Pay Stub and Holiday RALs: Faster, Costlier, Riskier in the Race to the Bottom

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November 2006

Executive Summary

- Refund anticipation loans (RALs) are usurious short-term loans secured by the taxpayer's expected tax refund. About 12 million taxpayers took out RALs in 2004, costing them over $1 billion dollars in loan fees. This report documents a new form of RALs called "pay stub" and "holiday RALs."

- Pay stub RALs are RALs made by tax preparers and their partner banks in January prior to the tax filing season, before taxpayers receive their IRS Form W-2s and can file their returns. Holiday RALs are made by tax preparers during November and December. Both types of loans are made based upon an estimated return calculated from a taxpayer's pay stub, and are expected to be repaid from the consumer's anticipated tax refund.

The National Consumer Law Center is a non-profit organization specializing in consumer issues on behalf of low-income people. NCLC works with thousands of legal services, government and private attorneys, as well as community groups and organizations, who represent low-income and elderly individuals on consumer issues.

Consumer Federation of America is a non-profit association of about 300 groups, with a combined membership of over 50 million people. CFA was founded in 1968 to advance consumers' interest through advocacy and education.

The authors would like to thank the following persons from consumer advocacy and free tax preparation groups that provided assistance to this report: Peter Skillern, Community Reinvestment Association of NC; Marva Williams, Woodstock Institute; Alan Fisher and Rhea Serna, California Reinvestment Coalition; Sarah Ludwig and Mark Winston Griffith, NEDAP; Pam Smith, Tulsa Community Action Project; Robin McKinney and Joanna Romani, Baltimore CASH Campaign; David Marzhal, Center for Economic Progress; Lucy Gorham, EITC Carolinas.

This research was funded by the Annie E. Casey Foundation. We thank them for their support but acknowledge that the findings and conclusions presented in this report are those of the authors alone, and do not necessarily reflect the opinions of the Foundation.

- Pay stub/holiday RALs sap additional money from the tax refunds of low-income Americans, on top of the billion-dollar drain already posed by the RAL industry. Pay stub RAL fees can be as high as $102, translating into triple digit APRs, plus at least one company charges a $50 "deposit" for tax preparation services when making the loan. However, another tax preparation company has committed to offering pay stub/holiday RALs at a 36% APR if the consumer chooses its debit card product, and does not charge a deposit for preparation services.

- Pay stub RALs pose additional risks to consumers, because they are based on estimated tax returns before the taxpayer receives her final tax information from a W-2. In addition, some tax preparers appear to be forcing pay stub RAL borrowers to return to the same preparer to have their taxes prepared, preventing these taxpayers from going to competitors or seeking free volunteer assistance.

- The most significant policy issue posed by pay stub and holiday RALs is the fact that they enable the RAL industry to further drain tax refunds and Earned Income Tax Credit (EITC) benefits despite IRS efforts to speed refunds. The RAL industry appears to be developing in the direction of earlier and faster loans at more expense and more risk to cash-strapped families.

I. What is a Pay Stub RAL?

A "pay stub RAL" or "pay stub loan" is a variation on refund anticipation loans (RALs). RALs are high cost loans secured by and repaid directly from the proceeds of a consumer's tax refund from the Internal Revenue Service (IRS). RALs are usually made when a taxpayer goes to a tax preparer to have her taxes prepared and filed. Taxpayers usually receive RAL monies 1 or 2 days after their returns are filed, or in the case of "instant RALS," the same day as filing. About 12 million taxpayers took out RALs in 2004, costing them over $1 billion dollars in loan fees.[1] The National Consumer Law Center and Consumer Federation of America issue an annual report on RALs, which readers are advised to consult for further information on the RAL industry.[2]

The pay stub RAL differs from a traditional RAL in that it is a loan offered even before a taxpayer receives her IRS Form W-2 and is based on an estimate of the expected tax refund. Since a taxpayer cannot file a tax return without a W-2, this loan is made prior to the filing of the return and before the tax season officially starts, in the period between January 1 and mid-January (when the IRS officially permits electronic filing and some taxpayers have received their W-2s).

