

**MSP
#21****INDIVIDUAL TAXPAYER IDENTIFICATION NUMBERS (ITINS):
Application Procedures Burden Taxpayers and Create a Barrier to
Return Filing****RESPONSIBLE OFFICIAL**

Debra Holland, Commissioner, Wage and Investment Division

DEFINITION OF PROBLEM

In late 2012, in response to a Treasury Inspector General for Tax Administration (TIGTA) report, the IRS announced permanent changes to its Individual Taxpayer Identification Number (ITIN) application procedures. Under the new procedures, primary and secondary applicants may use a certifying acceptance agent (CAA) to certify their supporting documents and submit copies rather than originals to the IRS. However, persons applying for an ITIN for a dependent still must mail original documents or copies certified by the issuing agency to the IRS, unless the dependent has the documents certified at an IRS Taxpayer Assistance Center (TAC) or a U.S. tax attaché's office.

The new procedures are one reason ITIN applications filed with returns during calendar year 2013 plunged 48.4 percent from the 2010-2012 baseline.¹ During the same time, the percentage of rejected applications has soared to 50.2 percent.² Without an ITIN, taxpayers ineligible for a Social Security number (SSN) cannot meet their tax return filing obligations or claim the personal exemptions for spouses and children and the tax credits and refunds to which they are legally entitled. Taxpayers also need ITINs to participate in the global economy by having the proper amount of taxes withheld, claiming tax treaty benefits, and complying with reporting laws such as the Foreign Account Tax Compliance Act (FATCA).³

A fundamental problem with the IRS's ITIN application procedures is that they exacerbate the issues identified by TIGTA instead of mitigating them, including:

- The lack of appropriate employee training and sufficient time to review ITIN applications, made worse by the new CAA limitations;
- The inability of CAAs, who often have specialized knowledge of identification documents used in certain communities and regions, to assist the IRS in identifying fraud because they cannot certify dependent documents; and
- The continued requirement to submit ITIN applications with a paper tax return during the filing season, which burdens taxpayers and the IRS, and squanders opportunities to detect fraud.

1 IRS, ITIN Production Reports (Oct. 30, 2010, Oct. 29, 2011, Oct. 27, 2012, and Oct. 26, 2013). Totals are year-to-date from January 1 through the date of each report.

2 *Id.*

3 See Most Serious Problem: *Reporting Requirements: The Foreign Account Tax Compliance Act has the Potential to be Burdensome, Overly Broad, and Detrimental to Taxpayer Rights*, *infra*.

A second major problem is that with the ITIN unit's increased focus on fraud and enforcement, it has given taxpayer service short shrift. Issues related to this approach include:

- Long wait times for applications to be processed, lost mail, and inadequate customer service and assistance at TACs;
- Barriers to resolving suspended or rejected applications, and the inability to speak with an IRS employee and learn the reason for a suspension or a rejection;
- New CAA procedures that discourage participation in the program and fail to provide appropriate training to CAAs; and
- Procedures for retiring old or inactive ITINs that may harm taxpayers and deprive them of their rights.

ANALYSIS OF PROBLEM

Background

The National Taxpayer Advocate has drawn attention to issues with the ITIN application process for many years.⁴ In 2003, the National Taxpayer Advocate reported the IRS did not have adequate staffing to process ITIN applications and tax returns during the filing season.⁵ She also identified processing delays, inadequate phone assistance, and the seemingly arbitrary acceptance or rejection of applications. Many of these problems still burden applicants a decade later. In July of 2012, TIGTA reported the ITIN application process was “so deficient that there is no assurance that ITINs are not being assigned to individuals submitting questionable applications.”⁶ While not minimizing compliance concerns, the National Taxpayer Advocate disagreed with some of TIGTA's conclusions about the amount of fraud associated with ITINs,⁷ as well as recommendations such as requiring only original or certified copies of documents and discontinuing the CAA program.⁸

Overview of New Procedures

In response to the TIGTA report, the IRS made wholesale interim changes to the ITIN program in June 2012, many of which were made permanent in November 2012 revisions.⁹ Under the new procedures, taxpayers (subject to a few exceptions) must send to the IRS original documents or copies certified by the issuing agency to support their ITIN applications unless they:

1. Use a CAA;
2. Apply at a Taxpayer Assistance Center; or

4 See National Taxpayer Advocate 2003 Annual Report to Congress 60-86; National Taxpayer Advocate 2004 Annual Report to Congress 143-162; National Taxpayer Advocate 2008 Annual Report to Congress 126-140; National Taxpayer Advocate 2010 Annual Report to Congress 319-338; National Taxpayer Advocate 2012 Annual Report to Congress 154-79.

5 National Taxpayer Advocate 2003 Annual Report to Congress 60-86.

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

7 See National Taxpayer Advocate 2012 Annual Report to Congress 157 (finding that the complexity of the requirements for claiming the Child Tax Credit or Advanced Child tax credit lead to widespread erroneous claims or omissions that cannot be attributable solely to fraud, as the TIGTA reports imply).

8 *Id.* at 159; TIGTA Report.

