



Consumer Federation of America

END OF THE RAPID RIP-OFF: AN EPILOGUE FOR QUICKIE TAX LOANS

The NCLC/CFA 2011 Refund Anticipation Loan Report

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EXECUTIVE SUMMARY

Refund anticipation loans (RALs) are one to two week loans made by banks, facilitated by tax preparers, and secured by the taxpayer's expected tax refund. RALs can carry triple digit APRs, and expose taxpayers to the risks of unpaid debt if their refunds do not arrive as expected.

This is the tenth annual report on the RAL industry from the National Consumer Law Center and Consumer Federation of America. After ten years, it appears that RALs are on their way out. This may be the last year the high-cost, high-risk loans are made.

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The Consumer Federation of America is an association of nearly 300 nonprofit consumer groups that was established in 1968 to advance the consumer interest through research, advocacy and education.

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Dramatic changes have occurred in the RAL industry in the past year. These changes include:

- The IRS eliminated the Debt Indicator, a service that helped tax preparers and banks make RALs by indicating whether a refund would be intercepted for certain debts.
- JPMorgan Chase, one of the three largest RAL lenders, exited the market voluntarily.
- The Office of Thrift Supervision prohibited MetaBank, a potential new entrant into the RAL market, from making the loans.
- The Office of Comptroller issued a regulatory directive against HSBC (H&R Block's RAL partner bank) prohibiting it from making RALs.
- The FDIC notified the RAL-lending banks that it regulates that the making of RALs without the Debt Indicator is "unsafe and unsound."

As a result of these changes, there may not be any banks left making RALs next year. For this year, there are only three small, state-chartered banks that make RALs— Republic Bank & Trust, River City Bank, and Ohio Valley Bank/Fort Knox Financial Services. However, barring a successful appeal by one of these banks, the FDIC's notices to them will end RAL lending.

Even with the end of RALs, low-income taxpayers still remain vulnerable to profiteering. Tax preparers and banks continue to offer a related product - refund anticipation checks (RACs) - which can be subject to significant add-on fees and may represent a high-cost loan of the tax preparation fee. Unscrupulous preparers could partner with non-bank lenders to make RALs, perhaps employing tactics used by high-cost loan companies. The reforms that have signaled the end of RAL lending have been issued by the IRS and banking regulators and could be administratively reversed.

Other findings of this report include:

- This year, the price for a typical RAL (from Republic Bank & Trust) for a loan of \$1,500 is \$61.22, plus another \$29.95 for a refund anticipation check for the remainder of the consumer's refund. The \$61.22 fee translates into an APR of 149%.
- The latest IRS data shows that RAL volume declined significantly from 2008 to 2009. Tax preparers and their bank partners made approximately 7.2 million RALs during the 2009 tax-filing season compared to 8.4 million in 2008, and a high of 12.4 million in 2004.
- Consumers paid an estimated \$606 million in RAL fees in 2009 to get quick cash for their refunds—essentially borrowing their own money, sometimes at extremely high interest rates.

- In addition to RAL fees, consumers in 2009 paid another estimated \$58 million in add-on fees, such “application,” “administrative,” “e-filing,” “service bureau,” “transmission,” or “processing” fees. Since the major preparation chains did not charge these fees in 2009, we based this estimate on an assumption that about 20% of RAL borrowers are charged this fee.
- Federal and state regulators have continued to take enforcement actions over RALs, including:
 - The Office of Comptroller of Currency issued a Policy Statement setting forth its expectations for national banks making RALs.
 - The Arkansas Attorney General filed a lawsuit against Mo’ Money Taxes for violations of the Arkansas RAL Act, including failure to make required disclosures and charging illegal add-on fees.
 - The New York State Division of Human Rights obtained successful decisions on its ongoing lawsuits against H&R Block and Jackson Hewitt for discriminatory targeting of minority communities for RALs.
 - The State of New Jersey and the New York City Division of Consumer Affairs both conducted sweeps of tax preparers to uncover deceptive RAL advertising.
 - The North Carolina Commissioner of Banks took action against Mo’ Money Taxes for its failure register as required by the North Carolina RAL law.
- During 2010, Maryland enacted a RAL law that was based in part on the NCLC Model Act. The Maryland law prohibits tax preparers from charging any fees other than the fee charged by the bank for the RAL or RAC, i.e., it prohibits add-on fees. Colorado and Louisiana enacted RAL laws that primarily provide for disclosures.

PART I. UPDATES AND STATISTICS

A. Introduction

Refund anticipation loans (RALs) are loans secured by and repaid directly from the proceeds of a consumer's tax refund from the Internal Revenue Service (IRS). Because RALs are usually made for a duration of about seven to fourteen days (the difference between when the RAL is made and when it is repaid by deposit of the taxpayer's refund), fees for these loans can translate into triple digit annual percentage rates (APRs).

RALs drain hundreds of millions of dollars from the pockets of consumers and the U.S. Treasury. They target the working poor, especially those who receive the Earned Income Tax Credit (EITC), a refundable credit intended to boost low-wage workers out of poverty. The EITC is the largest federal anti-poverty program, providing nearly \$50 billion to over twenty-four million families in 2009.¹

This report updates the NCLC/CFA annual reports on the RAL industry and the drain caused by RALs from tax refunds and EITC benefits. Those interested in background information on the industry and regulation should refer to the first NCLC/CFA RAL Report published in January 2002.² In addition to our yearly reports, we have issued special reports on the IRS Debt Indicator,³ "pay stub" RALs,⁴ a rebuttal of industry-funded RAL studies,⁵ RALs and fringe tax preparers,⁶ and two reports regarding mystery shopper testing of RAL providers.⁷

¹ Data from IRS Stakeholder Partnerships, Education & Communication (SPEC) Return Information Database for Tax Year 2008 (Returns Filed in 2009) (Feb. 2011).

