

United States Senate
WASHINGTON, DC 20510

April 12, 2019

Charles P. Rettig
Commissioner
Internal Revenue Service (IRS)
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Dear Commissioner Rettig,

Today, we released a new a Government Accountability Office (GAO) report with an important set of findings on the use of tax-time financial products. The report, *Tax Refund Products: Product Mix Has Evolved and IRS Should Improve Data Quality*, found that lower-income and some minority taxpayers are more likely to use tax-time financial products, which place additional financial burdens on lower-wealth populations. GAO also found that the preparers failed to disclose all costs and fees clearly or early in the preparation process. We are writing to request information on how the IRS could improve its refund distribution process to reduce low-income taxpayers' reliance on these fee-based products and improve fee disclosures for those who use them.

In 2017, over 20 million American taxpayers spent an estimated \$500 million on tax-time financial products—loans and other financial products associated with taxpayers' anticipated refunds that may carry additional fees.¹ The most popular tax-time financial product in America is the refund transfer (also called a “refund anticipation check”, or RAC), a “fee-based temporary bank account set up to receive tax refunds by direct deposit.”² Taxpayers also rely on refund advances—short-term, no-fee loans secured by taxpayers' anticipated refunds—and refund anticipation loans (RALs)—short-term, fee-based loans secured by taxpayers' anticipated refunds—to receive their refunds.³

In its report, GAO analyzed Federal Deposit Insurance Corporation (FDIC) data and found that “lower-income households were more likely to use tax-time financial products.”⁴ Specifically, GAO found that households making under \$40,000 a year were significantly more likely to use tax-time financial products than households making over \$60,000 annually. In addition, GAO found that “African-American households were 36 percent more likely to use tax-time financial products than white households” and that “households headed by single adults with families were more likely to use tax-time financial products than households headed by married

¹ National Consumer Law Center, “Tax Filers Face New Problems This Year,” Mandi Matlock, February 20, 2019, <https://library.nclc.org/tax-filers-face-new-problems-year#content-1>.

² Government Accountability Office, *Tax Refund Products: Product Mix Has Evolved and IRS Should Improve Data Quality*, April 12, 2019, p. 4, p. 15.

³ *Ibid.*, p. 4.

⁴ *Ibid.*, p. 23.

couples.”⁵ Ultimately, GAO concluded that “lower-income, African-American, and single taxpayers were more likely to use tax-time financial products.”⁶

Individuals who rely on tax-time financial products typically do so to address immediate cash needs. Studies of tax-time financial product users show that “product recipients tend to live paycheck-to-paycheck” and sometimes “become delinquent on rent, utilities, and other expenses during the winter with the expectation that they will be able to pay obligations after receiving tax refunds.”⁷ GAO noted that taxpayers “may use tax-time financial products because they need cash quickly.”⁸

Though the IRS offers a variety of free tax preparation services, including the Volunteer Income Tax Assistance (VITA) program and the Free File program, taxpayers using these government products can expect to see their refunds in a matter of weeks.⁹ Users of tax-time financial products, meanwhile, “can obtain cash very quickly”—in a matter of days—at costs significantly lower than other short-term loan options, like payday loans and auto title loans.¹⁰

Furthermore, GAO found a lack of transparency with fee disclosures for tax-time financial products, creating hurt consumers. The GAO’s undercover reviews of tax preparation providers found that the providers often presented pricing information to consumers “after returns have been prepared...pos[ing] a challenge for taxpayers looking to compare prices for different providers.”¹¹ In addition, GAO investigators found that the providers did “not consistently explain products or disclose fees to taxpayers.”¹² This lack of transparency places tax-time financial product consumers—who are largely low-income and minority taxpayers—at an even greater disadvantage on tax day and denies them the ability to effectively compare prices and costs among different providers.

