

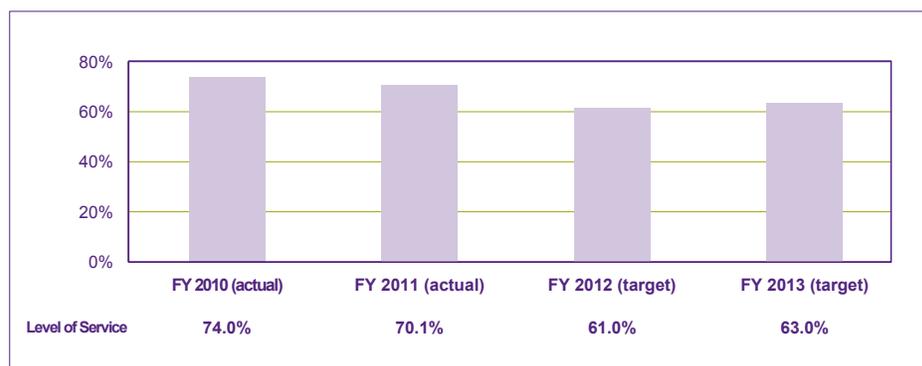
III. Filing Season Review

A. Filing Season Effects of Reduced Funding for Taxpayer Service

TAS identified inadequate IRS funding to serve taxpayers and collect taxes as the Most Serious Problem (MSP) in the 2011 Annual Report to Congress.²²⁷ Data from the recent (2012) filing season show IRS taxpayer service continues to erode in several areas.

The likelihood of taxpayers reaching an IRS telephone representative (*i.e.*, level of service) is declining. A basic definition of level of service is the percentage of calls that reached IRS telephone assistors among all calls attempting to do so. Due to budget constraints, the IRS projected its level of service in fiscal year 2012 would fall significantly below FY 2011 levels.

FIGURE III.1, LEVEL OF SERVICE FOR IRS TELEPHONE CUSTOMER ACCOUNT SERVICES TELEPHONE OPERATIONS, FYS 2010 - 2013²²⁸



A lower level of service is the result of callers finding they cannot get through or hanging up due to a prolonged wait time. The IRS measures wait time as the Average Speed of Answer (ASA). In FY 2012, the ASA got worse for all IRS telephone applications, its Practitioner Priority Service (PPS), and even for the NTA Toll-Free line, a referral line staffed by Wage & Investment employees to screen and refer inquiries to TAS.

227 National Taxpayer Advocate 2011 Annual Report to Congress 3.

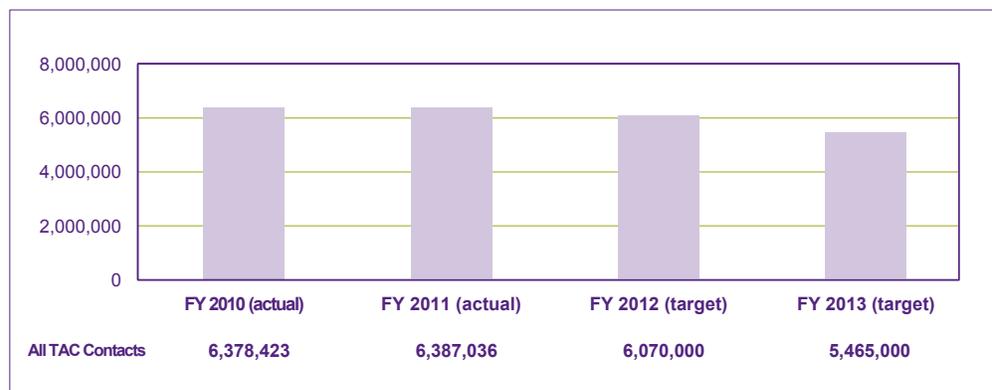
228 W&I Business Performance Review, *Customer Service Representative Level of Service* 20 (Feb. 15, 2012).

FIGURE III.2, AVERAGE SPEED OF ANSWER (ASA) FOR IRS CUSTOMER ACCOUNT SERVICES TELEPHONE OPERATIONS IN MINUTES, FY 2010 - 2013²²⁹



The IRS projects that face-to-face contacts in Taxpayer Assistance Centers will also decline. Data on total TAC contacts (historical and targets) appear below.

FIGURE III.3, TAXPAYER ASSISTANCE CENTER CONTACTS, FY 2010 THROUGH 2013²³⁰



229 W&I Business Performance Review 20 (Feb. 15, 2012). W&I does not make ASA targets for NTA Toll-Free. The ASA listed for NTA Toll-Free in the FY 2012 column is the actual ASA for the first six months of FY 2012. The actual ASA data for NTA Toll-Free is from an IRS response to a TAS inquiry (Apr. 10, 2012).