² Chi Chi Wu, Jean Ann Fox, and Elizabeth Renuart, National Consumer Law Center and Consumer Federation of America, Tax Preparers Peddle High Priced Tax Refund Loans: Millions Skimmed from the Working Poor and the U. S. Treasury (Jan. 31, 2002), *available at* http://www.nclc.org/images/pdf/high_cost_small_loans/ral/2002-ral-report.pdf [hereinafter NCLC/CFA 2002 RAL Report].

³ Chi Chi Wu, National Consumer Law Center, Corporate Welfare for the RAL Industry: the Debt Indicator, IRS Subsidy, and Tax Fraud (July 2005), *available at* http://www.nclc.org/images/pdf/high_cost_small_loans/ral/debt_indicator_white_paper.pdf.

⁴ Chi Chi Wu and Jean Ann Fox, National Consumer Law Center and Consumer Federation of America, Pay Stub and Holiday RALs: Faster, Costlier, Riskier in the Race to the Bottom (Nov. 2008), *available at* http://www.nclc.org/images/pdf/high_cost_small_loans/ral/paystub_ral_report.pdf.

⁵ Appendix A to Chi Chi Wu, Jean Ann Fox, and Patrick Woodall, National Consumer Law Center and Consumer Federation of America, Another Year of Losses: High-Priced Refund Anticipation Loans Continue to Take a Chunk Out of Americans' Tax Refunds 4 (Jan. 2006).

⁶ Chi Chi Wu, National Consumer Law Center, RALs, Tax Fraud, and Fringe Preparers (Feb. 2009). This report is Appendix A to Chi Chi Wu and Jean Ann Fox, National Consumer Law Center and Consumer Federation of America, Big Business, Big Bucks: Quickie Tax Loans Generate Profits for Banks and Tax Preparers While Putting Low-Income Taxpayers At Risk (Feb. 2009) [hereinafter NCLC/CFA 2009 RAL Report].

⁷ Chi Chi Wu, Michael Rowett, Peter Skillern, Deyanira Del Rio, Alexis Iwanisziw and Josh Zinner, National Consumer Law Center, Arkansans Against Abusive Payday Lending, NEDAP, Community Reinvestment Association of North Carolina, Tax Preparers Out of Compliance: Mystery Shopper Testing Exposes Violations of Refund Anticipation Loan Laws in Arkansas, New York and North Carolina (Apr. 2010) [hereinafter 2010 RAL Mystery Shopper Report]; Chi Chi Wu, Kerry Smith, Peter Skillern, Adam

B. Dramatic Changes in the RAL Industry

Concerns over RALs have prompted a number of regulators to take action against them. Collectively, these actions signal the end of RAL lending.

On August 5, 2010, the IRS announced it would stop providing the Debt Indicator, a service that helped tax preparers and banks make RALs by acting as a form of credit check.⁸ The Debt Indicator revealed whether a taxpayer's refund would be paid or would be intercepted for certain debts, such as child support, defaulted student loans, and debts owed to the federal government. Consumer advocates had strongly urged termination of the Debt Indicator,⁹ and applauded the IRS's action.¹⁰ Without the Debt Indicator, RAL lending is expected to decline and be much riskier.

In April 2010, JP Morgan Chase voluntarily exited the RAL market. Chase had been one of the three biggest RAL providers, serving about 13,000 independent preparers.¹¹ This left many independent preparers without a source of RALs.

On Christmas Eve 2010, H&R Block announced that its RAL lending bank partner, HSBC, had terminated its agreement to provide RALs to H&R Block as a result of a directive by its regulator, the Office of Comptroller of Currency (OCC).¹² This action left H&R Block without a RAL lending partner for the 2011 tax season. The OCC had taken a similar action on Christmas Eve 2009, ordering Santa Barbara Bank & Trust (the then-main RAL lender for Jackson Hewitt) out of the RAL market.¹³

The tax products division of Santa Barbara Bank & Trust then spun off and announced plans to make RALs in partnership with MetaBank.¹⁴ In October 2010, the Office of Thrift Supervision issued a supervisory directive to MetaBank, effectively prohibiting that bank from making RALs. The OTS directive also terminated

Rust, and Stella Adams, National Consumer Law Center, Community Reinvestment Association of North Carolina, Community Legal Services of Philadelphia, Tax Preparers Take a Bite Out of Refunds: Mystery Shopper Test Exposes Refund Anticipation Loan Abuses in Durham and Philadelphia (Apr. 2008) [hereinafter 2008 RAL Mystery Shopper Report].

⁸ Press Release, Internal Revenue Service, IRS Removes Debt Indicator for 2011 Tax Filing Season (Aug. 5, 2010), available at <http://www.irs.gov/newsroom/article/0,,id=226310,00.html>.

⁹ Chi Chi Wu, National Consumer Law Center, Corporate Welfare for the RAL Industry: the Debt Indicator, IRS Subsidy, and Tax Fraud (July 2005), available at http://www.nclc.org/images/pdf/high_cost_small_loans/ral/debt_indicator_white_paper.pdf.

