June 8, 2010

By Fax (202-898-0230) and First Class Mail
The Honorable John E. Bowman
Acting Director
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552

Dear Mr. Bowman:

It is our understanding that one of the federally-chartered thrifts under your supervision, Meta Financial Group, known as MetaBank, hopes to offer refund anticipation loans (RALs) during the 2011 tax season. We write to urge the Office of Thrift Supervision to prohibit MetaBank from engaging in RAL lending. At a minimum, if RAL lending is permitted, the OTS must adopt standards requiring federal thrifts to supervise and monitor their third-party tax preparer agents. These standards must be as stringent as those adopted by the Office of Comptroller of Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC).

A. The OTS Should Prohibit MetaBank from Making RALs

The OTS should prohibit MetaBank from engaging in RAL lending, both during the tax season and pre-tax season in the form of "pay stub" RALs. As one of the undersigned groups wrote to you in March of this year, MetaBank has already entered the RAL market by making pay stub RALs to Jackson Hewitt customers using its iPower Card line of credit feature. We have recently learned that MetaBank hopes to offer "traditional" tax season RALs, including presumably through the Jackson Hewitt tax preparation chain, in 2011.

The OTS should prohibit MetaBank or any of the thrifts it regulates from engaging in RAL lending for several reasons. First, RAL lending poses a significant threat to safety and soundness because of the risk of fraud from unscrupulous tax preparers. This is especially true for Jackson Hewitt, as it has been the subject of several government enforcement actions. Second, RAL lending poses a risk to maintaining adequate capital levels for MetaBank. Indeed, it appears that inadequate capital levels were part of the reason that the OCC forced Pacific Capital Bancorp out of RAL lending.

Note that in addition to its own high-cost iPower Card line of credit, MetaBank already has a number of partnerships with other fringe providers, such as payday lenders, pawn shops and online gambling. Permitting more RAL lending would compound the effect of MetaBank's role in high-risk, high-cost lending, making it a poster child for small banks engaged in predatory practices.

1. RALs Pose a Significant Risk of Fraud

Consumer advocates have long criticized RALs for the expense and risk they pose for consumers, especially low-income taxpayers. However, the problems of RALs are not limited to their impact on consumers. RALs also are risky because they are often involved in tax fraud schemes by preparers. The attached 2009 report from NCLC and CFA report summarizes numerous studies- -- conducted by consumer groups, private foundations, government investigators, and the IRS's own researchers -- indicating that RALs promote inflated refunds.

For example, a 2008 study by IRS found that "propensity scoring methods indicate that there is a significant correlation between taxpayers who use RALs and noncompliance. RAL users are 27 percent - 36 percent more noncompliant than taxpayers who do not use a bank product." [1] A 2006 Government Accountability Office study found errors that led to inflated refunds exceeding $1,000 in 6 out of the 19 test cases.[2] Mystery shopper testing conducted by consumer groups found multiple instances of tax preparation that led to inflated refunds, including a Jackson Hewitt preparer who failed to include unemployment income in a tester's return.[3]

Since the 2009 NCLC/CFA report, consumer groups conducted another round of mystery shopper testing which again found that certain preparers made serious errors or even encouraged tax fraud.[4] Instances of fraud included a Jackson Hewitt preparer who advised a tester not to include $300 in income for which the tester had not received an

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[1] Karen Masken, Mark Mazur, Joanne Meikle, and Roy Nord, *Do Products Offering Expedited Refunds Increase Income Tax Non-Compliance*, Office of Research, Analysis and Statistics, Internal Revenue Service, 2008, at 15, on file with authors.
[2] Government Accountability Office, *Paid Tax Return Preparers: In a Limited Study, Chain Preparers Made Serious Errors*, GAO-06-563T, April 4, 2006, *available at* http://www.gao.gov/new.items/d06563t.pdf.
[3] Chi Chi Wu, Kerry Smith, Peter Skillern, Adam Rust, and Stella Adams, *Tax Preparers Take a Bite Out of Refunds: Mystery Shopper Test Exposes Refund Anticipation Loan Abuses in Durham and Philadelphia*, National Consumer Law Center, Community Reinvestment Association of North Carolina, Community Legal Services of Philadelphia, April 2008, ("Durham/Philadelphia Mystery Shopper Report")
[4] Chi Chi Wu, Michael Rowett, Deyanira Del Rio, Alexis Iwaniszi, and Peter Skillern, National Consumer Law Center, Arkansans Against Abusive Payday Lending, NEDAP, Community Reinvestment Association of North Carolina, *Tax Preparers Out of Compliance: Mystery Shopper Testing Exposes Violations of Refund Anticipation Loan Laws in Arkansas, New York and North Carolina,* April 2010.

IRS Form 1099. In addition, many tax preparers (including two Jackson Hewitt outlets) failed to comply with state and local laws regulating RALs, and did not give clear price information about RALs or tax preparation fees.

Part of the problem is tax preparers are so thinly regulated as an industry. With the exception of only three states, there are currently no minimum educational, licensing, or certification requirements for tax preparers. While the IRS effort to register tax preparers will hopefully improve this situation, it will take time to be fully implemented.

In the meantime, these minimally regulated preparers are acting as third-party agents for banks in making RALs. They solicit customers for the loans, explain (or fail to explain) the loan terms to consumers, process loan documentation, obtain the consumer's signature, retain the loan documents on file, and even print the RAL checks. They determine the size of the loan and ensure its soundness, through their work in preparing the tax return. In short, tax preparers do everything but make the ultimate approval decision and fund the loan.

Furthermore, the population of tax preparers is extremely diverse. In addition to H&R Block, Jackson Hewitt and Liberty Tax, there are thousands of independent preparers. While Jackson Hewitt might be the primary partner for MetaBank, there is nothing to prevent MetaBank from partnering with hundreds of independent preparers, some of whom have even lower accountability standards. While some independent preparers are accountants, enrolled agents, or more experienced than the chains, the independent preparer sector also includes payday loan stores, check cashers, used car dealers, jewelry and furniture stores, and in immigrant communities, businesses that offer travel services, "notario" services, and quickie foreign divorces. In addition to fraud issues, the competence of these fringe preparers may be questionable.

The large commercial tax preparation chains also have had their share of fraud and unscrupulous practices. For example, MetaBank's main partner, Jackson Hewitt, has been repeatedly sanctioned for engaging in deceptive, misleading and even criminal conduct. In January 2007, the California Attorney General reached a $5 million settlement with Jackson Hewitt over that preparer's false and deceptive marketing of RALs from 2001 to 2004. In April 2007, the U.S. Department of Justice (DOJ) filed a complaint and injunction decree against Jackson Hewitt for engaging in a pervasive and massive tax fraud schemes that falsely claimed $70 million in tax refunds in 2006 and 2007. The complaint states that:

> … So Far/Jackson Hewitt intentionally hires inadequately educated and poorly trained individuals to become Jackson Hewitt tax return preparers. Sohail has said that his return preparers "are only short term. All they need is to be able to do data entry. A monkey can do this." …. The So Far/Jackson Hewitt instructors fail to teach all preparers critical elements related to tax return preparation, including Earned Income Tax Credit (EITC) due diligence requirements, procedures for detecting fraudulent W-2 forms, and methods to question customers who provide questionable, suspicious, or fraudulent information. In addition, the So

> Far/Jackson Hewitt training fails to give return preparers the knowledge or experience to complete more complicated tax returns, including those requiring Schedule A or C. This lack of training directly contributes to the preparation of inaccurate, incomplete, and false tax returns.

The complaint can be reviewed in full at http://www.usdoj.gov/tax/MI_Compl.pdf

Partly as a result of DOJ's enforcement action, Jackson Hewitt's RAL lending partner, Pacific Capital Bancorp, reported a net loss of $91.6 million from RALs according to its 2008 SEC Form 10-K filing.

Moreover, note that MetaBank is also planning to partner with Santa Barbara Tax Products Group to make RALs. This is the division of Pacific Capital Bancorp (PCB) that was responsible for RAL lending at that bank. In addition to its failure to adequately supervise and monitor its tax preparer partners such as Jackson Hewitt, PCB had admitted that its own risk management and supervision were less than robust. Until 2007, PCB admitted that in terms of fraud control, it did nothing more than mimic the IRS's controls *and even admitted it left fraud controls off when they thought IRS wasn't screening*. Indeed, SBBT did not even employ a bank officer in its RAL division who was responsible for credit quality. As one investment analyst noted: "risk management was a little sparse."[5] Even after 2007, this division experienced significant losses due to fraud issues. In 2009, PCB had to set aside $74.5 million for loan losses on RALs, due to the an increase in the number of tax refunds for PCB RAL customers that the IRS withheld pending review for further documentation.[6] In other words, the IRS flagged an increased number of returns involving PCB RALs for fraud or other problems.