A variation on the pay stub RAL is the "holiday RAL". This loan is made even earlier, during the months of November and December. What the pay stub RAL and holiday RAL share in common with traditional RALs is that they are balloon payment loans offered by tax preparers and their partner banks, and are expected to be repaid from the proceeds of the consumer's tax refund.

Pay stub RALs and holiday RALs concern us for several reasons, which are discussed in depth in this report: added expense; additional risk posed by a loan based on a refund where the taxpayer has not even received her W-2, let alone had her taxes calculated; and the fact that some pay stub RAL lenders force the taxpayer in advance of the tax season to return to the same tax preparer to have her taxes prepared.

Most importantly, we are concerned that this product enables the RAL industry to keep draining tax refunds and Earned Income Tax Credit (EITC) benefits despite IRS efforts to speed refunds, which were expected to help reduce the volume of traditional RALs.[3] Thus, the RAL industry appears to be developing in the direction of more speed at more expense and more risk. It appears to be responding to the potential of faster IRS refunds by introducing a loan product that can get the "jump" on tax filing season, allowing tax preparers and high rate lenders to continue exploiting the tax refunds of cash-strapped low-wage workers.

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[1] *See* Chi Chi Wu, Jean Ann Fox, and Patrick Woodall, *Another Year of Losses: High-Priced Refund Anticipation Loans Continue To Take a Chunk Out Of Americans' Tax Refunds*, National Consumer Law Center and Consumer Federation of America, January, 2006, at 4-5 (hereinafter "2006 NCLC/CFA RAL Report."

[2] These reports are available at www.consumerlaw.org/action_agenda/refund_anticipation.

[3] *See* 2006 NCLC/CFA RAL Report at 18-19.

II. How a Pay Stub RAL Works

To receive a pay stub RAL, the taxpayer will have an estimated tax return prepared by the tax preparer based upon his last pay stub from the end of December – hence the name "pay stub" RAL. The pay stub RAL is made based upon the anticipated refund shown by that estimated tax return. The holiday RAL is based upon a year to date pay stub from which a tax preparer can estimate whether the taxpayer will have a refund.

In addition to using an estimated tax return, RAL lenders appear to use other criteria to determine whether or not to make a pay stub or holiday RAL, a major criterion being a credit scoring check.[4] The need for a credit score check may present a significant barrier to some consumers who seek a pay stub RAL. The head of one tax preparation chain has estimated that fewer than 50% of applicants for the loans qualify for them.[5] This raises the issue of whether the pay stub RAL is used in some cases as a marketing ploy to lure taxpayers into the tax preparation office early, in order to get the taxpayers predisposed to come back when the filing seasons begins.

In addition to a credit scoring check, RAL lenders appear to use past history with respect to RALs as an approval criterion.[6] One pay stub RAL lender also advises tax preparers to call the taxpayer's employer if they have a concern about the authenticity of a pay stub. Thus, the tax preparer is calling the consumer's employer, not for the taxpayer's benefit to prepare an accurate return, but as a form of credit check for lenders.

III. Pay Stub RALs Offered by All Major Players in the RAL Industry

In 2006, only part of the RAL industry offered pay stub RALs. Two of the major RAL lenders offered pay stub RALs: Santa Barbara Bank & Trust (SBBT) and HSBC. The third major RAL lender, J.P. Morgan Chase Bank One, will be making these loans in 2007. As for tax preparers who broker these loans, in 2006, Jackson Hewitt was the largest chain involved in pay stub RAL lending, and it aggressively marketed the loans.[7]

During 2006, the nation's largest tax preparation chain, H&R Block, was very critical of pay stub RALs, calling upon the industry to drop the product.[8] Having failed to persuade its competitors to do so, Block has announced it will be making the loans in

