2020 Tax Season: More Delays and Higher Costs for Struggling Taxpayers

January 2020

As tax filing season officially begins advocates from the National Consumer Law Center (NCLC) issued their annual consumer advisory on taxpayer consumer protection issues. These include:

- **Tax-time financial products.** Lenders and tax return preparers again team up to sell refund-related products and services to taxpayers. Interest rates on refund anticipation loans (RALs) have increased on several products.

- **Inability to comparison shop**. With one notable exception, tax preparers continue to ignore consumers' preference for up-front pricing for tax preparation services. This secrecy stifles competition and results in higher fees all around.

- **Private debt collection:** The IRS private debt collection program continues to delivers vulnerable, elderly, and low-income taxpayers into the hands of private debt collectors. Some relief is coming but not fast enough for struggling families.

Advocates warn that consumers need to be on guard as they navigate this filing season. "Tax time is such a challenge for low-income and other vulnerable taxpayers," said Michael Best, staff attorney at the National Consumer Law Center. "Taxpayers just trying to get refunds they are owed face an obstacle course starting with incomprehensible forms and tax laws and ending with profit-seeking preparers and lenders looking to intercept a piece of their refunds."

Refund Delays under the PATH Act Continue

Low- and moderate-income households rely heavily on their tax refunds each year for a much-needed cash infusion into otherwise strapped household budgets. But once again, the Internal Revenue Service (IRS) is required to delay until mid-February the *entire* refund requested by taxpayers claiming the Earned Income Tax Credit (EITC) or Additional Child Tax Credit (ACTC). This delay, first implemented in 2017 under the Protecting Americans from Tax Hikes (PATH) Act, is intended to give IRS more time to stop fraudulent refund requests. In practice, though, it has resulted in unfair prolonged delays of legitimate refunds owed to struggling taxpayers.[1]

Under the PATH Act, the IRS cannot issue refunds to taxpayers claiming the EITC or ACTC before mid-February. The IRS expects the first EITC and ACTC refunds to be available the first week of March if taxpayers choose direct deposit and there are no other issues with their return. "The EITC is the largest anti-poverty program for working families, lifting millions out of poverty each year," noted Chi Chi Wu, staff attorney at the National Consumer Law Center. "Those who qualify for it are the least able to withstand a delayed refund and may be pushed to expensive tax-time loan products to meet the needs of their families. That means money for families goes to banks and tax preparers instead."

Tax-Time Financial Products: Lenders Continue to Evolve In Efforts to Capture More Taxpayer Refunds

In the past, RALs, loans secured by and repaid directly from a consumer's tax refund, featured fees that translated into triple-digit Annual Percentage Rates (APR) and diverted significant portions of taxpayers' refunds into the pockets of banks and preparers. Although these traditional RALs are largely a thing of the past, consumers still need to be careful at tax time.

After a couple of years focusing largely on second-generation "no-fee" RALS, tax-time lenders are increasingly moving back to offering loans accompanied by a charge. Products this year will include:

- **Refund Anticipation Checks (RACs)** – RACs provide a way for unbanked taxpayers to receive refunds by direct deposit, check, or a prepaid card. The product essentially serves as a short-term loan of the fees a consumer would otherwise pay out of pocket to have the return prepared.
- **Refund anticipation loans (RALs) in two flavors this year:**
  - **"No-fee" RALs** – Consumers supposedly pay nothing for these RALs, but some preparers may recoup costs by imposing additional fees or other indirect charges.
  - **Interest-bearing RALs** – These loans have disclosed interest rates from 24% to 45%, but disclosures may not accurately reflect these costs because of additional fees.

Refund Anticipation Checks

Refund anticipation checks (RACs), also known as refund transfers, have been the most common tax-time financial product for many years. With a RAC, a refund is directly deposited in a temporary bank account that a bank opens for a taxpayer, and the preparer deducts the tax preparation fee and any other authorized fees, and then disburses what's left to the consumer – either by direct deposit, on a prepaid card or by check. RAC fees hover around $30 to $40[2] but can range from $20[3] all the way up to $64.95 at H&R Block if the consumer wants a paper check.[4]

The high fee of a paper check at H&R block is noteworthy, as lenders may push consumers towards more profitable products, like prepaid cards, by making them cheaper. Lenders can incentivize the use of certain products both by reducing or eliminating fees to taxpayers who use those products, or giving kickbacks to tax preparers when consumers use products like prepaid cards.

