not the actual refund; (3) that the consumer may have the return filed electronically without a RAL; (4) the estimated time in which the consumer could expect to receive the refund with electronic filing and direct deposit/mail or with paper filing and direct deposit/mail; (5) that the IRS does not guarantee the amount or time of the payment of a refund; (6) that the consumer is responsible for repayment of the loan in the event the refund is not paid or is not paid in full; (7) the estimated time when the consumer will receive the loan proceeds; and (8) the fee if the RAL is not approved. These disclosures must be made in at least 10 point type.

Prior to consummation of the loan, the facilitator must disclose: (1) the estimated total RAL fees; and (2) the estimated APR under the Truth in Lending Act.

Prohibited Acts: (1) Misrepresenting a material factor or condition of the RAL; (2) failing to process the RAL application promptly; (3) engaging in dishonest, fraudulent, unfair, unconscionable or unethical practice in connection with a RAL; (4) arranging for a creditor to take a security interest in any property of the consumer other than the proceeds of the consumer's tax refund to secure payment of RAL; and (5) offering a RAL for which the RAL, tax preparation, and related fees exceed the amount of the consumer's anticipated refund.

Civil/Criminal Penalties: Violation is a misdemeanor punishable by \$500 fine. Violation of the RAL statute is deceptive practice under the Nevada UDAP statute, enforceable by various state agencies.

Private Right of Action: Not explicit.

6. New Jersey Statute §§17:11D-1 to 17:11D-7

Applicability: Tax Preparers.

Exemptions: Preparers who have less than six tax preparation clients per year; tax preparation by relatives; employees acting within their scope of employment; attorneys;

CPAs; public accountants; enrolled agents; VITA programs; and fiduciaries acting in that capacity.

Licensing or registration requirements: None.

Loan Terms: RAL facilitators are required to comply with the New Jersey Licensed Lenders Act, its criminal usury cap, and general usury law., which limit the interest rate on small loans to 30% APR. (This provision was held to be preempted by federal law in Pacific Capital Bank, N.A. v. Milgram, 2008 WL 700180 (D.N.J. Mar. 13, 2008).

Disclosures

Written disclosures. Disclosures must be made in a separate document and must include the following verbatim statement:

"THIS IS A LOAN. THE ANNUAL PERCENTAGE RATE (APR), BASED ON THE ESTIMATED PAYMENT PERIOD, IS (fill in the estimated APR). YOUR TAX REFUND WILL BE USED TO REPAY THE LOAN. AS A RESULT, THE AMOUNT OF YOUR REFUND WILL BE REDUCED BY _____ (fill in appropriate dollar amount) FOR FEES, INTEREST, AND OTHER CHARGES.

"AS AN ALTERNATIVE, YOU CAN RECEIVE YOUR FULL REFUND IN APPROXIMATELY TWO WEEKS IF YOU FILE YOUR RETURN ELECTRONICALLY AND THE INTERNAL REVENUE SERVICE WILL SEND YOUR FULL REFUND TO YOUR OWN BANK ACCOUNT."

If additional interest is charged when a refund is delayed, the following:

"IF YOU CHOOSE TO TAKE THIS LOAN AND YOUR REFUND IS DELAYED, YOU MAY HAVE TO PAY ADDITIONAL INTEREST."

These disclosures must be made in 14 point type. Alternative disclosures are permissible if they are substantially equivalent, include a list of example RAL fees and APRs, and include a chart of estimate delivery times for an IRS mailed refund, IRS direct deposit, and a RAL.

Prohibited Acts: (1) Requiring the consumer to obtain a RAL to complete tax preparation; (2) failing to provide an itemized statement of fees, including RAL fees.

Civil/Criminal Penalties: \$1,000 per violation.

Private Right of Action: Not explicit.

Other Provisions: The New Jersey statute also contains standards of conduct for tax preparers in general.

6. New York Gen. Bus. Law §§ 371 to 373

Applicability: Tax Preparers.