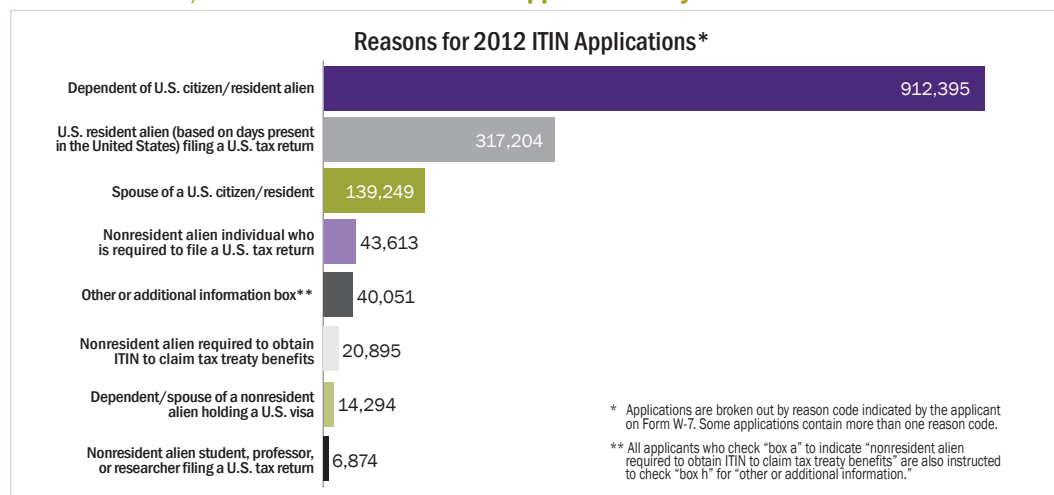
9 See IRS, IRS Strengthens ITIN Application Requirements; Interim Changes Will Protect the Integrity of the ITIN Process, IR 2012-62 (June 22, 2012); IRS, IRS Strengthens Integrity of ITIN System; Revised Application Procedures in Effect for Upcoming Filing Season, IR 2012-98 (Nov. 29, 2012).

3. Apply at a U.S. tax attaché office.

Only primary and secondary applicants can use a CAA to certify their supporting documentation.¹⁰ All applicants, including dependents, can apply at a TAC, but TACs will only certify passports and national ID cards.¹¹ Applicants living overseas can also apply at one of four U.S. tax attaché offices, which will certify all 13 approved types of documentation.¹² The new original document requirement exempts military spouses and dependents, students who are part of the Student and Exchange Visitor Program (SEVP),¹³ and nonresident aliens claiming tax treaty benefits.

The revised procedures left in place the requirement that absent certain exceptions, an applicant must submit the application with a paper federal tax return during the filing season, to prove the taxpayer has a valid filing requirement. Nonresident aliens claiming the benefits of a tax treaty and persons with income, payments, or transactions subject to third-party reporting or withholding may apply for an ITIN separately from filing a tax return.¹⁴ However, these applicants make up a minority of ITIN filers.

FIGURE 1.21.1, Calendar Year 2012 ITIN Applications by Reason Code¹⁵



10 To send in copies of the documents instead of originals or certified copies, CAAs must conduct an in-person interview or a live video electronic interview with the applicant. See IRM 3.21.263.3.2 (Jan. 2, 2013).

11 The IRS increased the number of TACs certifying ITIN applications to 100 during the end of the 2013 filing season but has not committed expanding this program to more TACs in 2014. <http://www.irs.gov/uac/TAC-Locations-Where-In-Person-Documents-Verification-is-Provided> (last updated June 3, 2013). IRS response to TAS information request (Nov. 7, 2013).

12 The attachés are based in Beijing, Frankfurt, London, and Paris. See 2013 ITIN Updated Procedures Frequently Asked Questions, <http://www.irs.gov/Individuals/2013-ITIN-Updated-Procedures-Frequently-Asked-Questions> (last updated Sept. 13, 2013).

13 The Taxpayer Advocate Service was instrumental in bringing about this exception for SEVP students. TAS held multiple conference calls and meetings with stakeholders during 2012 and advocated for revised procedures for students.

14 See Instructions for Form W-7 (Aug. 2013).

15 TAS Research, Compliance Data Warehouse, Entity Application Programs, Form_W7 table, data drawn November 19, 2013. The reason code for dependents is derived from the W-7 application itself that lumps dependents of U.S. Citizens and resident aliens (for tax purposes) together.

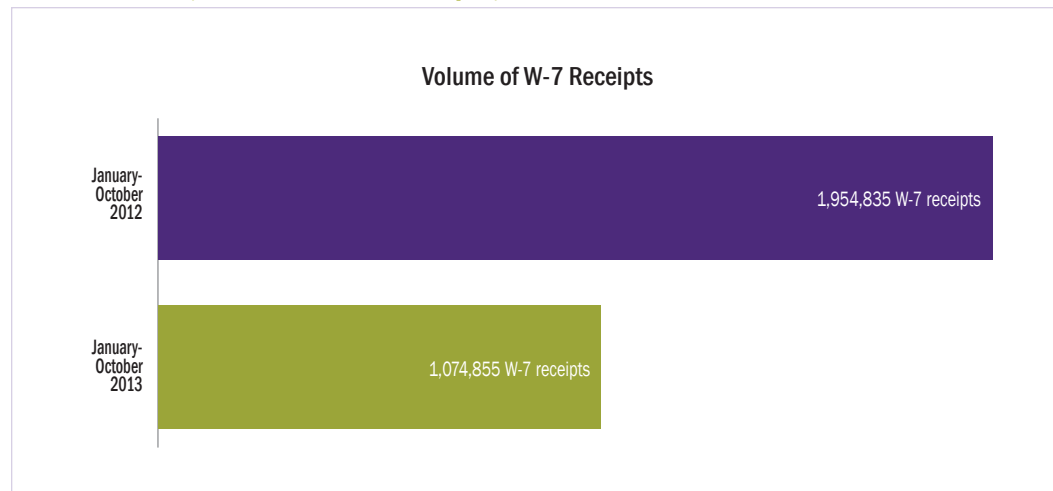
The National Taxpayer Advocate, Low Income Taxpayer Clinics (LITCs), and outside stakeholders warned the IRS about the negative consequences of the interim procedures, and of retaining the rule that an applicant must apply with a tax return during filing season, which include the following:¹⁶

