

**MSP  
#4****REVENUE PROTECTION: Hundreds of Thousands of Taxpayers File Legitimate Tax Returns That Are Incorrectly Flagged and Experience Substantial Delays in Receiving Their Refunds Because of an Increasing Rate of “False Positives” Within the IRS’s Pre-Refund Wage Verification Program****RESPONSIBLE OFFICIAL**

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**TAXPAYER RIGHTS IMPACTED<sup>1</sup>**

- *The Right to Be Informed*
- *The Right to Quality Service*
- *The Right to Challenge the IRS’s Position and Be Heard*
- *The Right to Privacy*
- *The Right to a Fair and Just Tax System*

**DEFINITION OF THE PROBLEM**

In general, the IRS uses the Pre-Refund Wage Verification Program (hereinafter - Income Wage Verification or IWV) to temporarily freeze an individual’s refund (also called “refund holds”) when it detects potentially false wages and withholding. The National Taxpayer Advocate first expressed concerns with the IRS’s inability to properly identify, process, and timely release refund freezes in 2003.<sup>2</sup> Despite certain improvements, such as technological advances, and procedural and policy changes, the IRS’s screening processes in this program continue to harm taxpayers with legitimate returns. For example:

- TAS’s analysis of the population of taxpayers filing for tax year (TY) 2014, whose returns the Electronic Fraud Detection System (EFDS) selected for review in 2015 (through October), showed that nearly 180,000 such taxpayers who finally received their refunds experienced delays of nearly 18 weeks on average.
- EFDS had a “false positive” rate of almost 35 percent in fiscal year (FY) 2015.<sup>3</sup>
- In 2015, the IRS moved potential identity theft returns identified by EFDS from the IWV to the Taxpayer Protection Program (TPP) for processing. The TPP’s false positive rate jumped from 19.8 percent in calendar year (CY) 2014 to 36.2 percent in CY 2015, while the Level of Service

1 See Taxpayer Bill of Rights, available at [www.TaxpayerAdvocate.irs.gov/taxpayer-rights](http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights).

2 The National Taxpayer Advocate initially expressed concerns regarding the increase in Criminal Investigation (CI) control, or “freeze,” by the IRS’s CI Fraud Detection Units in her 2003 Annual Report to Congress. See National Taxpayer Advocate 2003 Annual Report to Congress 175 (Most Serious Problem: *Criminal Investigation Freezes*). This program preceded the current IWV Program operated by the IRS’s Integrity & Verification Operation unit.

3 A false positive occurs when a system selects a legitimate return and delays the refund past the prescribed review period. IRS response to TAS information request (Oct. 20, 2015). The IRS did not track the false positive rates, also called detection rates, for EFDS. However, in FY 2015, it began tracking the false positive rate for EFDS related to the TPP.

(LOS) for taxpayers trying to contact the IRS to verify their identity plummeted. At one point during the peak of the filing season, only one out of ten calls got through to a live assistor.<sup>4</sup>

- The IRS also increased the testing of another application it uses to detect identity theft or fraud, the Return Review Program (RRP), which experienced an over 500 percent increase in stopping legitimate tax returns this year.

The workload in the Integrity & Verification Operation (IVO) unit, which operates the IWV program, decreased by 47 percent in CY 2015. Yet TAS received 36,752 IWV cases in the first nine months of CY 2015, or nearly 15 percent more as compared to the prior year, making it the second most common reason taxpayers came to TAS. TAS provided full or partial relief for almost four out of five taxpayers who contacted TAS about delayed refunds flagged under the IWV program and IWV holds, spending an average of 8.2 weeks to resolve these cases.<sup>5</sup>

The National Taxpayer Advocate acknowledges that any effective screening method will result in false positives, no matter how well designed. However, the high false positive rates in all of these programs are unnecessarily high; moreover, she remains concerned that:

- The IRS does not track the false positive rates for the IWV program, and thus, is unable to determine the precise filters or screens stopping legitimate refunds;
- The IRS does not have adequate procedures to promptly review and adjust its fraud detection filters, rules, and models; and
- Taxpayers whose refunds are frozen by the IWV program cannot reach a live assistor in the IVO unit.

These shortcomings burden taxpayers whose legitimate refunds are substantially delayed. As a result, the taxpayers' *rights to be informed, to quality service, to challenge the IRS's position and be heard, to privacy, and to a fair and just tax system* are jeopardized.

## ANALYSIS OF PROBLEM

### Background

The return integrity program, a process critical to the IRS's strategy to address identity theft and detect and prevent improper fraudulent refunds, is complex and multifaceted.<sup>6</sup> The Return Integrity & Compliance Services (RICS) IVO — a part of the Wage & Investment (W&I) Division — uses filters, rules, data mining models, and manual reviews to identify potentially false returns, usually through wages or withholding reported on the returns, to stop fraudulent refunds before the IRS issues them.<sup>7</sup> It electronically screens tax returns using three independent systems: the Dependent Database (DDb), the RRP, and the EFDS. If one of the systems flags a return as potentially fraudulent, the return goes to the TPP or the IWV program. Figure 1.4.1 provides a simplified flow chart of the complicated processes IVO uses to screen returns claiming refunds.

