

C. As the IRS Adopts a Specialized Approach to Identity Theft Victim Assistance, Concerns About Complete and Timely Account Resolution Remain

In the past year, the IRS has revamped the way it works identity theft (IDT) cases.¹ As discussed below, the IRS has set up 21 specialized IDT units to assist victims of identity theft. There is substantial evidence that this approach is not working. Specifically, the National Taxpayer Advocate is concerned that:

- IDT cases continue to top the list of TAS case receipts;
- Because IDT cases are complex and often involve multiple issues, making the need for a centralized unit to monitor cases even more urgent;
- While TAS Case Advocates have been able to significantly reduce cycle time on its IDT cases, the IRS is still harming victims by extensively delaying case resolution;
- The Identity Protection Specialized Unit (IPSU) as currently operating is harming IDT victims who experience significant hardship; and
- IDT filters ensnare far too many legitimate filers.

21 ID theft units at IRS

ID theft victims may make multiple contacts with multiple units at the IRS to get their issues resolved



Identity Theft Cases Continue to Top the List of TAS Case Receipt

One barometer of the effectiveness of the IRS's new approach is TAS's level of IDT cases. In FY 2012, identity theft was the top source of work for TAS Case Advocates, comprising 25 percent of all TAS receipts. The trend continued in FY 2013, with 25 percent of all TAS cases again being IDT-related (through March 31).² After a 61 percent increase from FY 2011 to FY 2012,³ TAS stolen identity cases are trending up even more in FY 2013, with receipts rising over 66 percent compared to the same period last year.⁴ Preliminary data indicate increases in TAS may continue throughout FY 2013.

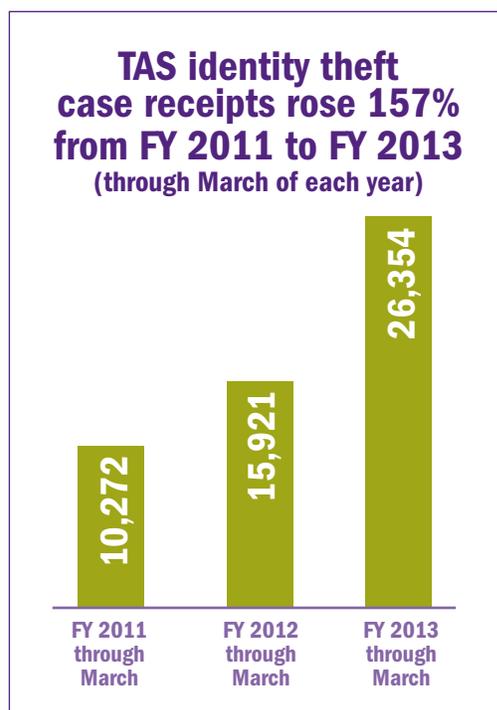
¹ In general, tax-related identity theft occurs when an individual intentionally uses the personal identifying information of another person to file a false tax return with the intention of obtaining an unauthorized refund.

² Through March 31, 2013, TAS received 26,354 stolen identity cases out of 105,985 cases overall.

³ Data obtained from Business Performance Management System (BPMS) reports on October 3, 2012, showing TAS received 34,006 stolen identity cases as of September 30, 2011, and 54,748 cases as of September 30, 2012.

⁴ Data obtained from BPMS reports on April 1, 2013, showing TAS received 15,921 stolen identity cases as of March 31, 2012, and 26,354 cases as of March 31, 2013.

FIGURE II.1, CONTINUED GROWTH IN TAS IDENTITY THEFT CASEWORK



IRC § 7811 authorizes the National Taxpayer Advocate to issue a Taxpayer Assistance Order (TAO) to require that the IRS cease any action, take any action, or refrain from taking any action, when a taxpayer is suffering (or about to suffer) a significant hardship. In FY 2013 (through April), TAS issued 26 TAOs on IDT-related issues.⁵

Identity Theft Cases are Complex, Often Involving Multiple Issues and Multiple Years, Making the Need for a Centralized Unit to Monitor These Cases Even More Urgent.