For instance, EPS (a division of MetaBank) waives RAC fees for refunds disbursed on the E1 Visa Prepaid card in its e-collect RAC program.[5] For one of its programs, EPS also increases its kickback to tax preparers from $12 for direct deposit or a check to $25 for a disbursement on the E1 Visa prepaid card.[6]

Consumers may not understand that choosing a RAC does not deliver the refund more quickly. Instead, it basically works as a short-term loan of the tax return preparation fee, by deferring payment of that fee until the refund arrives. Even so, at a time when nearly 40% of Americans said they could not to afford an unexpected $400 expense,[7] it's easy to understand why these products have endured. In 2018, taxpayers paid for more than 21 million RACs.[8]

> Paying $40 to defer a tax preparation fee of $300 for three weeks is equivalent to paying an annual percentage rate (APR) of 232% for a short-term loan to pay tax prep fees.

NCLC advocates warn consumers to carefully compare the benefits of a RAC to its cost before taking one. Paying $40 to defer a tax preparation fee of $300 for three weeks is equivalent to paying an annual percentage rate (APR) of 232% for a short-term loan to pay tax prep fees.

"Consumers can definitely avoid this relatively high cost product by using available free tax preparation resources," said Michael Best, an attorney with the National Consumer Law Center. These free resources are described below.

Refund Anticipation Loans

Tax preparers and lenders are again offering interest-bearing RALs in the ongoing quest to skim as much of taxpayers' refunds as possible. Taxpayers seeking the no risk, "no-fee" RALs of years past could instead end up with interest-bearing loans instead or no loan at all.

Taxpayers must file their return with a preparer *before* they can receive a decision on their RAL request. Because these RAL applications appear to be subject to underwriting and a credit report check, many lower income taxpayers who qualified for RALs in the past may no longer qualify. But they won't know until *after* the return is filed – tethering them to the preparer even if the RAL is rejected.

"No-fee" RALs

After a period of relative obsolescence, RALs made a comeback a few years ago in a different form: the "no-fee" RAL. These second-generation RALs dominated the market in 2017, when demand for them tripled over the prior year. They are marketed as not imposing costs or risks to borrowers.

With a no-fee RAL, the taxpayer borrows a limited amount when filing the return. Lenders call these "advances," but they are actually loans secured by the anticipated tax refund. Lenders promise not to pursue collection if the IRS doesn't approve the refund. While these loans purport not to impose a fee or interest charge on the consumer, there are still risks and costs. In 2017, about 1.7 million taxpayers applied for RALs, most of which we assume were no-fee RALs. The IRS has declined to provide data about RALs in later years, stating "Refunds [sic] anticipation loans (RAL) have been removed due to insufficient data."[9]

No-fee RALs range in maximum available amounts from:

- $500 from First Century Bank, N.A. (through Santa Barbara TPG)[10]
- to $1,000 at River City Bank,[11]
- to $3,500 with H&R Block[12].

A new entrant to the no-fee RAL market is Intuit, the company behind TurboTax. It is offering a no-fee RAL product from First Century Bank, N.A. ranging from of $250 to $2,000. Loan proceeds are only made available on a Turbo® Visa® Debit Card issued by Green Dot Bank.[13]

Lenders charge preparers a fee for each approved RAL, which gives preparers an incentive to recoup the fee from the consumer. EPS Tax Solutions and River City Bank make this explicit—they offer preparers the option to enroll in kickback programs that charge consumers a higher price for a RAC. The higher RAC fee charged by these programs has the effect of shifting the preparer's loan fee to the consumer. Assuming that most consumers who take no-fee RALs also take RACs, this provides a secret way for preparers to defray their own costs on the backs of the taxpayer.[14]

Preparers may also recoup fees by inflating tax preparation costs in the form of add-on junk fees. With the lack of fee transparency still so prominent in the tax preparer industry, there are endless opportunities for preparers to recoup these fees from consumers even where the preparer's contract with the lender expressly prohibits it from passing on the fees to consumers.