Exemptions: Employees acting within their scope of employment; attorneys; fiduciaries acting in that capacity; CPAs; public accountants; government employees as part of their official duties; and enrolled agents.

Licensing or registration requirements: None.

Loan terms: None

Disclosures

Written disclosures. Disclosures must be made in a separate document and must include the following verbatim statement:

"YOU ARE NOT REQUIRED TO ENTER INTO THIS REFUND ANTICIPATION LOAN AGREEMENT MERELY BECAUSE YOU HAVE RECEIVED THIS INFORMATION.

IF YOU DO SIGN A CONTRACT FOR A REFUND ANTICIPATION LOAN, YOU WILL BE TAKING OUT A LOAN. YOU WILL BE RESPONSIBLE FOR REPAYMENT OF THE ENTIRE LOAN AMOUNT AND ALL RELATED COSTS AND FEES, REGARDLESS OF HOW MUCH MONEY YOU ACTUALLY RECEIVE IN YOUR TAX REFUND.

IF YOU DO NOT TAKE OUT THIS REFUND ANTICIPATION LOAN, YOU ARE ELIGIBLE TO RECEIVE A GROSS TAX REFUND OF APPROXIMATELY \$(insert amount).

IF YOU DO TAKE OUT THIS REFUND ANTICIPATION LOAN, YOU WILL BE RESPONSIBLE TO PAY \$(insert amount) IN FEES FOR THE LOAN. AFTER THESE FEES ARE PAID, YOU WILL RECEIVE APPROXIMATELY \$ (insert amount) AS YOUR LOAN.

THE ESTIMATED ANNUAL PERCENTAGE RATE OF YOUR REFUND ANTICIPATION LOAN IS (insert amount)%. THIS IS BASED ON THE ACTUAL AMOUNT OF TIME YOU WILL BE LENT MONEY THROUGH THIS REFUND ANTICIPATION LOAN.

IF YOU DO TAKE OUT THIS REFUND ANTICIPATION LOAN, YOU CAN EXPECT TO RECEIVE YOUR LOAN WITHIN APPROXIMATELY TWO BUSINESS DAYS OF (insert date).

IF YOU DO NOT TAKE OUT THIS REFUND ANTICIPATION LOAN, YOU CAN STILL RECEIVE YOUR TAX REFUND QUICKLY. IF YOU FILE YOUR TAX RETURN ELECTRONICALLY AND RECEIVE YOUR TAX REFUND THROUGH THE MAIL, YOU CAN EXPECT TO RECEIVE YOUR REFUND WITHIN APPROXIMATELY TWO BUSINESS DAYS OF (insert date). IF YOU FILE YOUR TAX RETURN ELECTRONICALLY AND HAVE YOUR TAX REFUND DIRECTLY DEPOSITED INTO A BANK ACCOUNT,

YOU CAN EXPECT TO RECEIVE YOUR REFUND WITHIN APPROXIMATELY TWO BUSINESS DAYS OF (insert date)."

This disclosure must be made in 14-point type. Preparers must have consumers sign the form before they enter into a RAL.

Advertising. Any advertisement that mentions a RAL must state conspicuously that it is a loan, that a fee or interest will be charged, and the name of the lending institution.

Prohibited Acts: Representing the loan as a client's actual refund.

Civil/Criminal Penalties: \$250 to \$500 for the first violation, and \$500 to \$750 for succeeding violations.

Private Right of Action: Not explicit.

Other Provisions: The New York State law requires tax preparers to provide consumers with a "Consumer Bill of Rights Regarding Tax Preparers." The New York State law does not apply to cities with more than one million residents. It preempts all municipal, county and local ordinance regarding tax preparer disclosures, with the exception of cities with more than one million residents.

8. North Carolina Gen. Stat. §§ 53-245 to 53-254

Applicability: "Facilitator" of RALs, defined as any person who processes, receives, or accepts for delivery RAL applications or a RAL check.

Exemptions: Financial institutions; person who acts solely as an intermediary by processing or transmitting tax or credit information; persons who prepare RAL checks for delivery by a facilitator.