Identity theft cases are very complex, often requiring action by employees from different IRS organizations and with different skills. In addition to a combination of primary and secondary issues, IDT cases often cover several tax years, increasing

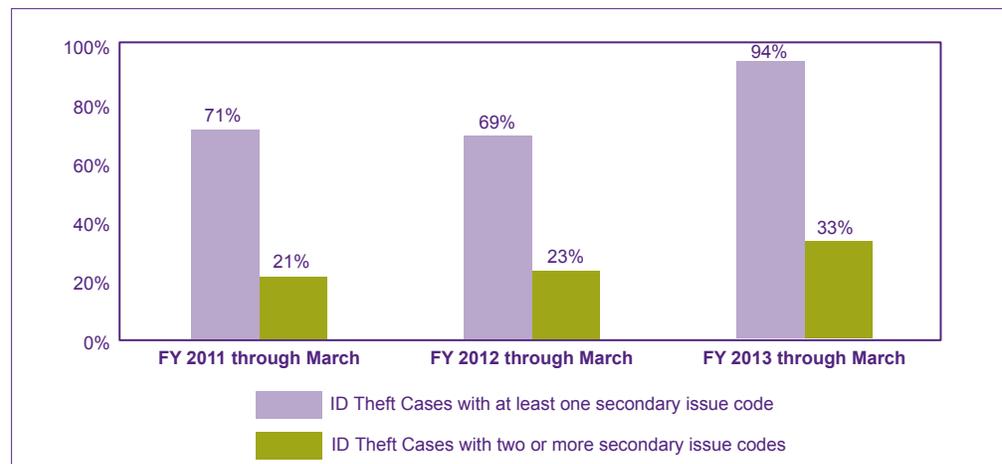
their difficulty and time needed to resolve.

When TAS case advocates receive a case, they assign Primary and (one or more) Secondary Issue Codes, indicating what issues are involved and, by inference, what functions TAS must work with to resolve all issues completely before closing the case. The vast majority of IDT cases worked by TAS involve multiple issues,⁶ as illustrated below.

⁵ For additional discussion regarding the TAO process, see *TAS Uses its Statutory and Delegated Authorities to Advocate Effectively in Taxpayer Cases*, *infra*. Of the 26 TAOs, 19 were economic burden cases and seven were systemic burden cases. Nineteen of the 26 TAOs were issued due to unresponsiveness by the IRS, two were issued due to disagreements over the documentation provided, and five were due to disagreements over whether IDT had occurred. The IRS eventually complied with all 26 TAOs.

⁶ When TAS opens a case, it assigns a primary issue code based on the most significant issue, policy or process within the IRS that needs to be resolved. When a TAS case has multiple issues to resolve, a secondary issue code will be assigned. See IRM 13.1.16.13.1.1 (Feb. 1, 2011).

FIGURE II.2, PERCENT OF CLOSED TAS IDENTITY THEFT CASES INVOLVING MULTIPLE ISSUE CODES, FY 2011 - FY 2013



In many instances, TAS Case Advocates must address more than two issues to fully resolve an identity theft victim's case. For example, the owner of a Social Security number (SSN) may be the subject of an IRS levy action caused by an IDT assessment, which led the victim to contact the Collection unit. The levy action may be due to an erroneous examination assessment caused by a fraudulent return, which the SSN owner (victim) was unaware of due to not receiving IRS notices (the return filed by the non-SSN owner / identity thief may have changed the address on the account). The Examination (audit) function must reverse the assessment, as Collection does not have the authority to reverse audit assessments. The adjustment to remove the fraudulent return from the taxpayer's account would then be handled by another processing function in Compliance.

As discussed earlier, the IRS altered its strategy for assisting IDT victims and moved to a specialized environment where each function that deals with IDT will create a dedicated group of employees to work those issues. Recognizing that IDT cases are complex, requiring adjustments by multiple IRS departments, the IRS has developed a transfer matrix outlining situations where a case is routed from one specialized function to another.

