



Consumer Federation of America

NCLC[®]

NATIONAL
CONSUMER
LAW
CENTER[®]

BIG CHANGES BURDEN TAXPAYERS: New Law Delays Refunds, Drives Demand for Loans; Immigrant Taxpayers Face Challenges

March 2017

By

Chi Chi Wu

National Consumer Law Center[®]

Michael Best, contributing author

Consumer Federation of America

© Copyright 2017, National Consumer Law Center, Inc. All rights reserved.

ABOUT THE AUTHORS

Chi Chi Wu is a staff attorney at the National Consumer Law Center (NCLC). She is an expert on consumer credit issues, including tax-time financial products (refund anticipation loans and checks), credit reporting, credit cards, and medical debt. Since 2002, Wu has authored annual reports on tax-time financial products issued by NCLC and the Consumer Federation of America. She is co-author of the legal manuals [Fair Credit Reporting Act](#) and [Collection Actions](#), and a contributing author to [Consumer Credit Regulation](#) and [Truth in Lending](#). Wu frequently serves as a resource for policymakers and the media on consumer credit issues. Previously, Wu worked in the Consumer Protection Division at the Massachusetts Attorney General's office and the Asian Outreach Unit of Greater Boston Legal Services.

Michael Best is the senior policy advocate at the Consumer Federation of America (CFA) where he works on issues related to paid tax preparers, performs research and advocacy work, and manages the Federation's policy resolution process. Prior to joining CFA in 2013, he worked as a research consultant on a labor organizing campaign, interned with the Democratic staff on the House Education and the Workforce Committee, and spent four years as an attorney researcher at Change to Win, a coalition of labor unions.

ACKNOWLEDGEMENTS

The authors would like to thank Carolyn Carter (NCLC) and Rachel Weintraub (CFA) for editorial review, and Svetlana Ladan (NCLC) for production assistance.

This research was funded by the Annie E. Casey Foundation. We thank the Foundation for its 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.



ABOUT THE NATIONAL CONSUMER LAW CENTER

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has worked for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the U.S. through its expertise in policy analysis and advocacy, publications, litigation, expert witness services, and training. www.nclc.org

ABOUT CONSUMER FEDERATION OF AMERICA

The Consumer Federation of America is an association of more than 250 nonprofit consumer groups that was established in 1968 to advance the consumer interest through research, advocacy and education.

www.consumerfed.org



TABLE OF CONTENTS

EXECUTIVE SUMMARY	i
INTRODUCTION	1
I. TAX-TIME ISSUES UPDATE	2
A. PATH Act Delay	2
B. Refund Anticipation Loans	2
C. Refund Anticipation Checks	5
D. Immigrant Taxpayers Hampered by ITIN Renewals and Current Environment of Fear	7
II. TAX-TIME CONSUMER PROTECTION ISSUES	10
A. Minimum Competency Standards Needed for Paid Preparers	10
B. Need for Disclosure of Tax Preparation Fees	12
C. Private Debt Collectors Will Begin Collecting IRS Tax Debts	13
III. INDUSTRY PLAYERS	15
A. H&R Block.....	15
B. Jackson Hewitt	15
C. Liberty Tax Service	16
D. MetaBank	16
E. Republic Bank & Trust	17
F. Santa Barbara Tax Products Group	17
G. Tax-Time Products at Fringe Financial Outlets	17
CONCLUSION	22

EXECUTIVE SUMMARY

Tax-time is a critical time for millions of Americans, providing much-needed funds in the form of billions in refunds. In particular, the Earned Income Tax Credit (EITC) helps 27 million families and is the largest anti-poverty program in this country. This year, these EITC recipients and many other taxpayers face new and old challenges in accessing these critical funds.

- **Delays drive growth in financial products.**

This year, refunds for recipients of the EITC and Additional Child Tax Credit (ACTC) were delayed until late February, which may have caused problems for millions of financially stressed taxpayers who expected to receive their refunds several weeks earlier. The delay was the result of recent federal legislation and will continue in future years.

The delay in refunds resulted in dramatic growth in volume for a new generation of refund anticipation loans (RALs), with over 1.5 million loans made this year. These RALs are different from the high-cost loans that were driven off the market several years ago, in that they generally do not charge the taxpayer a fee for the loan. However, they are not entirely risk-free and could change in future years to charge taxpayers a fee.

A related product is refund anticipation checks (RACs). Nearly 19 million consumers obtained a RAC in 2015, at a cost of at least \$475 million.

- **Need for minimum competency standards for paid preparers.**

The vast majority of paid tax preparers are not required to meet any minimum educational, competency, or training standards. Only four states (Maryland, Oregon, New York, and California) regulate paid tax preparers. A national poll commissioned by the Consumer Federation of America (CFA) found that more than two-thirds of consumers believe that tax preparers are already licensed, while only 20 percent realize they are not. Thus, most Americans believe that they are being protected against incompetent tax preparation when the reality is that no such protections exist in 46 states.

The lack of competency standards for paid preparers exposes consumers to potential error or even fraud. Multiple rounds of mystery shopper tests have found high levels of errors and instances of fraud by tax preparers. In 2016, mystery shopper testing by Georgia Watch found inaccuracies in 18 out of the 20 tax returns prepared by paid tax preparers.

- **Immigrant taxpayers and ITIN renewal**

Millions of immigrant taxpayers who hold Individual Taxpayer Identification Numbers (ITINs) were required to have the numbers renewed, also potentially delaying processing of tax refunds. Applications for renewals may have been hampered by the general atmosphere of fear resulting from aggressive targeting of undocumented immigrants by federal immigration authorities. Undocumented immigrants may generally be afraid to file tax returns this year.

INTRODUCTION

For most Americans, tax time has been a “golden moment” in their financial lives. Over 70% of Americans receive a refund when they file their tax returns, putting over \$318 billion in their pockets.¹ Of these taxpayers, about 27 million are hard-working families that receive the Earned Income Tax Credit (EITC), a refundable credit intended to boost low-wage workers out of poverty. The EITC is the largest federal anti-poverty program, providing more than \$67 billion to these 27 million families last year.² This year, EITC taxpayers face a new burden in their ability to access their refunds, a statutorily mandated delay in the issuance of their refunds.

Historically, EITC recipients and other taxpayers receiving substantial refunds presented lucrative targets for many businesses. Refund anticipation loans (RALs) and related financial products evolved to profit off taxpayers and EITC recipients. Recently, a new generation of RALs has developed which do not impose any interest or fees on taxpayers. While these “no-fee” RALs do present some risks, they also proved popular with taxpayers this year, no doubt due in part to the refund delays faced by EITC recipients.

Immigrant taxpayers faced challenges this year. Some of them were required to renew the Individual Taxpayer Identification Numbers that they use for tax filings. Others may have been deterred from filing due to concerns that tax information could be shared with federal immigration authorities.

Taxpayers face risks as consumers of tax preparation services. These risks include the lack of minimum standards for paid tax preparers that would ensure competency and ethical conduct. They also include a lack of transparency as to what paid preparers will charge for services, making it impossible for taxpayers to comparison shop.

Since 2002, the National Consumer Law Center (NCLC) and the Consumer Federation of America (CFA) have jointly issued annual reports on tax-time consumer issues, particularly focused on the financial products industry and the drain caused by these products from tax refunds and EITC benefits.³ In addition to our yearly reports, we have issued a number of special reports, including studies using mystery shopper testing of paid preparers.⁴

¹ IRS, Filing Season Statistics for Week Ending Dec. 30, 2016, Jan. 10, 2017, available at <https://www.irs.gov/uac/newsroom/filing-season-statistics-for-the-week-ending-december-30-2016>.

² IRS, Statistics for Tax Returns with EITC, Jan. 18, 2017, available at www.eitc.irs.gov/EITC-Central/eitcstats (viewed Mar. 19, 2017).

³ These reports are all available at <https://www.nclc.org/issues/refund-anticipation-loans.html>.

⁴ See, e.g., Chi Chi Wu, Alice Vickers, Amelia O’Rourke-Owens, Peter Skillern, and Cara Williams, National Consumer Law Center, Florida Alliance for Consumer Protection, Reinvestment Partners, *Prepared in Error: Mystery Shoppers in Florida and North Carolina Uncover Serious Tax Preparer Problems* (Apr.