Licensing or registration requirements: Facilitators are required to register with the Commissioner of Banks.

Loan terms: Facilitators are required to file a schedule of RAL fees with the Banking Commissioner, who is authorized to make a finding as to whether a RAL fee is unconscionable. (This provision was NOT held to be preempted by federal law in North Carolina Ass'n of Electronic Tax Filers, Inc. v. Graham, 429 S.E.2d 544 (N.C. 1993)).

Disclosures

Posting. RAL facilitators are required to post a fee schedule showing RAL fees and electronic filing fee. They are also required to post a statement that the

taxpayer may have the tax return filed electronically without also obtaining a RAL.

Written disclosures. At the time of application, the facilitator must disclose to the consumer on a form separate from the application: (1) the loan fee; (2) the electronic filing fee; (3) the time frame in which the consumer will receive the loan proceeds; (4) that the consumer is responsible for repayment of the loan in the event the refund is not paid or is not paid in full; (5) the availability of electronic filing, along with the estimated time in which the consumer could expect to receive a refund with electronic filing but without a RAL; (6) estimated APRs for RALs ranging from \$500 to \$3000, using an estimated maturity date based upon when the tax refund is expected to be issued.

(Note that the Banking Division's regulations at N.C. Admin. Code tit. 4, r. 3J.0303 require the disclosure of the loan fee to be broken down into the fee received by the creditor versus the fee received by the facilitator.)

Prohibited Acts: (1) Misrepresenting a material factor or condition of the RAL; (2) failing to promptly arrange for a RAL after application; (3) engaging in fraud in connection with a RAL; (4) facilitating a RAL for which the RAL fee is either unconscionable or different from that displayed in the posted fee schedule; (5) arranging for the payment of any portion of RAL for check cashing, credit insurance, or any good or service unrelated to tax preparation or facilitating RALs; and (6) arranging for the creditor to take a security interest in property other than the consumer's tax refund. If a RAL is approved by a creditor, the facilitator must deliver loan proceeds within 48 hours of the time that the facilitator promised.

Civil/Criminal Penalties: Failure of a RAL facilitator to register is a misdemeanor punishable by a \$2,000 fine. The Commissioner is authorized to issue cease and desist orders against violators of the RAL Act, after notice and hearing. Violation of a cease and desist order is subject to a penalty of \$1,000 per violation. The Commissioner may also revoke a registration for violation of a cease and desist order or for a pattern of violative conduct.

Private Right of Action: Yes. If a facilitator engages in a prohibited act, damages in the amount of treble the loan fee. A facilitator who fails to deliver the proceeds of an approved RAL within 48 hours of the promised time is liable in the amount of the RAL fee.

Other Provisions: The N.C. Banking Division has promulgated regulations pursuant to the RAL Act, which are at N.C. Admin. Code tit. 4, r. 3J.0101 to 0402. The Banking Commission's regulations require facilitators to maintain records on each RAL application for a period of at least 3 years.

9. Oregon Rev. Stat. 673.605 to 630.615.

Applicability: “Facilitators” of RALs, defined as anyone who makes a RAL or “processes, receives or accepts for delivery” a RAL application, issues a check in payment of RAL proceeds, or in any other manner materially facilitates the making of a RAL.

Exemptions: Financial institutions; servicers thereof; CPAs; public accountants; intermediaries who do not deal with customers.

Licensing or registration requirements: Oregon requires tax preparers to be licensed, and only licensed preparers are permitted to make RALs.

Loan terms: None .

Disclosures

Written disclosures. Prior to completion of the application, the facilitator must disclose: (1) the RAL loan fee schedule with APRs; (2) the fact that a RAL is a loan that creates a legally enforceable debt and not the actual refund; (3) that the consumer may have the return filed electronically without a RAL; (4) the estimated time in which the consumer could expect to receive the refund with electronic filing and direct deposit/mail or with paper filing and direct deposit/mail; (5) that the IRS does not guarantee the amount or time of the payment of a refund; (6) that the consumer is responsible for repayment of the loan in the event the refund is not paid or is not paid in full; (7) the estimated time when the consumer will receive the loan proceeds; and (8) the fee if the RAL is not approved.

