

MSP #18 INDIVIDUAL TAXPAYER IDENTIFICATION NUMBERS (ITINs): IRS Processes Create Barriers to Filing and Paying for Taxpayers Who Cannot Obtain Social Security Numbers

RESPONSIBLE OFFICIAL

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TAXPAYER RIGHTS IMPACTED¹

- *The Right to Be Informed*
- *The Right to Quality Service*
- *The Right to Pay No More Than the Correct Amount of Tax*
- *The Right to Challenge the IRS's Position and Be Heard*
- *The Right to a Fair and Just Tax System*

DEFINITION OF PROBLEM

Problems obtaining Individual Taxpayer Identification Numbers (ITINs) have long plagued taxpayers who have a tax return filing requirement and need a taxpayer identification number, but are ineligible for a Social Security number (SSN).² ITINs play a vital role in the U.S. tax system. Without ITINs, approximately 4.6 million taxpayers would not be able to comply with their annual tax filing and payment obligations, or receive tax benefits to which they are legally entitled.³ When taxpayers cannot obtain ITINs timely, or at all, they may face financial hardship and limitations on where and with whom they can do business. Some taxpayers may drop out of the tax system altogether.

ITIN applications and associated return filings have dropped precipitously, down 58 percent between 2011 and 2014.⁴ While the general economic climate and immigration trends help explain this decline, IRS ITIN procedures have most certainly contributed to it. In 2012, in response to a Treasury Inspector General for Tax Administration (TIGTA) report alleging significant refund fraud connected to ITINs, the IRS made sweeping changes that require applicants to submit original identification documents (subject to a few alternatives) and has maintained its policy of generally requiring applicants to apply for an ITIN with a paper tax return during the filing season.⁵ The requirements have led to extreme delays for ITIN

1 See Taxpayer Bill of Rights, available at www.TaxpayerAdvocate.irs.gov/taxpayer-rights.

2 “Generally, noncitizens authorized to work in the United States by the Department of Homeland Security (DHS) can get a Social Security number.” Social Security Administration, *Social Security Numbers for Noncitizens*, Publication No. 05-10096 (June 2015), available at <http://www.socialsecurity.gov/pubs/EN-05-10096.pdf>.

3 During processing years (PYs) 2012-2014 an average of 4.6 million Form 1040 returns were filed having an ITIN for either the primary or secondary (e.g., spouse) filers or a dependent. IRS, Compliance Data Warehouse (CDW) (data retrieved on Dec. 15, 2015).

4 In PY 2011, the IRS received 2,317,374 ITIN applications (Form W-7), compared to 965,793 in PY 2014. IRS, *ITIN Comparative Reports* (Dec. 31, 2011; Dec. 31, 2014).

5 See IRS, IR-2012-98, *IRS Strengthens Integrity of ITIN System; Revised Application Procedures in Effect for Upcoming Filing Season* (Nov. 29, 2012), available at <http://www.irs.gov/uac/Newsroom/IRS-Strengthens-Integrity-of-ITIN-System;Revised-Application-Procedures-in-Effect-for-Upcoming-Filing-Season>.

While concerns about refund fraud are legitimate, the IRS's solutions do not effectively target the fraud nor do they balance the anti-fraud regime with the taxpayer's need for a process no more intrusive than necessary, part of a taxpayer's *right to privacy*.

applicants. During the 2015 filing season, the IRS advised taxpayers to wait up to 11 weeks,⁶ and at one point had a backlog of nearly 120,000 ITIN applications with returns.⁷ While concerns about refund fraud are legitimate, the IRS's solutions do not effectively target the fraud nor do they balance the anti-fraud regime with the taxpayer's need for a process no more intrusive than necessary, part of a taxpayer's *right to privacy*. As a result, the IRS burdens legitimate taxpayers and harms global commerce. The advent of the Foreign Account Tax Compliance Act (FATCA) has exacerbated problems due to the greater impact of not timely receiving an ITIN.⁸ The National Taxpayer Advocate is concerned that:

- The requirement to apply for an ITIN during the filing season burdens applicants, creates delays, leads to lost returns, and hampers the IRS's ability to detect and prevent fraud.
- ITIN applicants are subject to unnecessary burden and risk losing their identification documents while the IRS creates more work for itself by not providing adequate alternatives to applicants submitting original documents.
- Combined, the requirements for most applicants to apply during the filing season and send original documents contribute to errors on the parts of the ITIN unit and ITIN applicants, resulting in growing suspension and rejection rates.
- Taxpayers abroad needing ITINs for information reporting purposes are especially burdened by the ITIN requirements and procedures.
- Future requirements for deactivating ITINs will deprive some taxpayers of ITINs they need for tax administration purposes, and the IRS policy will undermine taxpayers' *right to be informed*.

6 See IRM Procedural Update WI-03-0215-0352 (Feb. 19, 2015), available at <http://www.irs.gov/pub/foia/ig/spder/WI-03-0215-0352%5b1%5d.pdf>.

7 IRS, *ITIN Production Report* (March 28, 2015) showed 119,409 "applications [with return] awaiting input." IRS, *ITIN Production Report* (Mar. 14, 2015) showed 3,075 "applications [without return] awaiting input." Internal Revenue Manual (IRM) 3.21.263.8.3.1, *Preliminary W-7 Application Data Screen* (Sept. 4, 2014) instructs examiners to input as the IRS received date the stamped date or, if missing, the postmark or signature date, or the current date minus ten days.

8 See National Taxpayer Advocate FY 2016 Objectives Report to Congress 48-52 (Area of Focus: *The IRS's Implementation of FATCA Has in Some Cases Imposed Unnecessary Burdens and Failed to Protect the Rights of Affected Taxpayers*). See also Legislative Recommendation: *Chapter 3 and Chapter 4 Credits and Refunds: Protect Taxpayer Rights by Aligning the Rules Governing Credits and Refunds for Domestic and International Withholding*, *infra*.

ANALYSIS OF PROBLEM

Background

Individuals ineligible for an SSN, including residents and nonresidents for tax purposes, need an ITIN to file a tax return or be claimed on another person's return.⁹ Taxpayers without SSNs rely on ITINs to:

- File required tax returns if income is above the filing threshold and pay associated taxes;
- Claim tax benefits to which they are lawfully entitled, such as the dependency exemption¹⁰ and the Child Tax Credit;¹¹
- File joint returns or be claimed as dependents on the returns of primary taxpayers;
- Avoid mandatory withholding at the rate of 30 percent on certain payments of U.S. source income made by a foreign financial institution under the requirements of FATCA¹² and U.S. source income that is fixed, determinable, annual, or periodic;¹³
- File an election or apply for a withholding certificate under the Foreign Investment in Real Property Tax Act (FIRPTA) of 1980;¹⁴
- Claim tax treaty benefits to obtain reduced withholding rates; and
- Provide information to third parties such as financial institutions, requiring an ITIN for information reporting and withholding.