I. TAX-TIME ISSUES UPDATE

A. PATH Act Delay

Many low-income taxpayers faced an unpleasant surprise this year, as they learned that their federal tax refunds would be delayed due to a law passed by Congress in December 2015, the Protecting Americans from Tax Hikes (PATH) Act.⁵ The PATH Act required the Internal Revenue Service (IRS) to delay refunds to taxpayers claiming the Earned Income Tax Credit (EITC) or Additional Child Tax Credit (ACTC) until at least February 15, 2017.⁶ The IRS must delay the entire refund – even the portion not associated with the EITC and ACTC – until that date. Furthermore, the IRS cautioned that refunds likely would not arrive in bank accounts or prepaid cards until the week of February 27 due to financial institutions needing time to process deposits.⁷

The tax refund delay likely caused problems for many taxpayers who receive the EITC or ACTC. These taxpayers are low-income working taxpayers, the vast majority of whom have children. They often depend on receiving their refunds early in the tax season to help pay for groceries, holiday bills, overdue utility debt, or other pressing expenses.

The PATH Act delay resulted in a significant decrease in the number of tax refunds made early in the tax season. As of mid-February, the IRS had paid out only about half as many refunds as last year, and the dollar volume of refunds was down by two-thirds.⁸ The drop in refunds is predicted to affect consumer spending by as much as \$21 billion in February 2017.⁹

B. Refund Anticipation Loans

One impact of the PATH Act delay is to drive growth in a new type of tax-time financial product, a variant on the refund anticipation loan (RAL). At least 1.5 million of these new generation RALs have been made so far.

2015)[hereinafter “*Prepared in Error*”]. Additional reports can be found at <http://www.nclc.org/issues/refund-anticipation-loans.html>.

⁵ Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV (2015) [hereinafter “PATH Act”].

⁶ PATH Act, § 201.

⁷ IRS, Refund Timing for Earned Income Tax Credit and Additional Child Tax Credit Filers, <https://www.irs.gov/individuals/refund-timing>, Feb. 17, 2017 (viewed Mar. 19, 2017).

⁸ Brian Faler, *Tax Season Off to A Slow Start, Thanks to New EITC Restrictions*, Politico, Feb. 22, 2017.

⁹ Luke Kawa, *Consumer Spending to Hit a Pothole with Tax Refunds Still in the Mail*, Bloomberg News, Feb. 8, 2017, at <https://www.bloomberg.com/news/articles/2017-02-08/consumer-spending-to-hit-a-pothole-with-tax-refunds-still-in-the-mail> (estimate from Goldman Sachs).

For decades, RALs were the main tax-time financial product, and provided hefty profits to tax preparers and lenders. These were loans made by banks, secured by and repaid directly from the proceeds of a consumer's tax refund. In the past, the fees for these loans could translate into triple digit annual percentage rates (APRs). Between 2009 and 2012, all of the banks that made these high cost loans either stopped voluntarily or were forced out by federal regulators. Thus, the high-cost version of bank RALs from the 2000s is no longer on the market, saving consumers hundreds of millions in RAL fees.¹⁰

Last year, lenders began offering a new version of RALs -- "advances" that do not impose an interest rate or fee to the consumer for the loan. In addition, these loans are "non-recourse," *i.e.*, the consumer is not required to repay the loan if the refund is not received.¹¹ Previously, one risk of RALs was that, if the refund was miscalculated or seized by the government to repay a student loan or another debt, the consumer could be liable for repaying the loan. This risk does not appear to exist with no-fee RALs.

Preliminary reports are that more than 1.5 million no-fee RALs have been made this year.¹² In contrast, only 40,000 RALs were made two years earlier, in 2015.¹³ Much of this popularity could be attributed to the refund delay for EITC and ACTC recipients. However, there are media reports that about 1 million no-fee RALs were made in 2016, before the refund delay took effect.¹⁴

Lenders offering these "no fee" RALs include:

- MetaBank makes no-fee RALs through tax preparation chains and to independent preparers through its EPS Unit.¹⁵ MetaBank is also the new RAL lender for H&R Block.

¹⁰ For a history of these high-cost RALs, *see* Chi Chi Wu, Tom Feltner, and Jean Ann Fox, National Consumer Law Center and Consumer Federation of America, *Something Old, Something New in Tax-Time Financial Products: Refund Anticipation Checks and Quickie Tax Loans* 2-3 (Feb. 2013) [hereinafter "NCLC/CFA 2013 Tax-Time Products Report"].

¹¹ *See, e.g.*, MetaBank, *2016 Form 10-K: Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934*, at 20 [hereinafter "MetaBank 2016 10-K"]; Republic Bancorp, *2016 Form 10-K: Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934*, at 12 [hereinafter "Republic Bank 2016 10-K"].

¹² H&R Block made about 858,000 RALs this year; Jackson Hewitt made about 485,000 RALs; and Liberty made 175,000 RALs. *See* Sections III.A, B and C below. That totals 1.5 million. The number of RALs was probably greater, since preparers not affiliated with the three largest tax preparation chains also offered these loans. *See also* Bowdeya Tweh, *Why More Than a Million Taxpayers Are Reaching for Refund Loans*, Wall St. J., Mar. 11, 2017.

¹³ Data from IRS Stakeholder Partnerships, Education & Communication (SPEC) Returns Database for Tax Year 2014 - Returns Filed through June 30, 2015 (Nov. 17, 2016).

¹⁴ Bowdeya Tweh, *Why More Than a Million Taxpayers Are Reaching for Refund Loans*, Wall St. J., Mar. 11, 2017.

¹⁵ EPS, e-Advance, at <http://www.epstax.net/e-advance.html> (viewed Mar. 24, 2017).

Block offers no-fee RALs of \$500, \$750 or \$1,250.¹⁶ MetaBank also makes RALs through Jackson Hewitt of up to \$1,300.¹⁷

- Santa Barbara Tax Products Group (SBTPG) offers no-fee RALs of up to \$1,000.¹⁸ SBTPG was purchased in 2014 by prepaid card provider Green Dot. First Century Bank is the official lender for this product.¹⁹
- Republic Bank & Trust is offering a no-fee RAL through independent preparers of either \$800 or \$1,250 called an “Easy Advance.”²⁰ Republic is the lender for Liberty Tax’s no-fee RAL offering, which provides loans up to \$1,300.²¹
- River City Bank offers a “no-fee” RAL of \$1,000. However, it appears that the consumer must obtain a refund anticipation check (RAC) at a cost of \$44.95, as the website states “**Taxpayer pays NO additional cost above the bank’s \$44.95 service charge for a federal product.”²²

About \$15 of the fee that River City imposes for its supposedly “no-fee” RAL could be considered a finance charge. A tax preparer who does not offer the no-fee RAL has the option of enrolling in the “Low Cost Fee Collection” program, which charges \$29.95 for a related product, a refund anticipation check (RAC).²³ But if the preparer wishes to offer “no-fee” RALs, the RAC price is higher at \$44.95.²⁴ This \$15 price difference could constitute a hidden finance charge for the supposedly “no-fee” RALs that are being offered. Last year, EPS offered similar options; however, since its purchase by MetaBank, it now allows preparer to offer no-fee RALs with all of its programs.²⁵

In addition to River City Bank’s higher fee for RACs, there are other risks presented by no-fee RALs. Most of the lenders for these programs charge tax preparers a fee for the RALs. Certain unscrupulous preparers, particularly “fringe” preparers, might pass along these fees, or charge

¹⁶ H&R Block, Refund Advance, <http://www.hrblock.com/lp/fy17/refundadvance.html> - /en/(viewed Mar. 19, 2017).

¹⁷ Jackson Hewitt, <https://myrefundadvance.com/> (viewed Nov. 28, 2016).

¹⁸ Santa Barbara Tax Products Group, FastCash ADVANCE - A Tax Time Advance for Taxpayers, 2017, at <https://www.sbtpg.com/fastcash.html>(visited Mar. 20, 2017).

¹⁹ *Id.*

²⁰ Republic Bank & Trust, Grow your business with Republic Bank’s Easy Advance, at <https://www.republicrefund.com/Products/EasyAdvance.aspx> (visited Mar. 20, 2017).