¹⁰ Press Release, National Consumer Law Center Inc. and Consumer Federation of America, Consumer Advocates Applaud End of IRS-Provided Service to Refund Anticipation Lenders (Aug. 5, 2010), available at http://www.nclc.org/images/pdf/high_cost_small_loans/ral/pr-ral-irs-debt-indicator-08-10.pdf.

¹¹ Chi Chi Wu and Jean Ann Fox, National Consumer Law Center and Consumer Federation of America, Major Changes in the Quick Tax Refund Loan Industry 26 (Feb. 2010) [hereinafter NCLC/CFA 2010 RAL Report].

¹² Press Release, H&R Block, *HSBC Terminates Agreement to Provide RALs at Direction of OCC* (Dec. 24, 2010).

¹³ Press Release, Pacific Capital Bancorp Announces Planned Sale of Refund Anticipation Loan and Refund Transfer Businesses (Dec. 24, 2010).

¹⁴ Intuit Proseries, Bank Product Update (Apr. 30, 2010) (on file with authors).

MetaBank's iAdvance program, citing "unfair or deceptive acts or practices."¹⁵ MetaBank also had previously provided Jackson Hewitt with a "pay stub" RAL in the form of its iAdvance line of credit on a prepaid card.¹⁶

As a result of the OCC and OTS's actions and the departure of JPMorgan Chase, there were only three state-chartered banks this year making RALs—Republic Bank & Trust, River City Bank, and Ohio Valley Bank/Fort Knox Financial Services. All three banks are small banks, and have only a fraction of JPMorgan Chase's or HSBC's RAL lending capacity. Republic is the RAL lending partner for both Jackson Hewitt and Liberty Tax Service in 2011.

On February 10, 2011, Republic announced that its federal regulator, the FDIC, had notified the bank that the practice of originating RALs without the benefit of the Debt Indicator is unsafe and unsound.¹⁷ Ohio Valley Bank received a similar notice, and its Board of Directors voted to discontinue making RALs.¹⁸ River City Bank also announced that it would exit the RAL business after the 2011 tax season, following conversations with the FDIC.¹⁹

The FDIC's actions signal that the three remaining RAL lending banks have been forced out of the RAL market. Two of the banks have accepted the FDIC's decision, but Republic Bank & Trust has stated it will appeal the decision to an administrative law judge, and potentially to a federal court.²⁰ Unless Republic's appeal is successful, the FDIC's actions mean there will be no banks left that could make RALs in 2012, effectively ending the product.

Even though these three small FDIC-regulated banks have the ability to make RALs for this year, it appears they will have high rates of rejection. Reports indicate that as many as 60% of applicants may be denied RALs.²¹ In addition, Republic Bank & Trust requires a refund of at least \$2,000 to be eligible for its \$1,500 RAL. Thus, Jackson Hewitt and Liberty Tax customers with smaller anticipated refunds are unable to obtain a RAL this year.²²

In addition to these regulatory changes, RALs may be losing their advantage in speed. For years, the IRS has stated that once it updated its systems, it would be able to process refunds that are e-filed and directed deposited in a few days, versus the currently

¹⁵ MetaBank, Form 8-K, Current Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 (Oct. 6, 2010).

¹⁶ NCLC/CFA 2010 RAL Report, *supra* note 11, at 19.

¹⁷ Republic Bank & Trust, Form 8-K, Other Events, Financial Statements and Exhibits (Feb. 10, 2011).

¹⁸ Ohio Valley Banc Corp., Form 8-K, Current Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 (Feb. 11, 2011).

¹⁹ Press Release, River City Bank Exits Refund Anticipation Loan Business (Feb. 16, 2011), *available at* www.rcbral.com (last visited Feb. 17, 2011).

²⁰ Robert Barba, *Republic, a Holdout in Refund-Anticipation Loans, Challenges FDIC Order*, American Banker, Feb. 16, 2011; Republic Bank & Trust, Form 8-K, Other Events, Financial Statements and Exhibits (Feb. 10, 2011).

²¹ *Refund Anticipation Loans Will be Hard to Get*, Sioux Falls Argus Leader, Jan. 5, 2011.

²² Republic Bank, *New RAL Program Announced*, 2010 Fall Newsletter, on file with the authors.

published schedule of eight to fifteen days.²³ The IRS has taken system steps in its modernization efforts, with forty million returns processed through its newer systems or about 30% of all individual tax returns.²⁴ Refunds processed through the newer systems take three to seven days.²⁵ Note that in some cases, four days out of the higher seven-day estimate are due to the Automated Clearing House (ACH) system—a delay that could be eliminated by using another delivery system.²⁶

Even with the end of RALs, low-income taxpayers still remain vulnerable to profiteering. Tax preparers and banks continue to offer a related product - refund anticipation checks (RACs) - which can be subject to significant add-on fees and may represent a high-cost loan of the tax preparation fee, as discussed in Sections I.F and I.H below. Unscrupulous preparers could partner with non-bank lenders to make RALs, perhaps employing tactics used by high-cost loan companies. Finally, the reforms that have signaled the end of RAL lending have been issued by the IRS and banking regulators. With different regulators, these decisions could be reversed easily.

