

## M. IRS ITIN Policy Changes Make Return Filing Difficult and Frustrating

Recent changes to the IRS's Individual Taxpayer Identification Number (ITIN) application program are burdening taxpayers and may harm voluntary compliance. ITINs play an important role in tax administration, as any individual who has a federal tax filing obligation but is not eligible for a Social Security number must apply to the IRS for an ITIN and then use the ITIN on any return, statement, or other document which requires a taxpayer identifying number.<sup>1</sup> Under the new procedures, most applicants must now submit original documentation by mail or travel to Taxpayer Assistance Centers (TACs) to have documents certified, making the application process more difficult. Since December 17, 2003, the IRS has required ITIN applicants with a filing requirement to attach a valid federal tax return with their application (unless they qualify for an exception).<sup>2</sup>

On June 22, 2012, the IRS implemented temporary changes that required all ITIN applicants to submit original documents supporting the information on their applications.<sup>3</sup> Under these procedures, applicants could no longer submit notarized copies and had to send in original documentation, even if a certified acceptance agent (CAA) reviewed and certified the documentation. On November 29, 2012, the IRS announced revised procedures for the 2013 filing season that require applicants to submit original documentation or copies certified by the issuing agency.<sup>4</sup> Although the IRS allows CAAs to submit copies of documentation for primary and secondary taxpayers after reviewing original documentation or certified copies, CAAs must still send in original documentation for all dependent applicants. A limited number of TACs can certify documents for primary, secondary, and dependent taxpayers.

### The Revised Procedures Create an Impediment for Taxpayers Required to File Returns.

The recent changes to the ITIN program have made it difficult for taxpayers to file returns. Those applying for dependent ITINs, who make up more than two-thirds of all applicants,<sup>5</sup> must either send original documentation to the IRS, or travel to one of a relatively small number of designated TAC offices, which can only certify copies of passports and national identification cards.<sup>6</sup> TAS conducted a conference call with six low income taxpayer clinics to discuss how the new requirements have burdened applicants.<sup>7</sup> More than one clinic had applicants who sought help applying for an ITIN, but due to

1 IRC § 6109; Treas. Reg. §§ 301.6109-1(a)(1)(ii)(B); 301.6109-1(d)(3).

2 See IRS News Release, IR-2003-140, IRS Announces Revisions to ITIN Applications (Dec. 17, 2003).

3 See IRS News Release, IR-2012-62, IRS Strengthens ITIN Application Requirements; Interim Changes Will Protect the Integrity of the ITIN Process (June 22, 2012).

4 See IRS News Release, IR-2012-98, IRS Strengthens Integrity of ITIN System; Revised Application Procedures in Effect for Upcoming Filing Season (Nov. 29, 2012).

5 IRS response to TAS information request (Sept. 28, 2012).

6 Not all TAC offices are permitted to certify copies of passports and national identification cards. See [www.irs.gov](http://www.irs.gov) for a list of these designated TACs. All other TACs are available for assistance in completing applications and will forward documents to Austin, Texas for processing.

7 TAS conference call with Low Income Taxpayer Clinics (May 23, 2013).

the burden of giving up original documents, decided not to apply for an ITIN, and consequently did not file a tax return. The clinics reported some country-specific problems, such as applicants in Mexico not being able to apply for ITINs because they could not give up their national identification cards for two months, especially in rural communities where they could not get replacements.<sup>8</sup> Multiple LITCs said that applicants had to wait three to four months to receive their documents back. In one case, an LITC reported that the IRS misplaced documents three times, causing the entire family to be without identification for six months.

The problem of delays in returning documents is only compounded by the fact that the IRS cannot track an ITIN application and the associated documents before the application is processed. When the IRS receives an ITIN application, it places it in a batch that is not numbered or controlled by individual application.<sup>9</sup> The application and supporting documents are not traceable until the ITIN is assigned and input on the ITIN real-time system. Given the lengthy timeframe for processing ITIN applications, this can result in extreme hardship for taxpayers who need their documents returned.

One TAS case involved an individual who sent her passport to the IRS with her ITIN application. After submitting the application, the applicant suddenly needed the passport to leave the country for a funeral. When TAS contacted the IRS to locate the passport and have it returned to the applicant, the IRS had not worked the application and was initially unable to find the application and documents. As a result of TAS's advocacy, the IRS subsequently located and processed the application. However, this occurred well after the time the taxpayer needed it, and as a result she could not travel abroad to attend the funeral. Although TAS requested that the IRS send the passport to TAS in order for TAS to send it to the taxpayer by overnight mail, the IRS sent it back to the taxpayer by regular mail.