4 See Most Serious Problem: *Identity Theft (IDT): The IRS's Procedures for Assisting Victims of IDT, While Improved, Still Impose Excessive Burden and Delay Refunds for Too Long*, *infra*.

5 Data obtained from the Taxpayer Advocate Management Information System (TAMIS) (Oct. 6, 2015). Closed IVO refund holds cases through Sept. 30, 2015 were open an average of 58.33 days. TAS Case Assistance by Issue Code (CABIC) 045.

6 IRM 25.25.1.1 (Feb. 19, 2015).

7 IRM 25.25.2.1(1) (Aug. 20, 2015).

Flow Chart of Refund Return Processing in IVO

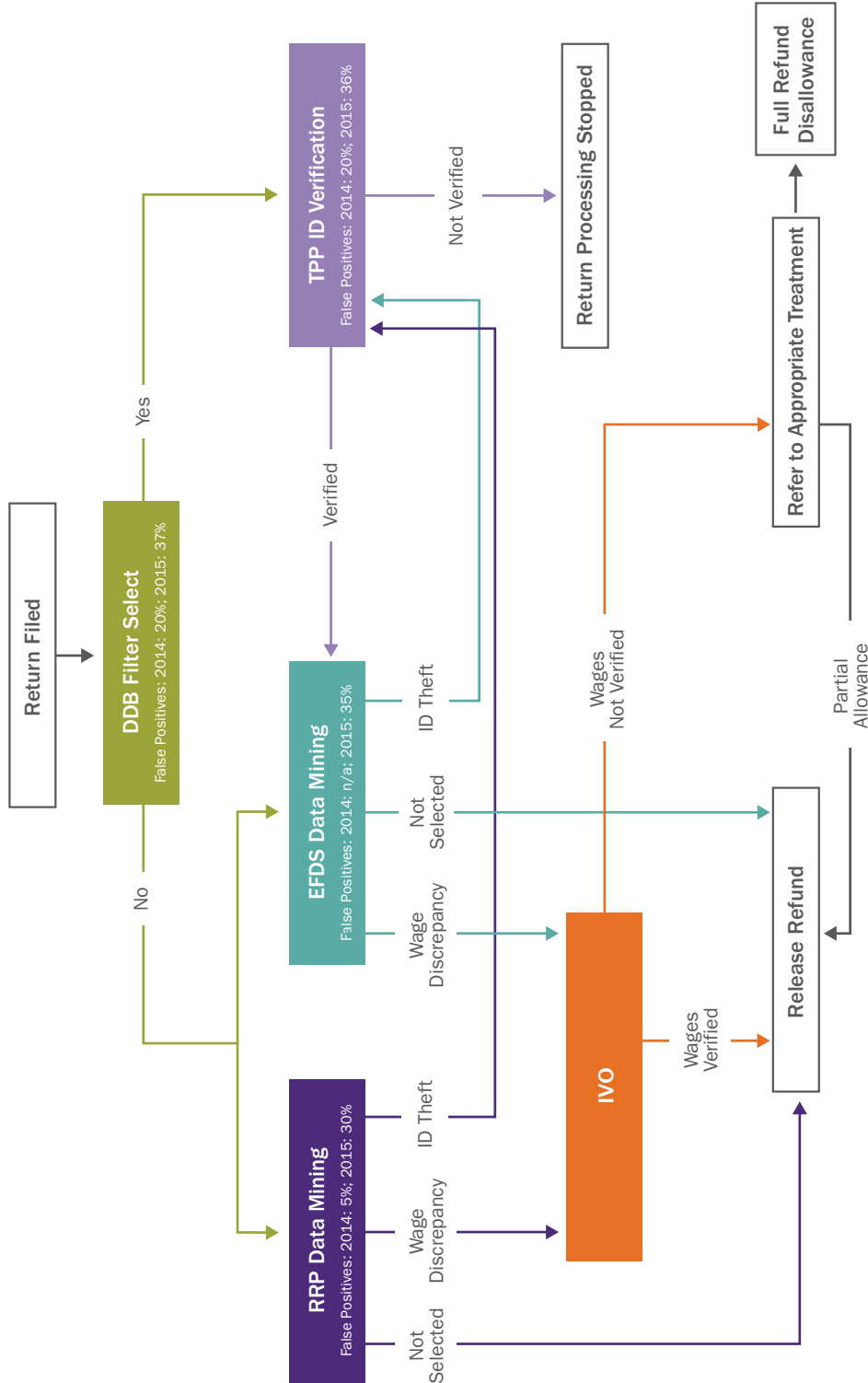


FIGURE 1.4.1

### *Taxpayer Protection Program*

The TPP uses the DDb to look for returns that exhibit characteristics of identity theft. When it deems a taxpayer's return suspicious, the TPP freezes the return and advises the taxpayer via letter he or she must authenticate his or her identity by calling the TPP toll-free number or self-authenticate through the TPP's Out of Wallet website.<sup>8</sup> If the taxpayer is unable to authenticate, the IRS does not process his or her return, and the taxpayer may have to provide additional information, including a paper copy of the return filed.<sup>9</sup> In addition to the DDb, IRS analysts manually select returns using pattern-matching techniques to detect potential identity theft returns in mass batches. TPP has had a significant increase in its false positive rates, from 19.8 percent in CY 2014 to 36.2 percent in CY 2015 (year to date).<sup>10</sup> According to the IRS, the TPP stopped almost two million refunds in CY 2015, compared to almost 1.6 million refunds stopped in CY 2014.<sup>11</sup>

### *IWV Program*

Next, the IRS processes returns claiming refunds, and it sends them through the EFDS. EFDS uses data mining models to score each Form W-2 and 1099 on refund returns for fraud potential based on business rules that consider return and filing characteristics.<sup>12</sup> For returns that score high enough on the EFDS, the IRS places an indicator on the account and delays posting for two weeks.<sup>13</sup> It sends potential identity theft returns back to the TPP and potentially fraudulent income/withholding returns to IVO for income verification. If the EFDS does not select returns, it posts and releases them for continued processing and does not include them in its false positive computation.<sup>14</sup>

When the IRS flags a refund return as having questionable income or withholding, it freezes the taxpayer's refund for a minimum of 11 weeks<sup>15</sup> while IVO employees attempt to contact the taxpayer's employers

8 IRM 25.25.6.1 (May 26, 2015). Out of Wallet questions are knowledge-based questions about private information not readily available that only the user will know.

9 IRM 25.25.6.5.1 (May 5, 2015).

10 See W&I Business Performance Review (May 15, 2015); IRS RICS, Update of the Taxpayer Protection Program (TPP) (Dec. 2, 2015).