C. RAL Volume Drops

RAL volume had already been decreasing prior to the dramatic changes in the industry discussed above. The latest available IRS data indicates that RAL volume dropped significantly from 2008 to 2009, by about 14%. About one in sixteen taxpayers applied for a RAL.²⁷

Based on IRS data, we estimate there were approximately 7.2 million RALs made in 2009. IRS data shows that there were 8.4 million RAL applications in 2009.²⁸ However, not all RAL applications result in loans, as a certain percentage are rejected.

We had previously used a rejection rate of 10% for RAL applications, based upon published statements from HSBC and Santa Barbara Bank & Trust (SBBT).²⁹ However, beginning in the 2009 RAL Report for the 2007 estimate, we used an estimate of 15% based on the industry's avowed statements of an approval rate closer to 85%.

²³ The very first NCLC/CFA RAL Report in 2002 reported that the “IRS plans to have the ability to process refunds for e-filed returns within 48 to 72 hours, thus reducing the perceived need for RALs.” NCLC/CFA 2002 RAL Report, *supra* note 2, at 21.

²⁴ Treasury Inspector General for Tax Administration, Reference Number: 2010-20-094, Annual Assessment of the Business Systems Modernization Program 3 (Sept. 23, 2010), *available at* <http://www.treasury.gov/tigta/auditreports/2010reports/201020094fr.pdf>.

²⁵ *Id.* at 1. *See also* Government Accountability Office, GAO-10-225, 2009 Tax Filing Season—IRS Met Many 2009 Goals, but Telephone Access Remained Low and Taxpayer Service and Enforcement Could Be Improved 21 (Dec. 2009).

²⁶ *Id.*

²⁷ There were 139 million returns filed in the 2009 filing season, which was for Tax Year 2008. Data from IRS SPEC, Return Information Database for Tax Year 2008 (Returns Filed in 2009) (Feb. 2011).

²⁸ *Id.*

²⁹ Santa Barbara Bank & Trust, Why You Should Choose SBBT '05; Household International, Exploring the Refund Anticipation Loan (RAL): Questions and Answers (on file with the authors).

To give a better indicator of RAL trends, Table 1 below includes RAL applications in addition to total RALs made, since estimates for 2000 to 2006 were based on the 90% approval rate. Note that even rejected RALs cost taxpayers a fee, because they are automatically given a refund anticipation check (RAC) at a cost of about \$30.

The following table documents the trends in RAL applications since 2000, using a 15% rejection rate for 2007 to 2009 and 10% for years earlier:³⁰

TABLE 1

Filing Year	No. of RAL applications	Increase/decrease from prior year	No. of RALs made	RAL loan fees
2009	8.4 million	(-14%)	7.2 million	\$606 million
2008	9.9 million	(-3%)	8.4 million	\$738 million
2007	10.2 million	2%	8.67 million	\$833 million
2006	10 million	(-7%)	9 million	\$900 million
2005	10.7 million	(-22%)	9.6 million	\$960 million
2004	13.8 million	2%	12.38 million	\$1.24 billion
2003	13.5 million	(-4%)	12.15 million	\$1.1 billion
2002	14.1 million	5%	12.7 million	\$1.1 billion
2001	13.4 million	12%	12.1 million	\$907 million
2000	12 million	--	10.8 million	\$810 million

A typical RAL in 2008-2009 for one of the bigger RAL lenders was \$3,300.³¹ RAL consumers in 2009 paid different prices, depending on the RAL lender and tax preparer. H&R Block charged \$65.26 for a RAL of \$3,300.³² H&R Block had about 2.95 million RAL customers in 2009.³³

In 2009, JPMorgan Chase charged \$65 for a RAL of \$3,300.³⁴ SBBT charged \$113.45³⁵ and Republic Bank & Trust charged \$118.40.³⁶ SBBT had about 1.86 million RAL customers in 2009, and Republic had about 837,000.³⁷

³⁰ This chart is based on data from IRS SPEC and the annual RAL reports issued by NCLC and CFA.

³¹ Pacific Capital Bancorp, Form 10-Q: Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the Quarterly Period Ended June 30, 2008, at 18.

³² H&R Block, Sample RAL and Instant RAL (Jan. 2008) (on file with the authors).

³³ See Section II.A, *infra*.

³⁴ JPMorgan Chase, Refund Anticipation Loan and/or Bonu\$ Deposit Account 2009 (on file with authors).

³⁵ Santa Barbara Bank & Trust, Bank Product Program 2009 (Nov. 2008) (on file with the authors).

³⁶ NCLC/CFA 2009 RAL Report, *supra* note 6, at 9.

³⁷ See Sections II.E and II.D, *infra*.

Given these various prices, we assume the following amounts were paid for RALs in 2009:

\$ 192.5 million—H&R Block customers	
\$ 211.0 million—SBBT customers	
\$ 99.0 million—Republic Bank & Trust customers	
\$ 103.4 million—all others	
<hr/>	
\$ 605.9 million	

This compares to an estimated \$738 million in RAL fees in 2007³⁸ and the high of \$1.24 billion in RAL loan fees in 2004.³⁹

This \$606 million estimate for 2009 does not include the added fees paid for loan products that provide a RAL on the same day that the taxpayer's return is prepared. In 2009, lenders charged an additional \$25 to \$55 for same-day RALs, a fee which the consumer paid on top of regular RAL fees.⁴⁰ We know that H&R Block made 1.5 million "Instant Money" RALs in 2004.⁴¹ Assuming a similar number in 2009, this adds at least another \$37.5 million to the RAL drain.⁴² We do not have data on the number of same-day RALs made by the rest of the industry.