230 W&I Business Performance Review 16 (Feb. 15, 2012).

IRS reductions to field assistance staff are the cause of the reduced TAC contacts. In the 2012 filing season:

- TACs were not open to support Earned Income Tax Credit Saturdays;²³¹
- Three TAC offices closed;
- Compared to June 2011, seven offices have no current staffing, one office now has only one employee; and
- Six additional offices now have only two employees.²³²

TACs with one or two employees are subject to unexpected closures due to employee absence, and to extended wait times due to higher-than-projected customer traffic. When offices are understaffed, some core tax administration services are out of reach for taxpayers. For example, as shown in the picture below, when certain employees are not available, the IRS refuses to accept cash payment — *i.e.*, the IRS turns away money!

FIGURE III.4, THE OKLAHOMA CITY TAC OFFICE DID NOT ACCEPT CASH PAYMENTS ON MAY 30, 2012 WHEN CERTAIN EMPLOYEES WERE NOT AVAILABLE



231 The IRS and its coalition partners use Earned Income Tax Credit Super Saturday events to increase awareness and participation in the EITC by eligible workers. For example, in 2009 the IRS opened over 250 TAC offices from 9 a.m. to 2 p.m. on Saturday March 21, 2009 to support this initiative. See IRS News Release IR-2009-25, *IRS Partners Mark Super Saturday March 21 to Help Taxpayers*.

232 W&I Business Performance Review 5 (Feb. 15, 2012).

TACs reduced the number of days in which they offered tax return preparation, and no longer set appointments for this service.²³³ This nearly halved the number of e-filed tax returns prepared and accepted in TAC offices compared to just two years ago, even though the target population for these services (the poor and the elderly) is growing. In 2010, over 46 million individuals in the U.S. were below the poverty level (compared to about 38 million in 2005), and over 39 million were over the age of 65 (compared to under 35 million in 2005).²³⁴

FIGURE III.5, TAC E-FILED TAX RETURNS ACCEPTED DURING THE FILING SEASON THROUGH THE DATE LISTED, 2010 – 2012²³⁵



To its credit, the IRS has taken steps to expand or maintain TAC services in some communities. During the 2012 filing season, a videoconferencing pilot program allowed taxpayers to interact “virtually” with an IRS assistor in another office, giving them access to most TAC services.²³⁶ Ten sites have videoconferencing workstations for taxpayer use, and 19 TAC offices provide staff to interact with taxpayers. IRS assistors may physically staff the office at least some of the time, and virtual service supplements the employees on site. Based on the results, the IRS will continue (and possibly expand) use of this service in communities with no TAC staffing.²³⁷

In another example of reduced service, the IRS’s Stakeholder Partnerships, Education, and Communication (SPEC) unit shifted employees and resources from outreach and financial education to focus on its volunteer return preparation program.²³⁸ However, as shown below, the number of returns prepared by the volunteers is still declining, even as the population eligible for this assistance continues to grow.

233 SERP alert 12A0095 (Jan. 27, 2012). See also *Contact My Local IRS Office* available at <http://www.irs.gov/localcontacts/index.html> (last visited Feb. 23, 2012).

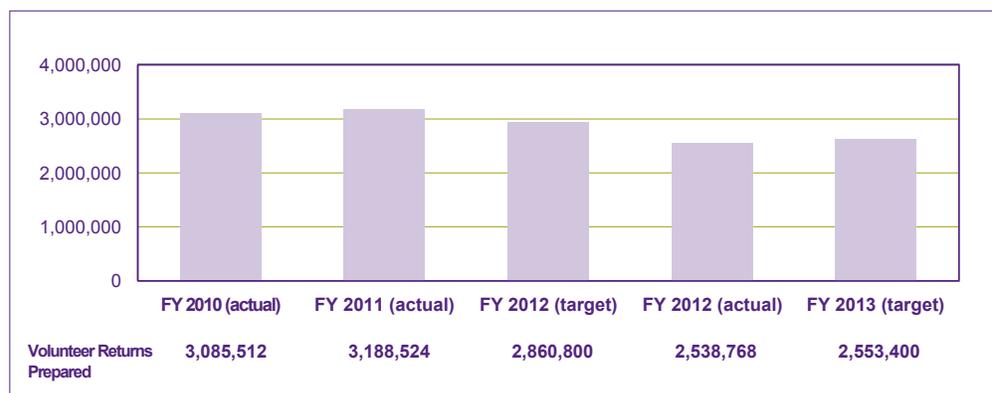
234 U.S. Census Bureau’s 2010 and 2005 American Community Survey S1701, *Poverty Status in the Last 12 Months*.

235 Field Assistance E-file reports (Apr. 3, 2012).

236 W&I Offline newsletter 10 (Oct. 2011).

237 For additional information on TAS’s participation in this pilot, see *TAS Is Participating in the IRS’s Virtual Services Delivery (VSD) Pilot*, *infra*.