RAL lending would pose a risk of fraud even for those banks that have the highest reputation for and record of integrity. MetaBank does not fit this category, as there have been documented instances of fraud at MetaBank as well. MetaBank debit cards were involved in paying for hotel rooms and air travel by a team of assassins that used fake passports in their successful effort to murder a senior Hamas official in January 2010.[7] From 1995 to 2008, a MetaBank employee defrauded customers out of $4 million by selling phony CDs.[8]

2. RALs Will Strain MetaBank's Capital Levels

In December 2009, the OCC forced Pacific Capital Bancorp (PCB) out of RAL lending. We believe that this action was due, in part, to the strain posed by RAL lending on PCB. During the 2009 tax season, PCB made about 1.7 million RALs, requiring about $2 billion in short term funds. This level of RAL funding created problems for

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[5] *Pacific Capital Bancorp Conference Call*, Financial Disclosure Wire, October 29, 2007, at 10.
[6] Pacific Capital Bancorp, *2009 Form 10-K: Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934*, at 42.
[7] Peter Eichenbaum, *MetaBank Says Dubai Suspects Used Fraud to Get Prepaid Cards*, Bloomberg BusinessWeek, March 2, 2010.
[8] Karen Mracek, *MetaBank Sued Over $4 Million Fraud*, Des Moines Register, June 14, 2009.

PCB in terms of maintaining adequate capital levels during RAL season. In the Fall of 2009, PCB even admitted that "RALs generally present the Company with some special funding and liquidity needs."[9]

In the past, PCB was able to reduce the strain on its capital level by turning a securitization facility. In 2008 and 2007, PCB securitized $1.6 billion and $1.5 billion in RALs. But as you know, these markets dried up after the financial crisis of Fall 2008. There is no guarantee that the securitization market for RALs will return in 2011. In 2009, PCB resorted to using brokered CDs to raise $1.28 billion for RAL lending.[10] We believe there is a serious question regarding MetaBank's ability to provide that kind of volume, especially if it replacing PCB's role as Jackson Hewitt's RAL lender. Also note that brokered CDs are inherently more unsound than regular deposits, because not only are they more expensive, but the seller can take them back and a bulk withdrawal creates a short-term liquidity problem.

MetaBank is an institution that is even smaller than PCB. PCB has $7.4 billion in assets and 48 branches. MetaBank has under $1 billion in assets and 13 branches. Making RALs to Jackson Hewitt customers will strain MetaBank's capital levels much more than it strained PCB's levels. For that reason alone, MetaBank should not be permitted to engage in significant tax-season RAL lending.

Finally, these strains on capital levels will be accompanied by significant loan losses. Already, MetaBank has had to set aside $8 million for loan losses for its pay stub RAL line of credit through Jackson Hewitt – a whopping 43% of the $18.7 million it set aside for loan losses in 2009.[11]

B. At a Minimum, the OTS Should Adopt the Standards Set by the OCC and FDIC for Supervision and Oversight of Third-Party Agents.

If MetaBank is permitted to engage in RAL lending, the OTS must adopt standards as rigorous, if not more so, than the OCC and FDIC has adopted for this product. The OCC recently issued a Policy Statement establishing the standards that national banks are expected to follow when offering RALs, refund anticipation checks, and other tax-related products, found at www.occ.treas.gov/ftp/bulletin/2010-7a.pdf. The FDIC established similar standards in its cease and desist order against Republic Bank of Louisville Kentucky, available at
http://www.fdic.gov/bank/individual/enforcement/2009-02-10.pdf

Both of these documents include the following requirements for banks that make RALs through third-party tax preparers:

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[9] Pacific Capital Bancorp, *Form 10-Q: Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the Quarterly Period Ended June 30, 2009*, at 64.
[10] Pacific Capital Bancorp, *Form 10-Q: Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the Quarterly Period Ended September 30, 2009*, at 22.
[11] Meta Financial Group Inc., *2009 Form 10-K: Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934*, at 57.

- Board responsibility for risk management of RAL lending.

- Procedures to monitor and oversee third-party tax preparers to ensure compliance with relevant laws, regulations, and policies.

- Procedures to audit, test, or mystery shop third-party preparers for compliance.

In addition, each of the following requirements are mandated by either the OCC or the FDIC, and we urge the OTS to also adopt them:

- Establish guidelines and review processes for all advertising and solicitations developed by third-party tax preparers. Review and approve in advance all advertising copy and video for RALs, whether prepared by the bank or third-party preparer.

- Perform due diligence before contracting with any third-party tax preparer, including conducting background checks and assessing general competence and business practices.

- Establish a training program about all relevant consumer protection laws for tax preparers and contractors who communicate with customers about RAL services.

- Require that at least 10% of tax preparers who offer the bank's RALs and who were not evaluated in a prior year must be evaluated each year.

- Hire an external auditor to evaluate the bank's RAL program for compliance with all relevant consumer compliance laws and regulatory guidance twice a year.

- Make clear and prominent disclosures of various aspects of RALs, including that they are a loan, that the loan may be denied, and a denied RAL will be converted to a refund anticipation check. Disclose all fees for RALs in advance, including ancillary charges, and separately identify fees related to tax preparation.

C. Conclusion

The business of RAL lending through minimally regulated agents such as tax preparers is fraught with risk and the potential for fraud. We urge the OTS to prohibit MetaBank or any of the federal thrifts that it supervises from offering RALs. At a minimum, the OTS must follow the lead of the OCC and FDIC to establish strict guidelines for thrifts to oversee and monitor RAL lending done through third-party tax preparers.

In a time where the lack of adequate regulation has caused a financial crisis, we urge the OTS to exercise leadership by keeping its thrifts out of RAL lending, or at least mandating that its thrifts ensure regulatory compliance by its third-party tax preparer agents. We respectfully request a meeting with you to discuss potential RAL lending by MetaBank or any other thrift under your supervision.

Thank you very much for your attention to this matter.

Sincerely,

Chi Chi Wu
National Consumer Law Center
(on behalf of its low-income clients)

Jean Ann Fox
Consumer Federation of America

Sarah Ludwig & Josh Zinner
Neighborhood Economic Development Advocacy Project

Peter Skillern & Adam Rust
Community Reinvestment Ass'n of NC

Alan Fisher & Kimberly S. Jones
California Reinvestment Coalition

Dory Rand & Tom Feltner
Woodstock Institute

ATTACHMENT 1

APPENDIX A

RALS, TAX FRAUD, AND FRINGE PREPARERS

Chi Chi Wu, National Consumer Law Center
Jean Ann Fox, Consumer Federation of America
February 2009

For the past few years, NCLC, CFA, and other consumer groups have criticized RALs for the expense and risk they pose for consumers, especially low-income taxpayers. However, the harms of RALs are not limited to their impact on consumers. RALs have a negative impact on the integrity of tax administration as well. They promote tax fraud by preparers, and attract questionable players into the tax preparation business.

In fact, concerns over the adverse role of RALs in tax administration were significant enough for the IRS to open a rulemaking proceeding in 2008 asking whether the agency should develop rules restricting the sharing of tax return information to market RALs, RACs, audit insurance and other financial products.[1] The key question in this rulemaking was whether RALs and other tax financial products provide preparers with a financial incentive to inflate refund claims inappropriately.

NCLC, CFA and other consumer groups submitted extensive evidence indicating that RALs do provide tax preparers with an incentive to inflate refunds. Moreover, NCLC and CFA cited several statements by fraud experts and IRS criminal enforcers that RALs aid thieves in their commission of tax fraud. This report includes some of this evidence, as well as updates the findings with more recent information.

RALs also contribute to another negative phenomenon – they attract and promote fringe tax preparers. Fringe preparers include businesses that are historically associated with the exploitation of consumers, such as payday loan stores, check cashers, and used car dealers. They also include some retailers, such as jewelry and furniture stores, and businesses that offer travel, "notario," and other services to immigrant communities. RALs provide the incentive for these fringe preparers to enter the business of tax preparation, sometimes with less than competent or savory results.

I. THE ROLE OF RALS IN ABETTING TAX FRAUD

A. <u>RALs Often Involved in Tax Fraud Cases</u>

NCLC/CFA and other consumer groups documented numerous examples of RALs being involved in cases of tax fraud. In preparing comments to the IRS's RAL rulemaking, both NCLC/CFA and the Community Reinvestment Association of North Carolina (CRA-NC) conducted a review of published legal cases, materials posted on the websites of the U.S. Department of Justice and IRS, and media reports. Our respective reviews of this material found at least 58 cases of tax fraud in which the defendants used

[1] 73 Fed. Reg. 1131 (Jan. 7, 2008).

RALs as a method of receiving their ill-gotten gains.[2] Subsequent to these reviews, another 11 cases were announced in mid to late 2008 involving RALs.[3]

These 69 cases alone would be a strong indicator that RALs assist criminals in committing tax fraud. However, the IRS itself has long known about the role of RALs in tax fraud, because IRS criminal investigators have noted the strong connection. In 2004, Gary Bell, then Director of the IRS Criminal Investigation Division's Refund Crimes Unit, reported that 80% of fraudulent e-filed returns were tied to a RAL or other refund financial product. Mr. Bell even explained the reasons why RALs enable tax fraud, noting that RALs offered fraudsters "an opportunity to get their cash and make a quick getaway."[4]

Nancy Jardini, Chief of the Criminal Investigations Division, reported similar data. In testifying before Congress, Ms. Jardini reported that 75% of tax returns identified as questionable and/or fraudulent were associated with a RAL.[5] In separate testimony, Ms. Jardini also noted that, in over 50% of cases of tax fraud committed by prisoners, the perpetrator requested either RALs or direct deposit refunds.[6]

In addition, RALs are the tool of choice for fraudsters who commit tax identity theft. In March 2008, a Wall Street Journal article about the growing problem of tax ID theft featured several cases in which RALs were used to perpetrate that crime.[7] The NCLC/CFA comments in the IRS rulemaking included several stories about taxpayers who were victimized by tax ID theft perpetrated using RALs.[8]

In 2007, a Senate Finance Committee hearing on tax fraud and ID theft featured the testimony of Evangelos Dimitros Soukas, who netted over $40,000 by stealing the identities of other taxpayers as well as making up false returns. Mr. Soukas was initially

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[2] Comments submitted by Community Reinvestment Association of North Carolina regarding Advance Notice of Proposed Rulemaking - Guidance Regarding Marketing of Refund Anticipation Loans (RALs) and Certain Other Products, April 7, 2008, at Attachment B, *available at* http://www.cra-nc.org/files/Download/CRANC%20FINAL%20Comment%20Letter%20on%20RALs.pdf [hereinafter "CRA-NC Comments to IRS RAL ANPR"]. Comments of National Consumer Law Center, Consumer Federation of America, et al. regarding Advance Notice of Proposed Rulemaking - Guidance Regarding Marketing of Refund Anticipation Loans (RALs) and Certain Other Products, April 7, 2008, at Appendix B, *available at* http://www.consumerlaw.org/issues/refund_anticipation/content/comments_040708.pdf. [hereinafter "NCLC/CFA Comments to IRS RAL ANPR"]

[3] See Addendum.