In addition to the fee charged by the RAL lenders, tax preparers and other third parties can charge their own fees for RALs. These fees, which we call "add-on" fees, are discussed in detail in Section I.H, below.

In 2009, the three major tax preparation chains did not charge add-on fees (Jackson Hewitt started charging them again in 2010 and 2011). However, many independents and smaller chains did charge these fees in 2009. These smaller players had about 70–75% of the paid preparer market, and 40% of the RAL market.⁴³ At one point, Santa Barbara Bank & Trust allowed preparers to charge a document processing fee of up to \$40.⁴⁴ However, we have seen add-on fees from independent preparers sometimes add up to several hundred dollars.

If we assume that about half of independent preparers charge add-on fees, it would equate to 20% of the RAL market or 1.44 million consumers. Using SBBT's cap of \$40—a conservative assumption given the proliferation of multiple fees—these add-on

³⁸ NCLC/CFA 2009 RAL Report, *supra* note 6, at 16.

³⁹ *Id.* at 5.

⁴⁰ NCLC/CFA 2009 RAL Report, *supra* note 6, at 6.

⁴¹ Peter Tufano and Daniel Schneider, Harvard Business School, H&R Block and "Everyday Financial Services" 7 (Oct. 2004).

⁴² Note that H&R Block customers paid an additional \$25 for an Instant RAL in 2009. H&R Block, Sample RAL and Instant RAL (Jan. 2008) (on file with the authors). This was significantly less than the same-day RAL surcharge for other tax preparers; thus, the drain created by these products may even be greater if we had data on industry-wide sale.

⁴³ See NCLC/CFA 2009 RAL Report, *supra* note 6, Appendix A, at Section II.A; Jackson Hewitt Tax Service, Investor Presentation—December 2006 Update 8 (Nov. 22, 2006).

⁴⁴ Plaintiff's Local Rule 56(a)(1) Separate Statement of Undisputed Facts at ¶ 8, n.1, *Pacific Capital Bank, N.A. v. Conn.*, No. 3:06-CV-28 (D. Conn. Aug. 10, 2006).

fees increased by about \$58 million the amount paid for RALs in 2009. Thus, taxpayers lost somewhere in the neighborhood of \$664 million collectively to get loans a mere one to two weeks sooner than they could have gotten their refunds from the IRS.

D. Impact on Low-Income Taxpayers and EITC Recipients

RALs are mostly marketed to low-income taxpayers. According to IRS data, 87% of taxpayers who applied for a RAL in 2009 were low-income.⁴⁵ A new report from the Urban Institute found that the median adjusted gross income of RAL borrowers is under \$20,000, and that one in four taxpayers earning \$10,000 to \$25,000 use a RAL.⁴⁶ RAL borrowers also tend to be single parents, under forty-five years old, and geographically concentrated in low-income communities.⁴⁷ In fact, the Urban Institute RAL report found that “taxpayers living in extremely low-income communities are an astonishing 560 percent more likely to use RALs and 215 percent more likely to use RACs—*controlling for their family characteristics and their income.*”⁴⁸ In other words, RAL users are typically not just poor; they live in poor communities. The authors of the study theorized that this phenomenon could be due to targeting by tax preparation chains, particularly in placement of store locations, or due to significant “peer effects.”⁴⁹

The most likely RAL users are recipients of the Earned Income Tax Credit (EITC). RALs drain hundreds of millions of dollars from that program each year. IRS data shows that in 2009 nearly two-thirds (64%) of RAL consumers were EITC recipients, or 4.6 million families.⁵⁰ Yet EITC recipients made up only 17% of individual taxpayers in 2009.⁵¹ Thus, EITC recipients are vastly over-represented among the ranks of RAL consumers.

In addition, IRS data shows that 22% of EITC recipients applied for a RAL in 2009.⁵² A startling 43% of EITC recipients obtained either a RAL or a RAC; in other words, nearly half of EITC recipients paid part of their publicly funded benefits to a bank to obtain a tax-related financial product. In contrast, only about 7% of taxpayers who do not receive the EITC get a RAL or RAC.⁵³ The Urban Institute RAL report found that an

⁴⁵ Data from IRS SPEC, Return Information Database for Tax Year 2008 (Returns Filed in 2009) (Feb. 2011).

⁴⁶ Brett Theodos, et al., Who Need Credit at Tax Time and Why: A Look at Refund Anticipation Loans and Refund Anticipation Checks 18 (Nov. 2010), *available at* <http://www.urban.org/publications/412304.html> [hereinafter Urban Institute RAL Report].

⁴⁷ *Id.* at 12–19.

⁴⁸ *Id.* at 28 (emphasis added).

⁴⁹ *Id.* at 19, 27.

⁵⁰ IRS data reports that 5.4 million EITC returns were associated with a RAL application in 2009. Data from IRS SPEC, Return Information Database for Tax Year 2008 (Returns Filed in 2009) (Feb. 2011). Using the 85% approval rate, see Section I.A *supra*, the number of approved RALs is 4.6 million.

⁵¹ There were 24.1 million EITC returns and 139 million individual tax returns in 2009. Data from IRS SPEC, Return Information Database for Tax Year 2008 (Returns Filed in 2009) (Feb. 2011).

⁵² *Id.*

⁵³ Karen Masken, Mark Mazur, Joanne Meikle, and Roy Nord, Office of Research, Analysis and Statistics, Internal Revenue Service, Do Products Offering Expedited Refunds Increase Income Tax Non-Compliance 3 (2008) (on file with authors).