The National Taxpayer Advocate has no confidence in the specialized units' ability to transfer cases among themselves without a centralized unit (such as the IPSU) to serve as the "traffic cop." The IPSU has already been serving in this capacity for four years and in our view should remain the single point of contact for victims, tracking each case from start to finish as it moves from one specialized unit to another. We recognize that the IPSU has inadequately monitored these cases in the past, viewing its role as passive and infrequently checking on cases. Thus, we have consistently recommended that the IPSU's role

be strengthened and become more active, and that each IRS function enter into an agreement with the IPSU with detailed procedures for working cases, and be held accountable for meeting deadlines for actions.

In FY 2014, TAS will review how successful the IRS is in transferring cases. In the 2013 Annual Report to Congress, the National Taxpayer Advocate will report findings from an analysis of IDT cases that involved multiple specialized IDT units and will make specific recommendations to better assist victims. The National Taxpayer Advocate will also raise concerns with the new Principal Deputy Commissioner of Internal Revenue.

While TAS Case Advocates Have Been Able to Significantly Reduce Cycle Time on Its IDT Cases, the IRS is Still Harming Victims by Extensively Delaying Case Resolution.

Even as the issues have grown more complex and the IRS has changed its IDT strategy, TAS Case Advocates have learned to resolve these cases more efficiently. In FY 2013 through March, TAS has taken an average of 99 days to close IDT cases, compared to 125 days over the same period in FY 2011. TAS Case Advocates also have achieved a relief rate of 91 percent in IDT cases in FY 2013 (compared to 80 percent for TAS cases overall).⁷ On the other hand, the IRS processing time for IDT cases is moving in the opposite direction. In 2008, former Commissioner Shulman made a commitment that the IRS would resolve identity theft victims' tax accounts "promptly." While some IRS functions can track the length of time a case is in inventory (see chart below), the IRS still cannot provide a servicewide cycle time measure for resolving identity theft cases. Thus, the IRS cannot determine how well it has done in meeting this commitment to resolve IDT cases "promptly."

While developing the section on identity theft in the National Taxpayer Advocate's 2012 Annual Report to Congress, TAS obtained cycle time data for various categories of IDT cases worked by Accounts Management. Because the IRS does not include this detailed cycle time data in its global identity theft reports, we do not have updated data for 2013, but the chart below is instructive in showing that for many categories of IDT work, the IRS takes between six months to a year to resolve cases.

⁷ Analysis of BPMS data conducted on October 16, 2012 and April 1, 2013.

FIGURE II.3, IRS CYCLE TIME FOR SELECTED CATEGORIES OF IDT CASES WORKED BY ACCOUNTS MANAGEMENT (FY 2012)

BOD	Function	Inventory Type	Case Type	Avg Days Open from Receipt to Closure (as of 9/30/2012)	Beginning Date	Ending Date
W&I	AM IPSU	IDTX	Monitoring tax-related identity theft cases that do not meet TAS Criteria 5 - 7; case worked by appropriate function and monitored by IPSU (every 60 days)	196	Cycle time begins when IPSU opens a control of the ID theft case, which can occur when the taxpayer (TP) contacts the IPSU or via referral from the IPSU call sites. This occurs most often after the TP has initially contacted the IRS function that sent the notice. NOTE: The IDTX cycle time does not include the time the taxpayer spent dealing with other IRS function(s) prior to IPSU.	Completed functional referral received back at IPSU indicating that all actions have been completed. The IDTX cycle time does not include time spent on the global review, which occurs after all requested actions have been completed.
W&I	AM IPSU	ITAR	Tax-related identity theft case that meets TAS Criteria 5 - 7. IPSU issues Identity Theft Assistance Request (ITAR) to appropriate function, which receive priority treatment. TP may request IPSU or the case may be referred from another function.	133	Cycle time begins when IPSU opens a control of the ID theft case. NOTE: The ITAR cycle time does not include the time TP spent dealing with other IRS functions prior to IPSU.	Ends when function referral received back in IPSU that all corrective actions have been taken and posted and IPSU contacts the taxpayer. The ITAR cycle time does not include time spent on the global review, which occurs after all requested actions have been completed.
W&I	AM	IDT1	Duplicate filing where the second return has a Form 14039 (ID theft affidavit) attached	230	Cycle time begins upon generation of CP 36/36i indicating there is a duplicate filing (this is generally 2-3 cycles after the IRS received date).	Once all account corrective actions are taken. (The taxpayer is then notified that IRS took corrective actions on the account.)
W&I	AM	IDT3	Mixed Entity cases - internally identified. Does not require a Form 14039. Duplicate filing research indicates identity theft that can be resolved internally without taxpayer contact.	323	Cycle time begins upon generation of CP 36/36i indicating there is a duplicate filing (this is generally 2-3 cycles after the IRS received date).	Once all account corrective actions are taken. (The taxpayer is then notified that IRS took corrective actions on the account.)
W&I	AM	IDT4	Self-identified non -tax-related identity theft (e.g., stolen wallet)	131	Cycle time begins upon receipt of complete and legible Form 14039 for non-tax related identity theft. The time does not start from the time the taxpayer calls in.	Ends when research confirms no tax related IDT has occurred and input of TC 971 AC 504 ID theft marker.
W&I	AM	IDT6	Duplicate Filing Inventory subjected to the Electronic Fraud Detection System (EFDS) filters to identify the true SSN owner. There may already be an open IDT1/3 control on the module so the control will be updated to IDT6.	364	Cycle time begins upon generation of CP 36/36i indicating there is a duplicate filing (this is generally 2-3 cycles after the IRS received date). AM does not reset the start date for IDT6; it retains the original start date from the open IDT1 or IDT3.	Once all account corrective actions are taken. (The taxpayer is then notified that IRS took corrective actions on the account.)