[4] Pay Stub RAL Loan Agreement from Santa Barbara Bank & Trust, on file with the authors.
[5] Gene Meyer, *Block Unveils Changes; Cheaper Tax Loans are among Steps to Boost its Tax Preparation Network*, Kansas City Star, September 8, 2006, at C1.
[6] Memo from SBBT to tax preparers re: "Update on Pre-Season Advances," January 20, 2006, on file with the authors (stating that it evaluates "details of prior year history" regarding past RALs taken out by the applicant.)
[7] In 2006, Jackson Hewitt sent out advertisements stating "Don't Wait For Your W-2. GET up to $1900 with a Money Now Loan in Minutes. Then Come Back With Your W-2 To File Your Return." Advertisement on file with authors. As of January 30 2006, Jackson Hewitt had a similar Web ad for this product at www.jacksonhewitt.com/products_moneynow.asp.
[8] David Twiddy, *H&R Block Calls on Competitors to End "Pay-Stub" Loans*, *Associated Press*, June 11, 2006.

this coming tax season.[9] However, Block's loans will be structured very differently from its competitors, as discussed in Section IV.

The head of Liberty Tax has also stated his company will make pay stub and holiday RALs in 2007, despite stating a dislike of the product.[10] In addition, SBBT appears to be permitting independent preparers to make pay stub RALs; whether HSBC does is unknown. While many independent tax preparers are highly competent and ethical, the lack of standards for this occupation means anyone can be a preparer, and many of the worst abuses have come from this sector (including the used car dealers, check cashing stores and furniture retailers who offer RALs).[11]

IV. Cost of a Pay Stub RAL

The charge for a pay stub RAL varies by the tax preparer and lender offering them. All of the preparers and lenders charge a fee that is officially labeled as the "finance charge" for the loan. This charge varies depending on the size of the loan. The following was SBBT's price structure for pay stub RALs in 2006.[12]

SBBT 2006 Pay Stub RAL Fee Schedule

Amount of Loan	Loan Fee
$488.50	$61
$1,119	$81
$1,798	$102

H&R Block has informed us that the pay stub and holiday RALs it will offer in 2007, called an "Instant Money Advance Loan" (IMAL), will all have one fee structure. This fee will translate into an Annual Percentage Rate (APR) of 36%, if the consumer elects to receive the loan using a Block Emerald account debit card. Because the fee will depend on the size of the loan and the amount of time it is outstanding, the absolute dollar amount will vary. If the IMAL is truly a 36% APR loan, Block's product appears to be in the same price range as the traditional finance company loans that provided the most popular form of short-term small loan credit prior to the advent of payday lending. However, the IMAL appears to be a single payment loan, not an installment loan. At 36% APR, it would be a more affordable source of credit than payday loans, which

[9] Gene Meyer, *Verdict on Block Unit to Take Time*, Kansas City Star, Nov. 8, 2006.
[10] Benjamin Lowe, Bank Says It Will End Tax-Refund Lending, Philadelphia Inquirer, July 27, 2006 at C1.
[11] 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 16 [hereinafter referred to as "NCLC/CFA 2005 RAL Report."]; 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 11 [hereinafter referred to as "NCLC/CFA 2004 RAL Report."]; Chi Chi Wu and Jean Ann Fox, The High Cost of Quick Tax Money: Tax Preparation, 'Instant Refund' Loans, and Check Cashing Fees Target the Working Poor, National Consumer Law Center and Consumer Federation of America, January 2003, at 10-11 [hereinafter referred to as "NCLC/CFA 2003 RAL Report."].
[12] Pay Stub RAL Loan Agreement from Santa Barbara Bank & Trust, on file with the authors.

usually carry APRs in the triple digits. However, if the consumer does not choose an Emerald account debit card, Block imposes an additional $25 fee for a paper check.

In addition to the loan fee, taxpayers who received pay stub RALs at Jackson Hewitt in 2006 were required to pay a non-refundable charge of $50, which is alternatively characterized as a fee for "services performed" or a "pre-paid portion" of tax preparation fees.[13] The $50 is later credited toward the tax preparation fee, if the taxpayer returns to the same Jackson Hewitt office that brokered the pay stub RAL.[14] H&R Block has stated it will not charge a separate fee for tax preparation services when it makes a pay stub/holiday RAL.