And, even if the "no-fee" RAL is truly cost free, it could serve as a Trojan horse for interest-bearing RALs, as discussed next.

Interest-bearing RALs put consumers back on the hook

Lenders have raised the stakes this year, offering much larger RALs on the condition that consumers forgo the alternatively available "no-fee" RAL. These RALs impose interest on the full amount of the loan and in some cases charge origination fees. Like last year, the "non-recourse" or "no-risk" statements of earlier years are conspicuously absent.

Examples of interest-bearing RALs this year include

- **MetaBank**'s Go Big Refund Advance loan has reduced its largest loan from $7,000 at 35.9% APR[15], to $6,400 with a fee of 2% of the loan amount.[16] Jackson Hewitt, which markets the MetaBank loans, notes that a $2,500 loan under this program would have an APR of 29.2%, assuming a loan duration of 25 days. However, if we assume a loan duration of 14 days, the APR would be 52%.

- **River City Bank** has kept its no-fee and interest-bearing RAL products at the same available loan amount as last year—$1,000 with no fee, and loans of $2,000, $3,000, or $5,000 with interest. The APR has increased from 26.07% plus an undisclosed loan origination fee[17] to 36% plus an undisclosed loan origination fee[18] – a significant increase.

- **First Century Bank, N.A.** provides the Fast Cash Advance RAL through Santa Barbara TPG, which then offers the product to tax preparers. After the IRS acknowledges a taxpayer's return, loans of $250 to $500 have an APR of 0%, loans of $501 to $3,000 have an APR of 16%, and loans above $3,000 have an APR of 45%[19] – above the traditional usury cap of 36%.[20] Loans before the IRS has acknowledged a taxpayer's return are also available, with APRs of 16% for loans under $3,000 and 45% for loans from $3,000 to $6,000.[21] Last year, Santa Barbara TPG offered a very different product from MetaBank, one that tied the loan amount to a percentage of the refund.[22] The new product comes with a much higher top APR – 45% rather than 36% – though a lower APR of 16% is available for loans $3,000 or less.[23]

- **Republic Bank & Trust Company** provides the RALs for Liberty Tax, which offers the Easy Advance product in increments of $500, $800, $1,300, $2,500, $3,000, $4,750, and $6,250, at 35.99% APR.[24]

The increased interest rates on so many of these products are only part of the picture. A closer look reveals that a true "all-in" APR could be higher. For example, in the case of River City Bank's interest-bearing RAL, the advertised interest rate of 36% leaves a loan origination fee out of the APR computation (the amount of this fee is unknown), which would push the APR over the traditional usury cap.

"Last year we saw a move back towards interest-bearing refund anticipation loans, and this year we are seeing interest rates go up," said Wu. "With the PATH Act still delaying refunds to those who most need it, the larger loan amounts available for interest-bearing RALs will cost vulnerable taxpayers even more."

Tax Preparation Fees Remain a Black Box at the Major Tax Preparation Chains, with One Notable Exception

More than half of taxpayers use a paid preparer to do their taxes. EITC taxpayers are more likely to use a paid preparer for a number of reasons, including that their returns are more complex than other taxpayers. This large captive market coupled with a near uniform refusal to provide up-front price information has long allowed tax

Free Tax Preparation Resources

Eligible taxpayers can avoid fees altogether by accessing one of several free alternatives for tax return preparation and filing.

- AARP Tax Aide program provides free return preparation and e-filing for taxpayers over age 50.

- Tax Counseling for the Elderly (TCE) provides free return preparation and e-filing for eligible taxpayers.

- Volunteer Income Tax Assistance (VITA) provides free return preparation and e-filing to eligible taxpayers. Many VITA sites also assist with opening bank accounts or applying for low-cost prepaid cards to reduce wait time for refunds, as well as renewing or applying for ITINs.

- IRS Free-File program for taxpayers making up to $69,000 may prepare and electronically file their own tax returns online using software. Be sure to access the programs from the IRS website.