²¹ Liberty Tax Service, Easy Advance, at <https://www.libertytax.com/easy-advance/>(visited Mar. 20, 2017).

²² River City Bank, 2017 Freedom to Choose Pricing Tiers, at www.rcbtaxdivision.com/pricing.aspx?mnu=3 (visited Mar. 20, 2017).

²³ *Id.* For a discussion of RACs, see Section I.C, below.

²⁴ River City Bank, 2017 Freedom to Choose Pricing Tiers, at www.rcbtaxdivision.com/pricing.aspx?mnu=3 (visited Mar. 20, 2017).

²⁵ EPS, Refund Transfer Programs Built for Your Tax Office, at <http://www.epstax.net/> (viewed Mar. 21, 2017).

even more, by padding their tax preparation fees. Since few consumers get firm price estimates before their returns are prepared, these hidden fees can be hard to avoid. However, several of the lenders for no-fee RALs have stated that they prohibit preparers from charging higher tax preparation fees to no-fee RAL customers.²⁶

The greatest expense for a no-fee RAL could actually be the tax preparation fee. In order to access a no-fee RAL, the taxpayer is required to use the services of a paid preparer. If the taxpayer was originally intending to use a paid preparer, then there is no an additional expense. But obtaining a no-fee RAL means the taxpayers cannot use a free Volunteer Income Tax Assistance site or prepare the return him/herself. Since tax preparation fees can be very high, up to \$500 or more (see Section II.B below) that can be a considerable additional expense.

Finally, the greatest concern could be that, while lenders did not impose direct charges on taxpayers this year for a RAL, that could change in future years.

C. Refund Anticipation Checks

The refund anticipation check (RAC) or “refund transfer” is a product related to RALs. With RACs, the bank opens a temporary bank account into which the IRS direct-deposits the refund check. After the refund is deposited, the bank issues the consumer a check or prepaid card, or makes a direct deposit into the consumer’s own bank account, and closes the temporary account. A RAC is no faster than the direct deposit of a refund to the taxpayer’s own bank account, but it allows the consumer to have the tax preparation fees deducted out of the refund.

After the demise of high-cost RALs, RACs became the dominant tax-time financial product on the market. According to the latest IRS data, about 18.8 million taxpayers obtained RACs in 2015.²⁷ Since the fee for a RAC is at least \$25, these taxpayers paid a minimum of \$475 million for these financial products, and probably paid more. The vast majority of RAC consumers – over 95% in 2015 – are low-income.²⁸ About half of RAC consumers (55%) in 2015 were EITC recipients.²⁹

²⁶ See, e.g., Republic Bank 2016 10-K at 12.

²⁷ Data from IRS SPEC Returns Database for Tax Year 2014 - Returns Filed through June 30, 2015. Note that there were significant changes made to the SPEC database in 2016. The data no longer includes tax returns where the Adjusted Gross Income is over \$60,000 or from zip codes there less than 100 tax returns were filed. Therefore, comparisons to prior years’ data are not possible.

²⁸ Data from IRS SPEC Returns Database for Tax Year 2014 - Returns Filed through June 30, 2015. Because of the data changes discussed in the preceding footnote, this data could be somewhat off. In 2014, before these changes, the data showed that 83% of RAC customers were low-income and half were EITC recipients. Chi Chi Wu, Chantal Hernandez, Michael Best, National Consumer Law Center and Consumer Federation of America, *Minefield of Risks: Taxpayers Face Perils from Unregulated Preparers, Lack of Fee Disclosure, and Tax-Time Financial Products*, Mar. 2016, at 3, available at

RACs present a number of issues for consumers. This year, RACs generally cost \$25 to \$59.95 for the federal refund, plus in some cases another \$10 for a RAC of the state tax refund. This is very pricey for what is essentially a one-time use bank account.

For 2017, sample RAC fees include:

- H&R Block charges \$34.95 for a RAC of the federal refund delivered on an Emerald Card or via direct deposit, or \$59.95 for a RAC delivered via paper check. However, Block has eliminated the charge for a RAC of the state refund.³⁰
- Santa Barbara Tax Products Group charges \$29.95 for a RAC of the federal refund if delivered on a prepaid card or \$39.95 otherwise, plus \$10 for a RAC of the state refund.³¹
- Jackson Hewitt charges \$32.95 for a federal refund RAC plus another \$17 “transfer fee.”³²
- Republic Bank & Trust charges either \$25 or \$35 for a RAC of the federal refund. The price depends on whether the preparer wants to charge the lower price and receive nothing, or charge a higher price and receive an \$8 kickback.³³
- River City Bank provides the option of two programs. The first program charges \$44.95 for a RAC and allows the preparer to offer a “no-fee” RAL of \$1,000 for no additional cost. This program also pays a \$10 “rebate” or kickback to the preparer. The second option charges only \$29.95 for a RAC, but the preparer cannot provide a no-fee RAL, there is no kickback, and there is a \$9.95 charge for a RAC of the state refund. (Both programs also provide a kickback for selling a prepaid card).³⁴

<http://www.nclc.org/images/pdf/pr-reports/TaxTimeReport2016.pdf> [hereinafter “NCLC/CFA 2016 Tax-Time Products Report”]

²⁹ Data from IRS SPEC Returns Database for Tax Year 2014 - Returns Filed through June 30, 2015.

³⁰ H&R Block, Refund Transfer: Pay Nothing Out-of-Pocket, at <http://www.hrblock.com/financial-services/tax-refund-payment/> (visited Mar. 24, 2017).

³¹ Santa Barbara Bank & Trust, Refund Transfer – Tax Prep Fees Paid from the Refund, 2017, at http://cdn.taxproductsgroupblog.com/wp-content/uploads/2016/11/26373_D_Refund-Transfer.pdf?852513 (viewed Mar. 20, 2017).

³² Don Dare, *Knoxville Woman Charged \$645 for ‘simple’ tax prep*, WATE ABC-TV, Feb. 20, 2017, at <http://wate.com/2017/02/20/knoxville-woman-believes-she-was-overcharged-by-tax-preparer/>.

³³ Republic Bank & Trust, Pricing Plans, at <https://www.republicrefund.com/Products/Pricing-Plans.aspx> (visited Mar. 20, 2017).

³⁴ River City Bank, 2017 Freedom to Choose Pricing Tiers, at www.rcbtaxdivision.com/pricing.aspx?mnu=3 (visited Mar. 20, 2017).

- EPS Financial, now owned by MetaBank, offers two RAC options. The “e-Collect” program offers a free RAC if the refund is deposited on the E1 Visa Prepaid Card; otherwise it charges \$15 for direct deposit or \$20 for a check.³⁵ The program does not pay the preparer a kickback. The “e-Bonus” program charges \$35 for a RAC and provides a kickback of \$12 or \$25 to the tax preparer.³⁶ Both programs permit the preparer to offer a no-fee RAL.³⁷

In addition to the RAC fee itself, many tax preparers charge add-on fees, such as “document processing” or e-filing fees, discussed in earlier reports on tax-time products.³⁸ This can significantly add to the expense of a RAC.

RACs do not have a speed advantage over a refund that is direct deposited by the IRS into the consumer’s own bank account or onto a prepaid card. Thus, RACs essentially represent nothing more than a disguised loan of the tax preparation fee. This is because, when taxpayers obtain a RAC simply because they cannot afford the price of tax preparation upfront, they are essentially paying to defer payment of the tax preparation fee—which is a loan. If a taxpayer pays \$35 to defer payment of a \$350 tax preparation fee for three weeks, the APR would be equivalent to 174%. At least two court decisions have held that a RAC constitutes a loan of the tax preparation fee, and thus RAC fees are finance charges under the Truth in Lending Act.³⁹

Furthermore, by permitting the taxpayer to have the price of tax preparation deducted from the refund, RACs make taxpayers less sensitive to the price of tax preparation. The problems with lack of transparency in tax preparation fees are discussed in Section II.B below.