238 W&I Business Performance Review 6 (Feb. 15, 2012).

FIGURE III.6, VOLUNTEER RETURN PREPARATION PROGRAM RETURNS PREPARED, FY 2010 - 2013²³⁹

B. Refunds for Early Filers Delayed Due to Fraud Detection Programming Errors and Transmission Problems with Modernized E-file

Generally, the IRS issued refunds more quickly this filing season due to its successful implementation of the Customer Account Data Engine 2 (CADE 2).²⁴⁰ However, two problems that arose early delayed about 12.5 million refunds.²⁴¹ These types of delays tend to acutely affect low income taxpayers, who often file early to receive their refunds as soon as possible, and whose refunds are often substantial (relative to their incomes) due to refundable credits.

The first problem affected about six million returns filed between January 17 and January 26, 5.5 million of which claimed refunds.²⁴² The IRS's refund fraud filters delayed many legitimate returns along with potentially fraudulent ones, which meant the IRS held up about 80 percent of all individual returns filed between January 17 and 25, rather than the expected 12 percent.²⁴³ Pre-filing season testing failed to identify the problem. The IRS fixed it by the end of January, but issued the affected refunds one week late.

The other problem involved transmitting data from returns filed electronically under the Modernized e-File (MeF) system between January 17 and February 7.²⁴⁴ MeF data did not transmit correctly to other return processing systems, delaying approximately 7.8 million

239 W&I Business Performance Review 19 (May 18, 2012). The FY 2012 actual data only includes volunteer returns prepared through March 31, 2012.

240 CADE 2 is a new relational database the IRS uses to process tax returns on a daily rather than weekly basis. Generally, unless refunds are delayed by revenue protection filters, CADE 2 allows the IRS to issue direct deposit refunds four business days after processing occurs and posts a tax return to the taxpayer's account. Paper checks take an additional two business days. For more information about the CADE 2 project, see the ITDashboard for CADE 2 at <http://www.itdashboard.gov/investment?buscid=506> (last visited Apr. 4, 2012).

241 Government Accountability Office, GAO-12-566, *Interim Results of 2012 Tax Filing Season and Summary of the Fiscal Year 2013 Budget Request* 9-10 (Mar. 20, 2012).

242 GAO, GAO-12-566, *Interim Results of 2012 Tax Filing Season and Summary of the Fiscal Year 2013 Budget Request* 9 (Mar. 20, 2012).

243 *Id.*

244 Modernized e-File (MeF) is a system for electronic filing of returns first used by the IRS in 2010. Improvements over the old legacy system include faster acknowledgements of accepted returns, clearer explanations of why returns are rejected, and the ability to receive supporting documentation electronically.

returns (seven million of which claimed a refund).²⁴⁵ The IRS had to verify manually the data to process the affected returns, which held up some until as late as February 18. To minimize the number of returns affected, the IRS asked companies transmitting returns to switch to the older legacy e-file system until the IRS solved the problem.²⁴⁶ That option may not be available if the problem recurs in the next filing season, since the IRS plans to retire the legacy system in October 2012.²⁴⁷

In the 2013 filing season, in addition to participating in the IRS's Filing Season Readiness initiative, TAS will remind and encourage our Local Taxpayer Advocates and Case Advocates to identify these types of problems through our Systemic Advocacy Management System (SAMS) so TAS can work immediately with the IRS to fix them.

C. Adoption Credit Filing and Examination Procedures Placed Unnecessary Burdens on Taxpayers

The Patient Protection and Affordable Care Act increased the maximum adoption credit from \$12,150 to \$13,170 in 2010 and \$13,360 in 2011 (due to inflation adjustments) and made it fully refundable in the last two years.²⁴⁸ The credit is complex with different eligibility rules for domestic, foreign, and special needs adoptions. In all three categories, taxpayers claiming the credit can no longer file returns electronically because the IRS requires paper documentation on Form 8839, *Qualified Adoption Expenses*.

The IRS scrutinizes these returns because the credit is large and, in the 2010 and 2011 tax years, is refundable. As it does in audits of other refundable credits, the IRS holds the adoption credit portion of the refund until it determines whether the taxpayer is eligible for the credit.²⁴⁹ The average correspondence examination of the adoption credit takes 74 days.²⁵⁰ During the 2012 filing season through April 19, 2012, the IRS received 33,538 adoption credit claims and selected 20,589 (61 percent) for examination; of the claims files, 17,895 (53 percent) had missing, invalid, or insufficient documentation.²⁵¹

TAS identified the following concerns stemming from the IRS's administration of the credit:

245 GAO, GAO-12-566, *Interim Results of 2012 Tax Filing Season and Summary of the Fiscal Year 2013 Budget Request* 10 (Mar. 20, 2012).

246 *Id.*

247 *Id.* at 5.