- Taxpayers may forgo filing a joint return and claiming any exemptions, or file with an incorrect filing status because their spouses and dependents cannot obtain ITINs before the return filing date. Thus, they may pay more than they owe.
- Some affected taxpayers may stop filing returns altogether due to the difficulty of obtaining an ITIN.
- Taxpayers will experience hardship from not having their original documents for an extended period (often many months), risking fines and incarceration in some locations, and facing the costs of obtaining duplicates if lost.

Current and Future Volumes of ITIN Applications

From January 1 through October 27, 2012 the IRS received nearly two million ITIN applications.¹⁷ During the same period in 2013, having projected receipts of over 1.8 million, the IRS received just over one million as shown below.¹⁸

FIGURE 1.21.2, Volume of W-7 Receipts, 2012 and 2013



While a decline in unauthorized immigration may have contributed to the decrease, recent data suggests that unauthorized immigration has actually increased since 2009.¹⁹ In addition, while economic activity slowed during the global downturn, it has picked up again and applicants need ITINs for purposes of

¹⁶ See National Taxpayer Advocate 2012 Annual Report to Congress 159-63.

¹⁷ ITIN Comparative Report (Oct. 26, 2013). There were 1,954,836 W-7 receipts, 1,241,031 ITINs assigned, and 720,771 applications rejected from January through October, 2012.

¹⁸ *Id.* The IRS projected receipts of 1,820,782 for October 26, 2013. There were only 1,074,855 W-7 receipts, the IRS assigned 550,840 ITINs, and rejected 538,544 applications from January through October 2013.

¹⁹ See Pew Research Hispanic Trends Project, *Population Decline of Unauthorized Immigrants Stalls, May Have Reversed* (Sept. 23, 2013), available at <http://www.pewhispanic.org/2013/09/23/population-decline-of-unauthorized-immigrants-stalls-may-have-reversed/>. The estimated number of unauthorized immigrants peaked at 12.2 million in 2007, fell to 11.3 million in 2009, but has been increasing since to 11.7 million in 2012. *Id.*

withholding or claiming tax treaty benefits.²⁰ One plausible explanation for the decrease in applications is the chilling effect of the new procedures.²¹ LITCs reported to TAS that in 2013, people chose not to apply for ITINs due to the burden of giving up original documents.²²

The burden associated with the IRS's new procedures will only be exacerbated by any upcoming immigration reform. In 2013, the Senate passed the Border Security, Economic Opportunity, and Immigration Modernization Act.²³ Under section 2101 of this bill, persons cannot apply for registered provisional status until they have satisfied "any applicable Federal tax liability," which includes any income taxes assessed under IRC § 6203.

Having satisfied an assessed tax liability would usually mean a taxpayer has already filed a return with an ITIN. However, the legislation also requires applicants to meet an employment or education requirement, and one method for meeting this is to provide proof of income. Thus, there may be an upsurge in ITIN applicants who need to file past returns. The Senate bill is estimated to result in a net increase of 9.6 million people residing in the United States by 2023.²⁴ When asked if it considers how immigration patterns affect ITIN applications, and how it will manage an increase in applications due to reform, the IRS provided no details about these issues or whether it has done any planning.²⁵

ITIN Applicant Characteristics

ITIN filers, on average, report low adjusted gross income (AGI), with most of it coming from wages. They also claim lower refunds and lower child tax credits, but higher advanced child tax credits, as shown in Figure 1.21.3.²⁶

FIGURE 1.21.3, Income and Credits of ITIN and Non-ITIN Filers – Tax Year 2010, Processing Year 2011*

	Average For ITIN Filers	Average for Non-ITIN Filers
Adjusted Gross Income	\$ 32,616	\$ 59,984
Wage Income	\$ 33,584	\$ 50,376
Refund Amount	\$ 2,824	\$ 3,516
Child Tax Credit	\$ 878	\$ 1,227
Advanced Child Tax Credit	\$ 1,944	\$ 1,236

* Average amount is calculated for returns where the line item is greater than zero.

ITIN filers possess a lower proportion of single filers than the overall population, claim more dependents, and as a group are younger.

20 In 2012, almost 21,000 people applied for an ITIN to claim tax treaty benefits, as shown by checking box "a" on Form W-7. TAS Research, Compliance Data Warehouse, Entity Application Programs, Form_W7 table, data drawn November 19, 2013.