The ITIN population has changed significantly in recent years. In calendar year 2014, dependents comprised only 44 percent of ITIN applicants, compared to 68 percent of ITIN applicants in 2012.¹⁵ Spouses, who made up about six percent of ITIN applicants in 2012, made up over 13 percent in 2014.¹⁶

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- 9 Taxpayers are required by law to use a taxpayer identifying number on tax returns, statements, or other documents required to be filed, when prescribed by regulations, and the regulations specify that this number must be an SSN unless the individual is ineligible for an SSN or is required to use an employer identification number. Internal Revenue Code (IRC) § 6109(a)(1); Treas. Reg. § 301.6109-1(a)(1)(ii)(A). Form W-7, *Application for IRS Individual Taxpayer Identification Number*, is the application that taxpayers use to apply for an ITIN.
- 10 An individual may generally claim a dependency exemption amount for a child (or younger descendant or that of a sibling or step-sibling) under 19 (24 if a full-time student) sharing his or her home for over half the year and who is a U.S. citizen or national, or a resident of the U.S., Canada, or Mexico, or for a qualifying relative. See IRC §§ 151(c), 152(b), (c), (d). Note, however, that terms of tax treaties between the U.S. and foreign countries may provide for residents of those countries to claim a dependency exemption if they meet certain conditions. See, e.g., U.S.- Republic of Korea Income Tax Convention, Art. 4(7).
- 11 The Child Tax Credit and the refundable portion of it, known as the Additional Child Tax Credit, are generally available for children who meet the dependency exemption rules, with the additional requirement that they must also reside in the United States. See IRC § 24(a), (c), and (d).
- 12 Pub. L. No. 111-147, Title V, Subtitle A, 124 Stat. 71, 97 (2010). Under FATCA, participating foreign financial institutions (FFIs) who have reached agreements with the IRS to avoid being subject to systematic withholding must impose withholding on any of their own customers defined as “recalcitrant account holders.” IRC § 1471(b)(1)(D)(i). See IRC § 1471(d)(6) (definition of “recalcitrant account holder”). Financial customers must provide the FFI with either a Form W-9, to certify they are U.S. persons, or a Form W-8BEN, to certify they are foreign persons, both of which require an SSN or ITIN. Taxpayers without an SSN or an ITIN will generally be treated as recalcitrant account holders and will be subject to withholding undertaken by the FFI. IRS response to TAS information request (Nov. 1, 2013). See also Treas. Reg. § 1.1471-4.
- 13 See IRC § 1441.
- 14 Pub. L. No. 96-499, Subtitle C, 94 Stat. 2599, 2682 (1980). FIRPTA imposes income tax on foreign persons disposing of U.S. real property interests.
- 15 IRS, Compliance Data Warehouse (CDW), Form W-7 Database (data drawn Dec. 15, 2015). All numbers refer to year end data. See National Taxpayer Advocate 2013 Annual Report to Congress 216.
- 16 Detailed information from ITIN applications (Form W-7) for PY 2015 are not reported here due to a programming error that caused only about half of Form W-7 records being transferred to the IRS's CDW from the ITIN Real Time System (RTS). The IRS informed TAS that the corrected data for 2015 would not be available until early/mid 2016 and suggested that TAS exclude characteristics of 2015 Form W-7 applicants from this report. Form W-7 data for PY 2014 and prior years have been corrected.

ITIN applications submitted by nonresidents increased over eight percent between 2013 and 2014 (from 100,285 to 108,472), which might be driven in part by an increased number of taxpayers needing ITINs to comply with FATCA. ITIN filers were only slightly more likely to claim a refund than SSN taxpayers, and the average refund for ITIN filers was slightly less than the average refund for SSN filers during the last two years.¹⁷ In 2015, 4.4 million ITIN filers paid over \$5.5 billion in payroll and Medicare taxes and \$23.6 billion in total taxes.¹⁸

FIGURE 1.18.1, Type of ITIN Applicant and Country of Origin

Year	Total	Type of Applicant				Top Three Countries of Origin		
		Primary	Spouse	Dependent	Other	Mexico	Guatemala	India
2013	1,175,422	417,747	129,037	614,849	13,789	695,268	78,485	42,742
	100%	36%	11%	52%	1%	59%	7%	4%
2014	924,507	383,069	124,487	403,434	13,517	466,314	63,043	54,542
	100%	41%	13%	44%	1%	50%	7%	6%

FIGURE 1.18.2, Residency Status of ITIN Applicants and Application Exceptions¹⁹

Year	Total	Residency Status			Top Three Application Exceptions		
		Resident	Non-Resident	Other	Passive Income	Other Income	FIRPTA
2013	1,175,422	1,044,126	100,285	31,011	36,348	10,818	8,171
	100%	89%	9%	3%	3%	1%	1%
2014	924,507	781,650	108,472	34,385	32,243	13,265	9,728
	100%	85%	12%	4%	3%	1%	1%

17 IRS, CDW, Form 1040 Database (data drawn Dec. 15, 2015). All numbers refer to year end data except for 2015, which includes data through October 2015.

18 IRS, CDW, Form W-2 Database, Form 1040 Database (date drawn Dec. 16, 2015) (reflects data available from January to November 2015). An "ITIN filer" is defined as a tax return on which an ITIN was used for either the primary or secondary (e.g., spouse) filer or a dependent. The \$5.5 billion figure includes Federal Insurance Contributions Act (FICA) and Medicare taxes reported on Form W-2 by primary filers with an ITIN and primary filers with an SSN if the secondary filer or a dependent used an ITIN. This figure does not include FICA and Medicare tax paid by Form 1040 ITIN filers who used a different taxpayer identification number (e.g., SSN) on Form W-2. IRS, CDW, Form W-7 data.

19 IRS, CDW, Form W-2 Database, Form 1040 Database (date drawn Dec. 16, 2015).

FIGURE 1.18.3, Summary Characteristics of ITIN and Non-ITIN Filers²⁰

	2014		2015	
	ITIN	non-ITIN	ITIN	non-ITIN
Total Tax Returns	4,509,722	142,887,720	4,351,220	143,715,543
Returns with a Refund	3,582,839	111,415,130	3,429,365	110,734,488
	79%	78%	79%	77%
Returns with Balance Due	680,761	26,182,800	710,505	27,937,064
	15%	18%	16%	19%
Average Refund	\$2,904	\$3,321	\$2,896	\$3,363
Average Balance Due	\$2,011	\$5,332	\$2,089	\$5,566
Total Refund Amt (\$M)	\$10,405	\$370,040	\$9,931	\$372,429
Total Taxes Paid (\$M)	\$22,505	\$1,575,328	\$23,601	\$1,673,228
Taxes Withheld (\$M)	\$12,582	\$1,042,237	\$13,200	\$1,097,267

The inability to obtain ITINs leads to negative consequences for taxpayers, international businesses, and the IRS, as illustrated by the following examples:

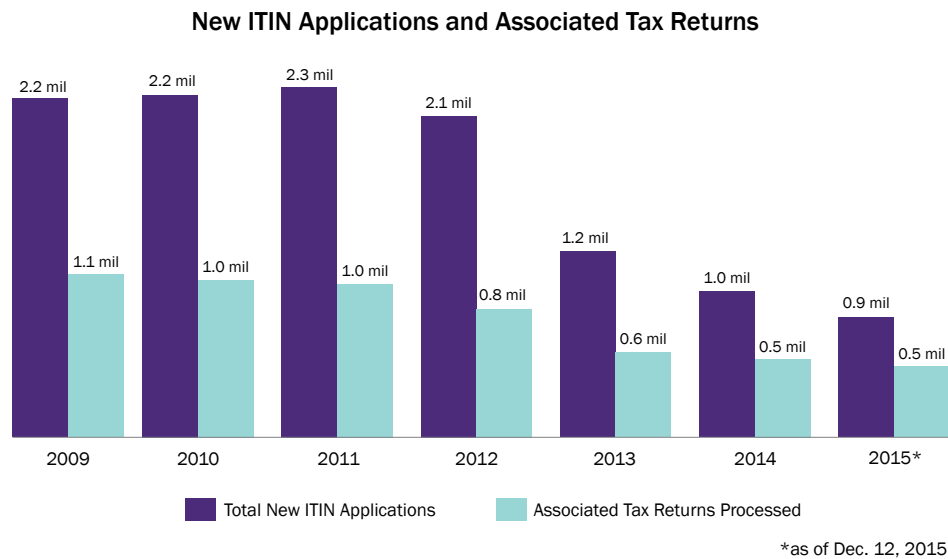
1. A foreign individual on a temporary (nonimmigrant) visa correctly obtains an SSN and pays taxes, as required, on the income earned working in the United States. His family undergoes financial hardship when he must forgo claiming the dependency exemption for his child and filing a joint return with his spouse, both residing in Mexico, because IRS procedures create barriers to them obtaining ITINs.²¹
2. A foreign investor who owns U.S. property applies for an ITIN six months in advance of an upcoming sale, leaving ample time for the IRS to process the ITIN and issue a withholding certificate. The IRS suspends her ITIN application without explaining why her supporting documents were insufficient. The investor delays the sale while she resubmits the same documents. By the time the IRS approves the ITIN application and the investor applies for and receives a withholding certificate, the sale has fallen through.
3. A resident for tax purposes, who is ineligible for an SSN, works as an independent contractor. He chooses not to file a tax return and pay taxes because he has witnessed others in his community who were unsuccessful in obtaining ITINs, even after paying certifying acceptance agents to assist them.

In 2012, TIGTA found the IRS's ITIN process was "so deficient that there is no assurance that ITINs are not being assigned to individuals submitting questionable applications."²² While concerns about refund fraud are legitimate, the IRS's disproportionately restrictive approach to issuing ITINs does not effectively target the fraud while needlessly burdening taxpayers and preventing those with a legitimate need for an ITIN from obtaining one. Beginning in 2012, the numbers of new ITIN applications and associated returns have fallen significantly as shown in Figure 1.18.4.

²⁰ IRS, CDW, Form 1040 Database (date drawn Dec. 16, 2015).

²¹ The documentation requirements for ITIN applications will be discussed below.

²² TIGTA, Ref. No. 2012-42-081, *Substantial Changes Are Needed to the Individual Taxpayer Identification Number Program to Detect Fraudulent Applications* 6 (July 16, 2012).

FIGURE 1.18.4, New ITIN Applications and Associated Returns in PYs 2009–2015²³

The Requirement to Apply for an ITIN During the Filing Season Burdens Applicants, Creates Delays, Leads to Lost Returns, and Hampers the IRS's Ability to Detect and Prevent Fraud

In 2003, despite the National Taxpayer Advocate's concerns about creating unnecessary administrative burden, the IRS began requiring most ITIN applications to be filed with a paper tax return during the filing season.²⁴ There are exceptions for nonresident individuals claiming the benefits of a tax treaty and having income, payments, or transactions subject to third-party reporting or withholding,²⁵ but these applicants are a minority.²⁶ ITIN applicants only have a short time to gather supporting documents and in many cases must give up original documents such as passports.²⁷ Some may not be able to apply for an ITIN at all if they are out of the country during the filing season and cannot send in their documents. Furthermore, filing an ITIN application with a return means applicants cannot electronically file their annual returns in the calendar year the ITIN is issued.

While this policy was ill-considered at its inception, the consequences have grown significantly worse. In 2003, the IRS processed ITIN applications in four to six weeks, and following the policy change, committed to two weeks.²⁸ During the 2015 filing season, the IRS advised taxpayers to wait up to 11 weeks,²⁹

23 IRS, *ITIN Comparative Reports* (weeks ending Dec. 12, 2015; Dec. 31, 2014; Dec. 31, 2013; Dec. 29, 2012; Dec. 31, 2011, Dec. 30, 2010, and Dec. 31, 2009).

24 See National Taxpayer Advocate 2003 Annual Report to Congress 60-86 (Most Serious Problem: *Individual Taxpayer Identification Number (ITIN) Program and Application Process*).

25 See Form W-7 instructions (Dec. 2014).

26 In PY 2014, about 56,700 out of 924,500 ITIN applicants (six percent) claimed an exception to filing with a tax return. IRS, CDW, Form W-7 Database (data drawn Oct. 19, 2015).

27 The documentation requirements for ITIN applications will be discussed below.

28 See National Taxpayer Advocate 2003 Annual Report to Congress 79.

29 See IRM Procedural Update WI-03-0215-0352 (Feb. 19, 2015), available at <http://www.irs.gov/pub/foia/ig/spder/WI-03-0215-0352%5b1%5d.pdf>.

and at one point had a backlog of nearly 120,000 ITIN applications with returns.³⁰ This results in ITIN taxpayers waiting up to 14 weeks to receive their refunds, contrasted with the up to three weeks taxpayers with SSNs must wait.³¹ The backlog also affected applicants who were exempt from the requirement to apply with a tax return.³²

When questioned about the cause of the extended timeframe and backlog, the IRS cited funding decreases, which resulted in the delayed return of seasonal tax examiners by 30 days, a shorter filing season, an inability to provide overtime pay, and an overall decrease in employees.³³ However, seasonal employees and overtime would not be necessary and the length of the season would be irrelevant if the IRS were to process ITIN applications throughout the year.³⁴ The IRS maintains, “Associating the issuance of the ITIN with the filing of a tax return is the only reliable method for the IRS to verify the number is being requested and properly used for tax administration purposes.”³⁵ However, in the case of a Form W-7 and Form W-2 name mismatch,³⁶ the IRS accepts copies of pay stubs or bank accounts as proof the income belongs to the applicant.³⁷ The IRS could accept these documents to determine that the taxpayer had a filing requirement and a proper tax administration purpose for an ITIN, throughout the year. This approach would acknowledge the need for a tax filing requirement, but balance the anti-fraud regime with the taxpayer’s need for a process no more intrusive than necessary.

Requiring ITIN applications to be filed with returns results in lost returns, and until a recent policy change, it also led to unprocessed returns. More than one Low Income Taxpayer Clinic (LITC)³⁸ has reported instances where the IRS processed an ITIN application, but lost the associated return, which was submitted shortly before the refund statute of expiration date (RSED).³⁹ Although the IRS does not keep records of lost return complaints,⁴⁰ allowing taxpayers to apply for an ITIN earlier, and later file annual returns, including the option to electronically file, would reduce the opportunity for returns to be lost.⁴¹

As a result of TAS’s advocacy, the IRS recently agreed to change its ITIN guidance and process all valid returns filed with an ITIN application. Prior to these changes, the Internal Revenue Manual (IRM) advised

30 IRS, *ITIN Production Report* (Mar. 28, 2015) showed 119,409 “applications [with return] awaiting input.” IRS, *ITIN Production Report* (Mar. 14, 2015) showed 3,075 “applications [without return] awaiting input.” IRM 3.21.263.8.3.1, *Preliminary W-7 Application Data Screen* (Sept. 4, 2014) instructs examiners to input as the IRS received date the stamped date or, if missing, the postmark or signature date, or the current date minus ten days.