248 Pub. L. No. 111-148, § 10,909, 124 Stat. 119, 1021 (2010) (amending IRC § 23 and redesignating it as IRC § 36C). Under the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312, § 101(b)(1), 124 Stat. 3296, 3298 (2010), the adoption credit becomes nonrefundable for tax years beginning after December 31, 2011, and reverts back to being IRC § 23.

249 IRM 21.5.10.4.1.2 (Mar. 16, 2011).

250 GAO, GAO-12-98, *Adoption Tax Credit – IRS Can Reduce Audits and Refund Delays* 10-11, available at <http://www.gao.gov/new.items/d1298.pdf> (Oct. 2011).

251 IRS Production Report, *Adoption Credit Compliance Filters Report through Cycle 2012-17*.

- Auditors asked taxpayers to provide documentation before reviewing the information the taxpayers included with their original returns, so taxpayers who already submitted documentation had to send it twice;
- The IRS did not inform taxpayers how long it would take to audit their returns and when they could expect a refund;
- Examiners were not knowledgeable about the expanded adoption credit under the Patient Protection and Affordable Care Act and how to handle the credit claimed for special needs children;
- When the IRS selected returns for both wage/withholding verification and adoption credit examination, the IRS failed to promptly release the portion of the refund attributable to verified withholding; and
- The hold on the adoption credit portion of the refund caused financial burden for some taxpayers.

During the first three weeks of the 2012 filing season, 95 percent of the returns claiming the refundable adoption credit tripped the filters that select those claims for examination, with the most common reason being “no documentation attached to the return.”²⁵² This is similar to the 99+ percent rate found during the first three weeks of the 2011 filing season (with the same top reason).²⁵³

As noted earlier, the adoption credit requires up-front substantiation attached to the tax return, in the form of an adoption order or decree and, in the case of a special needs child, a copy of the state’s determination of special needs.²⁵⁴ In FY 2013, TAS will encourage the IRS to allow e-filing of adoption credit returns that include substantiation in an electronic format. Electronic filing will give IRS examiners immediate access to the documentation, eliminating requests for information that taxpayers have already submitted, and allow the IRS to identify problematic returns more easily. E-filing software will also require taxpayers to attach documentation electronically prior to transmission of the return, reducing the number of returns filed with no supporting documentation (and reducing the burden placed on taxpayers and the IRS by unproductive examinations).²⁵⁵

D. CADE 2 Implementation – Unintended Consequences

CADE 2 allows the IRS to issue notices earlier than previously possible. Generally, this will benefit taxpayers (*e.g.*, the IRS will notify taxpayers of a balance due sooner, resulting in

252 IRS, FY 2012 *IRS Adoption Credit Enforcement Report* (June 13, 2012).

253 IRS, FY 2011 *IRS Adoption Credit Enforcement Report* (Mar. 25, 2011).

254 Notice 2010-66, *Refundable Adoption Credit*, (Oct. 18, 2010) available at http://www.irs.gov/irb/2010-42_IRB/ar09.html (last visited May 30, 2012).

255 A GAO audit of adoption credit examinations completed in 2011 found the IRS disallowed all or part of the credit in only 17 percent of the examinations, compared to an 86 percent assessment rate for other examinations. GAO, GAO-12-98, *Congressional Requesters – Adoption Tax Credit – IRS Can Reduce Audits and Refund Delays*, 10 available at <http://www.gao.gov/new.items/d1298.pdf> (Oct. 2011).

lower penalty and interest charges if paid promptly). However, the IRS will also mail some notices of tax owed on unpaid balance due returns before the official assessment date.

If taxpayers do not receive a subsequent notice in the 60 days on or after the date of assessment, the IRS may not have satisfied the “notice and demand” requirement of IRC § 6303.²⁵⁶ Under the normal balance due notice process, the IRS will mail a subsequent notice that will satisfy the notice and demand requirement, but various IRS procedures that suppress notices will lead to a few taxpayers not receiving notice and demand. Because of the small number of taxpayers expected to be affected, the IRS chose during CADE 2 development and implementation not to alter the date of assessment or the mailing date of the first notice so that it meets the notice and demand requirements of IRC § 6303.

In FY 2013, when we receive collection cases involving tax returns processed under CADE 2, TAS will identify how often the notice and demand issue under IRC § 6303 arises, and whether this practice results in problems for taxpayers.

E. CADE 2 Implementation Did Not Impede Offset Bypass Refunds to Relieve Hardship

Taxpayers facing economic hardship who discover the IRS has offset their expected refund to pay an IRS debt from another tax period may ask TAS to reverse the offset and issue a refund to relieve their hardship.²⁵⁷ If TAS confirms that the offset will create hardship, TAS advocates for relief to bypass the offset.²⁵⁸ IRS policy requires TAS to take this action before the assessment date.²⁵⁹

CADE 2 did not accelerate the assessment date or offset credit transfer date, only the refund payment date. Therefore, TAS and the IRS still have adequate time to validate hardship and build the case for bypassing the offset to tax debts. TAS was proactive in identifying this as a potential issue and queried the programmers and policy analyst in March 2011 to verify that the transition to CADE 2 would not narrow the window where TAS can advocate for relief. In FY 2013, TAS will analyze its success in providing relief in these cases to determine if taxpayers would benefit from a longer period to bypass the debt.