The holiday RAL from Jackson Hewitt similarly imposes a number of fees. For example, Hewitt's holiday RAL made by SBBT in the last tax season imposed a fee of $50 for either a $525 loan or a $325 loan.[15] In addition, Jackson Hewitt charged a $25 fee for "tax planning services."

The loan contracts for pay stub RALs state that the loan is due on a date in mid-February; in 2006, this date was February 17 for Jackson Hewitt loans. However, the loan contracts also provide that the loan can be paid off earlier if the taxpayer returns to the tax preparer earlier,[16] and takes out either a RAL or the non-loan refund anticipation check (RAC)[17] product.

One of the issues regarding pay stub RALs is whether the lenders are engaged in "double dipping", *i.e.* loaning the same amount twice and charging two loan fees. Jackson Hewitt has claimed that double dipping does not occur.[18] However, SBBT requires the taxpayer to apply for a RAL or RAC at the same time they apply for a pay stub RAL, so the consumer is obligated for at least one additional fee to repay the loan.[19] Block has informed us that its pay stub/holiday product will not require the use of a RAL or RAC to repay the loan, but that borrowers can use a direct deposit to the Block Emerald account without an additional fee.

However, since the due date for pay stub RALs is mid-February, some taxpayers might be forced to take a RAL, since a RAC or IRS direct deposit takes 8 to 15 days. If

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[13] Pay Stub RAL Loan Agreement from HSBC, on file with the authors; Pay Stub RAL Loan Agreement from Santa Barbara Bank & Trust, on file with the authors.
[14] *Id.*
[15] Holiday RAL Loan Agreement from Santa Barbara Bank & Trust, on file with the authors.
[16] Pay Stub RAL Loan Agreement from HSBC, on file with the authors; Pay Stub RAL Loan Agreement from Santa Barbara Bank & Trust, on file with the authors.
[17] Refund anticipation checks (RACs) are the non-loan bank product that many RAL lenders and tax preparers offer in addition to RALs. With refund anticipation checks, 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 a paper check and closes the dummy account. The consumer then picks up the check from the tax preparer's office.
[18] Karin Price Mueller, *Those Tax-Return Loans Can Be Mighty Expensive*, Newark Star-Ledger, March 27, 2006.
[19] Memo from SBBT to tax preparers re: "ERO Update Regarding Pre-Season Filing of RAL/RT Advances," December 30, 2005, on file with the authors.

the taxpayer receives her W-2 late in January and files in early February, a RAC or direct deposit refund might not arrive by mid-February. Also, there is always the possibility that taxpayers might be steered into taking a RAL by tax preparers, especially if they are taking a traditional RAL for the remainder of their refund. Low to moderate income consumers who are the target market for RALs are unlikely to be able to repay the lump sum loan out of current income without the expected tax refund to use for payment.

There are two legal issues created by the fact that the pay stub RAL fee is due either the earlier of mid-February or when the taxpayer returns and gets a traditional RAL. First, the APR disclosure can vary widely because the loan period could be as little as a few days (if the taxpayer takes out the pay stub loan in mid- January and gets her W-2 a few days later) to 46 days (from January 2 to February 17). Thus, the APR for a Jackson Hewitt pay stub RAL of $488.50 (finance charge of $61) could vary from 651% (7 days) to 99% (46 days). While timing variation is an issue for RALs in general, the 7 to 14 day period for traditional RALs does not vary as greatly and does allow for a reasonable estimate based on the median time period of 10 or 11 days.[20]