31 See 2015 Tax Season Refund Frequently Asked Questions, available at <http://www.irs.gov/Refunds/Tax-Season-Refund-Frequently-Asked-Questions> (last updated Apr. 22, 2015).

32 The backlog led to a spike in the processing time for applications submitted without returns. At one point during the 2015 filing season, the IRS took approximately 35 days to process these ITIN applications, compared to 23 days in 2014. See IRS, *ITIN Production Report* (June 13, 2015).

33 See IRS response to TAS information request (Sept. 17, 2015).

34 IRS, *ITIN Production Report* (Mar. 28, 2015) showed 119,409 “applications [with return] awaiting input.” IRS, *ITIN Production Report* (March 14, 2015) showed 3,075 “applications [without return] awaiting input.” IRM 3.21.263.8.3.1, *Preliminary W-7 Application Data Screen* (Sept. 4, 2014) instructs examiners to input as the IRS received date the stamped date or, if missing, the postmark or signature date, or the current date minus ten days.

35 See National Taxpayer Advocate FY 2015 Objectives Report to Congress vol. 2, 87.

36 See Form W-7, *Application for IRS Individual Taxpayer Identification Number*, and Form W-2, *Wage and Tax Statement*. A name mismatch occurs when the taxpayer’s name on the Form W-7 is different from the taxpayer’s name on Form W-2.

37 See IRM 3.21.263.5.10.8, *Correspondence Inventory Procedures* (Aug, 18, 2014).

38 See IRC § 7526.

39 TAS conference call with LITCs (Nov. 19, 2014).

40 See IRS response to TAS information request (Sept. 17, 2015).

41 After an ITIN is assigned, the accompanying tax return is sent for processing and follows the same path as returns with SSNs, suggesting there may be a breakdown in the process between the time the ITIN is processed and the return is sent for processing. *Id.*

Accepting Individual Taxpayer Identification Number (ITIN) applications throughout the year would allow the IRS to apply greater scrutiny to applications where an ITIN is not needed until the filing season.

that if the income and identity cannot be validated, the return will not be processed,⁴² even if the return was a valid return under the *Beard* test.⁴³ This practice infringed a taxpayer's right to pay no more than the correct amount of tax because a properly executed return can constitute a claim for refund, and if the ITIN unit failed to send the return for processing and assign an identification number, the IRS may be unable to locate the return and thus argue no claim for refund was timely filed if the RSED has passed.⁴⁴ Furthermore, the IRS's prior practice impaired a taxpayer's right to be informed because the IRS did not notify taxpayers that their returns were not being processed. TAS persuaded the IRS to protect these rights by revising the IRM to process tax returns with an Internal Revenue Service Number (IRSN)⁴⁵ when they are received with an ITIN application and the IRS cannot verify that the applicant has satisfied the requirements to be assigned an ITIN.⁴⁶

Accepting ITIN applications throughout the year would allow the IRS to apply greater scrutiny to applications where an ITIN is not needed until the filing season. The IRS could prioritize those applications where an ITIN is needed immediately, such as for FATCA purposes. The IRS could prevent more fraud by having two separate opportunities to detect fraudulent income or identity theft — one at the time of the ITIN application, and again at the time of return filing. Currently, the IRS misses out on the benefit of identifying trends throughout the year and applying rules to detect later returns that are part of fraudulent schemes.

ITIN Applicants Are Subject to Unnecessary Burden and Risk Losing Their Identification Documents While the IRS Creates More Work for Itself By Not Providing Adequate Alternatives to Applicants Submitting Original Documents

Some of the most restrictive elements of the ITIN application procedures were implemented in 2012 in response to TIGTA's fraud concerns.⁴⁷ Applicants must either mail in original identification documents or copies certified by the issuing agency, use a Taxpayer Assistance Center (TAC) to certify their

42 IRM 3.21.263.5.10.8, *Correspondence Inventory Procedures* (Aug. 18, 2014). See also IRM 3.21.263.5.4.1, *Temporary W-7 Status and Final W-7 Status Screen* (Oct. 25, 2013); IRM 3.21.263.5.2.3.7, *Final Status Determination Used in Stripping Process* (Jan. 2, 2015); IRM 3.21.263.5.2.9, *Clerical Handling of Reject Status 98 Flagged 65 Day Purge, Reject Status 99 ITIN 0099 Report, Hard Reject 1 Letter 4939 Cases, and Form 4442* (Sept. 30, 2013).

43 For the tax return to be valid, it must: contain sufficient data to calculate a tax liability, purport to be a return, include an honest and reasonable attempt to satisfy the requirements of the tax law, and be signed under penalties of perjury. See *Beard v Commissioner*, 82 T.C. 766, 777 (1984), *aff'd per curiam*, 793 F.2d 139 (6th Cir. 1986).

44 IRM 3.21.263.7.3, *Refund Inquiries Involving ITIN Issues* (June 29, 2015) advises employees working refund inquiries where the ITIN application was rejected to research an internal database to locate an assigned IRSN, which is an identification number that would not be assigned if the return was not forwarded for processing.

45 An IRSN is a temporary number used in place of a taxpayer identification number such as an SSN or ITIN in order to process a return. IRM, 3.21.263.4.5, *Internal Revenue Service Number (IRSN)* (Jan. 1, 2015). An IRSN is used for processing purposes only and is not a substitute for an SSN or ITIN. IRM 3.13.5.73, *When IRSNs Are Needed* (Jan. 1, 2015).

46 See IRS response to TAS information request (Nov. 20, 2015). The IRS revised the following IRMs: IRM 3.21.263.4.8.3, *Hard Reject Reason Codes* (Nov. 25, 2015); IRM 3.21.263.5.4.1, *Temporary W-7 Status and Final W-7 Status Screen* (Nov. 25, 2015); IRM 3.21.263.5.10.8, *Correspondence Inventory Procedures* (Nov. 25, 2015); IRM 3.21.263.5.2.3.7, *Final Status Determination Used in Stripping Process* (Nov. 25, 2015); IRM 3.21.263.5.10.5, *Suspense Inventory Procedures* (Nov. 25, 2015). ITIN applicants whose ITIN applications are rejected and whose returns are processed with an IRSN receive a letter notifying them that an IRSN was assigned, as well as a letter explaining that a refund cannot be released for a taxpayer using an IRSN. See Letter 685C, *SSN Invalid* (Rev. Oct. 2007); IRM 3.13.5.72, *Assignment of Internal Revenue Service Numbers (IRSNs)* (Apr. 3, 2015). See also CP 54B, *Inquiry Regarding Name and SSN - Refund Delayed* (July 2013); IRM 3.13.5.127.1, *CP 54 Notices B, E, G and Q* (Jan. 1, 2015).