D. Immigrant Taxpayers Hampered by ITIN Renewals and Current Environment of Fear

An Individual Taxpayer Identification Number (ITIN) is used by anyone who is required to file a tax return under U.S. law but is not eligible for a Social Security number, including but not limited to undocumented immigrants.⁴⁰ In addition to the refund delay, another change

³⁵ EPS, e-Collect, at <http://www.epstax.net/e-collect.html> (viewed Mar. 21, 2017).

³⁶ EPS, e-Bonus, at <http://www.epstax.net/e-bonus.html> (viewed Mar. 21, 2017).

³⁷ EPS, Refund Transfer Programs Built for Your Tax Office, at <http://www.epstax.net/> (viewed Mar. 21, 2017).

³⁸ See, e.g., Chi Chi Wu and Tom Feltner, National Consumer Law Center and Consumer Federation of America, *It’s a Wild World: Consumers at Risk from Tax-Time Financial Products and Unregulated Preparers*, at 11-12 (Feb. 2014) [hereinafter “NCLC/CFA 2014 Tax-Time Products Report”].

³⁹ *United States v. ITS Fin., LLC*, 2013 WL 5947222 (S.D. Ohio Nov. 6, 2013); *People v. JTH Tax, Inc.*, 212 Cal. App. 4th 1219, 151 Cal. Rptr. 3d 728 (2013).

⁴⁰ See National Taxpayer Advocate, *2016 Annual Report to Congress*, Jan. 10, 2017, at 239, available at <https://taxpayeradvocate.irs.gov/reports/2016-annual-report-to-congress>.

mandated by Congress in the PATH Act is a requirement that all ITINs issued before 2013 must be renewed.⁴¹ The PATH Act mandates that such ITINs are to expire on a rolling basis.

The following ITINs expired on January 1, 2017:⁴²

- Any ITIN with middle digits of either 78 or 79 (9NN-78-NNNN or 9NN-79-NNNN).
- Any ITIN not used on a tax return at least once in the past three years.

Additional ITINs will expire over the next three years and will need to be renewed.

If taxpayers file a tax return without renewing their ITIN, they will be ineligible for certain tax credits and exemptions and no refund will be paid until the ITIN is renewed. Once the ITIN is renewed, any exemptions and credits will be processed and any allowed refund will be paid.⁴³ The IRS has estimated that it can take 11 weeks to process an ITIN renewal during tax season.⁴⁴

The IRS has sent renewal letters to 440,000 taxpayers whose ITINs expired and who have used the numbers to file tax returns in the past three years.⁴⁵ However, the National Taxpayer Advocate estimated that about 11 million ITINs have expired because they have not been used on a tax return during the past three years, and these taxpayers were not sent a renewal letter.⁴⁶ Furthermore, only 16% of the recipients of the IRS renewal letters have responded.⁴⁷

Part of the reason for the low response rate to the IRS renewal letter could be aggressive targeting of undocumented immigrants by Immigration and Customs Enforcement (ICE), such as frequent raids, and the resulting atmosphere of fear. There are media reports that immigrants are generally afraid to file tax returns this year, because they are “worried that addresses and other personal information on their returns could end up with federal agencies administering the [immigration] crackdown.”⁴⁸ A slowdown or decrease in tax filings by

⁴¹ PATH Act, § 203.

⁴² IRS, ITIN Expiration Frequently Asked Questions, Q1, Feb. 9, 2017, at <https://www.irs.gov/individuals/itin-expiration-faqs>.

⁴³ IRS, ITIN Expiration Frequently Asked Questions, Q19, Feb. 9, 2017, at <https://www.irs.gov/individuals/itin-expiration-faqs>.

⁴⁴ IRS, ITIN Expiration Frequently Asked Questions, Q32, Feb. 9, 2017, at <https://www.irs.gov/individuals/itin-expiration-faqs>.

⁴⁵ National Taxpayer Advocate, *2016 Annual Report to Congress*, Jan. 10, 2017, at 244, available at <https://taxpayeradvocate.irs.gov/reports/2016-annual-report-to-congress>.

⁴⁶ *Id.*

⁴⁷ *Id.* at 245.

⁴⁸ Maria Sacchetti, *Undocumented and paying taxes, they seek a foothold in the American Dream*, Washington Post, March 11, 2017. See also Craig Dellimore, *Advocate: Immigrants Fearing Trump Policies Are Filing Taxes Later*, CBS Chicago, Feb. 24, 2017, available at <http://chicago.cbslocal.com/2017/02/24/advocate-immigrants-fearing-trump-policies-are-filing-taxes-later/>.

undocumented immigrants would be unfortunate given that they add \$1.1 billion in taxes to the coffers of state treasuries and billions in federal taxes.⁴⁹

Furthermore, undocumented immigrants theoretically should not fear the IRS sharing information from tax returns or ITIN renewal applications with ICE. Under Section 6103 of the Internal Revenue Code, information supplied to the IRS is confidential unless there is a specific authorization for sharing by that section. The IRS itself has reaffirmed that confidentiality, stating: “The IRS has strong processes in place to protect the confidentiality of taxpayer information, and this includes information related to tax returns filed using ITINs,” and “There is no authorization under this provision to share tax data with ICE.”⁵⁰

However, given the actions of the current Administration, skepticism about such confidentiality is understandable. As the Executive Director of one of the nation’s largest providers of free tax preparation services noted, “I don’t think it helps at all when you get a leaked executive order on immigration that says it will now be a deportable offense for immigrants to utilize public benefits, including refundable tax credits.”⁵¹

Furthermore, there have been instances when ITIN information was used to take enforcement action against undocumented immigrants. For example, in 2003, an agent with the Treasury Inspector General for Tax Administration in Kentucky gained access to IRS data on ITIN holders in Kentucky, then used that information to take out criminal complaints against two undocumented ITIN holders for using false Social Security Numbers.⁵²

⁴⁹ Lisa Christensen Gee, et al., Institute on Taxation & Economic Policy, *Undocumented Immigrants’ State & Local Tax Contributions*, updated March 2017, available at <http://www.itep.org/pdf/immigration2017.pdf>. (\$1.1 billion in state taxes paid by undocumented immigrants); Maria Sacchetti, *Undocumented and paying taxes, they seek a foothold in the American Dream*, Washington Post, March 11, 2017 (noting that prior estimates regarding taxes paid by undocumented immigrants were in the billions).

⁵⁰ Maria Sacchetti, *Undocumented and paying taxes, they seek a foothold in the American Dream*, Washington Post, March 11, 2017.

⁵¹ Michael Cohn, *Tax credit processing delays, immigrant fears and ITIN changes fuel early tax filing slowdown*, Accounting Today, Feb. 9, 2017, available at <https://www.accountingtoday.com/news/tax-credit-processing-delays-immigrant-fears-and-itin-changes-fuel-early-tax-filing-slowdown>.

⁵² Center for Economic Progress, *The IRS Individual Taxpayer Identification Number: An Operational Guide to the ITIN Program*, 2004, 3-4, on file with author.

II. TAX-TIME CONSUMER PROTECTION ISSUES

A. Minimum Competency Standards Needed for Paid Preparers

The lack of minimum competency standards for paid preparers in most states continues to be one of the most problematic aspects of paying taxes in the United States. Except for four states (CA, MD, NY, OR), the only tax preparers, apart from attorneys, certified public accountants and enrolled agents, who are required to pass a test are the unpaid volunteers at Volunteer Income Tax Assistance (VITA) and AARP Tax-Aide sites. A history of this gaping hole in taxpayer consumer protections is discussed in previous tax-time products reports⁵³ and other reports.⁵⁴

A national poll released in March 2017 and commissioned by the Consumer Federation of America found that more than two-thirds of consumers believe that tax preparers are already licensed, while only 20 percent believe they are not.⁵⁵ Thus, most Americans believe that they are being protected against incompetent tax preparation, when the reality is that no such protections exist in 46 states.

The CFA poll also reveals broad public support for government oversight of tax preparers, with more than 4 out of 5 respondents believing that paid tax preparers should be required to pass a competency test, be licensed by the state, and provide a clear, upfront list of fees before completing a taxpayer's return. In particular, the poll found that:⁵⁶

68 percent of respondents believe that either the state and/or federal government requires licensing for paid preparers while only 20% believe that neither require licensing.

86 percent of the public supports requiring paid tax preparers to pass a test administered by government that would ensure that paid preparers have the knowledge and training to complete taxpayer returns correctly.