21 See IRS response to TAS information request (Nov. 7, 2013) ("Recent implemented changes to the ITIN program, including more rigid documentation requirements, may have contributed to the recent decrease in applications received and the number of applications rejected and suspended. Another factor may be a change to the population that applies for ITINs.")

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

23 S.B. 744, 113th Cong. (2013).

24 CBO, Letter to Patrick Leahy, Chairman, Committee on Judiciary 1 (July 3, 2013), available at <http://www.cbo.gov/publication/44397>.

25 The IRS's response states: "The IRS will take the necessary steps to administer any tax related requirements of legislation if and when a new law is enacted." IRS response to TAS information request (Nov. 7, 2013).

26 IRS, Wage and Investment Research and Analysis (WIRA) ITIN Preliminary Findings and Recommendations (July 13, 2012).

FIGURE 1.21.4, DEMOGRAPHICS OF ITIN FILERS – TAX YEAR 2010, PROCESSING YEAR 2011*

Filing Status	ITIN Filers	Non-ITIN Filers
Single	20%	46%
Married Filing Joint	41%	38%
Married Filing Separate	4%	2%
Head of Household	35%	15%

Dependent Count	ITIN Filers	Non-ITIN Filers
0	18%	64%
1	14%	17%
2	23%	13%
3	23%	5%
4+	22%	2%

Age Category (Primary Taxpayer)	ITIN Filers	Non-ITIN Filers
0-18	0%	1%
19-25	11%	13%
26-35	35%	19%
36-45	30%	17%
46-55	15%	19%
56-65	6%	15%
66+	3%	15%

* Numbers may not total due to rounding.

For Tax Year 2011, ITIN filers reported \$8.4 billion in total tax liability.²⁷

The New Procedures Are Not Tailored to Address Fraud.

According to the TIGTA report, major issues with the IRS's processing of ITIN applications include:

- The environment created by management, including short processing timeframes, discourages employees from detecting fraudulent applications.
- Employee training on questionable documents is inadequate.
- The processes do not verify applicants' identity and foreign status.
- IRS management eliminated steps to identify questionable application patterns and schemes, including using application data such as duplicate mailing addresses as an indication of fraud.²⁸

If one of the primary problems is that IRS employees are not sufficiently trained or given adequate time to process ITIN applications, the IRS's decision to only allow primary and secondary applicants to use CAAs only worsens this problem. Under the new procedures, the ITIN unit will likely receive more applications

²⁷ See IRS response to TAS information request (Nov. 7, 2013), Individual Taxpayer Identification Number (ITIN) Usage Analysis: Tax Year (TY) 2010 to 2012.

²⁸ See TIGTA Report.

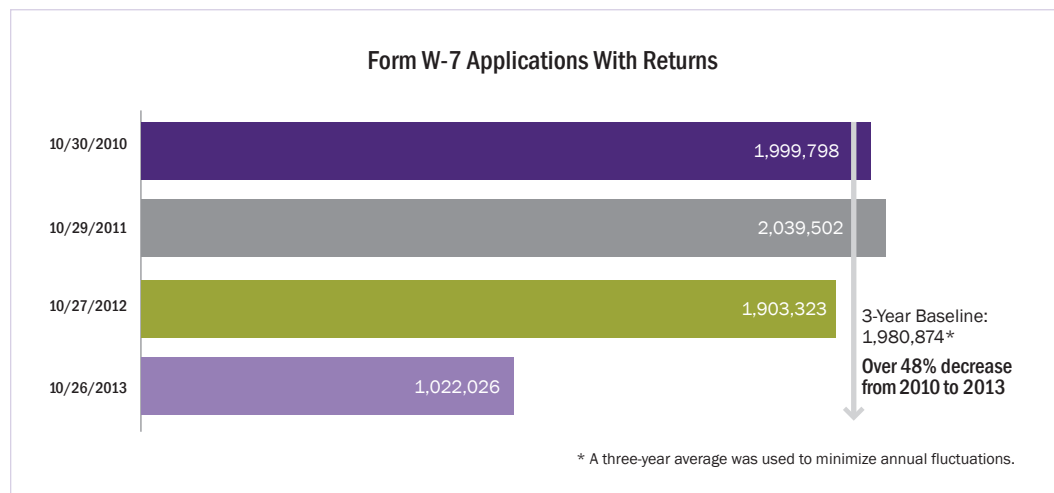
that have not been certified by a CAA, requiring greater scrutiny and more time to review. The reduction in the CAA program also does not help resolve problems with verifying identity and foreign status. CAAs are embedded in the communities they serve, and often their clientele consists largely of people from a few specific countries. Unlike IRS employees, who must be able to review identity documents from hundreds of countries, CAAs often have specific knowledge of a country’s or region’s documentation, putting them in a better position to verify identity and foreign status and identify fraud.

Some affected taxpayers may stop filing returns altogether due to the difficulty of obtaining an ITIN.