EITC recipient with a qualifying child is over 125% more likely to get a RAL and over 75% more likely to get a RAC than a non-EITC recipient.⁵⁴

Based on this IRS data, we estimate that about \$388 million was drained out of the EITC program in 2009 by RAL loan fees.⁵⁵ Add-on fees added another \$37 million to the drain.⁵⁶

Non-loan fees also drain significantly from EITC benefits. The EITC is the nation's largest anti-poverty program. One criticism has been that no other anti-poverty program requires its beneficiaries to pay for the cost of accessing the benefit, which includes the drain created both by RALs and by tax preparation fees. Including tax preparation fees provides a fuller picture of how EITC benefits are chipped away. An average fee would be \$189 (this is the average fee at H&R Block)⁵⁷ and can be higher for other preparers.⁵⁸

Thus, EITC recipients who got RALs paid an additional \$869 million in tax preparation fees. In addition, some percentage of these recipients paid check cashing fees.

TABLE 2

Type of Fee	Cost to Taxpayer	Drain on EITC Program
RAL loan fee (incl. dummy account fee)	\$ 65 or \$115	\$388 million
Add-on Fee (for 20%)	\$ 40	\$ 37 million
Total	\$105 or \$155	\$425 million
Tax preparation fee	\$189	\$869 million
Total with tax preparation	\$292 or \$342	\$ 1.3 billion

E. RAL Pricing

This year, RAL pricing has changed dramatically because of the IRS elimination of the Debt Indicator, and the departure of the biggest RAL-lending banks, discussed in Section I.B. As a result, the remaining RAL banks have reduced the amount of the loan they will make. Previously, RAL banks offered loans up to about \$10,000, which meant they usually would lend the full amount of the refund. Pricing was generally \$30 plus a percentage of the amount loan.

⁵⁴ Urban Institute RAL Report, *supra* note 46, at 23.

⁵⁵ This is 64% of the \$606 million total paid for RALs in 2009. *See* Section I.A, *supra*.

⁵⁶ Weighted to 20%. *See id.*

⁵⁷ H&R Block Inc., 2010 Form 10-K: Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, at 19 [hereinafter H&R Block 2010 Form 10-K].

⁵⁸ Tax preparation fees were as high as \$443 in mystery shopping conducted in Arkansas and New York. 2010 RAL Mystery Shopper Report, *supra* note 7, Appendix B.

This year, we have pricing information for only two of the three remaining RAL lending banks. These banks offer RALs of only limited amounts. The fees for these RALs are proportionally higher, and translate into higher APRs.⁵⁹

Republic Bank & Trust offers a RAL of \$1,500, for which it charges \$61.22,⁶⁰ representing an APR of 149%. River City Bank offers a RAL of \$750, with a fee of \$17.50,⁶¹ representing an APR of 85%. In addition, both Republic and River City charge another \$30 for a RAC for the remainder of the consumer's refund. These amounts compare with a fee of \$65 and an APR for an average RAL of \$3,300 in 2010 of 72%.⁶²

TABLE 3: 2011 RAL fees

Bank	Amount of Loan	Loan Fee	RAC Fee (for remainder of refund)	Total	APR
Republic Bank and Trust	\$1,500	\$61.22	\$29.95	\$91.17	149%
River City Bank	\$750	\$17.50	\$30	\$47.50	85%

Furthermore, it appears that both Jackson Hewitt and Liberty Tax have begun to again charge add-on fees.⁶³ Jackson Hewitt charges as much as \$30, so the total could rise to as much as \$121.

The fee for the RAL comes on top of the fee for tax preparation, with an average of \$189. Altogether, the consumer might pay about \$310. A low-income taxpayer could save this entire amount and still receive a quick refund using direct deposit by choosing a free tax preparation program that offers e-filing.

F. RACs

Refund anticipation checks (RACs) are another tax-time financial product offered by RAL banks as well as several other financial institutions. With RACs, the bank opens a temporary bank account into which the IRS direct deposits the refund check. After the refund is deposited, the bank issues the consumer a paper check or prepaid debit card with the RAC proceeds and closes the temporary account.

⁵⁹ These APRs are based upon a ten-day loan period. The estimated time provided by the federal government to receive a refund with e-filing and direct deposit is eight to fifteen days. IRS, Publication 2043, 2010 IRS e-file Refund Cycle Chart (Sept. 2010). The median time would be 11.5 days, and the loan itself takes one or two days to process. The Treasury Inspector General for Tax Administration's analysis of IRS data confirmed that the average time for an e-filed, direct deposit refund is ten days. Treasury Inspector General for Tax Administration, Reference Number: 2008-40-170, Many Taxpayers Who Obtain Refund Anticipation Loans Could Benefit from Free Tax Preparation Services (Sept. 8, 2008), available at <http://www.ustreas.gov/tigta/auditreports/2008reports/200840170fr.pdf>.

⁶⁰ Republic Bank, New RAL Program Announced, 2010 Fall Newsletter, on filed with authors.

⁶¹ River City Bank, Pricing Information, available at <http://rcbral.com/pricing.html> (viewed Feb. 10, 2011).

⁶² NCLC/CFA 2010 RAL Report, *supra* note 11, at 8.

⁶³ See Section I.H, *infra*.