Second, there is an issue of whether any of the finance charge is required to be rebated. The federal Rebate Act, 15 U.S.C. § 1615, requires that, if a consumer prepays a loan in which the interest in pre-computed, any unearned interest must be rebated or refunded to the consumer. With pay stub RALs, there is a significant chance that the loan will be repaid prior to the due date in mid-February if a traditional RAL is used to repay it. The issue is whether the federal Rebate Act requires the lender to rebate part of the finance charge for loans repaid prior to that due date. This depends on whether any of the loan fee is considered "unearned" if the loan is repaid early. HSBC's loan contracts appear to address this possibility, claiming that "HSBC will earn the finance charge," when the consumer is approved for a loan; whether this argument would hold up legally is an open question.[21]

Another Truth in Lending issue involves the $50 "deposit" for tax preparation charged by Jackson Hewitt at the time the pay stub RAL is made. If the taxpayer does not return to the same tax preparer, that fee is never refunded to the taxpayer. If the fee is never refunded, the $50 could be considered a finance charge under the Truth in Lending Act, and thus should be disclosed in the APR.

V. The Forced Return

One of the biggest concerns with pay stub RALs is the fact that, for Jackson Hewitt customers, it locks the taxpayer into returning to the same tax preparer for tax

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[20] Note that the pay stub RAL is structured as a "demand note," which means it theoretically could take advantage of a loophole in the Truth in Lending Act's Regulation Z that permits APRs for demand notes to be disclosed based on a 1 year period. Official Staff Commentary 12 C.F.R. § 226.17(c)(1)-17. For an explanation of this loophole, see 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 6 [hereinafter referred to as "NCLC/CFA 2002 RAL Report."].

[21] Pay Stub RAL Loan Agreement from HSBC, on file with the authors.

preparation and forces them to buy another costly financial product, whether it is a RAL or RAC. This prevents the taxpayer from seeking a less costly tax preparation alternative, such as filing the return themselves through the IRS Free File program or obtaining free tax preparation services from a Volunteer Income Tax Assistance site. It even prevents them from going to a paid competitor that might be cheaper.

Pay stub RAL lenders ensure that the taxpayer returns to the same preparer using several methods. First, the loan agreements themselves require the taxpayer to return to the same preparer. For example, HSBC's loan documents in 2006 for pay stub RALs offered by Jackson Hewitt state: "When you have received your Form W-2(s), or if it is after February 14th and you have determined that you will not by getting any, you must return to this office to have your tax return(s) completed and filed."[22]

Second, the $50 non-refundable charge provides another strong incentive for taxpayers to return to the same preparer. The taxpayer cannot receive credit for this amount unless she returns to the same tax preparer and even the same Jackson Hewitt office to have her return completed. Third, at least one RAL lender has directed tax preparers to hold the taxpayer's pay stub captive until the taxpayer returns. SBBT has instructed its tax preparers to "hold on to the [taxpayer's] pay stub until they bring you their W-2s."[23]

Finally, RAL lenders ensure that their loans are repaid by means of cross-lender debt collection. This is a particularly abusive practice used by RAL lenders, in which the lenders include a provision in their RAL agreements allowing them to take a consumer's tax refund and use it to pay back any prior RAL debts even from other RAL lenders.[24] We assume that cross-lender debt collection is used to ensure repayment of pay stub RALs, since the loan agreements for pay stub and holiday RALs contain the cross-collection provision.[25]

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[22] Pay Stub RAL Loan Agreement from HSBC, on file with the authors. SBBT loan agreements contain the same language. Pay Stub RAL Loan Agreement from Santa Barbara Bank & Trust, on file with the authors.

[23] Memo from SBBT to tax preparers re: "ERO Update Regarding Pre-Season Filing of RAL/RT Advances," December 30, 2005, on file with the authors.

[24] Thus, if a taxpayer owes money to one RAL lender from a prior year and applies for a RAL from a different lender, her RAL will be denied and her refund will be gone. The second lender will take her refund and use it to repay the prior RAL debt to the first lender. *See* NCLC/CFA 2002 RAL Report at 24. There has been some reform on the issue of cross-lender debt collection. J.P. Morgan Chase Bank One has informed us that it will be stop cross collecting, except for one other RAL lender, beginning January 1, 2007, and by 2008 Chase will not participate in any cross collection arrangements. Email from Chase to authors, November 6, 2006. H&R Block is implementing a new alert for taxpayers who may be subject to cross collection. Press Release, *H&R Block, HSBC Announce Refund Lending Enhancements: Partnered Improvements Focus on New Debt Alert Service and Disclosures*, October 31, 2006.