[4] Allen Kenney, *IRS Official Shines Spotlight on E-Filing Fraud*, 2004 Tax Notes Today 130-4, July 6, 2004.

[5] Statement of Nancy J. Jardini, Chief, Criminal Investigation, Internal Revenue Service, *Testimony before the Subcommittee on Oversight of the House Committee on Ways and Means*, July 20, 2005, *available at* http://waysandmeans.house.gov/hearings.asp?formmode=view&id=2921.

[6] Statement of Nancy J. Jardini, Chief, Criminal Investigation, Internal Revenue Service, *Testimony before the Subcommittee on Oversight of the House Committee on Ways and Means*, June 29, 2005, *available at* http://waysandmeans.house.gov/hearings.asp?formmode=view&id=2875.

[7] Tom Herman, *Identity Thieves Target Tax Refunds*, Wall Street Journal, March 12, 2008.

[8] Appendix D to NCLC/CFA Comment to IRS RAL ANPR.

attracted to the crime of tax identity theft and tax fraud because of a RAL website advertisement, and used RALs in his criminal schemes.[9]

The most prominent tax fraud case was the U.S. Department of Justice (DOJ) civil enforcement action filed April 2, 2007, against 5 Jackson Hewitt franchisees that operated 125 offices for their role in preparing fraudulent tax returns falsely claiming $70 million in tax refunds. DOJ alleged that the owners and managers of these franchisees "created and fostered a business environment … in which fraudulent tax return preparation is encouraged and flourishes." Examples of fraud alleged by DOJ included filing false returns claiming refunds based on phony W-2 forms; using fabricated businesses and business expenses on returns to claim bogus deductions; claiming fuel tax credits in absurd amounts for customers clearly not entitled to any credits; and massive fraud related to Earned Income Tax Credit (EITC) claims.[10]

According to the complaints filed in these lawsuits, RALs were heavily involved in the fraud committed by these Jackson Hewitt franchisees. The lawsuits against all of the franchisees alleged:

> Many of [franchisees'] stores cater to prospective customers who are not entitled to tax refunds but who seek to obtain fast money in the form of Jackson Hewitt "Holiday Express Loan Program" (HELP) loans, "Money Now" loans, or Refund Anticipation loans (RALs) secured by fabricated tax refunds fraudulently claimed on Jackson Hewitt prepared and filed tax returns.[11]

In addition, one of the lawsuits alleged: "In 2007, a Smart Tax/Jackson Hewitt return preparer offered to fraudulently manipulate a customer's 2006 return information so the customer would qualify for a RAL."[12]

The complaints also suggested that RALs contributed to an atmosphere that encouraged fraudulent tax preparation, in part due to a sense that it was not the preparer's responsibility to look out for or stop fraud. For example, one complaint noted that the franchise owner told an employee not to reject returns with false Form W-2s, stating "fraud detection is the job of the police and Santa Barbara Bank & Trust" (Jackson Hewitt's RAL lender).[13]

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[9] Statement of Evangelos Dimitros Soukas, *Testimony before the Senate Finance Committee*, April 12, 2007.
[10] Complaint, United States v. Smart Tax of Georgia, Inc., 1:07CV-0747 (N.D. Ga. Apr. 2, 2007); Complaint, United States v. Smart Tax Inc., 07C-1802 (N.D. Ill. Apr. 2, 2007); Complaint, United States v. Sofar, Inc., Civ. No. 2:07-cv-11460 (E.D. Mich. Apr. 2, 2007); Complaint, United States v. Smart Tax of North Carolina, Inc., Civ. No. 5:07-cv-00125-FL (E.D.N.C. Apr. 2, 2007). All of the complaints are *available at* http://www.usdoj.gov/tax/txdv07215.htm.
[11] *Id.*
[12] Complaint, United States v. Smart Tax Inc., 07C-1802 (N.D. Ill. Apr. 2, 2007).
[13] Complaint, United States v. Smart Tax of Georgia, Inc., 1:07CV-0747 (N.D. Ga. Apr. 2, 2007).

B. Studies Finding RALs Associated with Tax Fraud

Numerous studies, both investigative and statistical, suggest that RALs are involved in cases of inflated refunds. These studies have been conducted by consumer groups, private foundations, government investigators, and the IRS's own researchers. They include:

(1) A 2008 study by IRS researchers analyzing different sets of tax returns that had been audited, some with RALs or RACs and others without. This study found "propensity scoring methods indicate that there is a significant correlation between taxpayers who use RALs and noncompliance. RAL users are 27 percent - 36 percent more noncompliant than taxpayers who do not use a bank product." [14] The researchers did caution that the higher rates of noncompliance by RAL users does not prove that RALs *cause* tax fraud.

(2) A 2008 sting operation by the New York Department of Taxation and Finance that found evidence of fraud among about 40% of the 85 tax preparers that they visited[15]

(3) In 2006, the Government Accountability Office (GAO) conducted mystery shopper testing of 19 tax preparers.[16] The GAO found errors that led to inflated refunds exceeding $1,000 in 6 out of the 19 test cases. These inflated refunds resulted from preparers not reporting business income in 10 of 19 cases and claiming an ineligible child for the EITC in 5 out of the 10 applicable cases. The GAO report specifically noted that RALs were often offered by these paid preparers.

(4) Mystery shopper testing by CRA-NC in Durham, and Community Legal Services of Philadelphia (CLS-Philadelphia) by testers seeking RALs found multiple instances of tax preparation that would have led to inflated refunds.[17]

- One CRA-NC tester had to withdraw from mystery shopper testing because of preparer incompetence in the treatment of income from dividends. The preparer was confused about how to handle dividend income and needed to consult her "tax people" for advice. After a consultation, she advised the tester that it was not necessary to report the dividend income, essentially instructing the tester to commit tax fraud. Furthermore, preparer also

[14] Karen Masken, Mark Mazur, Joanne Meikle, and Roy Nord, *Do Products Offering Expedited Refunds Increase Income Tax Non-Compliance*, Office of Research, Analysis and Statistics, Internal Revenue Service, 2008, at 15, on file with authors.
[15] Tom Herman, *New York Sting Nabs Tax Preparers*, Wall Street Journal, Nov. 26, 2008.
[16] Government Accountability Office, *Paid Tax Return Preparers: In a Limited Study, Chain Preparers Made Serious Errors*, GAO-06-563T, April 4, 2006, *available at* http://www.gao.gov/new.items/d06563t.pdf.
[17] Chi Chi Wu, Kerry Smith, Peter Skillern, Adam Rust, and Stella Adams, *Tax Preparers Take a Bite Out of Refunds: Mystery Shopper Test Exposes Refund Anticipation Loan Abuses in Durham and Philadelphia*, National Consumer Law Center, Community Reinvestment Association of North Carolina, Community Legal Services of Philadelphia, April 2008, ("Durham/Philadelphia Mystery Shopper Report")

completely missed profits from the sale of stock shares, which also must be reported as income.

- A Jackson Hewitt preparer failed to include unemployment insurance income in the return of a married couple who served as CLS-Philadelphia testers. This omission substantially understated the couple's income. This couple was required to file an amended return in order to correct this omission.

(5) Impact Alabama conducted similar mystery shopper tests of 13 tax preparers.[18] Its testers found that 11 of the 13 preparers incorrectly claimed the EITC. In addition, 10 preparers did not report income from other jobs such as babysitting, 8 did not report interest income, and 12 allowed testers to claim "head of household" status without being qualified for it.

None of the testers should have qualified for refunds, but each preparer figured a refund ranging from $65 to $6,247. One tax return that showed a $6,247 refund was prepared by a fringe preparer, Columbus Finance Company, for a taxpayer who actually owed $112 to the IRS. Impact Alabama reported that these preparers promoted RALs to the testers. [19]

(6) The National Taxpayer Advocate's 2007 Report to Congress noted that when IRS audited EITC tax returns associated with RALs, they found errors in 87% of cases, versus 73% of the cases without RALs – a 14% difference. Furthermore, returns with RALs resulted in adjustments of tax liability that averaged 10% more than non-RAL returns.[20]

(7) A study conducted for a private foundation compared error rates in returns from both free tax preparation sites and commercial preparers, finding much higher error rates in the latter – 41% in free sites versus 73% in commercial sites.[21] The errors in commercial sites were also larger in dollar amount and more likely to overestimate the refund than underestimate (40% of the commercial preparer returns overestimated the refund, but only 8% of the free site returns overestimated the refund). Part of the reason for these higher error rates, tilted toward inflated refund amounts, may be the financial incentives provided by RALs and RACs, since the nonprofit free sites have no similar financial incentive.