The findings of the GAO report are alarming, showing that low-income taxpayers—those with the greatest need for additional funds—are forced to buy expensive tax-time products because they need to pay bills due before refunds arrive. The report also reveals inadequate disclosures of product costs by tax preparation providers. As the distributor of tax refunds, the IRS plays a role in perpetuating this problem. To help us better understand what steps the IRS could take to speed up the process of providing taxpayers’ with their refunds—thus reducing, in part, low-income taxpayers’ reliance on expensive tax-time financial products—we ask that you answer the following questions no later than April 26, 2019:

⁵ *Ibid.*, p. 24, p. 27.

⁶ *Ibid.*, p. 23

⁷ *Ibid.*, 28.

⁸ *Ibid.*, 28.

⁹ *Ibid.*, p. 10. Recipients of the Earned Income Tax Credit (EITC) and Additional Child Tax Credit (ACTC) can expect to wait longer; the Protecting Americans from Tax Hikes (PATH) Act of 2015 prohibits the IRS from distributing EITC and ACTC credits until February 15 of each year so that the IRS has the opportunity to “review these returns for potential fraudulent activity.”

¹⁰ *Ibid.*, p. 27-31. Tax-time financial products also allow low-income taxpayers to “defer payment of fees related to tax return preparation” until they receive their refund.

¹¹ *Ibid.*, p. 38.

¹² *Ibid.*, p. 39.

1. What laws and regulations currently govern the IRS' procedures for distributing refunds? Of those laws and regulations, which (if any) contribute to the slowdown of refund distribution to low-income and minority taxpayers?
2. What additional barriers, such as funding or staffing restrictions, does the IRS face to expediting its refund distribution process?
3. What steps could the IRS take under existing law to speed up the process by which low-income and minority taxpayers receive their refunds?
4. In delivering refunds to taxpayers, the IRS must balance speed with other considerations, such as preventing identity theft and other tax crimes. How does the IRS balance its need to protect taxpayers from fraud with its efforts to expedite returns?
5. What steps, if any, does the IRS believe Congress should take to help expedite the process of providing low-income and minority taxpayers with their refunds?
6. From December 22, 2018, to January 25, 2019, President Trump refused to sign an appropriations package—resulting in the nation's longest-ever partial government shutdown. The IRS was closed as a result of the shutdown. How did the government shutdown affect the IRS' ability to rapidly provide low-income and minority taxpayers with their refunds?
7. The Office of the Comptroller of the Currency (OCC) and IRS share responsibility for regulating certain sectors of the tax preparation industry. In 2015, OCC “issued risk-management guidance for national banks that offer tax refund-related products”; the IRS, meanwhile, has established disclosure requirements for authorized IRS e-file providers.¹³ GAO's non-generalizable review of tax preparers in Virginia, Maryland, and Washington, D.C., found that although e-file providers generally followed OCC and IRS guidance regarding the disclosure of tax-time financial product fees, these disclosures were still neither transparent nor timely. Specifically, the GAO found that “bank documents were more likely than information provided by paid preparers...to include more disclosures about the fees and terms of tax-time financial products.”¹⁴
 - a. GAO noted that the National Taxpayer Advocate recommended in 2017 that the “IRS require all e-file participants offering tax-refund financial products to provide a standard ‘truth in lending’ statement to help taxpayers better understand the terms of the refund anticipation loan product.”¹⁵ However, the IRS “did not adopt the National Taxpayer Advocate's recommendation.” Why did the IRS not adopt this recommendation?

¹³ *Ibid.*, p. 36-37.

¹⁴ *Ibid.*, p. 39-40.

¹⁵ *Ibid.*, p. 38.

- b. In 2014, the U.S. Court of Appeals for the District of Columbia Circuit found that the IRS “does not have sufficient authority to regulate” all paid tax preparers. Given the existing restrictions on the IRS’ regulatory authority, what steps can IRS take to update its guidance and regulations to improve the transparency of tax-time financial product fees? Are there steps that the IRS would like to take that it cannot due to its limited authority over the tax preparation industry as a whole?

Please do not hesitate to reach out to Susannah Savage of Senator Warren’s staff at 202-224-4543 or Alex Johnson of Senator Duckworth’s staff at 202-224-2854 with any questions or concerns.

Sincerely,



Elizabeth Warren
United States Senator



Tammy Duckworth
United States Senator