Prior to consummation of the loan, the facilitator must disclose: (1) the estimated total RAL fees; and (2) the estimated APR under the Truth in Lending Act.

Prohibited Acts: (1) Requiring the consumer to obtain a RAL to complete tax preparation; (2) failing to provide an itemized statement of fees, including RAL fees.

Civil/Criminal Penalties: The State Board of Tax Practitioners has general supervisory authority over licensed tax preparers in Oregon.

Private Right of Action: Not explicit.

Other Provisions: The Oregon RAL law prohibits any local government from enacting a stronger RAL ordinance.

10. Tennessee Code §§ 62-29-201 to 62-29-205

Applicability: “Facilitators” of RALs, defined as anyone who makes a RAL or “processes, receives or accepts for delivery” a RAL application, issues a check in payment of RAL proceeds, or in any other manner acts to allow the making of a RAL.

Exemptions: Financial institutions; servicers thereof; intermediaries who do not deal with customers.

Loan Terms: The Tennessee law provides for a one-day right to rescind the loan by returning the RAL check or tendering the amount of the loan. The facilitator may not charge a fee for rescission; however, the consumer can still be charged a fee for a RAL.

Licensing or registration requirements: None.

Disclosures

Posting. Tax preparers who make RALs must display a schedule of current RAL fees, electronic filing fees, “dummy” account fees, and other related RAL fees. The posting must also state that the consumer may have the return filed electronically without a RAL. Postings must be in 28 point type on a 16 inch by 20 inch document displayed in a prominent location.

Written disclosures. Prior to completion of the application, the facilitator must disclose: (1) the RAL loan fee schedule (2) the fact that a RAL is a loan and not the actual refund; (3) that the consumer may have the return filed electronically without a RAL; (4) the estimated time in which the consumer could expect to receive the refund with electronic filing and direct deposit/mail or with paper filing and direct deposit/mail; (5) that the IRS does not guarantee the amount or time of the payment of a refund; (6) that the consumer is responsible for repayment of the loan in the event the refund is not paid or is not paid in full; (7) the estimated time when the consumer will receive the loan proceeds; and (8) the fee if the RAL is not approved.

Prior to consummation of the loan, the facilitator must disclose: (1) the estimated total RAL fees; (2) the estimated APR under the Truth in Lending Act; (3) a comparison of the costs of receiving a refund directly from IRS, with a RAL, with a RAL, and with any other tax financial product.

No mandatory type size or mandatory language for the written disclosures.

Advertising. Any advertisement that mentions a RAL must state conspicuously that it is a loan, that a fee or interest will be charged, and the name of the lending institution.

Prohibited Acts: (1) Representing the loan as a client’s actual refund; (2) requiring the consumer to obtain a RAL to complete tax preparation; (3) misrepresenting a material factor or condition of the RAL; (4) failing to process the RAL application promptly; or (5) engaging in fraud in connection with a RAL.

Civil/Criminal Penalties: Violation is a misdemeanor punishable by \$500 fine.

Private Right of Action: Not explicit.

Other Provisions: The Tennessee RAL law prohibits any local government from enacting a RAL ordinance.

11. Texas Fin. Code §§ 350.001 to 350.008

Applicability: “Facilitators” of RALs, defined as anyone who makes a RAL or “processes, receives or accepts for delivery” a RAL application, issues a check in payment of RAL proceeds, or in any other manner acts to allow the making of a RAL.

Exemptions: The following are exempt from the registration requirements of the Texas law: Financial institutions; person who acts solely as an intermediary by processing or transmitting tax or credit information; persons who prepare RAL checks for delivery by a facilitator.

Loan terms: None

Licensing requirements: Facilitators are required to register with the Office of the Consumer Credit Commissioner. A RAL facilitator must also be: (1) primarily involved in tax preparation or financial services and (2) authorized as an e-file provider with IRS.