⁵³ See, e.g., NCLC/CFA 2016 Tax-Time Products Report at 10-14; Chi Chi Wu and Michael Best, National Consumer Law Center and Consumer Federation of America, *Taxpayer Beware: Unregulated Tax Preparers and Tax-Time Financial Products Put Taxpayers at Risk*, March 6, 2015, available at <http://www.nclc.org/images/pdf/pr-reports/report-tax-time-products-2015.pdf> [hereinafter "NCLC/CFA 2015 Tax-Time Products Report"].

⁵⁴ *Prepared in Error*; Chi Chi Wu, National Consumer Law Center, *Riddled Returns: How Errors and Fraud by Paid Tax Preparers Put Consumers at Risk and What States Can Do* (November 2013), available at <http://www.nclc.org/issues/riddled-returns.html> [hereinafter "Riddled Returns"].

⁵⁵ Press Release, Consumer Federation of America, Second National Poll Indicates Strong Support for Reform of Paid Tax Preparer Industry, Mar. 22, 2017, available at http://consumerfed.org/press_release/second-national-poll-indicates-strong-support-for-reform-of-paid-tax-preparer-industry/.

⁵⁶ *Id.*

88 percent of the public supports licensing requirements for paid tax preparers by a state agency that would also accept and resolve complaints, and enforce consumer protections.

59 percent believe paid preparers should have special training but don't need a degree and 31 percent of the public believe that paid tax preparers should have a college degree in accounting.

The lack of regulation for paid preparers has created a culture that allows incompetence and abuses to flourish. In 2016, Georgia Watch conducted mystery shopper testing in Southwest Atlanta and found inaccuracies in 18 out of the 20 tax returns prepared by paid tax preparers.⁵⁷ Other rounds of mystery shopper testing are documented in a 2015 report by consumer groups,⁵⁸ or summarized in a March 2014 report by NCLC.⁵⁹ The percentages of problematic returns in these other testing programs ranged from 25 percent to 90 percent.⁶⁰

NCLC has drafted a Model Individual Tax Preparer Regulation Act to assist states and encourage them to consider establishing competency standards for paid preparers.⁶¹ The Model Act is based on the existing laws in three of the four states that do regulate tax preparers (Maryland, Oregon and California), as well as IRS regulations that were later invalidated due to lack of authority.⁶² In summary, the Model Act requires tax preparers to:

- Obtain a registration unless they fit into one of the exceptions for the limited number of tax preparers already regulated, such as certified public accountants, enrolled agents, and lawyers.
- Pass a basic competency exam.
- Have 60 hours of initial education and 15 hours per year of continuing education.
- Provide a standardized disclosure of their fees.

There has been some activity to push for preparer regulation. Bills to regulate paid preparers were introduced in Congress⁶³ and Cleveland, Ohio.⁶⁴ Unfortunately, the effort in Congress failed.⁶⁵

⁵⁷ Elise Blasingame, Georgia Watch Financial Protection Program, *Errors, Fraud & Arbitrary Fees: A Secret Shopper Study of Paid Tax Preparation Services in Southwest Atlanta*, 2016, available at <http://www.georgiawatch.org/wp-content/uploads/2016/06/Errors-Fraud-Arbitrary-Fees-Final-Formatted-Report.pdf>.

⁵⁸ *Prepared in Error* at 1-2.

⁵⁹ *Riddled Returns* at 6-13.

⁶⁰ *Id.*

⁶¹ *Id.* at 19-45.

⁶² The fourth state to regulate tax preparers was New York. New York's regulations governing preparers were finalized in December 2013, after NCLC had developed its Model Act.

⁶³ The provision in Congress was included by Senator Ron Wyden as part of a larger bill on tax identity theft. Michael Cohn, *Senate Committee Drops Tax Preparer Regulation from Identity Theft Bill*, Accounting

B. Need for Disclosure of Tax Preparation Fees

Another problem faced by taxpayers is the lack of transparency around tax preparation fees. Tax preparation is one of the few consumer services in the United States for which consumers cannot obtain a price for the services before they incur them. Tax preparers assert that they charge by the form, and cannot predict which forms will be generated until they actually finish the tax preparation. Thus, consumers cannot comparison shop, or predict how much tax preparation will cost them. The ability to deduct tax preparation fees from a RAC compounds the lack of transparency of tax preparation fees, as it makes taxpayers less sensitive to the price. Mystery shopper testing has documented tax preparation fees up to \$400 or \$500 for EITC recipients and other low-and-moderate income taxpayers.⁶⁶

In 2016, the Progressive Policy Institute (PPI) conducted a survey of major tax preparer chains in Baltimore and Washington, D.C., finding that EITC recipients could expect to spend 13 to 22 percent of their refunds to pay for tax preparation services.⁶⁷ Sample fees in Baltimore include a \$309 fee charged by H&R Block to as high as \$509 charged by Liberty Tax Service. In Washington, D.C., prices charged to EITC filers ranged from \$315 (H&R Block) to \$491 (Jackson Hewitt).⁶⁸ PPI noted that, according to these firms' annual reports, the average fee at H&R Block and Liberty Tax Service, respectively, is \$147 per return and \$191 per return, which was far lower than the fees uncovered by PPI.⁶⁹ PPI noted that: "In our survey, extra fees associated with EITC paperwork requirements can add significantly to the price."⁷⁰

The CFA poll, previously discussed in Section II.A, found overwhelming public support for requiring paid preparers to disclose their fees: 88% of respondents support requiring paid preparers to supply an upfront list of fees.⁷¹ The NCLC Model Individual Tax Preparer

Today, Apr. 18, 2016, available at <http://www.accountingtoday.com/news/senate-committee-drops-tax-preparer-regulation-from-identity-theft-bill>.

⁶⁴ Cleveland Ordinance No. 1398-16. See Sam Allard, *Cleveland City Council *Introduces* Legislation Regulating Storefront Tax Preparers*, www.clevescene.com, Nov. 23, 2016.

⁶⁵ Michael Cohn, *Senate Committee Drops Tax Preparer Regulation from Identity Theft Bill*, *Accounting Today*, Apr. 18, 2016, available at <http://www.accountingtoday.com/news/senate-committee-drops-tax-preparer-regulation-from-identity-theft-bill>.

⁶⁶ *Prepared in Error* at 10-11; *Riddled Returns* at 18 (providing Table of Tax Preparation Fees).

⁶⁷ Progressive Policy Institute, *The Price of Paying Taxes II: How paid tax preparer fees are diminishing the Earned Income Tax Credit (EITC)*, 1, April 2016, available at <http://www.progressivepolicy.org/publications/policy-memo/the-price-of-paying-taxes-ii-how-paid-tax-preparer-fees-are-diminishing-the-earned-income-tax-credit-eitc/>

⁶⁸ *Id.* at 3.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Press Release, Consumer Federation of America, *Second National Poll Indicates Strong Support for Reform of Paid Tax Preparer Industry*, Mar. 22, 2017, available at http://consumerfed.org/press_release/second-national-poll-indicates-strong-support-for-reform-of-paid-tax-preparer-industry/.

Regulation Act includes a provision that would require paid preparers to provide a standardized disclosure of their fees in the form of a table.

More information on excessive tax preparation fees and the need for better disclosure is available in prior NCLC/CFA reports,⁷² and reports from other advocacy groups.⁷³

C. Private Debt Collectors Will Begin Collecting IRS Tax Debts

The IRS is required to outsource collection of certain overdue tax debts by the Fixing America's Surface Transportation (FAST) Act, passed by Congress in December 2015.⁷⁴ This law requires the IRS to outsource tax debts to private collectors if:

- more than one year has passed without any interaction between the taxpayer and IRS;
- one-third of the statute of limitations has lapsed and there is no IRS collector assigned; or
- the IRS is otherwise not working the debt due to lack of resources.⁷⁵

According to an IRS analysis, 79% of the cases that are likely to be referred to private debt collectors involve taxpayers with incomes below 250 percent of the federal poverty level.⁷⁶

The IRS has announced that it will begin placing tax debts with private debt collectors in the spring of this year.⁷⁷ The IRS has selected four companies to collect federal tax debts,⁷⁸ one of which (Pioneer Recovery) had its contract to collect student loans terminated in 2015 by the U.S.