C. <u>RALs Provide Preparers With Financial Incentives to Push the Loans, Which May Lead to Inflated Refunds</u>

RALs provide significant financial incentives to preparers. These incentives encourage preparers to sell RALs, and to take measures that promote loans. In turn, those

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[18] Impact Alabama, *Impact Alabama Undercover Investigation of Commercial Tax Preparers in Alabama Results and Analysis*, Jan. 2009, on file with authors.
[19] Steve Doyle, *Group Uncovers Tax Cheaters*, Huntsville Times, Jan. 23, 2009.
[20] National Taxpayer Advocate, *FY 2007 Annual Report to Congress*, December 31, 2007, at 88.
[21] Amy Brown, *Quality in Free and Commercial Tax Preparation: Results from the 2006 Tax Season*, Annie E. Casey Foundation, June 2006.

measures may result in preparers sometimes inflating a taxpayer's refund. These incentives include:

- Some preparers receive a kickback per RAL. For example, Republic Bank & Trust advertises on its website a kickback "incentive" payment of $6 per RAL.[22] At one point, all of the major RAL lending banks offered these kickbacks. Santa Barbara Bank & Trust still does, paying $3 per RAL plus an additional payment of $1 to $3 depending on the loan performance of RALs facilitated by the preparer.[23]
- Previously, Block employees had been compensated per RAL or RAC. Individual Block employees no longer receive compensation for these products, but the company does. Block buys a 49.9% "participation share" from HSBC in each RAL facilitated by Block.[24]
- Currently, Hewitt receives a lump sum from RAL lenders plus "a variable payment upon the attainment of certain contractual growth thresholds."[25] In prior years, Hewitt's share of loan profits was even more explicit. Hewitt's 2004 Securities and Exchange Commission prospectus describes how the company received $16 plus a potential additional $2 plus 50% of any profit over 1% of the aggregate loan volume of RALs. In other words, Hewitt received a significant percentage if not the majority of profits from RALs, but shared in a 50% risk if loan defaults resulted in a net loss to the bank.[26]
- The biggest incentive is for independent preparers, who can charge one or more separate add-on fees, sometimes called "application," "administrative," "e-filing," "service bureau," "transmission," or "processing" fees. These add-on fees are on top of the RAL loan fee charged by the bank, and can range from $25 to several hundred dollars.
- H&R Block and Jackson Hewitt preparers also charged add-on fees until these chains agreed to drop them. These fees could be quite steep. For example, one Jackson Hewitt franchisee was sued for charging a hidden $25 RAL fee on top of a disclosed $75 application fee.[27]

IRS regulations specifically prohibit preparers from basing their fees on the refund amount.[28] However, the above compensation structures undermine this protection by compensating preparers for generating loans. On a corporate level, both Block and

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[22] https://www.republicrefund.com/ERO-Support/ERO-Incentives.aspx,
[23] Santa Barbara Bank & Trust, *Bank Product Program 2009*, November 2008.
[24] H&R Block Inc., *2007 Form 10-K: Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934*, at 6, *available at* http://www.sec.gov/Archives/edgar/data/12659/000095013707009521/c16312e10vk.htm.
[25] Jackson Hewitt Tax Service Inc., *2007 Form 10-K: Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934*, at 22, *available at* http://www.sec.gov/Archives/edgar/data/1283552/000119312507147353/d10k.htm.
[26] Jackson Hewitt, Final Prospectus, June 22, 2004, at 39, *available at* http://ccbn.10kwizard.com/cgi/convert/rtf/JACKSONHEWITTTA424B1.rtf?rtf=1&repo=tenk&ipage=2856162&num=-3&rtf=3&xml=1&dn=2&dn=3.
[27] Watts v. Jackson Hewitt Tax Service, 579 F. Supp.2d 334 (E.D.N.Y. 2008).
[28] IRS Publication 1345.

Hewitt have shared in the profits or risks of the loans, which are dependent on the loan amounts (and thus refund amounts). Furthermore, preparers have incentives to inflate refunds when RALs are involved because:

- While a larger RAL does not mean more compensation for the preparer on an individual basis, a bigger refund and RAL means the independent preparer can charge a higher fee in that the taxpayer becomes less sensitive to the amount of tax preparation fees.
- A larger refund also means a taxpayer is more likely to get a RAL. Taxpayers are more likely to get a RAL for a $3,000 refund (costing $62 to $114) than a $500 refund (costing $35 to $43).
- For retailers who offer tax preparation and RALs, such as used car dealers and furniture stores, the bigger refund means the retailer can sell a more expensive product. A bigger refund also means a bigger check cashing fee for the check casher who prepares taxes, or more money to pay off a loan for payday lenders and pawn shop operators.

Finally, RALs and other financial products, such as RACs, often permit preparers to handle the payment mechanism (check or prepaid card). This provides another opportunity for malfeasance on the part of the preparer. In several cases, including at least three of the RAL fraud cases described in CRA-NC's comments,[29] the preparer illegally endorsed a RAL check and deposited it into its own bank account.[30] This is especially easy because the tax preparer is the one who prints a RAL check or issues a prepaid card – indeed, the preparers often are provided blank check stock to print out RAL checks. In contrast, if a taxpayer receives a paper check from the government or a direct deposit, s/he has direct control over the funds when first issued.

Finally, RALs may provide incentives to inflate refunds simply because they draw fringe preparers into the field, as discussed in Section II.F below. The quality of preparation services by fringe preparers is questionable, and may result in inflated refunds.

D. <u>The Speed of RALs Makes Tax Fraud Easier for Criminals</u>

One reason that RALs encourage tax fraud is the speed by which the fraudster receives loan proceeds. Such reasoning is not only intuitive and logical, it was pointed out to the IRS over 15 years ago. In 1993, the IRS commissioned a report on electronic filing fraud by Dr. Malcolm Sparrow, an expert on fraud at Harvard's Kennedy School of Government. In his report, Dr. Sparrow informed the IRS:

> Most importantly, the existence of RALs has acted as an attractor for fraud by shortening the "exposure period" for the perpetrators. The exposure period -- the time that elapses between the carrying out of a dishonest act and the receipt of the financial payoff from that act -- is one of the most powerful deterrents for fraud

[29] CRA-NC Comments to IRS RAL ANPR at Attachment B.
[30] The Addendum to this report describes four other similar cases.

> available. It is a very uncomfortable period for the criminal as they have to, in some sense, stay contactable or available to the authorities in order to receive their reward. In the paper system the processing delays, although never designed explicitly as fraud controls, acted as such.
> The existence of RALs has brought the exposure period right down to 48 hours, which, for a simple to execute fraud with a $ 3,000 reward, is incredibly fast and therefore extremely attractive when compared with other fraud opportunities. "Easy money fast" is a much more attractive proposition for fraud perpetrators than "easy money . . . which you should get in six weeks."[31]

Thus, the role of RALs in fraud is something the IRS has been aware of since 1993, and indeed was the reason that the agency terminated the Debt Indicator in the following year. Unfortunately, the IRS chose to reinstate the Debt Indicator in 1999, and as discussed in Section I.E. below, both the number of RALs and tax fraud skyrocketed.

The federal government's own financial crimes experts came to the same conclusion as Dr. Sparrow. The Treasury Department's Financial Crimes Enforcement Network (FinCEN) raised concerns about the role of RALs in promoting fraud in August 2004. FinCEN issued a warning to banks that month, noting the fraud potential of RALs: "To make this type of loan appealing to the public, funds are made immediately available, leaving little time for the lender to perform due diligence to prevent fraud."[32]

Other commentators have made similar observations. For example,

- As noted above, Gary Bell of the IRS Criminal Investigations Division noted that the speed of RALs enables fraudsters to make a quick getaway. Mr. Bell further explained "it may take the IRS three or more weeks to process the return [using fraud detection measures], especially in the peak of the spring filing season. Meanwhile, the RAL lenders have processed the loan within a couple of days of the return being filed, the money is in the hands of the bad guys, and they can disappear without a trace,…"[33]
- Steven Saltzburg, a Georgetown University law professor who was the director of a Treasury Department task force on tax fraud, stated that "the refund anticipation loan system made it easy for criminals with false papers to steal up to $3,300, the maximum refund anticipation loan amount, but because the I.R.S. pays the banks within two weeks and rarely pursues recovery, the taxpayers often end up as the losers."[34]

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[31] Malcolm Sparrow, *Fraud In The Electronic Filing Program: A Vulnerability Assessment Prepared for the Internal Revenue Service*, Sept. 1, 1993, at 10.
[32] FinCEN, SAR Activity Review, Issue 7, August 2004, at 15-17.
[33] Gail Perry, *Electronic Filing Fraud: Latest Tax Scam's Got Legs*, Accounting Today, August 9, 2004, at 3.
[34] David Cay Johnston, *Bank Challenges I.R.S. on Refunds for Borrowers*, New York Times, Feb. 22, 1995.