The TIGTA report includes a detailed section about how many ITINs and associated refunds were sent to a single address, implying that these ITIN applications were fraudulent.²⁹ During the 2013 filing season, the IRS instructed employees to “correct” the taxpayer’s mailing address listed on the application (Form W-7) if the address belonged to a CAA.³⁰ This policy harmed applicants who may not have had long-term addresses where they could receive official documents. Based on the theory that a large number of documents sent to a single address is an indicator of fraud, the IRS made changes that burden taxpayers without actually addressing any proven fraud in the context of ITINs. TAS is pleased that the IRS has since accepted its recommendation to remove this instruction from the IRM and allow applicants to use a CAA’s address to receive original documents.³¹

The IRS also changed its employee training to address the TIGTA comments about an environment that leaned towards accepting applications. However, it appears the pendulum may have swung too far in the opposite direction. Through October 2013, the number of W-7 applications with filed returns has plummeted 48.4 percent from the previous three-year baseline as shown below.

FIGURE 1.21.5, 2013 Form W-7 Applications with Returns Plunged 48.4 Percent from the 2010–2012 Baseline³²



29 See TIGTA Report at 17.

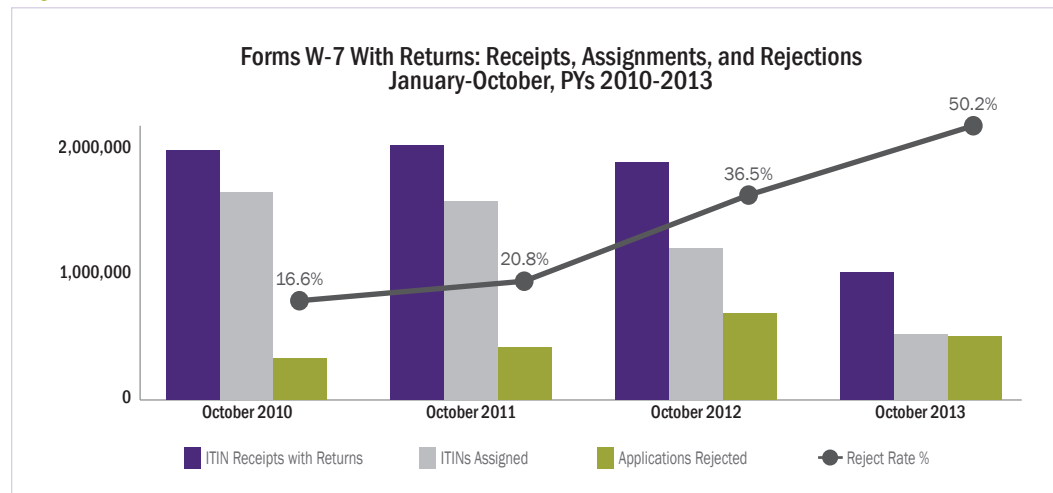
30 This address is used to return original documents to the applicant. “If the address on line 2 is the business address of the CAA, edit the taxpayer’s address from the tax return to the Form W-7.” IRM 3.21.263.5.3.5.5 (Jan. 1, 2013).

31 See TAS IMD Review Comments, IRM 3.21.263, SAMS 27612 (July 25, 2013). See also Interim Procedural Update 13U1417, IRM 3.21.263.5.3.5.5(2) (Sept. 3, 2013). Stakeholders also advocated for this change. IRS conference call with practitioners (Aug. 16, 2013).

32 IRS, *ITIN Production Reports* (Oct. 30, 2010, Oct. 29, 2011, Oct. 27, 2012, and Oct. 26, 2013). Receipts are year-to-date totals from January 1 through the date of each report.

Even with a near 50-percent decline in ITIN applications and accompanying tax returns, the percentage of rejected applications has soared to 50.2 percent as shown in Figure 1.21.6 below.

FIGURE 1.21.6, Forms W-7 with Returns, Assigned ITINs, Rejected Applications, and IRS Reject Rate³³



If most of the increase in the rejection rate is due to the new procedures, the net effect of the rule change has resulted in an additional 300,000 applications denied in 2013 alone.³⁴

According to the IRS, the number one reason applications were placed in suspense was that “supporting identification documentation that was submitted is unacceptable.”³⁵ The top reason for rejecting applications was that the applicant did not respond to the suspense notice requesting additional information.³⁶ Practitioners and applicants commonly report that the IRS is rejecting documentation they believe to be legitimate. There are multiple reasons for this:

- An IRS employee might not recognize that a document is valid, such as in cases where legitimate passports are rejected.
- An IRS employee may not recognize that a document is sufficient, which happened when the IRS rejected over 200 Canadian student applications because they lacked visas, even though the U.S. State Department does not require visas for Canadian students.³⁷
- An official document from another country or region within that country, *e.g.*, a foreign birth certificate or school record, might not conform to the IRS’s standards for these documents.

³³ IRS, *ITIN Production Reports* (Oct. 30, 2010, Oct. 29, 2011, Oct. 27, 2012, and Oct. 26, 2013). Receipts are year-to-date totals from January 1 through the date of each report.

³⁴ IRS, *ITIN Production Reports* (Oct. 29, 2011, Oct. 27, 2012, and Oct. 26, 2013). The rise in the error rate from 16.6 percent in 2010 to 50.2 percent in 2013 shows an increase of approximately 300,000 additional rejected applications for PY 2013.

³⁵ IRS response to TAS information request (Nov. 7, 2013).

³⁶ *Id.*

³⁷ TAS Systemic Advocacy Management System (SAMS) issue 28728.