One of the most significant issues the LITCs observed was the lack of communication regarding rejected applications.<sup>10</sup> Several LITCs reported they received IRS suspense notices or rejection notices for ITIN applications, yet were not told why the application was rejected. They said these notices often asked for the same identification documents that the LITCs already submitted and provided no indication why a document was not considered valid. When the practitioners called the IRS, they were unable to speak to anyone who could look at the application and explain which document was invalid and why. This

8 Mexico issues its citizens the *Matricula Consular* (or, commonly, the *matricula*). See <http://consulmex.sre.gob.mx/detroit/index.php/matricula-consular> (last visited May 28, 2013).

9 ITIN applications must be filed with a paper tax return unless they meet an exception. Because these applications are handled in Submission Processing, the controlling and tracking is much the same as for all other originally filed paper returns. The returns move through several functions before the IRS has any way of identifying individual returns or tracking the status. Returns are opened, sorted, batched into groups of approximately 100 and coded (or prepared) for data transcription before a unique document locator number (DLN) is assigned to individual returns. Only after data transcription can returns be easily located and tracked systemically by this unique DLN. During the height of filing season processing, it may be several days to weeks before individual returns receive a DLN and can be identified and located.

10 TAS conference call with Low Income Taxpayer Clinics (May 23, 2013).

process has then led to practitioners sending in three or four documents instead of two, since they have no idea which document was rejected or will be rejected.

The new procedures do provide an alternative to mailing passports or national identification cards by allowing applicants to have these documents certified at a limited number of Taxpayer Assistance Centers. However, certifying ITIN documents has put a strain on the TACs that offer this service. During the 2013 filing season, the TAC offices in the Dallas / Fort Worth area were only offering tax return preparation on one day of the week due to the demand for certifying ITIN documents. Furthermore, even TACs that are designated to certify documents remain inaccessible to taxpayers because taxpayers either cannot enter them without a form of U.S. government-issued identification or do not enter due to fear of detention and deportation.<sup>11</sup> For example, the TACs in Oakland and San Francisco are in government buildings. For applicants without a U.S. government-issued identification, they must travel to the TAC in San Jose, which is 42 miles away, or the TAC in Salinas, which is 104 miles away, which are not in government-owned buildings. Because dependent applicants cannot have their documents certified by a CAA, they are forced to either send their original documents to the IRS or go to a TAC.

LITCs expressed frustration that a CAA cannot serve an entire family, since CAAs are empowered to certify documents for the parents but not for their dependent children. Because CAAs live in the communities of the taxpayers they serve, they are likely to be more familiar with foreign documentation and in a better position to review country-specific documents than IRS employees, who must review documentation from over 215 countries and in many languages.<sup>12</sup> Nonetheless, the IRS has declined to accept the National Taxpayer Advocate's recommendation to allow CAAs to certify dependents' documents.<sup>13</sup>

### **Current Year ITIN Applications have Fallen Precipitously and Rejection Rates have Increased Substantially.**

From December 30, 2012, through April 27, 2013, ITIN applications fell by 46 percent compared to the same period last year. At the same time, the percentage of rejected applications doubled from 22 percent to 44 percent.<sup>14</sup>

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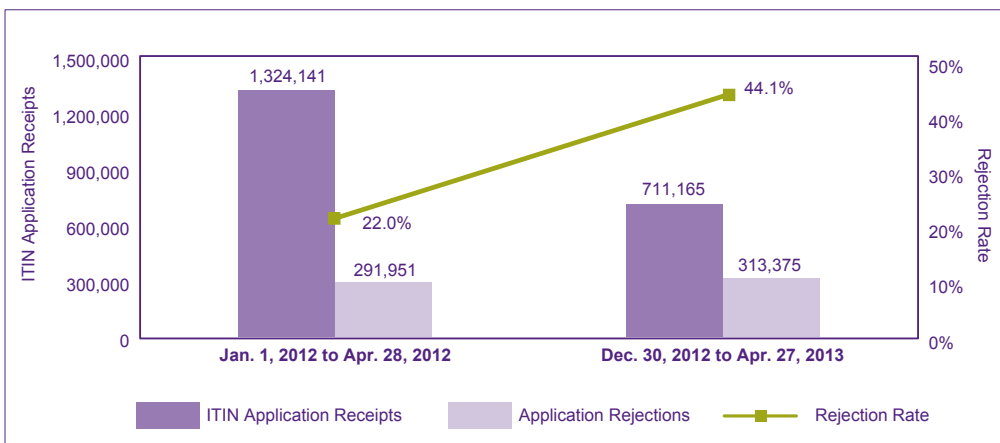
11 TAS phone conversation with Low Income Taxpayer Clinic (May 21, 2013).