256 IRC § 6303 provides that within 60 days after assessment the IRS “give notice to each person liable for the unpaid tax, stating the amount and demand thereof.” Treas. Reg. § 301.6303-1(a) provides, however, that failure to give notice and demand within 60 days does not invalidate the notice.

257 Generally, TAS works all timely telephonic requests for offset bypass refund relief; both IRS and TAS employees work written requests. When TAS or the IRS makes an economic hardship determination, the Local Taxpayer Advocate or IRS official uses their discretion whether to provide relief by authorizing a refund.

258 IRC § 6402(a) states the IRS “may” credit an overpayment against a liability owed by the same taxpayer for another internal revenue tax or tax period. That language permits the IRS to bypass the offset at its discretion.

259 IRM 21.4.6.5.12.1, *Offset Bypass Refund (OBR)* (Apr. 29, 2011).

F. Taxpayer Assistance Centers Rejected Returns Filed by Practitioners

Taxpayer Assistance Centers began the filing season with a new policy of not accepting paper returns from tax preparers (except those with attached payments).²⁶⁰ TACs directed the preparers or their agents to mail the returns themselves or file them electronically. The IRS did not consult with the tax preparer community, TAS, or its own Return Preparer Office (RPO) before announcing this new policy.

When TACs refused to accept returns, they provided the preparers information on becoming an IRS e-file provider and making payments with the Electronic Federal Tax Payment System (EFTPS). The IRS intended this policy change to boost the e-file rate for preparers and reduce the work in the TACs to adjust for lower staffing, but the change was overly broad, and had the potential to harm taxpayers. The new policy covered many returns that are not eligible for electronic filing:

- Amended returns;
- Prior year returns;
- Returns that require paper documentation not eligible for electronic filing (*e.g.*, adoption tax credit); and
- Returns with attached forms or schedules not supported by electronic filing.

Refusing to accept these returns at TACs does nothing to promote e-filing by preparers. Refusing to accept returns or claims for refund close to the refund statute expiration date (RSED) could harm the taxpayer by increasing the risk that the return would be filed after the RSED, when the taxpayer would be ineligible for a refund.

The new policy covers all preparers, including those filing ten or fewer returns with the TAC, yet the Internal Revenue Code does not require tax preparers who complete ten or fewer returns to participate in electronic filing.²⁶¹ Until the IRS campuses do a better job of recording the postmark date on multiple tax returns filed in a single package, from the preparer's perspective, it may make sense to file paper returns at a nearby TAC. The cost may be significantly less than mailing each return by certified mail.

TAS also pointed out that accepting tax returns and payments is a core function of tax administration and contributes to voluntary compliance. The IRS initially responded to TAS's concerns by drafting a Frequently Asked Questions (FAQ) document for its Field Assistance managers.²⁶² However, instead of creating clear exceptions to the new policy, it gave TAC managers discretion to accept returns on a case-by-case basis when it was in the best interest of the IRS or when failing to do so would create a taxpayer hardship. This approach lacked clarity and could have led to unequal treatment of preparers and taxpayers

260 Field Assistance Return Acceptance Policy Script (Jan. 20, 2012).

261 IRC § 6011(e)(3).

262 Draft Return Acceptance Policy FAQ for Managers (Feb. 6, 2012).

in different TAC offices. TAS advocated for a clear list of exceptions to the policy based on the concerns TAS elevated.

The second revision to the policy finally took a modified version of this approach.²⁶³ The policy includes a clear list of exceptions where TACs will accept paper returns from preparers:

- Extension forms;
- Prior year returns;
- Imminent RSED returns; and
- Routine returns that the preparer has traveled a significant distance or waited a long time to file.

In FY 2013, TAS will continue to advocate that the IRS's return acceptance policy minimize burden to preparers and protect taxpayers from possible harm. TAS also will encourage the IRS to seek comments from the tax preparation community, the Return Preparer Office, and TAS before changing the policy again.

G. IRS ITIN Policies and Procedures Leave Hundreds of Thousands of Taxpayers Unable to Meet Their Filing Obligations

1. The IRS Issues ITINs to Allow Taxpayers Without Social Security Numbers to Meet Their Federal Tax Filing Obligations

Any individual who has a tax return filing obligation but is not eligible to obtain a Social Security number (SSN) must apply to the IRS for an Individual Taxpayer Identification Number (ITIN).²⁶⁴ Since December 17, 2003, the IRS has required ITIN applicants with a filing requirement to attach a valid federal income tax return, unless they qualify for an enumerated exception.²⁶⁵ In 2007, the IRS began permitting electronic filing for returns with a mismatch between the ITIN used on the return and the SSN appearing on Forms W-2.²⁶⁶ The IRS recognized that many ITIN owners earn wages reported by employers under SSNs of other taxpayers, and did not want to keep these taxpayers from e-filing.