11 Data obtained from IRS Global ID Theft Report (Sept. 30, 2015). The IRS stopped 1,987,714 refunds in year to date (YTD) 2015 and 1,593,457 cases in YTD 2014. For a full discussion of the National Taxpayer Advocate's concerns about identity theft, see Most Serious Problem: *Identity Theft (IDT): The IRS's Procedures for Assisting Victims of IDT, While Improved, Still Impose Excessive Burden and Delay Refunds for Too Long*, *infra*.

12 IRS response to TAS information request (Aug. 20, 2015). IRM 25.25.2.1 (Aug. 20, 2015).

13 The two-week hold allows IVO to screen the tax returns and look for fraud or potential identity theft issues.

14 Posting occurs when the tax return is posted to the customer account to reflect the filing of the return and includes tax computation to determine the tax obligation for this period.

15 IRM 25.25.2.4 (Aug. 20, 2015). The initial suspense period is ten days to allow for the IRS to send a letter to the taxpayer, which advises the taxpayer of the 60-day review period. The IRS sends Notice CP05, *Information Regarding Your Refund*, or Letter 4464C, *Questionable Refund 3rd Party Notification Letter*. See IRS response to TAS information request (Aug. 20, 2015). This 11-week "soft-hold" was negotiated by the National Taxpayer Advocate and the IRS post-2005 after the National Taxpayer Advocate showed in the 2005 Annual Report to Congress that the IRS was permanently freezing legitimate taxpayer refunds without reviewing them, resulting in an egregious abridgement of taxpayer rights and leading to the removal of the Questionable Refund Program (QRP) from CI to W&I, resulting in the creation of IVO. Although the initial hold is 11 weeks by default there are instances when a refund is released earlier. See National Taxpayer Advocate 2005 Annual Report to Congress 25 (Most Serious Problem: *Criminal Investigation Refund Freezes*); National Taxpayer Advocate 2005 Annual Report to Congress vol. 2 (*Criminal Investigation Refund Freeze Study*); National Taxpayer Advocate 2011 Annual Report to Congress 41 (Most Serious Problem: *The IRS's Wage and Withholding Verification Procedures May Encroach on Taxpayer Rights and Delay Refund Processing*).

to verify wages and withholdings reported.<sup>16</sup> If the employer verifies the information and IVO is satisfied the return is valid, the IRS will release the refund. If IVO cannot verify the return information through the Individual Master File (IMF) or employer contact, the IRS sends a letter to the taxpayer requesting documentation to substantiate the information.<sup>17</sup> It is unknown how long this process takes because the IRS does not track this information.<sup>18</sup> EFDS had a false positive rate of almost 35 percent in FY 2015 for returns the IRS sent to IVO for a determination.<sup>19</sup>