All taxpayers can check the real-time status of their refunds using the IRS website's automated Where's My Refund function.

preparers to ignore consumers' demands for pricing clarity. "When consumers don't have adequate information to shop around, abusive pricing schemes proliferate," said Best.

Last year, however, H&R Block broke away from the industry norm and launched a transparent pricing program. Under the new program, taxpayers can determine the base price for their returns at the outset. From there, an in-store price list by form will permit most people to compute the cost of the return before work ever begins. For now, the other major tax preparation chains continue to keep consumers in the dark until after the return is prepared.

Private Debt Collectors Run Roughshod Over Taxpayer Rights

A 2015 law requires the IRS to use private debt collectors to collect certain unpaid federal tax debts. Despite the well-documented abuses in the debt collection industry, the IRS, in designing the private debt collection (PDC) program, put cost-effectiveness ahead of thoughtful oversight of collectors, to the detriment of vulnerable and lower-income taxpayers.

By December 2018, the private debt collection program had more than 1 million accounts referred out for private collection – 600,000[25] in FY 2018 and 456,000 in FY 2019, as of December 2018.[26]

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The PDC program had eked out a relatively small profit for the government by the end of September 2018, but it appears to have only managed this result by sending out to private collectors the accounts of taxpayers *who could not have been collected against if the IRS were doing the collecting itself*.[27] Among these were disaster survivors in the aftermath of natural disasters, recipients of Social Security Disability Income (SSDI) and Supplemental Security Income (SSI) payments, and other taxpayers IRS procedures would have specially protected due to their limited income.

However, because of changes to law made under the Taxpayer First Act, after December 31, 2020, private collectors will no longer be able to collect on accounts where:

- Substantially all of a taxpayer's income is from Social Security Disability Insurance benefits or Supplemental Security Income,
- A taxpayer's adjusted gross income is at or below 200 percent of the Federal Poverty Level.[28]

While this is an important first step, low-income taxpayers' whose accounts are already assigned to a private collector will stay with that collector, and the IRS plans to keep assigning low-income taxpayers to private collectors until the law prevents them from doing so.[29] The National Taxpayer Advocate noted in her most recent report that "it is prudent to cease assignment of these cases immediately and recall these cases that have already been assigned to [private collectors]—but so far the IRS has ignored this recommendation."[30]

One new problem with the PDC program is that as of October 8, 2019, the IRS allows private collectors to urge taxpayers to preauthorize a direct debit from their bank account to pay their federal tax debt. This direct debit involves the taxpayer sending an authorization with bank account information to a private collector, who will then create a check which it mails to the IRS.[31]

This payment method is known as a remotely created check (RCC) and consumer advocates have long advocated for it to be banned due to its potential abusiveness. In fact, the FTC banned the use of RCCs in telemarketing in 2015.[32]

Letting debt collectors ask people for their bank account information also creates opportunity for scammers, as consumers will not know if it's a legitimate debt collector or a scammer posing as an IRS collector asking for their information.

Taxpayers should remember that they are not obligated to talk to a private debt collection agency, and they have the right to demand in writing (recommended) or orally that their tax debt account be taken from the private collector and returned to the IRS immediately.

The Fair Debt Collection Practices Act (FDCPA) also applies to private debt collectors collecting federal tax debts. This law gives consumers the right to send a written request to a debt collector to stop contacting them. The FDCPA protects consumers against debt collection harassment and deception. Most notably, it provides a legal remedy for violations. Consumers who believe they may have been the victim of a debt collection violation can find a lawyer who specializes in the FDCPA through the directory provided by the National Association of Consumer Advocates.

Individual Taxpayer Identification Number (ITIN) Renewals Are at a Full Stop

ITINs are used by anyone required to file a tax return or pay taxes under U.S. law who is not eligible for a Social Security number, including undocumented immigrants. The PATH Act mandated the expiration of all ITINs issued before 2013, permitting their renewal on a rolling basis.

Under the new law, millions of ITINs have already expired, with nearly 2 million expiring[33] on December 31, 2019. These include:

- ITINs issued before 2013 with middle digits of 83, 84, 85, 86, or 87 (Example: (9XX-83-XXXX).
- Any ITIN not used on a tax return at least once in the past three years.