⁷² See, e.g., NCLC/CFA 2014 Tax-Time Products Report at 16-18; Chi Chi Wu and Jean Ann Fox, *National Consumer Law Center and Consumer Federation of America, The Party's Over for Quickie Tax Loans: But Traps Remain for Unwary Taxpayers* 14-17 (Feb. 2012).

⁷³ David Rothstein and Rachel Black, *New America, Improving The Tax Preparation Experience*, Feb. 11, 2015, available at <http://www.newamerica.org/asset-building/improving-the-tax-preparation-experience>; David Rothstein, *Policy Matters Ohio, Improving Tax Preparation With a Model Fee Disclosure Box*, June 2013, available at www.policymattersohio.org/wp-content/uploads/2013/06/FeeDisclosure_Jun2013.pdf.

⁷⁴ Pub. L. No. 114-94, Div. C, Title XXXII, § 32102, 129 Stat. 1312, 1733-36 (2016), codified at 26 U.S.C. § 6306. The FAST Act was known popularly as the highway funding bill, which raises the question as to why a tax provision was included in a transportation bill.

⁷⁵ 26 U.S.C. § 6306(c)(A).

⁷⁶ Letter from Nina Olson, National Taxpayer Advocate, to Senate Committee on Finance and House Ways & Means Committee, regarding the use of private collection agencies (PCAs) to collect delinquent federal tax debts, May 13, 2014, at 8, available at http://taxpayeradvocate.irs.gov/userfiles/file/nta_pdc_letter.pdf.

⁷⁷ IRS, *Private Debt Collection*, Sept 26, 2016, available at <https://www.irs.gov/businesses/small-businesses-self-employed/private-debt-collection>.

⁷⁸ *Id.*

Department of Education because it provided inaccurate information to student loan borrowers.⁷⁹

Private collection of tax debts is problematic for many reasons. It exposes taxpayers to the potential abuses that are unfortunately common with the debt collection industry.⁸⁰ It is a waste of taxpayer dollars, given that a pilot program using private collectors in 1996-1997 resulted in a \$17 million net loss to the government,⁸¹ and a program in the mid-2000s created a net loss of almost \$4.5 million.⁸² As a result, in 2009, the IRS terminated the previous program by not renewing the contracts for private debt collection.⁸³

Hiring private debt collectors will also add to the problem of scam artists who pose as IRS collectors. According to the Better Business Bureau, these scams occupy the number one spot on that agency's list of Top Scams for 2016.⁸⁴ When private collectors begin calling taxpayers regarding back taxes, it will add to the confusion and make consumers more vulnerable to these scams.

Private debt collectors collecting IRS debts will be subject to the federal Fair Debt Collection Practices Act (FDCPA),⁸⁵ including the consumer's right to send the collector a written request to stop contacting the consumer. The FDCPA protects consumers against harassment and deception and provides consumers with the right to take legal action.⁸⁶

⁷⁹ Press release, U.S. Department of Education to End Contracts with Several Private Collection Agencies, Feb. 27, 2015, available at <http://www.ed.gov/news/press-releases/us-department-education-end-contracts-several-private-collection-agencies>.

⁸⁰ A previous version of the IRS private debt collection program led to a number of complaints and concerns about private collectors using abusive tactics, failing to safeguard the confidentiality of taxpayer information, and lacking sufficient background in tax remedies and options for taxpayers. See generally National Consumer Law Center, Fair Debt Collection § 8.10 (8th ed. 2014), updated at <http://www.nclc.org/library>

⁸¹ Government Accountability Office, *Internal Revenue Service: Issues Affecting IRS' Private Debt Collection Pilot*, GAO/GGD-97-129R, at 1 (July 1997), available at <http://www.gao.gov/assets/90/86658.pdf>.

⁸² Letter from Nina Olson, National Taxpayer Advocate, to Senate Committee on Finance and House Ways & Means Committee, regarding the use of private collection agencies (PCAs) to collect delinquent federal tax debts, May 13, 2014, at 15, available at http://taxpayeradvocate.irs.gov/userfiles/file/nta_pdc_letter.pdf.

⁸³ Press Release, Internal Revenue Serv., IR-2009-019, IRS Conducts Extensive Review, Decides Not to Renew Private Debt Collection Contracts (Mar. 5, 2009).

⁸⁴ Press Release, Better Business Bureau, BBB Top Ten Scams of 2016: Tax Scam is Still #1 Despite Raid in India, Dec. 22, 2016, available at <http://www.bbb.org/council/news-events/news-releases/2016/12/bbb-top-ten-scams-of-2016-tax-scam-is-still-1-despite-raid-in-india>.

⁸⁵ 26 U.S.C. § 6306(g).

⁸⁶ See generally National Consumer Law Center, Fair Debt Collection (8th ed. 2014), updated at <http://www.nclc.org/library>.

III. INDUSTRY PLAYERS

This section provides basic information on the tax-time financial activity of key industry players, an overview that we provide annually.

A. H&R Block

H&R Block is the nation's largest tax preparation chain, accounting for 14% of all individual tax returns in 2016, or 19.7 million.⁸⁷ The company earned about \$165 million from refund anticipation checks (RACs) in 2016,⁸⁸ which translates into about 5 million RACs.

H&R Block offers the Emerald Card, a prepaid debit card, to its tax preparation customers. H&R Block earned \$92.6 million in Emerald Card revenues in 2016.⁸⁹ The Emerald Card also allows customers to access the Emerald Advance Line of Credit, which is a pre-season or "pay stub" product. H&R Block earned about \$57 million in interest from the Emerald Advance product in 2016.⁹⁰

H&R Block did not offer no-fee RALs in 2016. It began offering the loans this year, with MetaBank as the lender. During the 2017 filing season, Block had received 1.1 million applications for no-fee RALs, of which 78% were approved – or about 858,000 loans.⁹¹

B. Jackson Hewitt

Jackson Hewitt is the second largest tax preparation chain in the U.S. It has 6,300 company-owned and franchise offices, including 3,000 in Walmart stores.⁹²

This year, Hewitt is offering its clients a no-fee RAL of up to \$1,300, with MetaBank as the lender.⁹³ Hewitt has processed 485,000 of these loans in 2017, about twice what it processed in 2016 (or about 240,000 loans).⁹⁴

⁸⁷ H&R Block Inc., 2016 Form 10-K: Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, at 2-3. [hereinafter "H&R Block 2016 Form 10-K"].

⁸⁸ *Id.* at 23.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ H&R Block, Inc., H&R Block (HRB) William C. Cobb on Q3 2017 Results - Earnings Call Transcript, Mar. 8, 2017, available at <http://seekingalpha.com/>.

⁹² Jackson Hewitt, Our Story, <https://www.jacksonhewitt.com/Offers/About-Jackson-Hewitt/> (viewed Mar. 21, 2017).

⁹³ Jackson Hewitt, <https://myrefundadvance.com/> (viewed Nov. 28, 2016).

⁹⁴ Bowdeya Tweh, *Why More Than a Million Taxpayers Are Reaching for Refund Loans*, Wall St. J., Mar. 11, 2017.

C. Liberty Tax Service

Liberty Tax is the third significant commercial tax preparation chain in the country, with about 4,225 locations.⁹⁵ Liberty Tax prepared about 1.8 million returns in 2016 through its U.S. retail offices.⁹⁶ The chain is well-known for hiring people to stand outside stores, dressed up in Statue of Liberty costumes, as a form of advertisement during tax season.

Liberty earned about \$45.3 million in RAC and loan fees in 2015, constituting 26% of revenue.⁹⁷ It sold RACs to 901,000 of its customers,⁹⁸ or about half of its customer population.⁹⁹

This year, Liberty offered the “Easy Advance” no-fee RAL, made by Republic Bank & Trust Company.¹⁰⁰ It sold about 175,000 of these loans, a 40% increase from 2016,¹⁰¹ which means it made about 125,000 loans in 2016.