2. Since 2003, TAS Has Advocated for Changes in IRS ITIN Processes and Procedures That Continue to Strain Limited IRS Resources and Unduly Burden Taxpayers

The National Taxpayer Advocate addressed problems with the processing of ITIN applications or associated tax returns in the 2003, 2004, 2008, 2009, and 2010 Annual Reports to

263 IRM 21.3.4.8 (Mar. 2, 2012).

264 IRC § 6109; Treas. Reg. § 301.6109-1(d)(3).

265 See IRS News Release IR-2003-140, *IRS Announces Revisions to ITIN Applications* (Dec. 17, 2003). See also IRS Pub. 1915, *Understanding Your IRS Individual Taxpayer Identification Number (ITIN)* (Jan. 2012).

266 IRS, Individual Taxpayer Identification Number (ITIN) Reminders for Tax Professionals, at <http://www.irs.gov/individuals/article/0,,id=120580,00.html>. See also IRS Publication 1915, *Understanding Your IRS Individual Taxpayer Identification Number (ITIN)*10 (Jan. 2012).

Congress.²⁶⁷ The IRS policy of requiring ITIN applications to be filed only with paper tax returns creates a seasonal backlog of applications and returns, and unnecessarily delays processing of over one million tax returns and associated refunds annually.²⁶⁸ In February 2009, the National Taxpayer Advocate issued a Taxpayer Advocate Directive²⁶⁹ directing the IRS to develop a process that allows taxpayers to obtain ITINs during the year without an associated return, upon proof of employment and withholding (or self-employment).²⁷⁰ The National Taxpayer Advocate also briefed the Commissioner regarding the changes mandated in the directive.²⁷¹

In FY 2013, the National Taxpayer Advocate will continue advocating for regular, non-seasonal processing of ITIN applications, which would be less burdensome to taxpayers and more efficient for the IRS.²⁷² The IRS can achieve this by assigning ITINs throughout the year upon proof of employment or self-employment; and simultaneously developing a way to verify that previously issued ITINs have been used for tax administration purpose, and revoking unused numbers on a regular basis after notifying the ITIN holders. The National Taxpayer Advocate will continue to raise her concerns at the highest levels of IRS leadership, and report to Congress on the progress of this effort on a regular basis.²⁷³

3. A Recent ITIN Policy Change Caused a Sharp Increase in Rejected ITIN Applications and Tax Returns for Forms W-2 with Mismatched Names, Harming Hundreds of Thousands of Taxpayers

On December 8, 2011, the IRS changed its policy and began rejecting ITIN applications and the tax returns accompanying them if the returns reported only income from Forms W-2 with mismatched names.²⁷⁴ The IRS later revised Internal Revenue Manual (IRM) 3.21.263.5.3.2, *General Application Procedures*.²⁷⁵ Neither TAS nor the IRS Office of Chief Counsel had the opportunity to review or clear the IRM change or the new policy. In response to a TAS inquiry, the ITIN Program Office replied that “these changes [were made]

267 See National Taxpayer Advocate 2010 Annual Report to Congress 319-334; National Taxpayer Advocate 2009 Annual Report to Congress 520-522; National Taxpayer Advocate 2008 Annual Report to Congress 126-140; National Taxpayer Advocate 2004 Annual Report to Congress 143-162; 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.

268 While the IRS denies electronic filing to one million ITIN returns annually, it touts that electronic filing is now preferred by 70 percent of individual filers. See IRS, *Nearly 70 Percent of Taxpayers Used IRS e-file in 2010*, IR-2010-112 (Nov. 10, 2010), at <http://www.irs.gov/newsroom/article/0,,id=231381,00.html>.

269 See TAD 2009-1, *Processing of Forms W-7/Filing of ITIN Applications and Associated Tax Returns* (Feb. 25, 2009). See also National Taxpayer Advocate 2010 Annual Report to Congress 335-338.

270 E.g., three consecutive pay stubs or other payment documentation, employment or independent contractor commitment letters or contracts, Forms 1099-MISC, *Miscellaneous Income*, etc.

271 TAD 2009-1, *Processing of Forms W-7/Filing of ITIN Applications and Associated Tax Returns*, (Feb. 25, 2009). See National Taxpayer Advocate 2010 Annual Report to Congress 335-338.

272 Because most ITIN applications are attached to tax returns, the IRS must process a 12-month ITIN workload in the four-month filing season.