### *Return Review Program Models*

The RRP application enhances the IRS's capabilities to detect, resolve, and prevent criminal and civil noncompliance, thereby reducing the issuance of fraudulent tax refunds.<sup>20</sup> RRP selects all potential issues related to identity theft or fraud on the return through initial processing and routes it to the proper treatment stream in pre-refund status. It then generates 15 scores that relate to the predictive value of possible identity theft or fraud.<sup>21</sup> The IRS planned for RRP to replace EFDS but is currently using both systems, which leads to more taxpayers experiencing refund delays because their refund returns have a higher chance of the filters stopping them. The Treasury Inspector General for Tax Administration (TIGTA) noted in a September 2015 report that the failure by the IRS to retire the EFDS program could result in an estimated \$18.2 million in additional operation and maintenance costs. TIGTA recommended that the IRS retire EFDS, and the IRS agreed.<sup>22</sup> In FY 2014, the RRP false positive rate was five percent, which increased to 30.4 percent for FY 2015, an increase of over 500 percent.<sup>23</sup> One benefit of RRP over EFDS is that the IRS can adjust the RRP rules and models in real-time if systemic issues are identified, so improvements in this system will be essential to meet its objectives.

### **The IRS Does Not Track the False Positive Rates for the Pre-Refund Verification Program and Thus Is Unable to Determine What Stops Legitimate Refunds**

As stated earlier, TAS considers any legitimate refund return that an IRS system selects and delays past the programs predetermined review period as false positive. The IRS fraud prevention units only track the false positive rates associated with identity theft. This includes programs such as TPP, EFDS, RRP, Manual Analyst, and DDb.<sup>24</sup> Somehow, the IRS has false positive data for TPP, EFDS, and RRP; however, false positive rates are not tracked for returns forwarded to the IWV program. False positive data, if monitored and analyzed in real-time, can be used by the IRS to improve its fraud prevention and IWV programs, minimize harm to taxpayers making legitimate refund claims, and preserve IRS resources.

16 IRM 25.25.3.1 (May 21, 2015). The IRS employs several methods to contact employers for verification of wages based on the information listed on the verification of income documents attached to the IMF returns, adhering to the employer preference if one exists. The IRS sends letters annually to certain large employers requesting they provide wage information on a computer disc. Requests for verification are automatically generated by fax; phone calls are made based on employer preference. The IRS employee makes three attempts to verify the information. IRS response to TAS information request (Aug. 20, 2015).

17 The IRS sends Notice CPO5A, *Information Regarding Your Refund - Refund Being Held Pending More Thorough Review*.

18 IRS response to TAS information request (Aug. 20, 2015).

19 IRS response to TAS information request (Oct. 20, 2015). The IRS did not track the false positive rates for EFDS prior to FY 2015. However, in FY 2015, it began tracking the false positive rate for EFDS related to the TPP.

20 Privacy Impact Assessment (PIA) 1067 (Jan. 23, 2015), available at [http://www.irs.gov/pub/irs-utl/RRP\\_TS\\_pia.pdf](http://www.irs.gov/pub/irs-utl/RRP_TS_pia.pdf). A PIA is a process for examining the risks and ramifications of using information technology to collect, maintain, and disseminate information in identifiable forms about members of the public and agency employees.

21 See TIGTA, Ref. No. 2015-20-060, *The Return Review Program Enhances the Identification of Fraud; However, System Security Needs Improvement* (July 2, 2015).

22 See TIGTA, Ref. No. 2015-20-093, *Review of the Electronic Fraud Detection System* (Sept. 29, 2015).

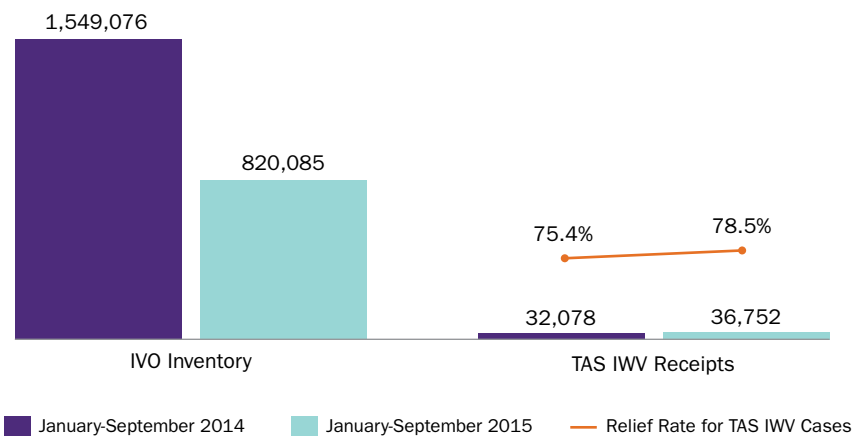
23 IRS response to TAS information request (Oct. 20, 2015).