BOD	Function	Inventory Type	Case Type	Avg Days Open from Receipt to Closure (as of 9/30/2012)	Beginning Date	Ending Date
W&I	AM	IDT8	Duplicate filing condition with prior AMTAP involvement.	Data not provided	Cycle time begins upon generation of CP 36/36i indicating there is a duplicate filing (this is generally 2-3 cycles after the IRS received date)	Once all account corrective actions are taken. (The taxpayer is then notified that IRS took corrective actions on the account.)
W&I	AM	IDT9	An open IDT 1/3 is updated to IDT9 upon receipt of an ITAR referral from IPSU. There may be an open IDT1/3 already on the module so the control will be updated to IDT9. If not, a new IDT9 is created.	248	Cycle time begins upon generation of CP 36/36i indicating there is a duplicate filing (this is generally 2-3 cycles after the IRS received date). AM does not re-set the start date for IDT9; it retains the original start date from the open IDT1 or IDT3.	Once all account corrective actions are taken. (The taxpayer is then notified that IRS took corrective actions on the account.)

In May 2012, TIGTA issued an audit report that corroborates the National Taxpayer Advocate's position that identity theft cases are complex and vulnerable to getting lost in the IRS shuffle.⁸ TIGTA selected a judgmental sample of 17 identity theft cases, and found the IRS had opened 58 separate cases to resolve the accounts of those 17 victims – an average of nearly three and a half cases per victim.⁹ The average cycle time for those cases was 414 days.¹⁰ Taking six months to well over a year, in most cases, to close an identity theft case is simply not acceptable for the hundreds of thousands of victims, and almost guarantees that these victims will be caught up in IRS processes for a second filing season.

The IPSU As Currently Operating Is Harming IDT Victims Who Experience Systemic Hardship.

The IRS established the Identity Protection Specialized Unit (IPSU) in 2008 to serve as the centralized organization assisting identity theft victims. In June 2010, W&I and TAS entered into a Memorandum of Understanding (MOU) for the IPSU to work systemic burden identity theft cases previously referred to TAS.¹¹ The memo provides that the IDT cases that meet TAS systemic burden criteria be worked under the same general parameters as TAS cases. The National Taxpayer Advocate agreed to the MOU because the IRS committed that taxpayers who met TAS's "systemic hardship" criteria would be provided the same service by the IPSU as they received from TAS.

8 See TIGTA, Ref. No. 2012-40-050, *Most Taxpayers Whose Identities Have Been Stolen to Commit Refund Fraud Do Not Receive Quality Customer Service* (May 3, 2012).