RACs generally cost around \$30. In the past three years, the IRS has separately reported RAC data. In 2009, about 12.9 million taxpayers received a RAC,⁶⁴ at a cost of about \$387 million. This was a 7.5% increase from 12 million taxpayers in 2008.⁶⁵

Thus, the number of RACs has increased significantly from 2008 to 2009, and exceeds the number of RALs. RACs present different issues than RALs. They are less expensive than a RAL, although they are still very pricey for what is essentially a one-time use bank account. Consumers with a bank account can receive their refunds in the same amount of time but avoid paying a fee for a RAC, if they simply use e-file and a direct deposit to their own bank accounts. A taxpayer who does not have a bank account should be encouraged to open one. In addition to speeding refunds, bank accounts help taxpayers avoid paying check cashing fees.

RACs present other problems. Like RALs, RACs permit the taxpayer to have the price of tax preparation deducted from the refund. This practice makes taxpayers less sensitive to the price of tax preparation, permitting tax preparers to hide the ball when consumers might attempt to comparison shop. Furthermore, when taxpayers obtain a RAC simply because they cannot afford the price of tax preparation upfront, the RAC is essentially a loan of the tax preparation fee—and an expensive one at that. Paying \$30 to borrow a tax preparation fee of \$189 for two weeks equates to an APR of 414%!

There are a number of other products available to enable taxpayers to pay for tax preparation services out of their refund, which are less expensive than RACs. These include QuickCollect (costing \$15)⁶⁶ from Santa Barbara Tax Products Group and eCollect (\$5) offered through Drake Software.⁶⁷

The IRS has stated it will explore the idea of permitting a portion of tax refunds to go directly to pay for tax preparation. A split refund option would allow taxpayers to pay for preparation fees out of their refunds without the need for a RAC. Consumer advocates have supported the idea, if properly limited in amount to prevent abuse.

In addition to the RAC fee itself, many tax preparers charge add-on fees, such as “document processing” or e-filing fees, discussed further in Section I.H below. Tax preparers charge these fees for both RACs as well as RALs. This can significantly add to the expense of a RAC.

Interestingly, the Urban Institute RAL Report found that, while the majority of RACs are taken by taxpayers who use paid preparers, a surprisingly large minority—45%—are used by taxpayers who prepared their own returns!⁶⁸ Since these taxpayers are

⁶⁴ Data from IRS SPEC, Return Information Database for Tax Year 2008 (Returns Filed in 2009) (Feb. 2011).

⁶⁵ NCLC/CFA RAL 2010 Report, *supra* note 11, at 20.

⁶⁶ Intuit ProLine Quick Collect, at proseries.intuit.com/product/offers/quick-collect.jsp (viewed Feb. 10, 2011).

⁶⁷ Bob Scott, Tax Software 2010: A Survey of What’s Ahead, *Progressive Accountant* (June 2, 2010).

⁶⁸ Urban Institute RAL Report, *supra* note 46, at 14. The taxpayers likely accessed the RACs when they used home software or online tax preparation programs, which often offer RAC options.

not required to pay a tax preparation fee, it raises the question of why they used a RAC. Furthermore, these taxpayers are likely to already have a bank account, because RACs issued online cannot be in check form.⁶⁹ These taxpayers could have received their refunds just as quickly without a fee by using a direct deposit to their own bank accounts.

One possibility for the significant RAC usage among self-prepared returns is to pay for other fees, such as e-filing fees. Another possibility is that taxpayers who use online programs to prepare their taxes could be paying for software usage fees with a RAC. In some cases, taxpayers may have selected a RAC without understanding the nature of the product or its fee. For example, in prior years, Intuit and Santa Barbara Bank & Trust offered a RAC on Turbo Tax preparation software that was marketed as a way to avoid using a credit card to pay for a \$16.95 e-file fee. Unfortunately, the RAC cost \$29.95, and there were a number of complaints by consumers that the fee was not made clear to them when they used the product.⁷⁰

G. Bank Accounts and Prepaid Cards

In order to take advantage of the speed of an eight- to fifteen-day refund, taxpayers must have a bank account into which the refund can be direct deposited. Taxpayers without a bank account should be encouraged to open an account to receive their refund, but there are other options as well. Taxpayers without a bank account can have their refund deposited to a prepaid card, including any existing payroll or prepaid card that the taxpayer already has.

There are also prepaid card options specifically targeted for delivery of tax refunds. These include the Get It Card from Advent Financial Services, the H&R Block Emerald Card, and the E1 Card from EPS Financial. A few of these cards even permit taxpayers to have the costs of tax preparation deducted from their refunds. There are similar prepaid debit cards available to taxpayers who use free VITA sites.

Earlier this year, the U. S. Department of Treasury announced a pilot project to offer 600,000 low-cost prepaid cards to families who may not have a bank account to receive their tax refunds. Consumer advocates supported the Treasury pilot, and hope it will be expanded nationwide in 2012.

Taxpayers should be cautious when considering other types of prepaid cards. As with any financial product, taxpayers should compare costs and consumer protections when choosing among options.

⁶⁹ *Id.* at 7.

⁷⁰ Teresa Dixon Murray, *The Scuzzy Award Goes to TurboTax*, Cleveland Plain Dealer, Apr. 9, 2007.

The following discussion provides additional information on prepaid cards.

Q&A ON PREPAID CARDS

What is a Prepaid Card?

Prepaid cards are debit cards that hold consumer funds but are not tied to an individual bank account. Often Visa- or MasterCard-branded, they work like bank debit cards but may not have the same consumer protections. For example, some cards do not offer statements or have protections against theft or unauthorized use that are as strong as cards linked to a regular bank account.