- Unnamed tax officials quoted in the New York Times observed that RALs "allow them [fraudsters] to get the money for their fraudulent returns before the fraud can be detected by the I.R.S."[35]

E. Experience with the Debt Indicator

The IRS experience with the Debt Indicator also provides an indication of how RALs promote fraud. In 1994, the IRS terminated the Debt Indicator due to concerns over mounting fraud in refund claims.[36] IRS data during that time period had indicated that 92% of fraudulent returns filed electronically involved RALs.[37]

After the Debt Indicator was terminated, the number of RALs dropped – at H&R Block, RAL volume was cut in half from 5.5 million to 2.35 million. The elimination of the Debt Indicator and the corresponding decrease in RALs appeared to have had its intended effect of cutting down fraud. According to the then Assistant Attorney General in charge of the Tax Division at the Department of Justice, eliminating the Debt Indicator, along with other fraud prevention measures, successfully reduced the number of fraudulent claims.[38]

When IRS reinstated the Debt Indicator in 1999, the number of RALs increased as a result. In reinstating the Debt Indicator, the IRS attempted to address fraud by requiring tax preparers to institute fraud prevention measures. Despite these new measures, fraud increased when the Debt Indicator was reinstated, and the number of RALs went up. Gary Bell of IRS's Criminal Investigations Division noted in 2004 that e-file fraud increased by more than 1,400% since 1999 (when the Debt Indicator was reinstated), and that approximately 1 in every 1,200 e-filed returns was phony, compared with a rate of about 1 in every 5,000 four years earlier. The FinCEN report also noted that RAL fraud had multiplied between 2000 and 2003.[39]

F. Banks Have Little Incentive to Institute Fraud Control Beyond IRS's Controls

Another reason that RALs contribute to tax fraud is that banks have little incentive to reduce fraud beyond reliance on IRS's own measures. As Dr. Sparrow described in his report to the IRS:[40]

> This raises an interesting point with respect to the banks' incentives. Their profit motive provides no incentive at all for them to detect fraud; they have a financial

[35] Robert D. Hershey Jr., *Administration Moves Against Tax Credit*, New York Times, Oct. 27, 1994.
[36] A history of the Debt Indicator, its termination and subsequent reinstatement, and its impact on the RAL industry is set forth in Chi Chi Wu, *Corporate Welfare for the RAL Industry: the Debt Indicator, IRS Subsidy, and Tax Fraud*, National Consumer Law Center (July 2005).
[37] George Guttman, *Improper Refunds Sapping Billions*, 66 Tax Notes 19, October 3, 1994, at 23.
[38] John Tigue & Linda Lacewell, *Tax Litigation – Interview with Loretta C. Argrett – Part II*, New York Law Journal, July 17, 1997.
[39] FinCEN, SAR Activity Review, Issue 7, August 2004, at 15-17.
[40] Malcolm Sparrow, *Fraud In The Electronic Filing Program: A Vulnerability Assessment Prepared for the Internal Revenue Service*, Sept. 1, 1993, at 23.

> incentive only to predict IRS behavior. The [Debt Indicator] has been, this year, an excellent predictor of IRS behavior, so they had a very profitable year. Note that they decline 6% or 7% of applications because the [Debt Indicator] comes back negative, whereas they decline only 0.5% of applications on the basis of their own fraud detection systems. So the [Debt Indicator] is doing nearly all of their selection work for them.
>
> The banks argue that they behave as good citizens, care deeply about fraud control, and are not solely guided by the profit margins. They do, however, monitor each [tax preparer] BY THEIR LOSS RATE, and cut off those [tax preparers] that become unprofitable for the banks. (emphasis in original).

Despite the banks' protestations that they deeply care about fraud, some RAL banks up until recently continued to do nothing more than mimic the IRS's controls. As long as the IRS paid the refund, these banks treated their fraud controls as sufficient. One bank even admitted it left fraud controls off when they thought IRS wasn't screening. The CEO of Santa Barbara Bank & Trust admitted:

> The reason why we didn't have it [fraud control] on all the time before is because we had a history with the IRS over their own fraud control and we mimicked, or tried to mimic the IRS' fraud control. So we would turn on when we thought the IRS would turn on its fraud control, and for many years, 10 or 15 years, that served this bank very, very well. It allowed the bank to balance revenue growth with loss control.[41]

Indeed, SBBT did not even employ a bank officer in its RAL division who was responsible for credit quality. As one investment analyst noted: "risk management was a little sparse."[42]

This sparse risk management and piggybacking on IRS fraud controls continued until 2007, when SBBT suffered significant losses from RAL fraud and after the IRS had instituted new controls. While SBBT instituted new measures in 2008, there is nothing to prevent it from reverting back to mimicking IRS fraud controls once the bank can be assured that it has "gamed" the controls and can determine whether the IRS will pay the refund. After all, during the years prior to IRS's institution of better fraud controls, SBBT knew it would be making loans against some fraudulent returns but accepted it so long as the bank knew it would get repaid from the U.S. Treasury.

A reversion to mimicry once the RAL banks figure out the post-2007 IRS fraud controls would be expected given the financial incentives for the banks. RAL banks have a significant incentive NOT to run fraud controls that exceed or are different from IRS fraud controls, because that lowers the bank's approval rate and results in a decrease in profit. For example, SBBT predicted that its RAL volume would decrease by 5% due to

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[41] Pacific Capital Bancorp Conference Call, Financial Disclosure Wire, October 29, 2007, at 14.
[42] *Id*. at 10.

its new fraud controls that are different from the IRS fraud controls.[43] That translates into about 90,000 RALs. Given that SBBT charges $106 for a typical RAL, these stronger fraud measures cost SBBT nearly $10 million in foregone RAL fees. As SBBT's CEO put it:

> I think the fact of the matter is this is a volume driven business, and the guys in San Diego worked very hard to sort of balance the risk requirements with the revenue generating issues of that business; and we patterned the fraud control, in particular, on behaviors that the IRS had done for many, many years.[44]

II. RALS AND FRINGE PLAYERS

RALs cause harm to low-income taxpayers and promote shady tax preparation another way: by attracting fringe preparers into the business.

A. The Independent Sector

Independent preparers have a large share of the commercial tax preparation market. According to data from the IRS, there were 79 million returns prepared by paid tax preparers in 2007.[45] In 2007, Block prepared 15.7 million returns, Jackson Hewitt prepared 3.65 million returns, and third largest chain, Liberty Tax, prepared about 1 million returns.[46] This adds up to slightly more than 20 million returns. Thus, independent preparers prepared nearly 59 million tax returns, or almost three-quarters of all paid preparer returns, in 2007.

There is little data as to how many RALs were sold through these independent preparers. We know that at one point, HBSC/Household had a relationship with approximately 5,600 tax preparers, most of whom we assume were independent.[47] We also know that H&R Block and Jackson Hewitt only accounted for about 5.25 million of the 8.67 million RALs made in 2007.[48]

Independent preparers can range from licensed professionals, such as attorneys and certified public accountants, to any person who wishes to hang a "shingle" and make money preparing taxes. The federal government regulates return preparers very minimally, and only three states (California, Maryland, and Oregon) license preparers. While there are many independent preparers who are just as experienced and well trained

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[43] Pacific Capital Bancorp Conference Call, Financial Disclosure Wire, Nov. 1, 2007, at 5.
[44] Pacific Capital Bancorp Conference Call, Financial Disclosure Wire, October 29, 2007, at 10.
[45] Data from IRS SPEC, Return Information Database for Tax Year 2006 (Returns Filed in 2007), Jan. 2009.
[46] Main Report at Part III, *supra*, at 26-30.
[47] Household International, *2003 Form 10-K: Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934*, at 7, *available at* http://www.sec.gov/Archives/edgar/data/354964/000095013703001680/c75016e10vk.txt.
[48] See Main Report, Part III, *supra*, at 26-28.

– if not more so – than the commercial chains, there is a sector of independent preparers that is extremely problematic – the fringe preparers.

Fringe preparers include businesses that are historically associated with the exploitation of consumers, such as payday loan stores, check cashers, and used car dealers. Some retailers, such as jewelry and furniture stores, are fringe tax preparers. In immigrant communities, businesses that offer travel services, "notario" services, and quickie divorces also often offer tax preparation of varying quality.

B. The Supporting Cast for Fringe Preparers

A scan of websites in early 2009 reveals a variety of tax preparation and RAL offers from check cashers, rent-to-own stores, payday lenders, and others. These stores offer tax preparation either by using software in-house to prepare tax returns or through off-site preparers.

1. *Software providers*

Many fringe preparers are able to exist because of the software and back office support of certain companies called "transmitters," "service bureaus," or "software developers." Examples include NTS Service Corp., Drake Software, Universal Tax Systems, Petz Enterprises, OrrTax and Refunds Today. These companies sometimes serve as the "electronic return originator" for the fringe preparer, *i.e.*, these companies are the ones authorized by the IRS to electronically file tax returns.

For example, Petz Enterprises advertises its Tax Software and Financial Products or "QuickAccess" to check cashers, noting that "you get to keep a percentage of every transaction."[49] EZ Income Tax offers its tax software and RALs to check cashers for $199.[50]

Refunds Today sells a package of interview software, e-filing, on-site refund check printing, marketing materials, and staff training to businesses who want to offer tax preparation and "Fast Tax Refunds" to their customers.[51] Refunds Today's website claims:

> With EZ Refund, you put quick tax refund checks in your customer's hands and put smiles on their faces. You also increase your own income while expending little effort to earn it. EZ Refund requires absolutely no tax preparation or electronic filing knowledge. It's simple. You gather the data, we prepare the taxes. Customers pay nothing out of pocket. You shorten the tax preparation and refund process down to minutes, instead of weeks. And you make money doing it![52]

[49] Quick Access ad, *Cheklist*, Winter 2007, at 31.
[50] EZ Income Tax ad, ChekList, Fall 2008, page 11.
[51] Refunds Today ad, CheckList, Fall 2008, page 29.
[52] https://ez-refund.refundstoday.com/_rt/ez_index.cfm, visited Feb. 16, 2009.