D. MetaBank

MetaBank is the no-fee RAL lender for H&R Block and Jackson Hewitt. It also offers no-fee RALs through its EPS unit, which it purchased from Drake Software in November 2016.¹⁰² MetaBank has made \$1.26 billion worth of no-fee RALs this year.¹⁰³

MetaBank had previously purchased Refund Advantage, the tax-time products unit of Fort Know Financial Services/Ohio Valley Bank, in September 2015. MetaBank made just over 1 million RACs in 2016.¹⁰⁴ It expects to make 2.4 million this year.¹⁰⁵

⁹⁵ Liberty Tax Service, 2016 Form 10-K: Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, at 34 [hereinafter “Liberty Tax Service 10-K”].

⁹⁶ *Id.* at 6.

⁹⁷ Liberty Tax's (TAX) CEO John Hewitt on Q4 2016 Results - Earnings Call Transcript, June 14, 2016 available at <http://seekingalpha.com/>; Liberty Tax Service 2016 10-K at 33 (total revenues of \$173 million).

⁹⁸ *Id.* at 39.

⁹⁹ *Id.* at 11 (noting the number of customers receiving refund transfer products was 49.7% for the 2015 tax season compared to 51.5% for the 2014 tax season).

¹⁰⁰ Liberty Tax Service, Refund and Advance Options, <https://www.libertytax.com/services/refund-options/> (viewed March 16, 2016).

¹⁰¹ Bowdeya Tweh, *Why More Than a Million Taxpayers Are Reaching for Refund Loans*, Wall St. J., Mar. 11, 2017.

¹⁰² MetaBank 2016 10-K at 8.

¹⁰³ Press Release, MetaBank Provides Tax Season Update, Mar. 9, 2017, available at <https://globenewswire.com/news-release/2017/03/07/933118/0/en/MetaBank-Provides-Tax-Season-Update.html>.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

E. Republic Bank & Trust

Republic Bank & Trust was the last bank to stop making high-cost RALs in 2012.¹⁰⁶ It continued to make RACs after 2012, and began making no-fee RALs last year.¹⁰⁷ Republic originated \$123 million in no-fee RALs in 2016.¹⁰⁸ Since the RALs were generally for \$750, that translates into about 164,000 no-fee RALs. Republic also earned \$19 million in RAC fees in 2016.¹⁰⁹

F. Santa Barbara Tax Products Group

Another provider of tax-time financial products is Santa Barbara Tax Products Group (SBTPG). SBTPG is the former Pacific Capital Bancorp RAL unit that was spun off after that bank was ordered to cease making RALs by its federal regulator, the Office of the Comptroller of Currency.¹¹⁰ SBTPG was purchased in October 2014 by GreenDot, one of the largest providers of prepaid cards.¹¹¹

SBTPG is the largest processor of tax refund disbursements in the U.S. and processed about 10.5 million refund transactions in 2016,¹¹² which appears to be more than half the RAC volume for that year.¹¹³ SBTPG also offers a no-fee RAL of up to \$1,000, which it calls a FastCash Advance.¹¹⁴

G. Tax-Time Products at Fringe Financial Outlets

Storefront financial services outlets—including check cashers, payday lenders, rent-to-own stores, retailers, car dealers, and other fee-based providers—have long engaged in a frenzy to make money during tax season, when low- to moderate- income consumers receive the largest single infusion of funds at any point in the year. Some of the fringe financial outlets offer non-

¹⁰⁶ NCLC/CFA 2013 Tax-Time Products Report at 3.

¹⁰⁷ NCLC/CFA 2016 Tax-Time Products Report at 6.

¹⁰⁸ Republic Bancorp, 2016 Form 10-K: Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 at 154.

¹⁰⁹ *Id.* at 71.

¹¹⁰ See Chi Chi Wu and Jean Ann Fox, National Consumer Law Center and Consumer Federation of America, *Major Changes in the Quick Tax Refund Loan Industry* 14-15 (Feb. 2010).

¹¹¹ Press Release, Green Dot Completes Acquisition of Santa Barbara Tax Products Group, Oct 23, 2014.

¹¹² Green Dot Corporation., 2016 Form 10-K: Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, at 1, 34.

¹¹³ See Section I.C above (18.8 million RACs).

¹¹⁴ Santa Barbara Tax Products Group, FastCash ADVANCE - A Tax Time Advance For Taxpayers, 2017, at <https://www.sbtpg.com/fastcash.html> (visited Mar. 20, 2017).

bank RALs.¹¹⁵ Other fringe financial outlets offer tax preparation services without selling RALs or other specifically tax-related financial products.

Some fringe financial outlets use online preparation products provided by a third party to support their tax preparation offerings. For example, GC-1 etax Partners, is being used by regional fringe financial outlets, such as CheckSmart, as well as larger single-state fringe financial outlets with multiple locations, such as Cash1 in California¹¹⁶ and First Virginian in Virginia.¹¹⁷ No website or explanation of services could be found for GC-1 etax partners.

Examples of fringe financial outlets that use these third party tax preparation services include:

- **Advance America and National Cash Advance:** National Cash Advance¹¹⁸ and Advance America,¹¹⁹ both wholly owned subsidiaries of Grupo Elektra,¹²⁰ offer a coupon for \$20 off the consumer's tax preparation fee, with filing and refund estimation provided by eTax.
- **CheckSmart:** CheckSmart is a chain with locations in nine states that offers products such as auto title loans, check cashing, and tax services in eight of those states.¹²¹ CheckSmart offers tax preparation services provided by GC-1 etax Partners.¹²²

Other fringe outlets promote products such as prepaid cards onto which refunds can be loaded; allow nonaffiliated preparers into their stores; or use tax-time to promote check cashing services.

- **ACE Cash Express:** ACE is not promoting tax preparation but does offer check cashing for refund checks.¹²³ ACE offers a 6% kickback to preparers of ACE's fee for each check

¹¹⁵ See NCLC/CFA 2015 Tax-Time Products Report at 6-7 (discussing non-bank RALs).

¹¹⁶ Cash1, Other Services. <http://www.cash1today.com/other-services/> (visited March 21, 2017).

¹¹⁷ First Virginian, other services. <http://www.firstvirginialoans.com/other-services/> (visited March 21, 2017).

¹¹⁸ National Cash Advance, Tax Services. www.nationalcashadvance.com/ourservices_tax.php (visited March 21, 2017).

¹¹⁹ Advance America, Tax Services. <http://www.advanceamerica.net/services/details/tax-services> (visited March 21, 2017).

¹²⁰ National Cash Advance, About Us. <https://www.nationalcashadvance.com/about-us> (visited March 21, 2017); Advance America, About Us. <https://www.advanceamerica.net/about-us> (visited March 21, 2017).

¹²¹ CheckSmart Locations. <http://www.checksmartstores.com/> (visited March 21, 2017).

¹²² CheckSmart, Other Services for each state. *See, e.g.,* Arizona, at <http://www.checksmartstores.com/arizona/other-services/> (visited March 21, 2017).

¹²³ Tax Refunds at Ace, at <https://www.acecashexpress.com/store-services/tax-checks> (visited March 21, 2017).

or card cashed that is associated with a preparer's Tax Program Member code.¹²⁴ ACE also opens its lobbies for the use of preparers that become Tax Program Members.¹²⁵

In prior years, the NCLC/CFA annual reports have discussed the Tax Max program for auto dealers from TRS Refund Services, which promotes tax preparation and refunds as a way to bolster auto sales at over 3,000 dealerships.¹²⁶ This year, Tax Max offers "Refund Advances" (i.e., RALs) of \$500, \$800 or \$1,200 within hours.¹²⁷ There is no additional fee for the customer, so it appears to be a no-fee RAL.¹²⁸

TRS Refund Services offers:

- **Fourth Quarter Sales Program:** The Fourth Quarter Sales Program allows car dealers to estimate a taxpayer's refund for the next tax year and negotiate a future down payment for when the tax documents arrive. As a result, the program enables dealers to sell cars in October, November or December. The online portal estimates the consumer's refund using the last paystub and then generates the appropriate supporting documents, including a promissory note for the customer to sign.¹²⁹ Tax Max also encourages dealers to hand out \$25 coupons to encourage Fourth Quarter program participants to return to the dealership to have their taxes prepared.¹³⁰
- **First Quarter Tax Max Marketing Program:** The First Quarter program is a tax preparation and loan program which allows car dealers to prepare tax returns onsite and use the proceeds to help fund the down payment for a car purchase at the point of sale.¹³¹ Tax Max warns dealers that 2% of refunds are intercepted because of debts and

¹²⁴ ACE Cash Express Frequently Asked Questions. At <https://apply.acecashexpress.com/tax/Faq.aspx> (visited March 21, 2017).