12 IRS response to TAS information request (September 28, 2012).

13 See National Taxpayer Advocate 2012 Annual Report to Congress 179.

14 IRS, ITIN Production Report (Apr. 27, 2013).

**FIGURE II.5, ITIN APPLICATION RECEIPTS AND REJECTED APPLICATION RATES DURING EARLY 2012 AND EARLY 2013**



TAS will continue monitoring ITIN application and rejection rates to determine whether this trend continues and indicates a change in filing compliance by ITIN taxpayers. In FY 2014, TAS will seek data on rejected applications for ITINs requested as the primary TIN for an income tax return to gauge the current ITIN application policy’s effect on voluntary compliance. TAS will also seek data on rejected ITIN applications for dependents to determine if the new procedures are causing the IRS to improperly deny numbers to these applicants.

### ITIN cases increase in TAS

**Oct. 2011-March 2012, TAS received**

**197 ITIN application cases**

**Oct. 2012-March 2013, TAS received**

**429 ITIN application cases**

**118% increase**  
over the same period in FY 2012

TAS has seen its own ITIN cases increase. From October 1, 2011, through March, 2012, TAS received 197 ITIN application cases. During the same period in FY 2013, TAS received 429 cases, an increase of 118 percent. These numbers may not fully represent the problems taxpayers are experiencing, because taxpayers who decide not to apply for an ITIN and forgo filing a tax return may not come to TAS at all.

## Requiring Applicants to Submit ITIN Applications with a Paper Return Continues to Harm Taxpayers.

The IRS has refused to allow filing of ITIN applications throughout the year with proof of a legitimate return filing requirement,<sup>15</sup> a decision that continued to harm taxpayers during the 2013 filing season. A recent IRS training presentation for CAAs advised them to allow four to six weeks for the IRS to process ITIN applications submitted May 1 through January 14, but to allow six to ten weeks for applications submitted January 15 through April 30.<sup>16</sup> Requiring the majority of ITIN applicants to file during the filing season with a paper return forces applicants not only to wait up to ten weeks for their applications to be processed and their original documentation returned, but also to wait much longer to receive any refunds. TAS will continue to advocate for the IRS to allow taxpayers to apply for ITINs throughout the year as long as they provide proof of a legitimate tax filing requirement.

## Changes Are Needed to Address Unique Characteristics of Different Groups of ITIN Filers.

In addition to the National Taxpayer Advocate's recommendations regarding ITINs in her Annual Reports to Congress, TAS has advocated for reforms to the ITIN program in its work with the IRS on joint teams and through the internal guidance review process.<sup>17</sup> This work has yielded some key changes. On October 2, 2012, the IRS announced that it had agreed to allow students, who already provide documentation to the Department of Homeland Security under the Student Exchange Visitors Program (SEVP), to have their documents certified by an SEVP institution instead of sending original documents to the IRS.<sup>18</sup> TAS is pleased the IRS has made this change but is concerned that it has not addressed the needs of other unique groups of taxpayers.

While the new rules allow CAAs, a limited number of TACs, and four international tax attachés to certify copies of documents, these rules overlook groups of foreign taxpayers who do not have access to a CAA and may need to travel to another country to reach an attaché. One LITC states that it has dealt with hundreds of H-2A workers<sup>19</sup> who are filing returns for the first time for 2012 and prior years.<sup>20</sup> Their spouses may live in other countries

15 See National Taxpayer Advocate 2012 Annual Report to Congress 165, 179 (stating that only allowing ITIN applications with paper returns during the filing season creates seasonal bottlenecks affecting over one million tax returns and associated refunds annually and repeating the recommendation to allow ITIN applications throughout the year with proof of a filing requirement).

16 IRS, Stakeholder Partnerships, Education and Communications (SPEC), *Certifying Acceptance Agent and Forensic Training* (Jan. 29, 2013).

17 See National Taxpayer Advocate 2010 Annual Report to Congress 319-34; National Taxpayer Advocate 2009 Annual Report to Congress 520-22; National Taxpayer Advocate 2008 Annual Report to Congress 126-40; National Taxpayer Advocate 2004 Annual Report to Congress 143-62; National Taxpayer Advocate 2003 Annual Report to Congress 60-86. In 2003, 2004, and 2008, the National Taxpayer Advocate identified the IRS's failure to timely process ITIN applications as a Most Serious Problem. See, e.g., TAS comments on IRM 3.21.263 (submitted Jan. 29, 2013).

18 See IRS Clarifies Temporary ITIN Application Requirements for Noncitizens with Tax Extensions and Many Foreign Students, <http://www.irs.gov/uac/Newsroom/IRS-Clarifies-Temporary-ITIN-Application-Requirements-for-Noncitizens-with-Tax-Extensions-and-Many-Foreign-Students>. (last updated Oct. 2, 2012).

19 An H-2A worker is a legal immigrant with residence in a foreign country who has no intention of abandoning that country and who comes to the United States temporarily to perform agricultural services or labor. See 8 U.S.C. § 1101(a)(15)(H)(ii)(a).