The first and the second examples indicate a lack of employee training. The last example indicates the IRS's new procedures are poorly executed because they make certain forms of documentation inapplicable by not considering what these documents actually contain.³⁸

Indications that the IRS suspended or rejected applications that it later approved, without receiving any additional documentation, are also disturbing.³⁹ Practitioners reported reapplying with identical supporting documents following a rejection and having the second application accepted.⁴⁰ In early 2013, the IRS placed 120,000 ITIN applications in R98 status pending a decision on acceptable certified copies of documents from the issuing agency.⁴¹ Documents were held for 30 days before a decision was made and sufficient staffing was put in place to begin processing the applications.

Although both TIGTA and IRS's Wage and Investment, Research and Analysis (WIRA) have supplied research that touches on the level of compliance among ITIN filers, the IRS does not appear to have a comprehensive picture of the payment compliance, filing compliance, and return accuracy of this population.⁴² Without this information, IRS personnel cannot adequately assess the benefits and detriments of various ITIN policy options. Instead of creating sweeping rules that block over half of ITIN applications, the IRS should evaluate how to detect fraud and prevent fraudulent refunds by running these returns through filters and databases, perhaps even an ITIN specific filter.

Requiring ITIN Applications to be Filed with Paper Returns During the Filing Season Burdens Affected Taxpayers and the IRS Alike, Hampering Efforts to Detect and Deter Fraud.

Requiring the majority of ITIN applicants to file during the filing season forces applicants to wait up to ten weeks for their applications to be processed and their original documentation returned, and even longer to receive refunds.⁴³ The IRS has stated, "associating the issuance of the ITIN with the filing of a tax return is still the only reliable method for the IRS to verify the number is being requested and properly used for tax administration purposes."⁴⁴ However, as demonstrated by exceptions for certain applicants, such as those claiming the benefits of a tax treaty or who are subject to withholding, there are ways for applicants to prove a tax administration purpose without filing a return. Indeed, the IRS allows applicants to provide copies of pay stubs with year-to-date information to verify that the applicant earned income in the case of a Form W-7 and Form W-2 mismatch.⁴⁵ There is no reason one or more pay stubs could not be accepted to prove income and a filing requirement prior to the filing of the tax return.

38 The IRS changed some requirements to accommodate records that did not comply with its standards. See, e.g., Interim Procedural Update WI-03-0613-1108 (June 13, 2013) (updating IRM 3.21.263.5.3.4.2(3) to specify that nursery or kindergarten school letters for applicants under six do not require listing course work or grades). However, multiple practitioners reported to TAS at the Nationwide Tax Forums in August 2013 that clients frequently had records that they could not use or were rejected because the record did not comply with the IRS's standards despite it being a legitimate record.

39 For example, a practitioner at the 2013 IRS Nationwide Tax Forums informed TAS about receiving rejection notices for ITIN applicants, followed weeks later by notices that the ITINs were assigned.

40 Practitioners at the 2013 IRS Nationwide Tax Forums reported this issue.

41 R98 status is a rejection code for an application received without a mailing address. IRS response to TAS information request (Nov. 7, 2013).

42 See TIGTA Report. See also IRS, WIRA ITIN Preliminary Findings and Recommendations (July 13, 2012).

43 These were the expected wait times for the 2013 filing season. See IRS, Stakeholder Partnerships, Education and Communications (SPEC), *Certifying Acceptance Agent and Forensic Training* (Jan. 29, 2013).

44 IRS response to TAS information request (Nov. 7, 2013).

45 *Id.*

Requiring ITIN applications during the filing season forces the IRS to process them under short timelines and does not provide sufficient time for fraud review, a concern raised by TIGTA. The IRS has advised it does not plan to pursue electronic filing of the ITIN application, despite the increased potential to detect fraudulent applications through electronic filters.⁴⁶ If the IRS accepted applications throughout the year, with proof of a legitimate filing requirement, its employees could spend more time verifying applications and supporting documents, detecting fraudulent schemes, and creating filters to catch fraudulent applications. This approach would also allow the initial ITIN returns to be e-filed and run through the IRS's regular fraud and identity theft filters.

The IRS Provides Inadequate Customer Service to ITIN Applicants and Improperly Suspends or Rejects Thousands of Applications.

The IRS's inability to process ITIN applications efficiently, timely, and correctly deprives taxpayers of their fundamental right to quality service. The average ITIN unit process cycle time during calendar years 2011, 2012, and 2013 was 20, 21, and 20 days respectively, which at first glance appears to be an acceptable time.⁴⁷ However, the IRS does not measure cycle time on suspended and rejected applications from the taxpayer's perspective, *i.e.* from start to finish. Instead, the IRS only measures how quickly it arrives at a preliminary decision, without considering the time taxpayers wait for the IRS to respond to additional information that taxpayers submit following the initial suspension or rejection.⁴⁸ Furthermore, the IRS does not take into account reworked applications that were erroneously rejected, or delays in processing due to mail misrouting, a process that remains unimproved despite a nearly 50 percent drop in workload.⁴⁹ Delays in processing ITIN applications cause the applicants to wait long periods of time for their refunds without receiving interest on overpayments.⁵⁰

The IRS also fails to deliver adequate customer service by its inability to track and locate ITIN applications and supporting documents. In a recent example, a taxpayer who needed to travel abroad for a medical emergency was unable to do so because the IRS could not locate the passport of the taxpayer's child.⁵¹ The IRS conducted about 60 lost document searches in the ITIN program in 2013, and was successful in finding just 40 of them.⁵² The current system for receiving and processing ITIN applications often does not allow the IRS to track applications until they are entered into a database, and once they are entered, there are still challenges to locating the documents.⁵³

The lack of focus on customer service is also apparent through the ITIN services offered at TACs. The IRS promised to provide "*full-service assistance* for primary and dependent taxpayers at some key IRS

46 For a further discussion of this issue, see Most Serious Problem: International Service: *The IRS Is Taking Important Steps to Improve International Taxpayer Service Initiatives, but Sustained Effort Will Be Required to Maintain Recent Gains*, *supra*.