47 See TIGTA, Ref. No. 2012-42-081, *Substantial Changes Are Needed to the Individual Taxpayer Identification Number Program to Detect Fraudulent Applications* (July 16, 2012).

documents, or use a third-party certifying acceptance agent (CAA).⁴⁸ Mailing original documents is impractical for many applicants who cannot go without their original identification documents for multiple months. Furthermore, it results in some taxpayers not receiving their identification documents back. Although TAS receives cases from taxpayers trying to locate lost original documents, the ITIN unit does not track the volume of undeliverable or returned mail, the number of claims for lost documents, the success rate for finding them, or the cycle time for returning them to taxpayers.⁴⁹ Passports are especially problematic due to the need for taxpayers to have them back. In recent years, the number of original passports submitted with ITIN applications has skyrocketed, from about 55,000 in 2012, to approximately 334,000 in 2013, and approximately 390,000 in 2014.⁵⁰ From July 2014 to July 2015, the IRS returned 4,318 original passports to embassies, for which the IRS could not locate a better mailing address.⁵¹

The IRS is imposing a hardship on any ITIN applicant who is required to send original identification documents to the IRS and who does not have reasonable and accessible alternatives. Examples of the harm taxpayers face include a taxpayer who cannot travel abroad for a medical emergency⁵² or a taxpayer who risks detention because he is unable to provide his identification documents to local law enforcement.⁵³ The IRM only provides for the expedited return of original documents in cases where TAS issues a request to the ITIN Unit based on the taxpayer's hardship.⁵⁴ Requiring a taxpayer to work with TAS to provide evidence of a hardship is unnecessary and a waste of time and resources because any taxpayer who is forced to give up his or her original identification documents experiences a hardship as a matter of policy. The IRS has objected to returning all original documents via expedited mail due to the additional cost, which it estimates to be in the millions of dollars.⁵⁵ However, if the IRS were to provide reasonable and accessible alternatives to sending in original documents, additional costs would be minimal due to the small number of applicants required to send their original documents to the IRS.

ITIN Authenticating TACs, which provide an alternative to giving up original documents, are a poor option for many because they can only approve two types of supporting documentation — passports and national identification cards.⁵⁶ As of September, 2015, there were 186 TACs offering ITIN authentication, with seven temporarily unavailable.⁵⁷ Some states had no TACs offering ITIN document

48 See IRS, IR-2012-98, *IRS Strengthens Integrity of ITIN System; Revised Application Procedures in Effect for Upcoming Filing Season* (Nov. 29, 2012), available at <http://www.irs.gov/uac/Newsroom/IRS-Strengthens-Integrity-of-ITIN-System;Revised-Application-Procedures-in-Effect-for-Upcoming-Filing-Season>. However, CAAs may not certify documents for dependents, who comprise the bulk of ITIN applicants.

49 Claims for lost identification documents are processed by the IRS Office of Chief Counsel, General Legal Services. IRS response to TAS information request (Sept. 17, 2015).

50 IRS, CDW, Form W-7 Visa Database (data drawn Oct. 20, 2015).

51 See IRS response to TAS information request (Sept. 17, 2015).

52 See National Taxpayer Advocate 2013 Annual Report to Congress 223.

53 See *id.*

54 See IRM 3.21.263.4.10, *Taxpayer Advocate Service (TAS) Assistance* (Oct. 19, 2015); IRM 3.21.263.5.3.4.2.4, *Returning Original Supporting Identification Documents to Applicant* (Oct. 19, 2015).

55 See conference call between TAS and IRS Wage and Investment, discussing *Authenticating Identification Documents at SPEC CAA VITA Sites* (Oct. 29, 2015).

56 IRS, Individual Taxpayer Identification Number (ITIN) Authenticating Taxpayer Assistance Centers, available at <http://www.irs.gov/uac/ITIN-Authenticating-TACs-Link> (last updated Dec. 7, 2015).

57 IRS, Taxpayer Assistance Center Locations Where In-Person Document Review Is Provided, available at <http://www.irs.gov/uac/TAC-Locations-Where-In-Person-Document-Verification-is-Provided> (last updated September 28, 2015).

Under the IRS's one-size-fits-all approach for Individual Taxpayer Identification Numbers (ITINs), a taxpayer trying to open a bank account abroad must meet the same arduous requirements for original documents (without the benefit of Taxpayer Assistance Centers and certifying acceptance agents) and wait just as long for an ITIN as a taxpayer claiming refundable credits, whose income and filing requirement would be subject to greater scrutiny.

authentication services,⁵⁸ and some larger states only had them located in a single metropolitan area.⁵⁹ Furthermore, taxpayers may face extreme waits at TACs, having to line up hours before they open to receive service.⁶⁰ Some taxpayers may not receive ITIN service from a TAC at all, due to reduced hours and appointment times, and limitations on how many new ITIN applications will be worked.⁶¹ Many TACs require a valid U.S.-issued ID just to enter the building, making them completely unavailable to many applicants.⁶² Qualified Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) sites also certify ITIN documents for free, but they have only 117 locations with CAAs, they cannot certify for dependents, and may operate only a few months each year.⁶³

Using CAAs is not only cost-prohibitive for some,⁶⁴ but completely unavailable to approximately 44 percent of ITIN applicants because they cannot be used by dependents.⁶⁵ Allowing dependents to use CAAs may actually reduce fraud because CAAs often have specialized knowledge of identification documents used in certain communities and regions, and can assist the IRS in identifying fraud. Furthermore, it would save the IRS resources because applications would likely have fewer errors as a result of the CAA's expertise, thus reducing the number of applications that must be suspended and that require correspondence with the taxpayer. Increasing eligibility for CAA services would also reduce the burden on TACs, allowing them to refocus scarce resources.

In 2015, the IRS initiated a pilot to test allowing three VITA CAA sites to certify documents for dependents, limited to only passports and national I.D. cards.⁶⁶ Although the National Taxpayer Advocate is encouraged that the IRS is exploring alternative methods for dependents to have their documents certified, the pilot is structured such that its effect on applicants, and specifically on the number of applicants who submit original documents, will be minimal.

Even if the pilot is successful and leads to the IRS allowing all 128 VITA/TCE sites with CAAs to certify dependent documents, the pilot would likely only provide significant benefits to the IRS by reducing

58 Neither Montana nor Wyoming have any TACs offering ITIN certification.

59 For example, the only TACs offering ITIN services in Minnesota were in Minneapolis, St. Paul, or Bloomington, which are all part of the Minneapolis metropolitan area.

60 The IRS Commissioner expressed dismay upon hearing reports of taxpayers lining up hours before TACs opened in order to receive service during the 2015 filing season. See *Hearing before the H. Ways and Means Comm., Subcomm. on Oversight on the 2015 Tax Filing Season*, 114th Cong. (2015) (Statement of John Koskinen, IRS Commissioner).

61 One submitter to TAS's Systemic Advocacy Management System (SAMS) reported that the local TAC only gives out 12-15 tokens for new ITIN applications per day, which can only be used on weekdays and would require the submitter to pull children out of school to apply for an ITIN. SAMS Submission # 32537 (submitted March 9, 2015) (on file with TAS).