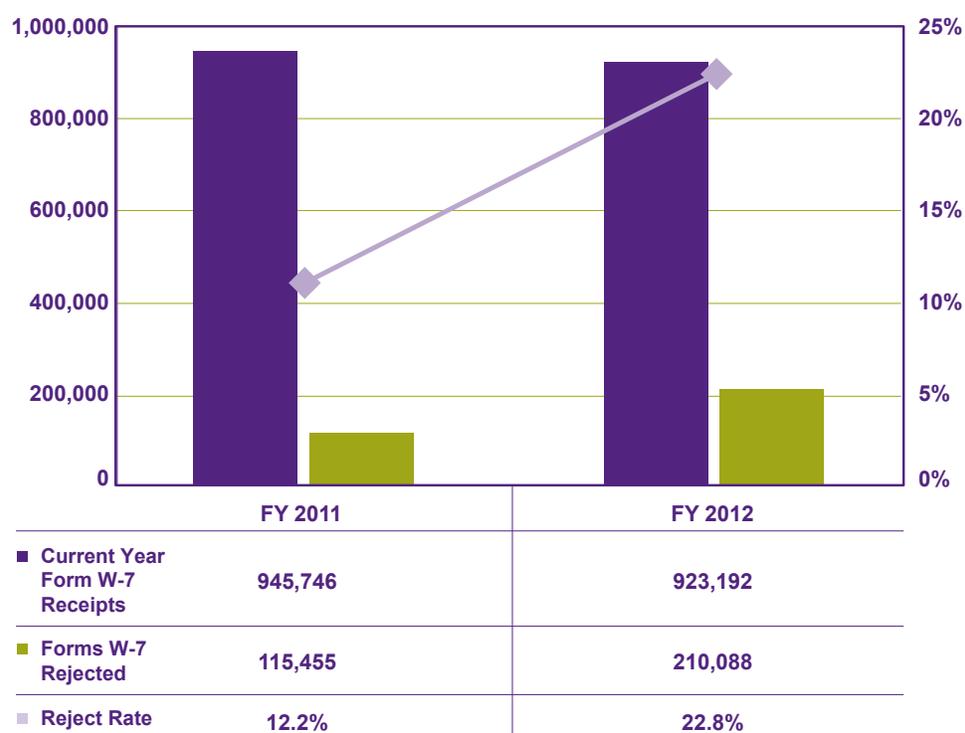
273 The National Taxpayer Advocate may consider issuing a new Taxpayer Advocate Directive on this matter in FY 2013.

274 See IPU 11U1922 (Dec. 8, 2011).

275 See SERP IRM 3.21.263.5.3.2 (Jan. 23, 2012).

as part of [the IRS's] ongoing efforts to combat fraud in the ITIN program."²⁷⁶ The ITIN Program Office also stated that the change was based on an advice from W&I Division Counsel. However, a W&I Counsel email shared with TAS was redacted to exclude a key sentence which advised to establish a process for verifying "that the taxpayer listed on W-2 is the ITIN applicant."²⁷⁷

FIGURE III.7, ITIN APPLICATION (FORM W-7) RECEIPTS AND REJECTS, CALENDAR YEAR 2011 THROUGH APRIL 2, 2011 AND CALENDAR YEAR 2012 THROUGH MARCH 31, 2012²⁷⁸



ITIN applicants often provide employers with SSNs that are not their own, and work under the names associated with those SSNs. The revised ITIN procedures were based on the assumption that if the sole income listed on a tax return is from a Form W-2 with a name other than that of the ITIN applicant, then the return is invalid, and therefore the applicant does not have a tax purpose for an ITIN. The IRS also did not process returns associated with such ITIN applications. To be valid, a return must satisfy the well-known four-part

276 Email from Sharon Davis, ITIN Program Office, to TAS (Jan. 31, 2012).

277 Unredacted email from Special Counsel to the Division Counsel (W&I) to Director, ITIN Program Office (Dec. 1, 2011).

278 IRS, *ITIN Production Reports* (Mar. 31, 2012, Apr. 2, 2011).

test set forth in *Beard v. Commissioner*.²⁷⁹ If the ITIN applicant's tax return satisfies the *Beard* requirements, it is valid regardless of whether the Form W-2 is attached. While the IRS may have a valid reason to question withholding on Forms W-2 (if any), it cannot consider the return invalid and must process it.²⁸⁰

The IRS rejection policy was also inconsistent with electronic filing procedures. Since 2007, the IRS has accepted e-filed returns with mismatched Forms W-2, allowing a mismatch between identification numbers only or involving both names and identification numbers.²⁸¹

4. TAS's Immediate Intervention Reversed ITIN Application Rejection Policy and Helped Tens of Thousands of Taxpayers with Pending Applications²⁸²