Taxpayers who file returns with expired ITINs will have their refunds held until their numbers are renewed.

The IRS website has more information on ITIN renewals.

Related Resources

- **Report:** *2019 Tax Season: The Return of the Interest-Bearing Refund Anticipation Loan and other Perils Faced by Consumers*, April 2019

- **Report:** *Tax-Time Products 2018: A New Generation of Tax-Time Loans Surges in Popularity*, March 2018

- **Press Release**: Private IRS Collectors Waste Taxpayer Money While Squeezing Low-Income Families, Jan. 11, 2018

- **Report:** *Public Views on Paid Tax Preparation 2017: Strong Public Support Continues for New Consumer Protections to Prevent Errors and Fraud*, March 2017

- **Infographic**: Choosing Your Preparer Wisely! April 2016

- State Model Law to Ensure Competent Paid Tax Preparers

- **NCLC Website**

ENDNOTES

1. IRS, PATH Act Tax Related Provisions.
2. Santa Barbara TPG Refund Transfer ($39.95).
3. EPS Refund Transfer Program.
4. H&R Block Refund Transfer.
5. EPS e-collect program.
6. EPS e-bonus program.
7. Board of Governors of the Federal Reserve System, *Report on the Economic Well-Being of U.S. Households in 2018*, May 2019.
8. SOI Tax Stats, Tax Year 2017: Historic Table 2 (SOI Bulletin).
9. IRS SOI Tax Stats - Historic Table 2, Historic Table 2 Documentation Guide.
10. Santa Barbara TPG, Fast Cash Advance (accessed 1/24/20).
11. River City Bank, Better Programs. More Options. Announcing Our 2020 Freedom Advance (accessed 1/24/20).
12. H&R Block Refund Advance (accessed 1/24/20).
13. Intuit TurboTax Refund Advance.
14. EPS, e-Bonus; River City Bank, New and Improved 2019 Freedom Advance.
15. Chi Chi Wu, Mandi Matlock, National Consumer Law Center *2019 Tax Season: The Return of the Interest-Bearing Refund Anticipation Loan and other Perils Faced by Consumers*.
16. Jackson Hewitt® Offices Open For 2020 Tax Season, Announces Refund Advance Options, Dec. 18, 2019.
17. Chi Chi Wu, Mandi Matlock, National Consumer Law Center *2019 Tax Season: The Return of the Interest-Bearing Refund Anticipation Loan and other Perils Faced by Consumers*.
18. River City Bank, Better Programs. More Options. Announcing Our 2020 Freedom Advance & Refund Transfer Solutions! (accessed 1/23/20).
19. Santa Barbara TPG, Fast Cash Advance (accessed 1/24/20).
20. Lauren Saunders, National Consumer Law Center, *Why 36%? The History, Use, and Purpose of the 36% Interest Rate Cap*, April, 2013.
21. Santa Barbara TPG, Fast Cash Advance (accessed 1/26/20).
22. Chi Chi Wu, Mandi Matlock, National Consumer Law Center *2019 Tax Season: The Return of the Interest-Bearing Refund Anticipation Loan and other Perils Faced by Consumers*, at pg. 17.
23. Santa Barbara TPG, Fast Cash Advance (accessed 1/26/20).
24. Liberty Tax Easy Advance.
25. Quarterly Update to Congress Internal Revenue Service – Private Debt Collection Program, FY 2018.
26. Quarterly Update to Congress Internal Revenue Service – Private Debt Collection Program, FY 2019.
27. Chi Chi Wu, Mandi Matlock, National Consumer Law Center *2019 Tax Season: The Return of the Interest-Bearing Refund Anticipation Loan and other Perils Faced by Consumers*.

28. *National Taxpayer Advocate Annual Report to Congress*, pg. 98, 2019.

29. *Id*. at 98-99.

30. *Id.* at 99.

31. New payment option available to taxpayers in private debt collection program.

32. FTC Amends Telemarketing Rule to Ban Payment Methods Used by Scammers, Nov. 18, 2015.

33. Millions more ITINs set to expire in 2019; IRS says renew early to prevent refund delays.