Check City, a chain of payday lenders, promotes use of Drake Enterprises' Lightning Tax Service at its stores.[53] Lightning Tax Service also partners with 1040.com to provide online tax preparation.[54] No information on the cost of financial products is available at either website.

There are transmitters that specifically cater to used car dealers, *e.g.*, Tax Refund Services, which operates as TaxMax. Tax Max was formed from the merger of three programs (Tax Refund Services, Tax Max and Tax Deals 4 Wheels) and is based in Tampa, Florida. It claims that 3,000 car dealerships offer its tax products.[55] TRS touts its products by claiming that over 50% of taxpayers receiving a refund spend the entire amount in 48 hours and that offering tax preparation and RALs increases down payments on cars by $1,000 to $5,000 per deal.[56]

TRS offers the Tax Max 4th Quarter Sales Program as a form of pay stub RAL lending, making loans in expectation that tax refunds will be available later. It helps dealers calculate an approximate tax refund for potential car buyers, then negotiate a future down payment based on that estimate. Customers sign a promissory note for the loan, permitting cars to be sold in October, November, and December before tax season starts. TRS recommends that dealers require customers to bring in payments every week or two weeks until they return with IRS Form W-2s to file the tax return. TRS suggests that dealers get clients to write personal checks for the amount of the "Tax Refund Advance" which the dealer holds until the RAL pays the down payment, a variation of payday lending. In addition, TRS recommends that dealers use starter interrupter devices to "manage the customer's behavior and help ensure that the customer maintains payments," and to move old inventory by only offering a limited choice of vehicles to these consumers.[57]

TRS also provides traditional RALs when tax season starts at a cost of $139 for tax preparation plus $48 to $139 in RAL fees.[58] Dealers are permitted to charge up to $99 to "organize the tax documents" for a total of $238 in tax preparation fees.[59] The RAL check is made payable to the taxpayer, but the check is sent to the dealership, and the customer is expected to endorse the check over to the dealership. TRS claims that RALs sent electronically are sent directly to the car dealer's bank account.[60]

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[53] http://www.checkcity.com/lightningtax/,visited Feb. 6, 2009.
[54] https://fileonline.1040.com/default.aspx?did=21047, visited Feb. 23, 2009.
[55] http://www.taxrefundservices.com/Site/TRSTaxMas/AboutUs.aspx, visited Feb. 11, 2009.
[56] http://www.taxrefundservices.com/Site/TRSTaxMax/Benefits.aspx, visited Feb. 11, 2009
[57] https://www.taxrefundservices.com/Site/TRSTaxMax/FourthQuarterSalesProgram.aspx, visited Feb. 11, 2009
[58] https://www.taxrefundservices.com/Site/TRSTaxMax/HowItWorks.aspx, visited Feb. 11, 2009
[59] https://www.taxrefundservices.com/Site/TRSTaxMax/FAQ.aspx, visited Feb. 11, 2009
[60] *Id.*

2. *Remote Tax Preparation Services Sold Through Storefront Financial Service Outlets*

Other fringe preparers operate by sending their customers' information to offsite tax preparers. TaxOne is a remote location tax preparation service provided by H&R Block to payday lenders, check cashers and other fringe financial outlets. Customers complete a Tax Information Organizer questionnaire at the partner outlet, and are instructed to bring their IRS Form W-2s, Form 1099s, a government issued photo ID, Social Security cards for all family members, and other requisite tax documents. The information is transmitted to TaxOne for preparation. Consumers return to the outlet to review the completed tax return and decide on "which fast money option works best for you."

TaxOne allows the fringe financial outlet to promote RALs. TaxOne RALs are made by Santa Barbara Bank & Trust and BanComer. The RAL prices appear to be similar to Block's in-store prices.[61] While the RALs may be less expensive than other providers and the quality of tax preparation better than at other payday lenders, the downside is that TaxOne allows payday loan chains to keep their customers coming through the doors during a time of year when typically the demand for payday loans drops. Some of the payday lenders and fringe financial providers using TaxOne include Check into Cash, MoneyTree, Advance America, Allied Cash Advance, and U.S. Money Shops. [62]

In addition, using a remote service to prepare tax returns and sell RALs or RACs raises privacy and security issues, as sensitive information is passed back and forth between two or more entities. Payday lenders using TaxOne will complete a taxpayer's worksheets and documents, then scan and transmit them to the H&R Block staff to prepare the tax returns. TaxOne's website says that paper copies of tax information are returned to the taxpayer and not kept at the fringe financial outlet. Information is transmitted via a secure HTTPS site with 128 bit encryption with client-host authentication, according to the preparer's FAQs.

Both a privacy and security policy are posted for TaxOne.[63] However, the consent forms required under Section 7216 of the IRS code are not initially handed out along with the TaxOne Organizer at storefront outlets or posted on the TaxOne website. The H&R Block training materials for TaxOne state that clients are to be provided the IRS-required consent-to-disclose forms to sign in order to permit their personal information to be shared with TaxOne for tax preparation purposes. Outlets are also required to provide consent-to-use forms for customers to authorize tax return information to be used to provide RALs.[64]

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[61] For example, taxpayers are charged a $30.95 account set-up fee plus a $28 finance charge for a $2,700 RAL, which is similar to Block's fees. http://www.taxone.com/fast_money_options.aspx, visited Feb. 10, 2009.

[62] www.taxone.com/find_locations.aspx, visited Jan. 28, 2009.

[63] http://www.taxone.com/faq.aspx, visited Feb. 10, 2009.

[64] Email from H&R Block, TaxOne Training Document excerpt, Feb. 1, 2009, on file with authors.

Another question about TaxOne is the price of tax preparation. MoneyTree quotes a tax preparation fee "as low as $79" but notes that pricing is based on each customer's tax situation and the complexity of the return.[65] The promotional brochure for Check into Cash's TaxOne service promotes RALs, but does not provide cost information for either tax preparation or RAL/RAC products.[66] However, its website states TaxOne preparation service starts at $79 and directs consumers to a customer service representative to provide a personalized price quote.[67]

Another remote tax preparation company, Liquid Tax, offers its remote tax preparation services to rent-to-own stores, check cashers, used car lots, barber shops, convenience stores, beauty supply shops, pawn shops and outlets that sell prepaid telephone cards. Taxpayer documents are faxed to Liquid Tax's office in Atlanta and the RAL checks are printed at storefront retailers who "convert loyal customers into additional revenues by providing basic tax prep services." Dealers are promised up to $100 in commission per return.[68]

Liquid Tax uses Drake Software to process tax returns and sell RALs.[69] Taxpayers fill out a form that the brick and mortar store faxes to the staff at Liquid Tax. The completed tax return and refund confirmation is faxed back within a half hour. A description of this product at the rent-to-own industry's trade website says that the client returns the next day to "pick up his refund check that is printed on the spot."[70] Of course, the check is for the proceeds of a RAL since IRS refunds are not processed in 24 hours.

Other tax preparation companies also advertise remote preparation services to check cashers and payday lenders. For example, Ultimate Tax Service offers check cashers a way to increase revenue by charging to prepare returns, then charging to cash the checks. Information is entered "into the system," the remote preparer completes the return, and "you print the Refund Loan Checks in your office."[71]

C. Prevalence and Motivation of Fringe Financial Providers in the Tax Preparation Field

Tax refunds have a significant impact on high cost lenders such as payday loan outlets and pawn shops. Typically, loan volume trends downward early in the year as

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[65] www.moneytreeinc.com/106/Tax-Services.htm, visited Feb. 10, 2009.
[66] TaxOne brochure from Check into Cash Payday Advance Centers, obtained at Prescott, AZ store, Feb. 2, 2009.
[67] www.checkintocash.com/products/tax-service/taxone.htm, visited Jan. 28, 2009.
[68] Press Release, *Liquid Tax's Powerful, Speedy Solution Converts Loyal Customers into Additional Profits*, PRWeb.com, Oct. 15, 2008, *available at* http://www.prweb.com/printer/1471614.htm, visited Feb. 10, 2009
[69] *Strong Partners: Liquid Tax Grows its Practice Through Unique Partnerships*, Taxing Subjects, at http://www.taxingsubjects.com/Archives/issue24/art2.html, visited Feb. 10, 2009.
[70] *Dave Oliver Adds Liquid Tax to First American Home Furnishings Lineup*, RTOonline.com, Dec. 8, 2008.
[71] Ultimate Tax Service ad, ChekList, Winter 2008, at 23.

consumers with payday or pawn loans use RAL and refund proceeds to take a break from the payday loan debt treadmill. For example, the Oklahoma Department of Consumer Credit reports on the volume of payday loans issued by month. Loan volume dropped 6.3% in January 2008 (90,109) over December 2007 (95,745) and another 12.8% drop in February (78,590) compared to January.[72]

Some payday lenders and other high cost lenders have responded by setting up tax preparation services and offering RALs and RACs. These fringe financial providers benefit both by keeping their customers coming to them and from the fees for selling tax preparation, RALs, and cashing RAL/tax refund checks. Pawn shops and rent-to-own stores can also sell items to customers with refunds or RAL cash in hand.