24 IRS response to TAS information request (Aug. 20, 2015).

In 2015 (January through September), TAS provided full or partial relief in about 78.5 percent of cases closed for taxpayers who contacted TAS about delayed refunds flagged under the IWV Program. IWV cases constituted 19.3 percent of all TAS cases, or the second most common reason that taxpayers came to TAS for assistance.<sup>25</sup> TAS receipts of IWV cases have increased over 14.6 percent while the volume of the IRS's IWV holds has decreased over 47 percent, comparing the January through September periods from 2014 to 2015, as shown in Figure 1.4.2.<sup>26</sup>

**FIGURE 1.4.2**

**TAS IWV Cases Increased Even Though IVO Inventory Decreased, January-September 2014-2015**



The increase in the number of taxpayers seeking TAS assistance with IWV holds combined with the high relief rate of almost 80 percent is an indicator of serious problems with the IWV program. In other words, the IRS delayed, and, in some cases stopped, legitimate refunds to taxpayers because of over-inclusive filters or cross-competing rules.

Inexplicably, the IRS does not track the false positive rates for IWV holds, and thus is unable to determine what is causing the greater percentage of stopped legitimate refunds.<sup>27</sup> By applying findings from analysis of false positive returns, the IRS could prioritize identification of legitimate refunds at the earliest stage possible and develop better filters and models in real time.

Investing in tracking the IVO false positive rates by model or filter during the filing season, performing regular global reviews, and quickly adapting filters, rules, and models based on levels of confidence in each, would result in a more efficient utilization of resources and fewer delays for taxpayers with legitimate returns, thereby reducing taxpayer burden. The IRS should also establish target false positive rates for

25 Data obtained from TAMIS (Jan. 1, 2014; Oct. 1, 2014; Jan. 1, 2015; and Oct. 1, 2015).

26 *Id.* Data obtained from IRS Global ID Theft Report (Sept. 30, 2015). TAS received 32,078 cases in CY 2014 (January through September) and 36,752 cases in CY 2015. The IRS identified 1,549,076 cases in IVO for CY 2014 and 820,085 cases in CY 2015. This decrease in IRS IVO volume is significant because it may be an indicator that the IRS is not clearing cases in a timely manner.

27 IRS responses to TAS information requests (Aug. 20, 2015; Sept. 14, 2015). The IRS does track the false positive rates for TPP.

By applying findings from analysis of false positive returns, the IRS could prioritize identification of legitimate refunds at the earliest stage possible and develop better filters and models in real time.

each process and filter in addition to creating a process to adjust selection rates so that the false positive rates do not exceed target level.

In CY 2014, RICS adjusted its filters and rules, which increased returns in TPP, flagged for identity theft and decreased refund returns sent to the Pre-Refund Wage Verification Program.<sup>28</sup> These adjustments did not resolve the substantial delays of legitimate taxpayer refunds.<sup>29</sup> For example, taxpayers whose returns were flagged and sent to TPP experienced the worst LOS on the TPP phone line in recent history — at one point during the peak of the filing season the LOS was ten percent.<sup>30</sup> Moreover, the sequential processing of returns through various filters resulted in taxpayers being subjected to multiple reviews of the same return. Recent submissions to TAS's Systemic Advocacy Management System (SAMS) indicate the IRS cleared some returns from identity theft via TPP but then selected the same returns via the IWV program, which extended the refund hold resulting in unnecessary taxpayer callbacks.<sup>31</sup>

#### **IVO Does Not Have Adequate Procedures to Promptly Review and Adjust Its Fraud Detection Filters, Rules, and Models**

Recently Congress acted on the National Taxpayer Advocate's legislative recommendation to accelerate information reporting, and passed legislation requiring that returns and statements related to employee wage information and nonemployee compensation be filed on or before January 31.<sup>32</sup> The IRS should collaborate with TAS on implementing this legal requirement that will improve the screening and matching of third-party reporting with the information on taxpayers' returns.

Currently, IVO has no procedures or safeguards in place to promptly review and adjust its filters, rules, and models. For instance, the RRP erroneously flagged a group of returns and froze refunds that had previously cleared two systems and had historical data verifying their legitimacy.<sup>33</sup> At the time, RRP lacked access to the historical data and was unable to verify the results of prior screenings. Although the IRS can update RRP in real time, it needs approval from the Business Rules and Requirements Management

28 TAS believes that although the TPP is flagging more returns for identity theft, these refunds may still end up requiring wage verification treatment. The IRS is not flagging fewer returns overall in wage verification, rather it is flagging them with a different program.

29 Teleconference between the National Taxpayer Advocate and the RICS Director (Feb. 2, 2015). Discussion about the spike in IWV holds and the changing of TPP filters.