Disclosures

Written disclosures. After completion of tax preparation but before a RAL is consummated, the facilitator must disclose: (1) a RAL fee schedule; (2) that a RAL is a loan; (3) the taxpayer can file a return without a RAL; (4) statement that the consumer is responsible for repaying the RAL if the IRS does not issue the expected tax refund; (5) any fee that will be charged if the loan is not approved; (6) the estimated time in which the consumer could expect to receive the refund with electronic filing and direct deposit/mail or with paper filing and direct deposit/mail; (7) that the IRS does not guarantee the amount or time of the payment of a refund; (8) the estimated cost of the RAL and APR and (8) estimated date for receiving the RAL.

There are no mandatory language or font requirements. However, a facilitator who advertises RALs in Spanish or negotiates the loan in Spanish must offer Spanish-language disclosures and loan documents.

Civil/Criminal Penalties: The Consumer Credit Commissioner may assess a \$500 administrative penalty. The Commissioner may also revoke the registration of a facilitator who violates the Texas law.

Private Right of Action: Not explicit.

Other Provisions: (1) The Texas RAL law prohibits any local government from enacting a RAL ordinance. This provision unfortunately preempts the San Antonio RAL ordinance, which had stronger disclosures in that it required them to be provided both in writing in 14 point type as well as orally. (2) The Texas Office of the Consumer Credit Commissioner has issued regulations at Tex. Admin. Code §§ 87.102 to 87.107.

12. Virginia Code § 6.1-474

Applicability: “Facilitators” of RALs, defined as anyone who makes a RAL or “processes, receives or accepts for delivery” a RAL application, issues a check in payment of RAL proceeds, or in any other manner acts to allow the making of a RAL.

Exemptions: Financial institutions; servicers thereof; intermediaries who do not deal with customers.

Loan terms: The Virginia law provides for a one-day right to rescind the loan by returning the RAL check or tendering the amount of the loan. The facilitator may not charge a fee for rescission; however, the consumer can still be charged a fee for a RAL.

Licensing or registration requirements: None.

Disclosures

Posting. Tax preparers who make RALs must display a schedule of current RAL fees, electronic filing fees, “dummy” account fees, and other related RAL fees. The posting must also state that the consumer may have the return filed electronically without a RAL. Postings must be in 28 point type on a 16 inch by 20 inch document displayed in a prominent location.

Written disclosures. Prior to completion of the application, the facilitator must disclose: (1) the RAL loan fee schedule (2) the fact that a RAL is a loan and not the actual refund; (3) that the consumer may have the return filed electronically without a RAL; (4) the estimated time in which the consumer could expect to receive the refund with electronic filing and direct deposit/mail or with paper filing and direct deposit/mail; (5) that the IRS does not guarantee the amount or time of the payment of a refund; (6) that the consumer is responsible for repayment of the loan in the event the refund is not paid or is not paid in full; (7)

the estimated time when the consumer will receive the loan proceeds; and (8) the fee if the RAL is not approved.

Prior to consummation of the loan, the facilitator must disclose: (1) the estimated total RAL fees; (2) the estimated APR under the Truth in Lending Act; (3) a comparison of the costs of receiving a refund directly from IRS, with a RAL, with a RAL, and with any other tax financial product.

There are no mandatory type size or mandatory language for the written disclosures.

Advertising. Any advertisement that mentions a RAL must state conspicuously that it is a loan, that a fee or interest will be charged, and the name of the lending institution.

Prohibited Acts: (1) Representing the loan as a client's actual refund; (2) requiring the consumer to obtain a RAL to complete tax preparation; (3) misrepresenting a material factor or condition of the RAL; (4) failing to process the RAL application promptly; or (5) engaging in fraud in connection with a RAL.

Private Right of Action: Yes. Violation of the RAL statute is a violation of the Virginia UDAP statute.

Other Provisions: The Virginia RAL law prohibits any local government from enacting a RAL ordinance.