An industry news service claims that the typical rent-to-own store has 400 customers and could make $20,000 in tax prep fees if half choose to have their taxes prepared at the store.[73] A Georgia rent-to-own manager described the case for tax preparation and RALs: "as customers cash those checks, we'll see them again soon, paying off merchandise, taking advantage of early buyouts as well as cash sales. That's a big revenue source for us on top of commissions for processing their tax return."[74]

One of the nation' largest rent-to-own chains, Rent-a-Center, offers tax preparation and refund loans through Tax AdvantEdge. Clients are instructed to bring tax documents to the store location and complete a questionnaire to collect basic personal information online. Rent-a-Center's RALs are provided by Santa Barbara Bank & Trust. Rent-A-Center advertises that it will cash tax refund checks. Cost information is not posted on Rent-a-Center's website.[75]

Check cashers benefit both from traditional check cashing fees as well as offering other payment devices for RALs and refunds. For example, Dollar Financial Group's Money Mart, a chain of check cashing stores, markets its Momentum prepaid debit card to receive tax refund deposits. ACE Cash Express offers either check cashing at its 1,700 stores or can load a refund onto a prepaid debit card provided by NetSpend, issued by Inter National Bank or MetaBank. ACE is offering a tax sweepstakes prize of $5,000 to customers who load at least $250 of their tax refund/RAL on the debit card and register their debit cards online.[76]

Another fringe financial provider that offers tax preparation and RALs is Cash America, a large pawn and payday loan operation. Cash America advertises a free estimate on the size of the customer's tax return with no up front fees. Cash America promotes instant RALs, RALs and RACs on its website. The fine print notes that tax

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[72] Oklahoma Department of Consumer Credit, *Oklahoma Trends in Deferred Deposit Lending*, June 2008, *available at* http://www.OK.gov/okdocc/documents/DDL%20Program%20Effectiveness%20Report.pdf
[73] "Rent-to-Own Dealers Capitalize on Fast Tax Refunds," RTOonline.com, November 12, 2008.
[74] "Economy Presents Rental Dealers with Tax Service Revenue Opportunity," RTOonline.com, December 3, 2008.
[75] http://www.racfinancialservices.com/site/page/pg3092.html, visited Feb. 10, 2009.
[76] http://www.acecashexpress.com/ss_taxprep.php, visited Feb. 11, 2009.

preparation and financial products are provided by third-party vendors that are responsible for all claims regarding their products.[77]

In order to get a sense of the magnitude of high cost lenders involved in tax preparation, NCLC/CFA's comment to the IRS reviewed the lists of entities that are authorized e-file providers for five states, available on the IRS website.[78] The following chart summarizes our review of the number of fringe preparers included in the e-file provider list for these five states:

State	Fringe Lenders/Providers	Percentage of Authorized e-file Providers
Arizona	213	5.0 %
Florida	351	2.5
Illinois	240	2.7
Massachusetts	19	0.4
South Dakota	17	3.7

Some of the high cost lenders listed on the IRS website include:

Ace Cash Advance (11 locations, AZ)
Check Advance (20 locations, AZ)
Loan Mart (31 locations, AZ)
Money Mart (32 locations, AZ)
Cash AdvantEdge (10 locations, AZ)
A Florida's Cash Express (FL)
Bay Auto Loan Cash Advance (FL)
Cash 4 U (FL)
Check Man (6 locations, FL)
Fast Money Inc (2 locations, FL)
Flash Cash Services (FL)
Instant Cash Advance (2 locations, FL)
Mr. Cash & Assoc. (FL)
Melrose Jewelry & Pawn (FL)
Calumet City Currency Exchange (IL)
Colortyme (rent-to-own store) (2 locations, IL)
Dupage Currency Exchange (IL)
Peoples Choice Cash & Pawn (IL)
Security Finance (55 locations, IL)
Quick Pay (MA)
EZ Money Check Cashing (SD)
Money Lenders (3 locations, SD)

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[77] http://www.cashamerica.com/FinancialServices/TaxFilingServices.aspx, visited Feb. 16, 2009
[78] http://www.irs.gov/efile/page/0,,id=10162,00.html.

Washington State requires outlets that facilitate the sale of RALs to register with the Department of Financial Institutions. For 2009, the approximately 617 locations that are registered include fringe financial service providers Rent-a-Center Tax AdvantEdge (18 locations), MoneyTree (60 locations), and Advance America payday loan outlets (approximately 100 locations). Both MoneyTree and Advance America use H&R Block's TaxOne tax preparation and RAL service.

Small loan installment lenders also offer tax preparation services during tax season. Sun Loan Company, with outlets in several western states, offers tax preparation, e-filing and RALs.[79] Both World Acceptance Corporation and Security Finance offer tax preparation services through their small loan outlets. Security Finance links to 1040 Tax Services to prepare online tax returns as well as offering in-store tax preparation.

D. Other Questionable Preparers

Fringe financial outlets are not the only dubious businesses offering tax preparation services. The review of the IRS list of authorized e-file providers for the five states uncovered additional questionable fringe preparers, such as:

Arizona Auto Title Co. (AZ)
Statons Home Furnishings (AZ)
U Haul International (AZ)
4 J'S Auto Sale & Services, LLC (FL)
A D Used Cars (FL)
Babcock Home Furniture (FL)
Buddy's Home Furnishings (54 locations, FL)
Cherilus Driving School (FL)
Delilah Ephraim Beauty Salon (FL)
Jays Stucco & Plastering (FL)
Jolinda Beauty Supply and Service (FL)
Lithos Jewelry (FL)
Lundys Liquor (FL)
Rent a Wheel (9 locations, FL)
Aloha Travel & Tax Services (IL)
Benton Super Lube (IL)
Paradise Super Market (IL)
Belmar Travel & Tour (MA)
New Age Oriental Therapy (MA)
Union Travel & Tours (MA)[80]
A to Z Language Interpreters (SD)
Appliance & Furniture Rent All Inc (5 locations, SD)

[79] http://www.sunloan.com/taxreturns.asp, visited Feb. 11, 2009.
[80] Union Travel & Tours was sued by the Massachusetts Attorney General's Office for offering quickie Dominican divorces that were not valid in the United States. Kathy McCabe, *Fee Refunds Ordered For Invalid Divorces*, Boston Globe, July 23, 2000.

Even one airline has gotten into the business. AirTran offers its frequent fliers tax preparation and financial products through online tax preparation by TaxProSolutions.com.[81] A GAO study found tax preparation and RALs being offered by used car dealers, a van rental store, a trailer in a gas station parking lot, and a shoe store that offered a free pair of shoes with tax preparation.[82]

Thus, businesses engaged in tax preparation and potentially offering RALs include used car dealers, travel agents, beauty salons, furniture stores, grocery stores, jewelry stores, liquor stores, and a "therapy" office. Needless to say, we wonder about the quality of preparation at these businesses. We question why the IRS has been permitting these businesses to become authorized e-file providers. The Treasury Inspector General for Tax Administration has noted the deficiencies in IRS oversight of the e-file provider program.[83]

E. The Problem with Fringe Tax Preparers

A fundamental problem with fringe preparers is the questionable quality of tax preparation. While software providers and remote tax preparation locations do offer back office support, often the retail salesperson at the fringe preparer is actively engaged in the preparation. The fringe preparer often asks the taxpayer the important questions, gathers the documentation, and enters it. For example, TaxMax provides used car dealers with a tax questionnaire that asks detailed questions about qualifications for the EITC such as "Was EIC Denied Last Year or Did You Receive an IRS Request to Qualify Your Childs Residency. If Yes Was Form 8862 or 8836 Completed to Qualify."

The testing conducted by CLS-Philadelphia and CRA-NC found several instances of incompetent tax preparation, including by one fringe preparer who essentially advised the tester to commit tax fraud. Testing conducted by Impact Alabama found even more instances of incompetent or fraudulent tax preparation, including a small loan company that prepared a tester's return to show a $6,247 refund when the tester actually owed $112 to the IRS.[84]

Even some independent and chain preparers that specialize in taxes provide questionable quality. An article on a small independent chain called "Mo' Money Taxes" notes that about 10 to 15% of their customers end up with a RAL but no refund from IRS.[85] That 10-15% "loss" rate is extremely high – much higher than the 1 to 2% loss rate reported by the RAL banks in general.

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[81] AirTran Airways A-Savers email Feb. 12, 2009, on file with authors.
[82] Government Accountability Office, *Refund Anticipation Loans*, GAO-08-800R, June 5, 2008, *available at* http://www.gao.gov/new.items/d08800r.pdf.
[83] Treasury Inspector General For Tax Administration, *Better Screening and Monitoring of E-File Providers Is Needed to Minimize the Risk of Unscrupulous Providers Participating in the E-File Program*, Reference No. 2007-40-176, September 19, 2007.
[84] Impact Alabama, *Impact Alabama Undercover Investigation of Commercial Tax Preparers in Alabama Results and Analysis*, Jan. 2009, on file with authors.
[85] Wendi C. Thomas, *Your Super-Fast Refund Comes with Strings That Pull Back*, Tennessee Commercial Appeal, Jan. 28, 2007.