30 See Most Serious Problem: *Identity Theft (IDT): The IRS's Procedures for Assisting Victims of IDT, While Improved, Still Impose Excessive Burden and Delay Refunds for Too Long*, *infra*.

31 SAMS is a database of issues submitted to the TAS Office of Systemic Advocacy and the advocacy projects developed from some of these submissions. The issues come from a variety of sources. These include TAS, other IRS employees, and external stakeholders, including individual and business taxpayers, practitioners, research and professional organizations. See SAMS submission, Issue 32977 (May 18, 2015).

32 Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, § 201 (2015). See also National Taxpayer Advocate 2013 Annual Report to Congress vol. 2, 86-8 (*Fundamental Changes: Fundamental Changes to Return Filing and Processing Will Assist Taxpayers in Return Preparation and Decrease Improper Payments*); National Taxpayer Advocate 2012 Annual Report to Congress 180-91 (Most Serious Problem: *The Preservation of Fundamental Taxpayer Rights Is Critical as the IRS Develops a Real-Time Tax System*); National Taxpayer Advocate 2011 Annual Report to Congress 284-95 (Most Serious Problem: *Accelerated Third-Party Information Reporting and Pre-Populated Returns Would Reduce Taxpayer Burden and Benefit Tax Administration But Taxpayer Protections Must Be Addressed*); National Taxpayer Advocate 2009 Annual Report to Congress 338-45 (Legislative Recommendation: *Direct the Treasury Department to Develop a Plan to Reverse the 'Pay Refunds First, Verify Eligibility Later' Approach to Tax Return Processing*).

33 SAMS submission 32694 (Mar. 26, 2015).

(BRRM) office.<sup>34</sup> BRRM does not meet regularly; therefore, any change request that needs immediate attention must go through a time-consuming approval process resulting in more refund delays. Creating a sub-approval group authorized to implement real-time modifications to screening rules and filters would allow a quicker resolution of systemic issues and minimization of taxpayer harm. The sub-group should include a TAS representative, since TAS often sees cases that are early-warning indicators of problems with filters.

At the end of FY 2012, the IRS eliminated the Pre-Refund Program Executive Steering Committee (ESC), leaving no overarching governance of the implementation of new filters, rules, and models or coordination of work involving multiple IRS functions. With the elimination of the ESC, the IRS cannot discuss problems associated with fraud detection data mining rules and filters at a servicewide level, resulting in additional delays for any necessary changes in screening rules and filters. In 2013, the National Taxpayer Advocate recommended that the IRS reinstate the ESC.<sup>35</sup> However, the IRS refused, stating, “The FY 2013 Return Integrity and Correspondence Service (RICS) reorganization established a centralized structure for the refund fraud program, and eliminated the need for an Executive Steering Committee (ESC).”<sup>36</sup>

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**If the IRS were to add staff to review returns on the front-end and answer taxpayer calls in the Integrity Verification Operation (IVO) unit, then more returns with legitimate refunds would be processed with fewer delays and less burden to the taxpayer, saving both the IRS and TAS resources from reworking these cases on the back-end.**

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The high rate of false positives in the IWV program in the absence of a forum to discuss potential flaws in filters and models suggests that the IRS’s decision to eliminate the ESC was not well-founded. The IRS should reinstate the pre-refund program ESC as a forum for the exchange of information about systemic issues among IRS functions and for ideas about how to resolve these issues, as well as include TAS as a chartered voting member of the ESC.

### **Taxpayers Whose Refunds Are Frozen by the IWV Program Cannot Reach a Live Person in IVO**

Unlike the TPP, IWV program does not have a dedicated phone number for taxpayers to call. As a result, taxpayers whose refunds are frozen face lengthy hold times and courtesy disconnects trying to reach IRS Customer Service representatives (CSRs) on a general line.<sup>37</sup> The CSR LOS for FY 2015 was 38.10 percent, compared to the FY 2014 LOS of 64.39 percent, representing a 40.8 percent decline.<sup>38</sup> If a taxpayer tries to get information from *Where’s My Refund*, he or she will receive a generic message prompting a call to the IRS. Even if the taxpayer does reach a CSR, he or she will find the CSR

34 IRM 1.1.13.5.3.4 (Oct. 7, 2013). The office is responsible for the coordination and execution of the activities required to define, develop, maintain, and control business requirements and rules.

35 National Taxpayer Advocate 2013 Annual Report to Congress 173 (Most Serious Problem: *Revenue Protection: Ongoing Problems with IRS Refund Fraud Programs Harm Taxpayers by Delaying Valid Refunds*).

36 Email from Chief of Staff, Office of the Commissioner of Internal Revenue (May 23, 2014) (on file with the National Taxpayer Advocate). Although the IRS does have a Revenue Protection Technology Governance Board which provides input and recommendations to the IRS Revenue Protection Technology ESC neither appear to have the overarching governance and implementation power of the Pre-Refund Program Executive Steering Committee.