[25] Pay Stub RAL Loan Agreement from HSBC, on file with the authors; Pay Stub RAL Loan Agreement from Santa Barbara Bank & Trust, on file with the authors.

VI. Risks of a Pay Stub RAL

Pay stub RALs pose a number of risks to taxpayers, risks that are in addition to those posed by traditional RALs. Given that many taxpayers are not aware of the risks of traditional RALs, or even that the products are loans in nature,[26] we suspect that pay stub RAL borrowers are not aware of the additional risks of this particular type of RAL.

First, pay stub RALs are made without the benefit of the final tax information in a W-2 or an actual, full tax preparation session. Thus, the loans may be made based on erroneous or missing information. For example, there may be pre-tax deductions such as retirement contributions that are not accurately reflected on the final pay stub. A taxpayer might have other sources of income not reflected on the pay stub that reduce his refund, such as a second job, income from a 1099, or unemployment compensation.

When the taxpayer returns for the actual tax preparation session, there could be information uncovered that changes the return. For example, a second preparer could discover that a child claimed for EITC purposes actually did not qualify and thus the taxpayer's EITC is much smaller than expected. One free tax preparation program reported seeing clients who required amended returns to correct issues after getting pay stub RALs from a commercial preparer.[27]

Also, the pay stub RAL is made prior to when the IRS provides the Debt Indicator (DI). The DI is a service provided by the IRS that screens electronically filed tax returns for any claims against a taxpayer's refund.[28] The DI informs the preparer whether a taxpayer's full refund amount will be paid or whether it will be offset by obligations collected by the IRS, such as prior tax debt, child support arrears, or delinquent student loan debt.[29] About 1 in 10 traditional RAL applications are turned down due to the DI.[30]

There may be some deception involved with pay stub or holiday RALs. According to the transcript of a television broadcast in Arkansas, one Jackson Hewitt franchisee told consumers that pay stub RALs were "IRS approved".[31]

Pay stub and holiday RALs are also not without risk to the lenders and tax preparers. Industry observers have noted that without a W-2, a taxpayer could obtain more than one loan from different lenders.[32] While cross-lender debt collection might prevent a taxpayer from getting a pay stub RAL with Jackson Hewitt and then a traditional RAL for the full amount from another preparer, it would not prevent a taxpayer from subsequently filing directly with the IRS. An identity thief could easily

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[26] NCLC/CFA 2005 RAL Report at 7-8.
[27] Email from Pam Smith, Tulsa Community Action Program, to author, August 15, 2006
[28] Chi Chi Wu, *Corporate Welfare for the RAL Industry: the Debt Indicator, IRS Subsidy, and Tax Fraud*, National Consumer Law Center, at 1 (July 2005).
[29] *Id.*
[30] *Id.* at 5.
[31] KARK, Transcript, January 7, 2006, 18:00, *available at* 2006 WLNR 519152.
[32] David Twiddy, *Jackson Hewitt CEO Says Company Won't Jettison Pay-Stub Loans*, Associated Press, June 22, 2006.

make up a pay stub using commonly available software and a stolen Social Security Number from a consumer with a good credit history. In fact, one investment analyst has cautioned that: "This is probably the single largest risk factor facing Jackson Hewitt."[33] However, such risk and the susceptibility to fraud indicate that tax preparers and their partner banks should not be engaged in this type of lending, rather than charging exorbitant rates for the loans.