47 IRS, *ITIN Production Reports* (Oct. 29, 2011, Oct. 27, 2012, and Oct. 26, 2013). The IRS defines cycle time as "the number of work days in the processing cycle for documents and tax returns." IRS response to TAS information request (Nov. 7, 2013).

48 IRS response to TAS information request (Nov. 7, 2013). The National Taxpayer Advocate has previously raised concerns about how the IRS calculates cycle time on ITIN Applications. See National Taxpayer Advocate 2010 Annual Report to Congress, 324, 333.

49 *Id.*

50 Under IRC § 6611, overpayment interest is calculated based on when the return is filed in processable form, which includes the taxpayer's identifying number.

51 Taxpayer Advocate Management Information System (TAMIS) Case File 5573740. The consent to release taxpayer information is on file with TAS.

52 IRS response to TAS information request (Nov. 7, 2013) (stating that "[t]he volume of lost identity [document] searches in ITIN was not recorded for 2011 and 2012.>").

53 For more details about the IRS's system for batching ITIN applications, see National Taxpayer Advocate Fiscal Year 2014 Objectives Report to Congress 45.

[TACs],” but many TACs require a valid U.S.-issued ID just to enter the building, which makes this option unavailable for many taxpayers.⁵⁴ In addition, the IRS permits TAC employees to certify only passports and national identity cards.⁵⁵ The IRS acknowledges that civil birth certificates and school records are used more frequently with ITIN applications than passports or national ID cards, yet TACs cannot certify these documents.⁵⁶ Only 17.8 percent of all applicants proved identity by CAA-certified copies of passports or national ID cards, or by mailing them directly to IRS, whereas birth certificates and school records comprised 61.6 percent of all documents submitted for identification.⁵⁷

The IRS assigned 68.2 percent of all ITINs to alien dependents, the majority of whom proved identity by providing birth certificates and school records.⁵⁸ Because many, if not most, dependent aliens do not possess passports or national ID cards, they cannot have their documents certified by either a TAC or a CAA. Although the IRS increased the number of TACs certifying ITIN applications to 100 during the end of the 2013 filing season, it has not committed to expanding this program to more sites in 2014.⁵⁹

ITIN applicants have reported multiple problems with applications being suspended or rejected, including:

- The lack of communication regarding the reason for the action;
- The inability to speak with IRS employees;
- The IRS’s failure to notify taxpayers about the status of their applications and what steps are available to them;
- The rejection of applications with legitimate documents; and
- The inexplicable suspension or rejection of applications that were later processed without any further documentation.

A frequent complaint among taxpayers and practitioners is that the CP 566, *Suspense Notice*, does not explain why the application was suspended. The IRS revised suspension notices in January of 2013 to clarify requirements for school and medical records.⁶⁰ Still, these notices often fail to identify which document is unacceptable, meaning applicants must call the IRS to attempt to find out.

When taxpayers do receive a suspension notice, they may not hear anything more after submitting further documents as the IRS does not contact applicants again before issuing the rejection notice.⁶¹ Once it

54 National Taxpayer Advocate 2012 Annual Report to Congress 176. Representatives of Low Income Taxpayer Clinics 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 Low Income Taxpayer Clinic Grantee Conference, Recent Developments in IRS Policies and Procedures Related to ITIN Applications, panel discussion (Dec. 6, 2012).

55 Cf. National Taxpayer Advocate 2012 Annual Report to Congress 154, 173; and Servicewide Electronic Research Program (SERP) IRM 3.21.263.6.1.5 (Jan. 2, 2013).

56 IRS response to TAS information request (Nov. 7, 2013).

57 IRS response to TAS information request (Sept. 27, 2012). The above RTS measures are from PY 2012.

58 *Id.* The above RTS measures are from PY 2012.

59 *Id.*

60 IRS response to TAS information request (Nov. 7, 2013).

61 *Id.*

suspends an application, the IRS imposes another restriction that makes it difficult to submit replacement documents: applicants can no longer have a TAC certify their documents.⁶²

Taxpayers will experience hardship from not having their original documents for an extended period (often many months), risking fines and incarceration in some locations.

A common complaint from tax practitioners is that they have no way of speaking with an IRS employee with access to the ITIN real-time system (RTS).⁶³ CAAs have reported to TAS that calls to the ITIN unit often go unanswered. During calendar year 2013, the average level of service for ITIN calls was only 55.3 percent, and the average speed per answer was 926 seconds, or more than 15 minutes.⁶⁴ According to the IRS, all toll-free assistors have access to RTS. However, the ITIN Real Time System Navigation Training, the only training course that teaches employees how to access RTS and search ITIN application records, contains no knowledge check or test to measure what employees learned.⁶⁵ Access to RTS is insufficient if employees do not know how to use the system and effectively answer applicants' questions. Furthermore, although toll-free assistors have the ability to transfer calls directly to the ITIN unit, the IRS does not publish this instruction in the IRM.⁶⁶

The IRS did not adequately engage the stakeholder community during 2013 and continues to make burdensome changes without consulting or notifying stakeholders.