37 A courtesy disconnect is when the IRS phone line is overloaded and the caller is disconnected after a certain amount of time. For a full discussion of the National Taxpayer Advocate’s concerns regarding taxpayer account access, see Most Serious Problem: *Taxpayer Access to Online Account System: As the IRS Develops an Online Account System, It May Do Less to Address the Service Needs of Taxpayers Who Wish to Speak with an IRS Employee Due to Preference or Lack of Internet Access or Who Have Issues that Are Not Conducive to Resolution Online*, *infra*.

38 See IRS, Accounts Management (AM) (Sept. 30, 2015).



does not have access to the EFDS or RRP histories and cannot give specific responses to taxpayer inquiries.<sup>39</sup> CSRs take down information and route it to the IWV group in IVO. IVO, however, does not call back or correspond with a taxpayer based on referral from a CSR. If the information forwarded by the CSR is not verifiable, IVO will simply close out the referral on Account Management Services (AMS) application.<sup>40</sup>

### Taxpayers Whose Refunds Are Frozen by the IWV Program Suffer From Delays and Inaction

Taxpayers with frozen refunds experience significant delays of 18 weeks on average while IVO employees attempt to verify wages and withholding.<sup>41</sup> TAS's analysis of the population of taxpayers filing for TY 2014, whose returns were selected by EFDS for review in 2015 (through October), showed that nearly 180,000 such taxpayers who finally received their refunds, experienced delays of nearly 18 weeks on average. Several examples illustrate the frustrations of taxpayers with legitimate refunds who were unable to reach a live assistor with access to their IVO accounts:<sup>42</sup>

- Taxpayers, who successfully authenticated their identity after their returns were stopped by the identity theft filters, were under the impression their refunds would be released. They were not notified by the IRS that there would be a second delay to their refunds, as their returns were then selected by the IWV program due to the IRS subsequently questioning reported wages and withholdings. A programming problem in IVO prevented the issuance of a Notice CP05, *Information Regarding Your Refund – We Have Received Your Income Tax Return and Are Holding Your Refund*. Multiple taxpayers contacted TAS after being unable to reach the IRS or to receive an explanation of the delay. TAS Office of Systemic Advocacy elevated this systemic issue, and the IRS committed to resolving this issue for the 2016 filing season.<sup>43</sup>
- In several instances, taxpayers were also subject to additional refund delays when IVO verified their wages and withholding but did not correctly input closing actions to release the refund. To release the refund, an employee must input the closing action into two separate IRS systems. If employees only input the action into one system, the IRS continues to hold the refund. IVO was not monitoring its inventory to ensure refunds were correctly and timely issued once verification took place. Taxpayers had to contact the IRS to inquire why they had not received their refund or request TAS assistance.
- In one instance, the IWV hold languished over a year without any contact from the IRS or action by IVO. It was only when an inquiry was referred to TAS that the hold was resolved in seven days.<sup>44</sup>

39 IRM 21.5.6.4.35.3 (Nov. 2, 2015).

40 IVO does not correspond with a taxpayer based on a referral from a CSR. To the contrary, if it is just a refund status inquiry not associated with any verifiable information, IVO employees will just close out the referral on AMS. IRM 25.25.5.2 (July 27, 2015); IRM 25.25.5.4 (July 27, 2015); IRM 25.25.5.4.1 (July 27, 2015).

41 "Significant delay" was quantified by TAS by analyzing the population of taxpayers filing for TY 2014 selected using EFDS for review in 2015. Through October, we found nearly 180,000 such taxpayers who finally received their refunds but were delayed on average nearly 18 weeks (median of 19 weeks). Additional taxpayers may still face delays, and future analysis will show how many taxpayers were affected and for how much longer. IRS CDW, TY 2014 filings received from January through October of 2015. Results quantify time elapsed between selection for review and receipt of refund (Dec. 2015).

42 These examples are compilation of facts from several SAMS submissions. SAMS issues 32694 (Mar. 26, 2015), 32900 (May 1, 2015), 33183 (July 9, 2015), and 33239 (July 22, 2015).