13. Washington (State) Rev. Code § 19.265.010 et seq.

Applicability: "Facilitators" of RALs, defined as anyone who makes a RAL or "processes, receives or accepts for delivery" a RAL application, issues a check in payment of RAL proceeds, or in any other manner acts to allow the making of a RAL.

Exemptions: Financial institutions; servicers thereof; intermediaries who do not deal with customers.

Loan terms: The Washington State law provides for a one-day right to rescind the loan by returning the RAL check or tendering the amount of the loan. The facilitator may not charge a fee for rescission; however, the consumer can still be charged a fee for a RAL.

Licensing requirements: Facilitators are required to register with the Department of Financial Institutions. A RAL facilitator must also be: (1) primarily involved in tax preparation or financial services and (2) authorized as an e-file provider with IRS.

Disclosures

Written disclosures. Prior to completion of the application, the facilitator must disclose: (1) the RAL loan fee schedule (2) the fact that a RAL is a loan and not the actual refund; (3) that the consumer may have the return filed electronically without a RAL; (4) the estimated time in which the consumer could expect to receive the refund with electronic filing and direct deposit/mail or with paper filing and direct deposit/mail; (5) that the IRS does not guarantee the amount or time of the payment of a refund; (6) that the consumer is responsible for repayment of the loan in the event the refund is not paid or is not paid in full; (7) the estimated time when the consumer will receive the loan proceeds; (8) the fee if the RAL is not approved; and (9) the consumer's one day right to rescind the loan. These disclosures must be made in at least 10 point type.

Prior to consummation of the loan, the facilitator must disclose: (1) the estimated total RAL fees; and (2) the estimated APR under the Truth in Lending Act.

Prohibited Acts: (1) Misrepresenting a material factor or condition of the RAL; (2) failing to process the RAL application promptly; (3) engaging in dishonest, fraudulent, unfair, unconscionable or unethical practice in connection with a RAL; (4) arranging for a creditor to take a security interest in any property of the consumer other than the proceeds of the consumer's tax refund to secure payment of RAL; and (5) offering a RAL for which the RAL, tax preparation, and related fees exceed the amount of the consumer's anticipated refund.

Civil/Criminal Penalties: Violation is a misdemeanor punishable by \$500 fine

Private Right of Action: Yes. Violation of the RAL statute is constitutes violation of the Washington State UDAP statute.

Other Provisions: The Washington State RAL law prohibits any local government from enacting a RAL ordinance. This provision unfortunately preempts the Seattle RAL ordinance, which had stronger disclosures in that it required oral disclosures, mandatory warning language, and Spanish language disclosures.

14. Wisconsin Stat. §§ 421.301 and 422.310

Applicability: Creditors

Exemptions: None

Licensing or registration requirements: None.

Loan Terms: None.

Disclosures

Written disclosures. Before the consumer enters into a RAL, the creditor must disclose: (1) any RAL fees; (2) any fees for electronic filing; (3) total dollar amount of 1 & 2; (4) anticipated length of time, plus or minus two business days, in which the customer will receive RAL proceeds; (5) that the customer can electronically file without obtaining a RAL; (6) anticipated length of time for the customer to receive a refund with electronic filing but no RAL (note that the Dept of Financial Inst. Regulations require this period to be no more than 14 days); (7) that the customer is responsible for repayment of the RAL if the refund is not paid or is lower in amount than anticipated; and (8) the APR calculated using a maturity date based upon when the tax refund is expected to be issued given electronic filing.

Private Right of Action: Yes. Consumers may seek actual damages and statutory damages of twice the finance charge, from \$100 to \$1,000, for a violation.

Prohibited Acts: Charging different electronic filing fees for RAL versus non-RAL customers.

Other Provisions: The Wisconsin Department of Financial Institutions has promulgated regulations, which are at Wis. Adm. Code DFI-Bkg §§. 80.353 to 80.356. The Banking Commission's regulations require facilitators to maintain records on each RAL application for a period of at least 3 years.

New York City Administrative Code §§ 20-739 to 20-741.1

Applicability: Tax Preparers.

Exemptions: Employees acting within their scope of employment; attorneys; fiduciaries acting in that capacity; CPAs; public accountant; government employees as part of their official duties; and enrolled agents.