In January 2012, TAS opened an Immediate Intervention Project after receiving a Systemic Advocacy Management System (SAMS) submission from a tax practitioner.²⁸³ After TAS's intervention and discussions with the Special Counsel to the National Taxpayer Advocate and the Division Counsel (W&I), in early February 2012 the IRS agreed to stop rejecting ITIN applications with mismatched names on attached Forms W-2 (and associated returns), and begin holding them while seeking information from the applicants.²⁸⁴ On March 20, 2012, the IRS revised the IRM allowing ITIN applicants the opportunity to verify the income on the name-mismatched W-2s.²⁸⁵ The IRM also removed the instruction to employees to declare returns invalid and reject them.²⁸⁶

However, for the ITIN applications suspended by the IRS to corroborate the W-2 income, the IRS continues to record in the ITIN database "invalid return," which may confuse IRS employees. Although the IRS has agreed to reprogram the database to show the proper status, *i.e.*, that the ITIN application is suspended because of the lack of documentation, and

279 *Beard v. Commissioner*, 82 T.C. 766, 777 (1984), *aff'd per curiam*, 793 F.2d 139 (6th Cir. 1986). To satisfy the *Beard* test, the taxpayer must meet the following four requirements: (1) the information on the return must be sufficient for the IRS to calculate tax liability; (2) the filed document must purport to be a return; (3) the return must be an honest and reasonable attempt to comply with the tax laws; and (4) the taxpayer must execute the return under penalties of perjury.

280 The law requires taxpayers "having for the taxable year gross income which equals or exceeds the exemption amount" to file income tax returns. See IRC § 6012(a)(1)(A). Both U.S. and foreign persons are required to furnish a taxpayer identifying number in order to file a tax return. See *generally* IRC § 6109; Treas. Reg. § 301.6109-1(b).

281 IRS, *Fact Sheet* (Jan. 23, 2007), at http://win.web.irs.gov/ITIN/e-file_ITIN-SSN_Mismatch_FactSheet_01-23-07.pdf (last visited Feb. 23, 2012). See also IRS, *Questions and Answers* (Dec. 28, 2006), at http://win.web.irs.gov/ITIN/e-file_ITIN-SSN_Mismatch_FAQ_01-10-07.pdf (last visited Feb. 23, 2012). The National Taxpayer Advocate discussed the inability to file returns with SSN/ITIN mismatches electronically in her 2003 Annual Report to Congress. See National Taxpayer Advocate 2003 Annual Report to Congress 76, n 60.

282 IRS, *ITIN Production Reports* (Feb. 4 and Mar. 3, 2012). By February 4, 2012, the IRS had rejected 57,655 of 198,501 receipts (29.0 percent); after TAS intervention, of the additional receipts of 367,242 through March 3, 2012, the IRS had rejected only 66,715 (18.2 percent).

283 SAMS Issue 23088 (Jan. 3, 2012).

284 Immediate Intervention Project 23341 (Feb. 1, 2012).

285 IRM 3.21.263.5.3.2, *General Application Requirements* (Mar. 20, 2012). See also SERP IPU 12U0705 (Mar. 20, 2012).

286 If the applicant responds with acceptable documentation, the IRS now assigns the ITIN and processes the tax return under the assigned ITIN. If the applicant does not respond, although the IRS does not assign an ITIN, the IRS no longer rejects the associated return. Instead, the IRS will process the tax return under an Internal Revenue Service Number (IRSN). See IRM 3.21.263.4.5, *IRS Temporary Numbers (IRSN)* (Jan. 1, 2011) and IRM Exhibit 3.21.263-45, *Letter 4939* (Mar. 20, 2012).

that the return is not invalid, these changes will not become effective until 2014.²⁸⁷ Until the database is reprogrammed, other IRS employees trying to assist the taxpayers or practitioners inquiring on the status of an ITIN application will read that the return is “invalid” and misinterpret the reason the application was suspended. In addition, the IRS did not accept all TAS suggestions about “other corroborating documents” showing proof of income in IRM 3.21.263.²⁸⁸ In FY 2013, TAS will continue working with the IRS on revising the list of acceptable documentation to verify that the income belongs to the ITIN applicant. We also have recommended that the IRS revisit all rejected ITIN applications between December 8, 2011 and February 2, 2012 (the date it began putting them in suspense), and ask affected taxpayers to resubmit their applications and returns for reconsideration under corrected procedures (because the IRS returned rejected applications by mail and did not retain copies). TAS insists that the IRS offer priority reconsideration of the applications under the March 20, 2012 procedures.

287 IRS email from Chief, Specialty Programs Branch to TAS indicating the Unified Work Request (UWR) to make programming changes to the Request Tracking System (RTS) database to correct the mischaracterization of return validity will not be effective until 2014.

288 Essentially, TAS suggested to at least accept documentation listed in the Examination IRM 4.19.15.38.4 (Feb. 21, 2012) as a proof of wage income and tax filing need.