62 See National Taxpayer Advocate 2012 Annual Report to Congress 176. Representatives of LITCs raised concerns about the requirement of many TACs or federal buildings in which some TACs are located to produce a valid, U.S.-issued ID to enter the building. 2013 Annual LITC Grantee Conference, Recent Developments in IRS Policies and Procedures Related to ITIN Applications, panel discussion (Dec. 6, 2012).

63 See IRS, *List of SPEC Acceptance Agents*, available at http://win.web.irs.gov/spec/spec_ITIN.htm (last updated Dec. 5, 2015).

64 According to CAA websites with fee schedules posted, fees for ITINs applications prepared by CAAs can range in the hundreds of dollars for a single ITIN application.

65 IRS, CDW, Form W-7 Database for PY 2014 (data drawn Dec. 15, 2015).

66 See IRS, Authenticating Identification Documents for Dependents at SPEC CAA VITA Sites (Oct. 29, 2015) (on file with TAS).

the strain on TACs. While it may reduce burden for taxpayers who are already eligible to use TACs, the pilot is unlikely to decrease the number of taxpayers forced to send in original identification documents. Under the current system, dependent applicants are likely to send in original documents because either they live in a location where there is not an accessible TAC (making it unlikely there is an accessible VITA/TCE site), or they need to use documents other than a passport or national I.D. card to prove their identities. Without expanding the pilot to include all CAAs (not just VITA/TCE sites), and without allowing CAAs to approve all 13 types of documents for dependents, these applicants will still need to mail in original documents. Furthermore, because ITIN applicants in the pilot must meet the income eligibility requirements for the VITA sites, the benefits are further limited to only those taxpayers who generally make \$54,000 or less, have a disability, are elderly, or have limited English.⁶⁷ Because dependent applicants are required to file ITIN applications with a tax return,⁶⁸ and generally do so during the filing season, the National Taxpayer Advocate hopes the IRS will extend the pilot through the filing season in order to obtain a full picture of how the pilot will affect dependent applicants.

In late December of 2015, Congress amended Internal Revenue Code (IRC) § 6109 to provide special rules for the issuance of ITINs.⁶⁹ The new law provides that the IRS may issue an ITIN to an applicant residing in the United States if the applicant provides the documentation required by the IRS either (a) in person to an IRS employee or to a community-based certified acceptance agent (as authorized by the IRS), or (b) by mail.⁷⁰ For applicants residing outside the United States, they must submit their applications either by mail, to an IRS employee, or to a designee of the Secretary at a U.S. diplomatic mission or consular post.⁷¹ It allows the IRS to establish documentation requirements for ITIN applicants to prove identity, foreign status, and residency.⁷² However, the IRS may only accept “original documents or certified copies meeting the requirements of the Secretary.”⁷³ This language gives the IRS the latitude to provide a number of alternatives to accepting only original documents or copies certified by the issuing agency. When implementing the law, the IRS should use this opportunity to study the additional types of certified copies that may meet its requirements; for example, copies certified by state or other federal agencies other than the issuing agency, clerks of courts, notarized copies, and copies that are properly apostilled and authenticated by U.S. diplomatic missions abroad.⁷⁴

Furthermore, the law provides no limitations on what documents can be certified by a CAA and whether a CAA can certify dependents’ documents. Finally, the law envisions an expansion of the CAA program, which the National Taxpayer Advocate hopes the IRS will fully carry out.⁷⁵ The law lists persons eligible to be acceptance agents, which includes among others, state and local governments, federal agencies, and

67 See IRS, Free Tax Return Preparation for Qualifying Taxpayers, available at <https://www.irs.gov/Individuals/Free-Tax-Return-Preparation-for-You-by-Volunteers> (last updated Oct. 26, 2015).

68 See Form W-7, *Application for IRS Individual Taxpayer Identification Number Instructions* (Dec. 2014). The pilot was originally scheduled to run from September through December 2015. See IRS, Authenticating Identification Documents for Dependents at SPEC CAA VITA Sites (Oct. 29, 2015) (on file with TAS).

69 See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, § 203(a) (2015) (to be codified at IRC § 6109(i)).

70 See *id.* (to be codified at IRC § 6109(i)(1)(A)).

71 See *id.* (to be codified at IRC § 6109(i)(1)(B)).

72 See *id.* (to be codified at IRC § 6109(i)(2)(A)).

73 See *id.* (to be codified at IRC § 6109(i)(2)(B)).

74 For detailed information, see U.S. Department of State, Authentications and Apostilles, available at <http://travel.state.gov/content/travel/en/legal-considerations/judicial/authentication-of-documents/notarial-and-authentication-apostille.html> (last visited on Dec. 18, 2015). See also Convention of 5 October 1961 Abolishing the Requirement of Legalization for Foreign Public Documents, available at <https://www.hcch.net/en/instruments/conventions/full-text/?cid=41> (last visited Dec. 18, 2015).

75 See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, § 203(c) (2015).

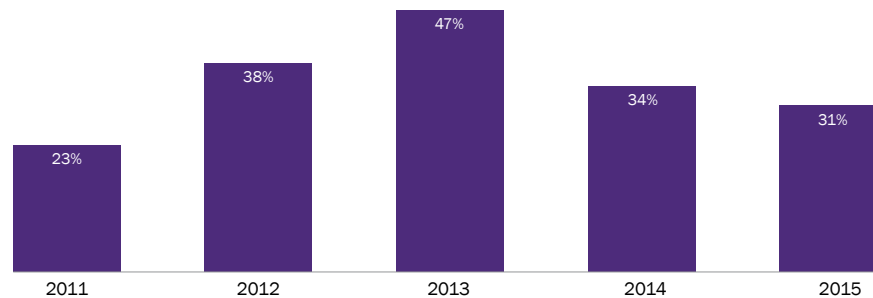
other persons or categories authorized by regulations or IRS guidance.⁷⁶ In addition, as part of a required study on the effectiveness of the application process for ITINs, the IRS must evaluate ways to expand the geographic availability of CAAs and strategies to work with other federal agencies, state and local governments, and other organizations to encourage participation in the CAA program.⁷⁷ The IRS should use the study to explore accessible alternatives to submitting original documents under its current policy. The IRS also should collaborate with TAS on developing criteria for this study, and include a TAS representative on the study team.

Combined, the Requirements for Most Applicants to Apply for an ITIN During the Filing Season and Send Original Documents May Contribute to Errors on the Parts of the ITIN Unit and Applicants, Resulting in Growing Suspension and Rejection Rates

The compressed timeline for reviewing documents during the filing season encourages errors by the ITIN unit and leads to the use of seasonal employees, who may have less experience and expertise in reviewing ITIN applications. The timeline also leads to errors by applicants who have less time to put together applications. The rate for ITINs rejections is unacceptably high, with almost a third of applications rejected during the past two years, as shown in Figure 1.18.5.

FIGURE 1.18.5⁷⁸

Percent of Rejected ITIN Applications in PYs 2011-2015



It is likely that the original documents requirement contributed to the spike in rejections in 2013, as a result of taxpayers sending in incomplete applications or failing to meet the IRS's standards for original documents. During the last two processing years, the number one reason for suspended applications was documentation that did not meet IRS criteria as shown in Figure 1.18.6.