Fringe tax preparers also have been known to file tax returns without a W-2. An IRS spokesperson in Georgia noted that "[o]ffering to file a tax return with merely a pay stub, for example, may be a gimmick used 'primarily to entice taxpayers to pay extra fees for extra services that they may or may not need.'"[86]

Another problem with some fringe preparers is that, while the commercial chains at least claim to make disclosures that RALs are loans, fringe preparers sometimes don't even bother trying. The most recent example of this comes from the New Jersey Attorney General, who cited 38 independent tax preparers for deceptive advertising of RALs.[87] These preparers advertised RALs as "instant," "same day," or day-specific ("1 Day" or "2 Day") refunds without disclosing that they were loans. Some of the preparers were fringe preparers or otherwise involved in other business such as:

Amigo Travel Express
Apple Immigration & Tax Services
DPS Professional Tax Service & Realty Management
Ejecutivo Travel Agency and Services
Guadalupe Galvan a/k/a Aero Travel & Taxes
J-B Deli, Grocery and Multiservices LLC
Johnny Zorilla a/k/a Accurate Accounting House a/k/a Zorilla Check Cashing
Suramericana Travel, Inc.
Tropical Agency, Puerto Rico Viajes Inc.
U.S.A. Family Management, Inc.

The New Jersey Attorney General also filed a lawsuit with similar allegations against a local tax preparation chain, Malqui Corporation, in 2007.[88]

Fringe preparers also aggressively promote fast tax "refunds." Some of the examples of fringe preparers and their advertisements included in the NCLC/CFA Comment to the IRS were:

(1) Buddy's Home Furnishings in Bradenton, Florida, which the manager described as issuing an "instant check" for tax returns, but refused to disclose the fee structure.[89]

(2) Serpentini Chevy in Cleveland advertised: "We'll Do Your Taxes For Free And Double Your Refund," then used tiny type to disclose that the "tax refund bonus" was limited to $500, and had no mention that a loan was involved.

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[86] Susan McCord, *W2 or no W2?*, Albany Herald, Feb. 18, 2008.
[87] Press Release, *Attorney General Anne Milgram Charges Tax Preparers Falsely Advertised "Same Day" Tax Refunds,* Office of the New Jersey Attorney General, Feb 5, 2009, available at http://www.nj.gov/oag/newsreleases09/pr20090205d.html.
[88] Press Release, *State Sues Tax Preparation Firm Over Deceptive "Fast Refund" Offers*, New Jersey Attorney General's Office, March 5, 2007.
[89] Brian Neill, *Fast-Cash Tax Returns Come with Price,* Bradenton Herald, Feb. 1, 2008.

(3) Car Credit City advertised: "Take $20 Off Your tax service. File your taxes at Car Credit City and driver away in a quality vehicle. All you need is – Your 2007 W-2 – Driver's License – Social Security Card – 2 most recent pay stubs – Proof of Residency (utility bill or piece of mail)."

(4) Dollar Financial Group's advertisements for its Money Mart stores promise to "Turn your refund into fast cash! With a RAL for $200 to $9,500 by check in one to three days or an instant RAL for up to $1,700 with the balance of funds payable with a RAL in one to three days."[90]

(5) Preparers who use names that imply the taxpayer can receive a refund quickly. The review of authorized e-file providers in five states from the IRS website[91] revealed names such as:

AA Next Day Tax Cash (4 locations, AZ; 4 locations, FL; SD)
Home of Next Day Tax Cash (AZ; 4 locations, FL; SD)
Rapido Express Income Tax Services (AZ)
ASAP Rapid Refund Tax Service (FL)
Instant Refund (3 locations, FL)
Instant Tax Service (49 locations, AZ; 34 locations, IL)
Magic Tax Refund (4 locations, FL)
Quick & Easy Rapid Refund (FL)
Quick Refunds (FL; 13 locations, IL)
Quick Cash Tax Services (FL)
Quick & Easy Rapid Refund (FL)
Rapid Tax Refund (FL)
Refunds Express (FL)
Super Fast Express Refunds (FL)
Kai's Rapid Tax Refund Service (IL)
Next Day Tax Cash (4 locations, IL; 2 locations, SD)
Xpress Refunds Tax Service (IL)
Williams Rapid Refund (IL)
Fast Tax Back (MA)
Tax Man Refund Express (MA)

(6) TaxStar Online[92] advertises:

> The Tax Refund Program brings customers to your location when you advertise a FREE Instant Tax Refund Estimate. Most people are anxious to find out how much money they will get back and you provide that useful service. You simply enter a few items from the customers W-2 into the Online Estimator, or onto the paper form and fax to us, and we instantly estimate the amount of tax refund they

[90] www.moneymart.com/MM/tax.asp, included in Appendix F.
[91] http://www.irs.gov/efile/page/0,,id=10162,00.html.
[92] http://dealers.taxstaronline.com/benefits.php, visited Feb. 20, 2009.

should receive. You will know in minutes how many refund dollars you have available.
Larger Down Payments. Close more deals with the extra $3,000 to $5,000 available for a down payment from your customer's tax refund. It makes financing easier and qualifies the customer for a wider selection of your inventory. And there is no long wait for the cash; we can have the refund deposited directly into your bank account, or you can print a Refund Anticipation Loan check, directly from your computer, in as little as 12 hours.

F. RALs Encourage Fringe Players to Become Tax Preparers

RALs and RACs encourage fringe players to enter the field of tax preparation. There would be much less incentive for used car dealers, shoe stores, and payday lenders to be involved in tax preparation without RALs and RACs, because:

(1) The fringe preparer would not be the arranger of the financial product used to pay for goods and services, and the transaction would lack the "seamless" nature that encourages taxpayers to spend their refunds with the fringe preparer.

(2) The fringe preparer could not obtain control of the financial product proceeds, *i.e.*, if there were no RALs and RACs, tax refund monies would always be paid directly to the taxpayer by mail or direct deposit. The RAL or RAC allows the fringe preparer/retailer to physically hold the funds or check, especially since the preparer is the one that issues the check or cards.

(3) The fringe preparer could not extract tax preparation, document processing, e-filing or other add-on fees from the proceeds of a RAL or RAC.

(4) The fringe preparer would not receive the per-RAL fees that RAL lenders pay to preparers in making a RAL.

Thus, the elimination or restriction of RALs would have the added advantage of reducing the number of questionable fringe preparers in the commercial tax preparation field.

III. CONCLUSION

For many years, consumer advocates have urged the Congress, the IRS, and other policy makers to ban or restrict RALs. As this report shows, banning RALs will benefit more than consumers. It will reduce tax fraud and promote the integrity of our tax system. It will eliminate one incentive that attracts fringe players into the tax preparation field. Banning or restricting RALs is a win-win for everyone, except those who profit from these predatory loans.

ADDENDUM: LIST OF TAX FRAUD CASES INVOLVING RALS FROM MARCH 2008

United States v. Legro, 284 Fed. Appx. 143 (5^{th} Cir. July 2, 2008) (Bernita Legro prepared false returns claiming average of $2,172 in telephone excise tax; obtained at least $700,000 in RALs for the fraudulent refunds).

Local, State Staff Reports, Tulsa World, Jan. 7, 2009, at A16 (Cynthia Williams used RALs to inflate refund amounts claimed in clients' tax returns)

Ed Richter, *Local Man Enters a Guilty Plea for Filing False Tax Returns*, Middletown Journal, Dec. 1, 2008 (Patrick Hill created false W-2s and obtained fraudulent refunds using RALs).

Press Release, *Detroit Man Sentenced for False Refund Claims to IRS*, U.S. Attorney's Office for the Eastern District of Michigan, Nov. 24, 2008 (Booker T. Gregory, Jr. assisted in filing 36 false returns claimed using RALs).

Ben Finley, *Tax Preparer Guilty of Fraud, Bucks County Courier Times*, Nov. 20, 2008 (Aneza Abalo targeted Liberian community, falsifying her clients' returns with fake deductions; took cut of clients' refunds using RALs).

Tax Fraud Lands Atlanta Man in Federal Prison, Atlanta Business Chronicle, Oct. 31, 2008 (Antonio Millege Adams assisted others in filing false returns by creating fake W-2s; to ensure that he received his fee plus a portion of the fraudulent refund, he directed filers to seek RALs).

Press Release, *Fishers Woman Charged with Filing 47 False Tax Returns*, U.S. Attorney's Office for the Southern District of Indiana, Oct. 9, 2008 (Lori Crisp prepared false returns at H&R Block office stealing identities of other individuals, then received RALs for these returns, which she cashed).

Press Release, *Federal Court Shuts Down Chicago Tax Preparer*, U.S. Dept. of Justice, Oct. 3, 2008 (Debra Windham, former IRS secretary, filed phony returns for unwitting customers and applied for RALs without the customer's knowledge, then took a portion of the loan proceeds).

John Eligon, *Tax Preparer is Charged with Theft on L.I.*, New York Times, Apr. 10, 2008 (Diana Aliffi stole identities of other individuals to file false returns, obtained RALs from JPMorgan Chase, and had RAL checks sent to her so she could deposit them into her own account).

Press Release, *President of Takoma Park Tax Preparation Business Sentenced for Preparing False Tax Returns*, U.S. Dept. of Justice, Apr. 21, 2008 (Jiten Mehta filed returns on behalf of clients using fake deductions and obtained RALs for these clients from which he deducted fees).

Press Release, *Detroit Man Goes to Jail for Defrauding the Internal Revenue Service*, U.S. Attorney's Office for the Eastern District of Michigan, Mar. 11, 2008 (Kenneth Felder recruited and assisted nine other individuals to file false returns with fake W-2s and apply for RALs).