VII. Comparison to Pay Day Loans

For years, we have argued that RALs are part of the same fringe financial sector as payday loans, car title loans, pawns and rent-to-own transactions. With pay stub RALs, the tax preparation and refund anticipation loan industry has moved that much closer to payday loans. In fact, Block CEO Mark Ernst has made this argument explicitly, stating "The economics of the product have more in common with payday lending than refund lending."[34]

Interestingly, Jackson Hewitt has even refused to call the product a "pay stub" loan. In an investor conference call, Hewitt CFO Mark Heimbouch stated that "you mentioned it as a pay stub lending product. It absolutely is not. It has nothing to do with pay stub or payday lending. It is really just an enhancement to our standard Money Now loan product ...."[35] Apparently, the term "pay stub loan" is a little too close to "payday loan" for Mr. Heimbouch's comfort.

The resemblance between pay stub RALs and payday loans is more than just the names. Both are small unsecured loans. Both are due in full on the next date the borrower receives money; in the case of a payday loan, the borrower's next payday. With a pay stub RAL, the single payment loan is due early in the tax return season. In the case of some pay stub RALs, both are usurious and abusive to borrowers. The main difference is that pay stub loans are supposed to be repaid directly by once-a-year tax monies and thus not rolled over the way payday loans frequently trap borrowers. However, even there, RALs are closely connected to payday loans. Data indicates that the tax season is the time when many payday loans and other predatory small loans are paid off, probably due to tax refunds.[36]

In fact, the tie between refund-based lending and the refund itself may become less attenuated as the industry seeks to increase the "earliness" of refund lending. There is nothing to prevent the industry from moving the time period even earlier and then having the loan paid by the tax refund months later. With holiday RALs being made in November and December prior to the last pay stub of the season, it is not inconceivable

[33] Bradley Keoun, *Jackson Hewitt Reaps Profit, Skepticism on 69% Tax-Refund Loan*, Bloomberg News, April 7, 2006 (quoting Lehman Brothers analyst).
[34] David Twiddy, *H&R Block Calls on Competitors to End "Pay-Stub" Loans*, Associated Press, June 11, 2006.
[35] Q4 2006 Jackson Hewitt Tax Service Inc. Earnings Conference Call, *Financial Disclosure Wire*, June 1, 2006.
[36] NCLC/CFA 2006 RAL Report at 12.

that tax preparers could make RALs of a few hundred dollars based on a pay stub and prior history even in September or the summer.

Given the resemblance to payday lending, it is not surprising that at least one federal banking regulator might have taken some sort of action to discourage a bank within its authority from engaging in pay stub RAL lending. The Federal Deposit Insurance Corporation, which has oversight authority of state-chartered banks, may have prevented First Bank of Delaware from offering pay stub RALs, because that bank unexpectedly declined to offer the loans despite the fact that it caused them to lose their entire RAL business with Liberty Tax Service.[37] If the FDIC did do so, it is to be applauded for such action.

However, the federal banking regulator for all of the major RAL lenders, the Office of Comptroller of Currency, has not publicly taken similar action. Yet a few years ago, the OCC did force the national banks that had been engaged in high cost payday lending to exit that field.[38] We call upon the OCC to take action to get national banks out of the business of pay stub RAL lending.

VIII. Conclusion

Pay stub and holiday RALs represent a new and more insidious threat to the tax refunds and Earned Income Tax Credits of low-income taxpayers. While some of these products may not be as costly, others present exorbitant fees with triple digit APRs, layered upon the already high costs of traditional RALs. In addition, some pay stub and holiday RALs come with other abusive features such as a forced trip back to the same tax preparer. All of these loans present significant risks to consumers because they are based upon premature information and unconfirmed tax refunds. The most serious threat posed by pay stub and holiday RALs, however, is the fact that they permit tax preparers and their partner banks to continue to drain the refunds of low-income Americans even after the IRS will be able to speed up the delivery of refunds.

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[37] Benjamin Lowe, Bank Says It Will End Tax-Refund Lending, Philadelphia Inquirer, July 27, 2006 at C1.
[38] *See* National Consumer Law Center, The Cost of Credit: Regulation, Preemption, and Industry Abuses § 3.13.3 (3rd ed. 2005 and Supp.).