76 See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, § 203(c) (2015).

77 See *id.* at § 203(d).

78 IRS, *ITIN Comparative Reports* (Nov. 21, 2015, Dec. 31, 2014; Dec. 29, 2012).

FIGURE 1.18.6, Top Five Reasons for Suspended ITIN Applications⁷⁹

Suspense Codes	2014	Jan. 1 - July 31, 2015
S02 – Valid documentation (<i>i.e.</i> , didn't meet IRS criteria)	97,762	70,259
S26 – Passport	33,543	26,469
S03 – Identification documents must be an original or certified by the issuing agency	31,218	22,317
S36 – School Record	29,442	20,337
S30 – Medical Record (under 6)	28,826	19,003

A frequent practitioner complaint is the IRS's suspending or rejecting applications with legitimate supporting documents. One LITC reported that over 25 percent of its ITIN applications were either suspended or rejected outright, despite being reviewed and certified by an on-site CAA and having no errors.⁸⁰ In one case the IRS asked for a passport to be resubmitted, even though a valid passport was certified by a CAA, meaning an original passport did not need to be submitted. Although the rejection rate has improved since 2013, errors by applicants and the IRS are likely as long as most ITIN applications must be filed during the filing season and include original documents.

Taxpayers Abroad Needing ITINs for Information Reporting Purposes Are Especially Burdened by the ITIN Requirements and Procedures

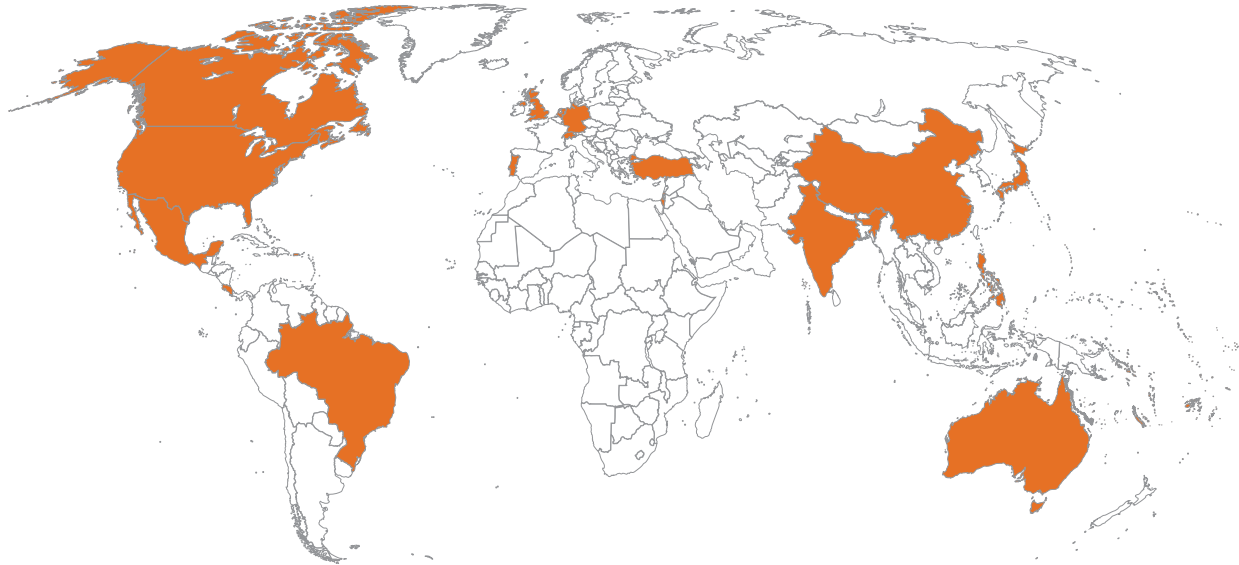
As a result of the procedures, ITIN applicants abroad often must mail their documents internationally and go without them for an extended time. Taxpayers abroad do not have the benefit of TACs, which allow applicants in the United States to avoid sending in original documents. The IRS attaché offices abroad used to be able to certify ITIN applications, but all four were closed in 2015.⁸¹ Currently, applicants abroad have limited CAA options, with CAAs in only 18 countries (Macau and Hong Kong are counted as part of China) and one U.S. territory as shown in Figure 1.18.7.⁸²

79 IRS response to TAS information request (Sept. 17, 2015). Data for PY 2015 was only available for the first half of the year.

80 The Clinic reported this information on TAS's SAMS. See SAMS Issue # 33030 (submitted June 1, 2015) (on file with TAS).

81 See Most Serious Problem: *International Taxpayer Service: The IRS's Strategy for Service on Demand Fails to Compensate for the Closure of International Tax Attaché Offices and Does Not Sufficiently Address the Unique Needs of International Taxpayers*, *supra*.

82 The IRS has indicated that there are 18 countries (Macau and Hong Kong are counted as part of China) and one U.S. territory with a CAA. However, the *irs.gov* website only lists 17 countries outside the United States with CAAs because the *irs.gov* website is available to the general public, and only CAAs requesting to be posted on this website are listed. See IRS response to TAS fact check (Dec. 11, 2015). See IRS, available at <https://www.irs.gov/Individuals/Acceptance-Agent-Program> (last visited Nov. 23, 2015).

FIGURE 1.18.7⁸³**Map of Countries with CAAs**

Furthermore, some of the largest countries with CAAs only have one or two in the entire country.⁸⁴ The recently passed law amending IRC § 6109, referenced above, includes federal agencies in its list of persons eligible to be CAAs,⁸⁵ but the law also dictates that applicants residing abroad will not have the option of submitting their applications through a CAA at all because they are limited to submitting them by mail, to an IRS employee, or to a designee of the Secretary at a U.S. diplomatic mission or consular post.⁸⁶ Furthermore, the expanded program for training and approving CAAs under the new law is only for the purposes of applicants residing in the United States.⁸⁷ It is incumbent upon the IRS to provide alternatives for applicants residing abroad to provide certified copies outside of using a CAA.

The recent law authorizes the IRS to accept ITIN applications at a U.S. diplomatic mission or consular post.⁸⁸ The National Taxpayer Advocate hopes the IRS will start allowing U.S. embassies and consulates abroad to certify documents in a manner similar to a CAA. Currently, there are 275 U.S. consulates and embassies that provide a similar service for SSN applicants by conducting an in-person interview, certifying original identification documents such as birth certificates and passports, and referring the

83 IRS, available at <https://www.irs.gov/Individuals/Acceptance-Agent-Program> (last visited Nov. 23, 2015). The figure only shows 17 of the 20 countries (in addition to the United States) that have CAAs because the other three countries with CAAs are those where the CAAs have not requested to be posted on the [irs.gov](https://www.irs.gov/Individuals/Acceptance-Agent-Program) website available to the public.

84 Brazil has only one CAA and India has only two. IRS, Acceptance Agent Program, available at <https://www.irs.gov/Individuals/Acceptance-Agent-Program> (last visited Nov. 23, 2015).

85 See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, § 203(c) (2015). This section defines federal agencies according to the definition in IRC § 6402(h), which provides “the term ‘Federal agency’ means a department, agency, or instrumentality of the United States, and includes a Government corporation (as such term is defined in section 103 of title 5, United States Code).