9 See *id.*

10 See *id.*

11 TAS has identified criteria that qualify taxpayers for TAS assistance, which includes an independent review by a Case Advocate of actions that have been taken or need to be taken to resolve the problems taxpayers are experiencing. TAS commonly refers to Criteria 1-4 as "economic burden" cases, and Criteria 5-7 as "systemic burden" cases. See IRM 13.1.7.1 (July 23, 2007).

The MOU states that:

- Within five workdays of the received date, the IPSU employee will acknowledge the taxpayer's contact and initiate actions to resolve the issue;
- The IPSU will perform a preliminary account analysis to identify any related issues;
- If the issues raised by the taxpayer are not within Accounts Management's (AM) authority to resolve, the IPSU will complete Form 14103, *Identity Theft Assistance Request (ITAR)*, and forward the form/case to the appropriate function for resolution;
- The IPSU will monitor the case and contact the taxpayer every 30 days to provide the taxpayer with the case status; and
- If either the W&I Commissioner or the National Taxpayer Advocate becomes aware of significant unanticipated problems that arise from the implementation of this process, both parties agree to meet to discuss and resolve the situations as soon as is possible.

Despite the IRS's agreement to shift these "systemic burden" IDT cases to the IPSU, TAS still received 12,421 of them through the end of FY 2012,¹² and 9,738 through May 2013.¹³ Further, many of the systemic burden cases initially assigned to the IPSU have returned to TAS inventory because of slow or unsatisfactory handling. In FY 2014, we will explore the reasons for the failure of the IPSU to resolve these cases.

The IRS is now designating 180 days as the normal processing time for IDT cases.¹⁴ This means that the IPSU will not accept a case until 211 days (more than 30 days past the 180-day "normal processing time" for IDT cases) after the IDT incident. Additionally, the IPSU will now monitor cases that involve multiple functions every 60 days, a change from the 30-day monitoring agreed upon in the MOU.¹⁵ These changes are in violation of the MOU as originally signed, and the National Taxpayer Advocate has not agreed to these deviations from the MOU.

As noted above, the National Taxpayer Advocate initially agreed to the MOU because she was assured that IDT victims who have significant hardships and thus qualify for TAS services would be provided the same level and type of assistance from the IPSU as they would from TAS. At the time, we viewed this unit as an opportunity to import the quality of TAS assistance into a regular operating unit of the IRS.

It is now clear that taxpayers being referred to the IPSU are not receiving the quality of service required by the National Taxpayer Advocate when the MOU was signed. Thus, the actions of the IPSU are actively harming victims of identity theft who have systemic

¹² IRS, *IPSU Identity Theft Report* (Sept. 29, 2012).

¹³ Data obtained from BPMS report on June 1, 2013.

¹⁴ See IRM 21.9.2.2.1 (3), *Identity Theft Time Frames* (May 29, 2013); IRM 21.9.2.2.1, *Identity Theft Assistance Requests – Procedures for Receipt of Form 14103 Referral* (May 29, 2013).

¹⁵ See IRM 21.9.2.4.2.9 (May 29, 2013).

hardships. The solution is not for TAS to take back these systemic burden IDT cases from the IPSU, but for the IPSU to meet the terms of the MOU signed in 2010, and become the quality operation envisioned and committed to by the IRS in 2010. The IRS should immediately adopt TAS's recommendations for improving IDT victim assistance, which generally follow TAS case processing procedures.

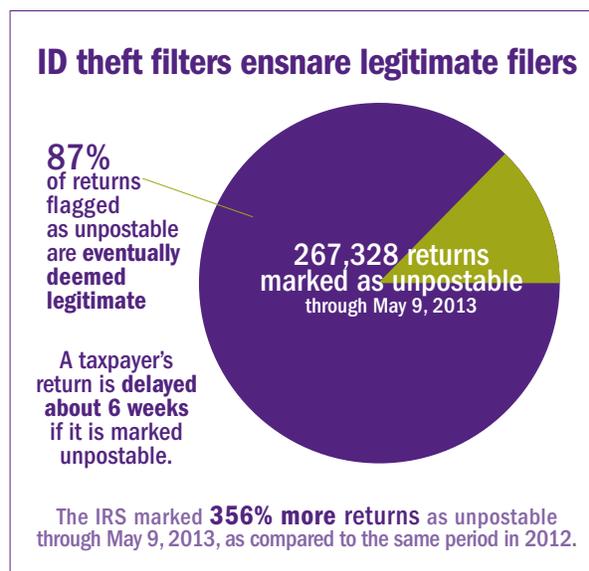
The National Taxpayer Advocate plans to visit and meet with IPSU employees in June, 2013, and attempt to improve this inadequate assistance. If the IRS fails to adopt her procedural recommendations, the National Taxpayer Advocate will issue a Taxpayer Advocate Directive on this matter and will develop guidance to her employees directing them to immediately issue Taxpayer Assistance Orders on IPSU cases that end up in TAS, ordering the IPSU to take the appropriate steps to resolve the case, rather than just passively monitoring these cases.