¹²⁵ ACE In-Lobby Program, at <https://apply.acecashexpress.com/tax/In-Lobby.aspx> (visited March 21, 2017).

¹²⁶ See Tax Refund Services, Benefits at <https://www.taxmax.com/TRSTaxMax/Benefits.aspx> (visited March 21, 2017) and Tax Refund Services, About Us, at <https://www.taxmax.com/TRSTaxMax/AboutUs.aspx> (visited March 21, 2017).

¹²⁷ TRS Tax Refund Services 1st Quarter Frequently Asked Questions, Answer Number 2, at <https://www.taxmax.com/TRSTaxMax/FAQ.aspx> (visited March 21, 2017).

¹²⁸ TRS Tax Refund Services 1st Quarter Frequently Asked Questions, Answer Number 14, at <https://www.taxmax.com/TRSTaxMax/FAQ.aspx> (visited March 22, 2017).

¹²⁹ TRS TaxMax, How It Works, at <https://www.taxmax.com/TRSTaxMax/HowItWorks.aspx> (visited March 21, 2017).

¹³⁰ Tax Max 4th Quarter FAQ #5. Q: Should I offer the \$25 coupon to taxpayers who participate in the 4th Quarter Sales Program. A: YES! This gives the taxpayer another incentive to return to your dealership with their tax documents. <https://www.taxmax.com/TRSTaxMax/FAQ.aspx> (visited March 21, 2017).

¹³¹ TRS Tax Max, How It Works, at <https://www.taxmax.com/TRSTaxMax/HowItWorks.aspx> (visited March 23, 2017).

advises dealers to run credit checks as well as calling the Treasury Offset Program number “to determine any offsets to the refund.”¹³²

- **Fees:** TRS Tax Max Refund Services charges start at \$154 (\$129 with a coupon). The fees are deducted directly from the taxpayer’s refund, and there is a \$79 bank processing fee.¹³³ Dealers also have the opportunity to charge an incentive fee of up to \$99 “for organizing the tax documents.”¹³⁴
- **Advances:** Tax Max also offers a \$500, \$800, or \$1,200 advance, conditioned upon lender approval (purportedly not based on a credit score check). Once the IRS deposits the consumer’s refund, the remaining funds, minus the advance, are released to the consumer. A 2017 Tax Max training video dealing with RAL check printing displays the logos of MetaBank and its EPS division,¹³⁵ indicating that TaxMax is offering that bank’s no-fee RAL product.¹³⁶ One FAQ answer indicates that there are nonrefundable fees if a client is not approved after applying for the advance,¹³⁷ which may mean that the auto dealer is responsible for the fees, since another FAQ answer indicates that “there is no additional cost for this product to the customer.”¹³⁸
- **Tax Max Visa Prepaid Card.** This card is issued by First Century Bank.¹³⁹ An “Instant Issue” card has fees of \$4.75 per month after the first thirty days. There are transaction fees ranging from \$0.75 for a PIN POS purchase fee to \$2.50 per ATM withdrawal to 1.5% of the transaction when withdrawing money via a teller. A consumer who sets up direct deposit of his or her paycheck or government benefits deposit of will receive a personalized card and there is access to a surcharge free ATM network. However, there

¹³² TRS Tax Max, How It Works. <https://www.taxmax.com/TRSTaxMax/HowItWorks.aspx> (visited March 23, 2017). It is unlikely that the Treasury would provide offset information to a car dealership due to privacy issues, which raises the question of how the dealers are obtaining the information.

¹³³ *Id.*

¹³⁴ TRS Tax Max, How It Works, Question 13, at <https://www.taxmax.com/TRSTaxMax/HowItWorks.aspx> (visited March 23, 2017).

¹³⁵ See Section III.D, above.

¹³⁶ Onsite Check Printing Video-Tax Max 2017, 1:57/3:48. <https://www.youtube.com/watch?v=qSnOJBWjQWI> (viewed March 23, 2017)

¹³⁷ Taxmax 1st Quarter FAQ #3. Q: What if the customer is not approved for the Refund Advance? A: If not approved, the customer must wait for the normal time frame for the IRS to release the refund. Unfortunately, all fees still apply and cannot be reversed. <https://www.taxmax.com/TRSTaxMax/FAQ.aspx> (visited March 23, 2017).

¹³⁸ Taxmax 1st Quarter FAQ #14. Q: Is everyone approved for the refund advance? A: No. The refund advance is based upon bank approval. TRS Tax Max has no authority in the approval process and is not affiliated with the partnering bank. The refund advance program is subject to change at any time and is expected to be available until the end of February. Please note that there is no additional cost for this product to the customer. <https://www.taxmax.com/TRSTaxMax/FAQ.aspx> (visited March 23, 2017).

¹³⁹ Taxmaxcard.com (visited March 23, 2017), at <http://taxmaxcard.com/direct-deposit.html>

is still a \$2.95 per month fee and a 1.5% transaction fee when withdrawing money via a teller.¹⁴⁰

- **Drive Now Network:** The program provides leads on customers “who are currently active in the market for a new car and have an anticipated Tax Refund Check of all amounts ready to be spent. The average Tax Refund Check last year was \$4,511! Our lead generator connects you to that check starting that day!”¹⁴¹
- **Financial Service Centers:** TRS Tax Max also offers itself as an online tax preparation portal for other “financial service center” businesses such as check cashers.
 - **No Liability for Financial Service Center:** Tax Max describes the program as quick, easy to use and “zero liability” for the financial service center business. Tax Max prepares the return with the information that the business collects from clients. According to Tax Max, the businesses using this product do not have to obtain an Electronic Filing Identification Number or register with the IRS.¹⁴² However, these businesses would appear to be actively involved in tax preparation by collecting critical tax information from the customer, such as number of dependents or deduction information. This would also mean that the customer’s only point of contact at the business for tax preparation might claim to have no knowledge or responsibility if something goes wrong with the return.
 - **Fees:** All the fees are deducted directly from the taxpayer’s refund. Tax Max Refund Services charges start at \$154 (\$129 with a coupon). There is also a \$79 bank processing fee.¹⁴³ The financial service center business can also charge an “Incentive Fee” of up to \$99. Tax Max then suggests that the financial service center business can make an additional \$138 by charging a check cashing fee of 3% on a \$4,500 refund.¹⁴⁴ All those fees (not taking into account any coupon) add up to \$470 or 10% of a \$4,500 refund—and that’s assuming that Tax Max only charges its minimum fee.

¹⁴⁰ Taxmaxcard.com (visited March, 23 2017), at <http://taxmaxcard.com/fees.html>

¹⁴¹ Drive Now Network, at <https://www.taxmax.com/TRSTaxMax/DriveNowNetwork.aspx> (visited March 23, 2017).

¹⁴² Taxmax Financial Service Centers, at <https://www.taxmax.com/TRSTaxMax/FinancialServiceCenters.aspx> (visited March 23, 2017).

¹⁴³ TRS Taxmax, How It Works, at <https://www.taxmax.com/TRSTaxMax/HowItWorks.aspx> (visited March 23, 2017).

¹⁴⁴ Taxmax Financial Service Centers, at <https://www.taxmax.com/TRSTaxMax/FinancialServiceCenters.aspx> (visited March 23, 2017).

CONCLUSION

This year, taxpayers face greater challenges and burdens, mostly due to legislative changes. Recipients of the EITC and ACTC saw their refunds delayed, which in turn led to the proliferation of a new generation of refund anticipation loans. While these loans did not impose direct charges on taxpayers this year, that could change in future years.

Immigrant taxpayers were required to renew their ITINs and faced a general atmosphere of fear which extended to tax filings. Soon, mostly low-income taxpayers will be the targets of private debt collectors that are dunning for IRS tax debts. And there is still much progress needed to properly regulate tax preparers and protect taxpayers from incompetence and fraud.