In 2013, the IRS conducted three meetings or calls with the stakeholder community.⁶⁷ Nevertheless, a common complaint among stakeholders is the IRS makes sudden changes to ITIN application procedures without communicating these changes to the public. An example involves the requirements for proving an exception to the requirement of filing the ITIN application with a return. TAS spoke to a corporation that pays out hundreds of thousands of royalty payments each year, including some to nonresident aliens who claim tax treaty benefits and thus need ITINs.⁶⁸ To assist nonresident aliens in obtaining an ITIN without having to file the Form W-7 with a tax return, this corporation provides payees with a standard supporting letter to submit to the IRS. Recently, the payees began receiving letters from the IRS stating that even though these standard letters were previously accepted, effective September 10, 2013, they will no longer be accepted without an original signature. This sudden unilateral procedural change without consulting stakeholders or providing them advanced notice shows a disregard for customer service in the ITIN program.

New CAA Procedures and Policies Discourage Program Participation.

CAAs provide a valuable resource to the IRS in ensuring an applicant is eligible for an ITIN and supporting documents are valid. However, the IRS has failed CAAs in terms of customer service,

62 See CP 566. See IRM 21.3.1.4.61.2 (June 11, 2013) ("Do not refer applicants receiving a CP 566 to a Taxpayer Assistance Center (TAC). Current procedures require the applicant to submit their original documents directly to SPC ITIN Operations in response to a suspense notice.").

63 TAS conversations with practitioners at IRS Nationwide Tax Forums in July and August of 2013.

64 IRS response to TAS information request (Nov. 7, 2013).

65 See *id.*

66 See *id.*

67 *Id.*

68 TAS phone conversation with stakeholder (Nov. 1, 2013). Applicants claiming tax treaty benefits do not have to file a Form W-7 with a federal tax return. See Instructions to Form W-7.

communication, and education.⁶⁹ Although the IRS implemented new training requirements for CAAs during 2013, including completion of mandatory forensic training by the end of the calendar year, the IRS has yet to provide detailed guidance on what this entails. In a response to TAS on November 7, 2013, it stated, “IRS has identified two vendors who meet the established requirements for forensic training and anticipate providing further guidance to certifying acceptance agents on the website and by email distribution.”⁷⁰ At the time of publication of this report, it is unknown whether the IRS will provide this guidance before the due date for the training to be completed, leaving CAAs delaying their training or possibly taking inadequate training.

The IRS is Developing Procedures for Deactivating Old or Inactive ITINs That May Harm Taxpayers and Deprive Them of Their Rights.

The IRS is exploring options for deactivating ITINs issued before 2013 after certain periods of time or nonuse. While the National Taxpayer Advocate has recommended this approach in the past, she is concerned that the IRS may deactivate ITINs or let them expire without notifying taxpayers.⁷¹ The IRS has not addressed a specific question from TAS about whether it would notify taxpayers before expiring or retiring ITINs in all circumstances.⁷² It is imperative that the IRS communicate with taxpayers and notify them before deactivating or allowing existing numbers to expire.

CONCLUSION

Since the new IRS ITIN procedures were put into place, the number of ITIN applications and attendant tax returns has plummeted, while rejection levels have soared. The new procedures created barriers that prevent applicants from declaring income, filing returns, receiving refunds they are due under the law, and participating in the global economy. Absent necessary changes to the program, recommended by the National Taxpayer Advocate for several years, the ITIN program will continue to suffer in terms of facilitating compliance by ITIN taxpayers and preventing fraud.

69 For a further discussion of the IRS’s lack of communication and education for CAAs, see National Taxpayer Advocate Fiscal Year 2014 Objectives Report to Congress 49.

70 IRS response to TAS information request (Nov. 7, 2013).

71 See National Taxpayer Advocate 2010 Annual Report to Congress 333; National Taxpayer Advocate 2008 Annual Report to Congress 130.

72 The IRS merely stated that “The Service is continuing to analyze the feasibility of expiring ITINs issued prior to 2013. We are on target to complete the analysis by the June 2014.” IRS response to TAS information request (Nov. 7, 2013).

RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS:

1. Allow filing of ITIN applications throughout the year if submitted with proof of taxable income or a filing requirement.
2. Allow ITIN applications to be filed electronically.
3. Allow CAAs to certify copies of dependents' documentation instead of requiring original documents or copies certified by the issuing agency.
4. Allow TAC employees to certify all identity documents (beyond passports and national identity cards) that ITIN examiners currently accept for primary, secondary, and dependent applicants.
5. Require training with a knowledge check or test on the ITIN real time system for employees answering the toll-free lines and update the IRM to advise toll-free assistors of the capability to transfer calls to the ITIN unit.
6. Require notification to a taxpayer before an ITIN expires and allow the taxpayer time to apply for and obtain a new ITIN before the expiration of the old number.