43 SAMS submission 32694 (Mar. 26, 2015).

44 SAMS submission 32900 (May 1, 2015), 33183 (July 9, 2015), and 33239 (July 22, 2015).

Even though IVO staffing has consistently increased, it appears the growth has not had a positive impact on the expedited screening and verification of the volume of cases the IVO program selects.<sup>45</sup> In CY 2015, the IRS selected 43 percent fewer returns for IWV, compared to CY 2014,<sup>46</sup> while the IVO staffing increased by over 12 percent from FY 2014 to FY 2015.<sup>47</sup> As stated above, IVO does not have a direct phone number for taxpayers to respond to IWV inquiries. Thus, the increase in staffing is not allocated to speeding up the verification process by accepting direct calls from affected taxpayers. Moreover, the increase in staffing did not result in a reduction of taxpayer burden as evidenced by the 14.6 percent increase in TAS cases during the same period.<sup>48</sup>

As stated earlier, the IRS has a period of time within which to look at a return before the grace period expires and the refund return is frozen for further review. If the IRS were to add staff to review returns on the front-end and answer taxpayer calls in the IVO unit, then more returns with legitimate refunds would be processed with fewer delays and less burden to the taxpayer, saving both the IRS and TAS resources from reworking these cases on the back-end. Implementing a front-end communication strategy, including live taxpayer assistance in the IVO unit, would reduce refund hold times and free more employees for further examination of fraudulent returns.

## CONCLUSION

The National Taxpayer Advocate recognizes the importance of revenue protection screening techniques in protecting the tax system and the rights of taxpayers. Over the past 12 years, she has reported problems facing taxpayers whose legitimate refunds were frozen by the IRS and she has recommended improvements to reduce taxpayer burden while preventing refund fraud. Despite certain improvements, the IRS has not adopted several recommendations.<sup>49</sup> The IRS needs to balance its need to detect refund fraud with the taxpayers' *rights to be informed, to quality service, to privacy, and to fair and just tax system.*

45 IRS response to TAS information request (Oct. 20, 2015). For a full discussion of the National Taxpayer Advocate's concerns about third-party acceleration, see National Taxpayer Advocate 2012 Annual Report to Congress vol. 2, 67-96 (*Fundamental Changes: Fundamental Changes to Return Filing and Processing Will Assist Taxpayers in Return Preparation and Decrease Improper Payments*).

46 IRS response to TAS information request (Oct. 20, 2015). In CY 2014, the IRS selected 1,925,671 items and the amount decreased in CY 2015 to 1,091,512 items selected. Even with the volume decrease, the IRS is still unable to manage the volume despite the increase in staff.

47 IRS response to TAS information request (Oct. 20, 2015). In FY 2014, the staffing level was 546, and in FY 2015 the staffing level was 612.

48 Data obtained from TAMIS (Jan. 1, 2014; Oct. 1, 2014, Jan. 1, 2015, and Oct. 1, 2015).

49 See National Taxpayer Advocate 2014 Annual Report to Congress 536 (*TAS Case Advocacy*); National Taxpayer Advocate FY 2015 Objectives Report to Congress 143-45 (*TAS Receipts Suggest the IRS Needs to Enhance Efforts to Detect and Prevent Refund Fraud*); National Taxpayer Advocate 2013 Annual Report to Congress 173 (Most Serious Problem: *Revenue Protection: Ongoing Problems with IRS Refund Fraud Programs Harm Taxpayers by Delaying Valid Refunds*); National Taxpayer Advocate 2012 Annual Report to Congress 180-91 (Most Serious Problem: *The Preservation of Fundamental Taxpayer Rights Is Critical as the IRS Develops a Real-Time Tax System*); National Taxpayer Advocate 2011 Annual Report to Congress 41 (Most Serious Problem: *The IRS's Wage and Withholding Verification Procedures May Encroach on Taxpayer Rights and Delay Refund Processing*); National Taxpayer Advocate 2006 Annual Report to Congress 408 (Status Update: *Major Improvements in the Questionable Refund Program and Some Continuing Concerns*); National Taxpayer Advocate 2005 Annual Report to Congress 25 (Most Serious Problem: *Criminal Investigation Refund Freezes*); National Taxpayer Advocate 2005 Annual Report to Congress vol. 2 (*Criminal Investigation Refund Freeze Study*); National Taxpayer Advocate 2003 Annual Report to Congress 175 (Most Serious Problem: *Criminal Investigation Freezes*).

## RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS:

1. Begin tracking the IVO false positive rates by model or filter during the filing season, perform regular global reviews, and quickly adapt filters, rules, and models based on levels of confidence in each similar to the TPP.
2. Establish target false positive rates for each process and filter and create a process to adjust selection rates so that the false positive rates do not exceed target level.
3. Collaborate with TAS on implementing the new legal requirement to file returns and statements related to employee wage information and nonemployee compensation on or before January 31 of the year following the calendar year to which such returns relate.
4. Reinstate the Pre-Refund Program Executive Steering Committee to coordinate policy and other servicewide processes and business rules and include TAS in the steering committees as a charter voting member.
5. Create a sub-committee under the Business Rules and Requirements Management office with the authority to implement real-time modifications to screening rules and filters pertaining to tax fraud detection, resolution, and prevention, which directly affect RRP systems development; include a TAS representative as a member of this sub-committee.
6. Create a Taxpayer Call Area in IVO, which will include front-end outgoing verification calls to taxpayers from the IVO unit and the answering of direct taxpayer calls about refunds.