86 See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, § 203(a) (2015) (to be codified at IRC § 6109(i)(1)(B)).

87 *Id.*

88 *Id.*

applications with copies of the documents to a Federal Benefits Unit.⁸⁹ Thus, the Department of State could certify documents for ITIN applicants in its missions abroad following established procedures.⁹⁰

Applicants abroad also face the same timeframe as applicants applying during the filing season, which was 11 weeks in 2015, even if they are subject to an exception such as for FIRPTA or FATCA purposes and apply for an ITIN outside the filing season.⁹¹ Under the IRS's one-size-fits-all approach for ITINs, a taxpayer trying to open a bank account abroad must meet the same arduous requirements for original documents (without the benefit of TACs and CAAs) and wait just as long for an ITIN as a taxpayer claiming refundable credits, whose income and filing requirement would be subject to greater scrutiny. This process creates unnecessary barriers to commerce.

Future Requirements for Deactivating ITINs Will Deprive Some Taxpayers of ITINs They Need for Tax Administration Purposes, and the IRS Policy Will Undermine Taxpayers' Right to Be Informed

The IRS's deactivation plan will seriously infringe a taxpayer's right to be informed because the IRS will not provide advanced notification to taxpayers' last known address prior to deactivating their Individual Taxpayer Identification Numbers (ITINs).

The National Taxpayer Advocate has long advocated for the IRS to create a process for deactivating ITINs that are no longer used for tax administration purposes and is pleased the IRS and Congress have finally adopted her recommendation.⁹² However, she has concerns about how the deactivation plan will be carried out according to the requirements of the recently passed law and the IRS's implementation plans. Under the new law, ITINs issued during 2013 and later will remain in effect unless the individual to whom the ITIN was issued fails to file a tax return or be claimed as a dependent on another's tax return during a period of three consecutive years.⁹³ Before this law was passed, the IRS had announced its own deactivation plan, which would deactivate ITINs after five consecutive years of non-use.⁹⁴ The National Taxpayer Advocate was concerned that the IRS refused to clarify whether ITINs included on a third-party information return would constitute use for tax purposes during the period, such that it would prevent deactivation.⁹⁵ She is equally concerned that the new law does not take into account an information return filed by a third party that lists an individual's ITIN. The deactivation requirements included in the amendment to IRC § 6109 will lead to countless problems down the road for individuals who need an ITIN in order to provide it to a third party for information reporting purposes, but who may not have a tax return filing obligation and thus would not file during a three-year period. For example, the ITIN may be used on an interest-bearing financial account, but the taxpayer's income is below the filing threshold.

89 See email from Department of State governmental liaison to TAS (Sept. 9, 2015) (on file with TAS); email from Social Security Administration governmental liaison to TAS (Sept. 23, 2015) (on file with TAS).

90 For detailed information, see U.S. Department of State, Authentications and Apostilles, available at <http://travel.state.gov/content/travel/en/legal-considerations/judicial/authentication-of-documents/notarial-and-authentication-apostille.html> (last visited Dec. 18, 2015). Foreign Public Documents, available at <https://www.hcch.net/en/instruments/conventions/full-text/?cid=41> (last visited Dec. 18, 2015).

91 See IRM Procedural Update WI-03-0215-0352 (Feb. 19, 2015), available at <http://www.irs.gov/pub/foia/ig/spder/WI-03-0215-0352%5b1%5d.pdf>.

92 See, e.g., National Taxpayer Advocate 2010 Annual Report to Congress 333; National Taxpayer Advocate 2008 Annual Report to Congress 130.

93 See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, § 203(a) (2015) (to be codified at IRC § 6109(i)(3)).

94 See IRS, IR-2014-76, *Unused ITINs to Expire After Five Years; New Uniform Policy Eases Burden on Taxpayers, Protects ITIN Integrity* (June 30, 2014), available at <https://www.irs.gov/uac/Newsroom/Unused-ITINs-to-Expire-After-Five-Years%3B-New-Uniform-Policy-Eases-Burden-on-Taxpayers,-Protects-ITIN-Integrity>

95 See IRS response to TAS information request (Sept. 17, 2015).

The IRS's deactivation plan will seriously infringe a taxpayer's *right to be informed* because the IRS will not provide advanced notification to taxpayers' last known address prior to deactivating their ITINs.⁹⁶ Although the IRS will communicate information on its website and to CAAs about the deactivation plan, it will only notify taxpayers of a deactivated ITIN and provide guidance about how to reactivate it upon submission of a return and on settlement notices.⁹⁷ This shortsighted policy will undoubtedly harm taxpayers who will not learn that they need to reapply for an ITIN until after they have already filed their returns and are awaiting refunds. Taxpayers who are traveling away from a CAA or TAC, or who do not have in their possession or cannot give up their original identification documents, may be unable to reapply for ITINs and receive their refunds. If these taxpayers were notified in advance, they could plan accordingly, or challenge the deactivation if they believed it was in error. This policy will result in more work for the IRS because it will need to process the returns under IRSNs and later merge them to the taxpayers' reactivated ITINs.

CONCLUSION

The IRS continues to make it exceedingly difficult for taxpayers needing ITINs to comply with their tax filing and payment obligations. Until the IRS makes some significant changes in how applicants apply and how it processes ITIN applications, taxpayers may be further encouraged to stop filing returns or be prevented from receiving tax benefits to which they are lawfully entitled. Furthermore, barriers to commerce will only grow as more people will need ITINs to comply with FATCA.⁹⁸ Increased enforcement as a result of FATCA necessitates better ITIN procedures that encourage, not hamper, taxpayers' ability to comply with the tax laws.

96 See IRS response to TAS information request (Sept. 17, 2015).

97 See *id.*

98 See National Taxpayer Advocate FY 2016 Objectives Report to Congress 48-52 (Area of Focus: *The IRS's Implementation of FATCA Has in Some Cases Imposed Unnecessary Burdens and Failed to Protect the Rights of Affected Taxpayers*). See also Legislative Recommendation: *Chapter 3 and Chapter 4 Credits and Refunds: Protect Taxpayer Rights by Aligning the Rules Governing Credits and Refunds for Domestic and International Withholding*, *infra*.

RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS:

1. Allow all ITIN applicants to apply for an ITIN at any time of the year without submitting a tax return as long as they provide other evidence of a legitimate tax administration purpose for the ITIN.
2. Accept documentation such as pay stubs or bank statements as evidence of a filing requirement and thus evidence of a legitimate tax administration purpose for an ITIN.
3. Return by expedited mail all original identification documents sent to the IRS.
4. Allow TACs to certify all types of identification documents for ITIN applicants.
5. Allow CAAs to certify all types of identification documents for dependent ITIN applicants.
6. Expand the VITA CAA pilot to include CAAs who are not VITA/TCE sites and allow them to certify all types of identification documents for all ITIN applicants.
7. Partner with the Department of State to provide certification of ITIN applications at U.S. embassies and consulates abroad.
8. Collaborate with TAS on developing criteria for the ITIN study required by law, and include a TAS representative on the study team.
9. Notify all taxpayers at their last known address at least three months prior to the deactivation of their ITINs and provide guidance for how to reactivate the ITIN or challenge a deactivation the taxpayer believes is in error.