ID Theft Filters Ensnare Too Many Legitimate Filers.

The IRS relies on a series of filters (which it calls "business rules") to safeguard an account from potential identity theft. When a taxpayer whose account has been marked with an identity theft indicator fails the business rules, the return will be marked "unpostable" – meaning it will not be processed. We have serious concerns about the currency and effectiveness of these business rules.

Taxpayers who were issued an Identity Protection Personal Identification Number (IP PIN) but did not use a valid IP PIN when filing returns will also have their returns marked unpostable, to prevent further incidents of IDT. The IRS established procedures to issue replacement IP PINs to taxpayers who misplaced the original IP PINs, but we have recently learned that all taxpayers who used a replacement IP PIN had their returns marked unpostable.¹⁶

In 2013, through May 9, the IRS marked 267,328 returns as unpostable, an increase of 356 percent over the same period in 2012.¹⁷ If a taxpayer files a



16 See IRM 3.28.4.5, *Unpostable Code (UPC) 147 Reason Code (RC) 0 and Reason Code (RC) 1* (Feb. 14, 2013).

17 The IRS is screening for more criteria which more create unpostable returns in 2013 than in 2012. See IRS, GUF Reports 5540 and 5570.

legitimate return that was erroneously marked unpostable, processing is delayed between 39 and 44 days, or about six weeks. Preliminary analysis suggests an astonishing 87 percent of tax returns flagged as unpostable are eventually deemed legitimate.¹⁸

The Taxpayer Advocate Service will work with the IRS to try to determine the cause of the spike in unpostable returns this year, and find out why the IRS did not adjust its filters once it realized the business rules were much too inclusive. It is not acceptable for so many legitimate taxpayers to be harmed by having their returns unnecessarily rejected and delayed.

The National Taxpayer Advocate has made many recommendations to the IRS to improve its identity theft procedures, and she sees little improvement in the overall program. Thus, in FY 2014, the National Taxpayer Advocate shall focus the full force of her statutory and administrative authority on this issue, including the issuance of Taxpayer Advocate Directives and Taxpayer Assistance Orders. Moreover, in FY 2014, TAS will:

- Measure the effects of the IRS's new specialized unit strategy and quickly identify any negative impact these procedures may have on taxpayers;
- Continue to work with the IRS on identity theft issues, recommending improvements and alternative approaches, with a particular focus on reducing the time it takes to completely and accurately resolve the case from the victim's perspective;
- Issue Taxpayer Advocate Directives to the IRS to improve IDT victim assistance procedures and Taxpayer Assistance Orders to assist IDT victims who suffer from significant hardship.
- Develop guidance for Local Taxpayer Advocates to issue Taxpayer Assistance Orders to expedite relief to taxpayers when IRS processes are inadequate or too lengthy to assist taxpayers who are suffering significant harm;
- Improve our own case processing by timely alerting case advocates of any changes in IRS procedures to avoid delays in correcting taxpayers' accounts;
- Elevate emerging identity theft schemes and processing issues identified in TAS case-work for collaborative solutions with the IRS; and
- Educate TAS and NTA toll-free employees (who work for W&I) on appropriate criteria for accepting and referring systemic stolen identity cases.

18 IRS, GUF Reports 5540 and 5570. 99,037 legitimate taxpayers failed the business rules, out of 113,882 returns closed.