20 Email from LITC Director to TAS (Mar. 19, 2013) (on file with TAS).

and lack access to video equipment to conduct an interview and thus need to send original documents to the IRS to obtain an ITIN and be included on the returns.<sup>21</sup> TAS conversations with a different LITC reveal another problem for H-2A workers: the timing of the H-2A season makes it difficult for these applicants to apply for an ITIN by the tax filing deadline.<sup>22</sup> In the Midwest, the H-2A season runs from March till November, meaning that if the taxpayers come to work in the United States in March and do not already have their original documents with them, they have to send away for them and may not receive them in time to file by the deadline. TAS will continue to advocate for program changes to provide relief to these and other unique groups of taxpayers.<sup>23</sup>

### **TAS Will Continue to Monitor the Revised CAA Certification and Training Procedures.**

In her 2012 Annual Report to Congress, the National Taxpayer Advocate recommended the IRS improve its oversight of the CAA program by requiring periodic training, an annual competency exam, and a due diligence statement.<sup>24</sup> TAS is pleased that the IRS has committed to require CAAs to be regulated as Circular 230 practitioners, and to complete an online course and forensic training. However, TAS is concerned that the ITIN Program Office has not provided timely training updates and information to CAAs. For example, the January 29, 2013, CAA training presentation refers CAAs to Form 14154 for a checklist to assist them in completing Form W-7, and to Form 14194, which is a certificate of accuracy to be submitted with Form W-7. As of June 6, 2013, Form 14154 still was not available on the Forms and Publications section of the IRS website. Form 14194 was only posted on this area of the site on March 11, 2013, and under a different name, “Form W-7 COA.”<sup>25</sup> The inability of CAAs to file ITIN applications with the required forms during the first part of the filing season and the failure of the IRS to provide timely information only create further difficulty for applicants, especially because many who did not use CAAs in the past may have done so in 2013 to avoid sending in original documents.

In an email on November 29, 2012, the ITIN Program Office notified CAAs that they would need to complete forensic training by January 31, 2013, and certify their training by February 28, 2013.<sup>26</sup> On February 5, 2013, the IRS announced it was pushing back the training deadline to December 31, 2013.<sup>27</sup> Given the importance of CAAs to the ITIN

21 A CAA must conduct a face-to-face or live video electronic interview with an individual in order to certify an individual's documents, thus allowing the CAA to send in copies instead of the original documents. See IRM 3.21.263.3.2 (Jan. 2, 2013).

22 TAS conference call with Low Income Taxpayer Clinics (May 23, 2013).

23 In 2012, the National Taxpayer Advocate recommended the IRS accept copies of documents certified by an apostille in conformance with the U.S. obligations under the Hague Convention. See National Taxpayer Advocate 2012 Annual Report to Congress 179.

24 See National Taxpayer Advocate 2012 Annual Report to Congress 171.

25 A search for “Form 14154” on the search engine Google on June 6, 2013 did not find the current Form 14154 at all. Concerning Form 14194, it appears the IRS dropped the numbering in the March 2013 revision and refers to the form now as Form W-7 COA. See Form W-7 COA, *Certificate of Accuracy for IRS Individual Taxpayer Identification Number* (revised Dec. 2012).

26 See email from ITIN Program Office to Undisclosed Recipients (Nov. 29, 2012) (on file with TAS).

27 See IRS, Forensic Training, <http://www.irs.gov/Individuals/Forensic-Training> (last updated Feb. 5, 2013).

program, TAS will monitor the status of the new CAA requirements during the remainder of 2013 and in 2014 to bring to light any further issues.

### **TAS Will Continue to Work with the IRS on Its Plans to Deactivate ITINs.**

In response to the ITIN discussion in the 2012 Annual Report to Congress, the IRS committed to allowing ITINs issued after 2012 to expire after certain periods of time or nonuse, which may stop them from being used for anything other than federal tax administration purposes.<sup>28</sup> The IRS is exploring similar options for deactivating ITINs issued before 2013. TAS is pleased by the IRS's actions and will work closely with the IRS to ensure that taxpayers are not deprived of their rights. TAS strongly believes the IRS must communicate with taxpayers and notify them before deactivating ITINs or allowing them to expire.

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28 See National Taxpayer Advocate 2012 Annual Report to Congress 171-78. On numerous prior occasions, the National Taxpayer Advocate has expressed concern over the IRS's lack of a process for retiring ITINs and has recommended that it develop a process for retiring or revoking ITINs that are no longer used for tax administration purposes after providing notice to the taxpayer. See National Taxpayer Advocate 2010 Annual Report to Congress 333, National Taxpayer Advocate 2008 Annual Report to Congress 130, National Taxpayer Advocate 2003 Annual Report to Congress 67.