Licensing or registration requirements: None.

Disclosures

Written disclosures. Disclosures must be made in a separate document and must include the following verbatim statement:

"YOU ARE NOT REQUIRED TO ENTER INTO THIS REFUND ANTICIPATION LOAN AGREEMENT MERELY BECAUSE YOU HAVE RECEIVED THIS INFORMATION.

IF YOU DO SIGN A CONTRACT FOR A REFUND ANTICIPATION LOAN, YOU WILL BE TAKING OUT A LOAN. YOU WILL BE RESPONSIBLE FOR REPAYMENT OF THE ENTIRE LOAN AMOUNT AND

ALL RELATED COSTS AND FEES, REGARDLESS OF HOW MUCH MONEY YOU ACTUALLY RECEIVE IN YOUR TAX REFUND.

IF YOU DO NOT TAKE OUT THIS REFUND ANTICIPATION LOAN, YOU ARE ELIGIBLE TO RECEIVE A GROSS TAX REFUND OF APPROXIMATELY \$(insert amount).

IF YOU DO TAKE OUT THIS REFUND ANTICIPATION LOAN, YOU WILL BE RESPONSIBLE TO PAY \$(insert amount) IN FEES FOR THE LOAN. AFTER THESE FEES ARE PAID, YOU WILL RECEIVE APPROXIMATELY \$ (insert amount) AS YOUR LOAN.

THE ESTIMATED ANNUAL PERCENTAGE RATE OF YOUR REFUND ANTICIPATION LOAN IS (insert amount)%. THIS IS BASED ON THE ACTUAL AMOUNT OF TIME YOU WILL BE LENT MONEY THROUGH THIS REFUND ANTICIPATION LOAN.

IF YOU DO TAKE OUT THIS REFUND ANTICIPATION LOAN, YOU CAN EXPECT TO RECEIVE YOUR LOAN WITHIN APPROXIMATELY TWO BUSINESS DAYS OF (insert date).

IF YOU DO NOT TAKE OUT THIS REFUND ANTICIPATION LOAN, YOU CAN STILL RECEIVE YOUR TAX REFUND QUICKLY. IF YOU FILE YOUR TAX RETURN ELECTRONICALLY AND RECEIVE YOUR TAX REFUND THROUGH THE MAIL, YOU CAN EXPECT TO RECEIVE YOUR REFUND WITHIN APPROXIMATELY TWO BUSINESS DAYS OF (insert date). IF YOU FILE YOUR TAX RETURN ELECTRONICALLY AND HAVE YOUR TAX REFUND DIRECTLY DEPOSITED INTO A BANK ACCOUNT, YOU CAN EXPECT TO RECEIVE YOUR REFUND WITHIN APPROXIMATELY TWO BUSINESS DAYS OF (insert date)."

This disclosure must be made in 14-point type, in both English and Spanish. If the consumer does not understand English or Spanish, the preparer shall provide an oral explanation of the disclosure in the consumer's language. Preparers must have consumers sign the form before they enter into a RAL.

The New York City ordinance also requires tax preparers to provide consumers with a "Consumer Bill of Rights Regarding Tax Preparers." This gives the consumer the right to receive information about tax preparation services and RALs, including: (1) an estimate of the total costs for each tax preparation and refund services offered by the preparer, including RAL interest, RAL processing fees, and filing fees; (2) for each service, an estimate of the period of time that the consumer can expect to wait for his or her refund.

Advertising. Any advertisement that mentions a RAL must state conspicuously that it is a loan, that a fee or interest will be charged, and the name of the lending institution.

Prohibited Acts: Representing the loan as a client's actual refund.

Civil/Criminal Penalties: \$250 to \$500 for the first violation, and \$500 to \$750 for succeeding violations.

Private Right of Action: Yes. An injured person may seek compensatory and punitive damages; injunctive and declaratory relief; and attorney's fees and costs.

Other Provisions: New York City also has a code of conduct for tax preparers.