What should I look for in a Prepaid Card?

As with any financial product, you should consider the cost, especially any activation, monthly, ATM, balance inquiry and other fees. Also make sure the card protects you in case of loss or theft and that you can get statements or other forms of transaction information to monitor your balance, fees and charges. Avoid any prepaid card that allows you to overdraw the card and charges a hefty fee for it.

Where can I find more information about Prepaid Cards?

Resources on prepaid cards include:

National Consumer Law Center: <http://www.nclc.org/issues/prepaid-debit-cards.html>

Consumers Union: <http://www.defendyourdollars.org/pdf/2010PrepaidWP.pdf>

(Appendix A has a chart comparing different prepaid cards)

H. Add-On Fees

Add-on fees are fees separately charged by tax preparers. They are in addition to the RAL or RAC fees charged by the banks. Add-on fees for RALs and RACs appear to be a large source of profits for some preparers.

All three of the major tax preparation chains—H&R Block, Jackson Hewitt, and Liberty Tax—had promised to stop charging add-on fees several years ago.⁷¹ However, Jackson Hewitt started charging add-on fees again in 2010, specifically a “Data and Document Storage Fee” of up to \$40.⁷² This year, Jackson Hewitt’s contract with

⁷¹ Chi Chi Wu and Jean Ann Fox, *Coming Down: Fewer Refund Anticipation Loans, Lower Prices from Some Providers, But Quickie Tax Refund Loans Still Burden the Working Poor*, National Consumer Law Center and Consumer Federation of America, Mar. 2008, at 7.

⁷² 2010 RAL Mystery Shopper Report, *supra* note 7, Appendix B. *See also* Jackson Hewitt, Inc., Ask Jackson Hewitt, What is the Data and Document Storage Fee? (Dec. 10, 2009) (on file with authors).

Republic Bank & Trust permits Hewitt to charge an additional \$30 as a “transmitter’s fee.”⁷³ Liberty may also be charging a \$20 add-on fee.⁷⁴

In addition, tax preparers not affiliated with one of the three big commercial tax preparation chains will often charge add-on fees. There are multiple types of add-on fees. Some of the names for add-on fees that we have observed include:

- Application fees;
- Document processing fees;
- E-filing fees;
- Service bureau fees;
- Transmission/software fees;
- Technology fees.

Some preparers will charge several add-on fees. The cumulative impact of add-on fees can be very expensive. Mystery tester shopping has found add-on fee totals ranging from \$25 to \$324 in 2008⁷⁵ and \$19 to \$85 in 2010.⁷⁶ A New Jersey court decision documents how a local chain, Malqui Tax, charged a document preparation fee of \$134, plus a service fee of \$15, to RAL and RAC customers.⁷⁷

I. Fallout from the Loss of RALs

As discussed in Section I.B above, the OCC issued a regulatory directive on December 24, 2010 against HSBC prohibiting it from making RALs. Thus, H&R Block found itself without RALs for the 2011 tax season. H&R Block attempted to introduce a new product, called the Emerald Loan, which was a loan of \$750 or \$1,000 offered by H&R Block Bank with a cost of \$23 or \$30.⁷⁸ The Emerald Loan was not technically a RAL because it would not be secured by the customer’s refund. However, the Office of Thrift Supervision, which is the federal regulator for H&R Block Bank, appears to have put the Emerald Loan on hold.⁷⁹

⁷³ Fifth Amendment to Program Agreement Between Jackson Hewitt and Republic Bank & Trust (Sept. 30, 2010). See also Margaret Collins, *Taxpayers File for Refund Loans in Shadow of Stadium*, Bloomberg News, Feb. 7, 2011 (reporting that a RAL at Jackson Hewitt costs \$61.22 plus \$49.95 for the RAC and for “Jackson Hewitt’s transmission”).

⁷⁴ Ragan Robinson, *Tax Refund Loans in Installments This Year*, Gaston Gazette, Jan. 3, 2011 (reporting that a RAL at Liberty Tax Service costs \$110, which is \$20 more than Republic’s published price); Susan Tompor, *Tax-Refund Loans Harder to Come By*, Detroit Free Press, Feb. 7, 2011 (reporting that a RAC at Liberty Tax Service costs \$49.95, which is \$20 more than Republic’s published price).

⁷⁵ 2008 RAL Mystery Shopper Report, *supra* note 7, Attachment 2.

⁷⁶ 2010 RAL Mystery Shopper Report, *supra* note 7, Appendix B.

⁷⁷ Press Release, Office of the New Jersey Attorney General, Tax Preparation Firm Ordered to Pay \$3.5 Million for Deceptive Sales of “Refund Anticipation Loans” (Apr. 14, 2009), available at <http://www.nj.gov/oag/newsreleases09/pr20090414a.html>.

⁷⁸ Adam Rust, BankTalk.com, Block’s New Tax Time Loan Product (Jan. 5, 2011), available at <http://banktalk.org/2011/01/05/blocks-new-tax-time-loan-product/>.

⁷⁹ Adam Rust, BankTalk.com, Block’s Emerald Loan Delayed (Jan. 18, 2011), available at <http://banktalk.org/2011/01/18/blocks-emerald-loan-delayed/#more-3114>.

Jackson Hewitt had faced a similar situation last year, when an OCC action against SBBT left it without RALs for half of its offices. Like Jackson Hewitt, H&R Block offices are dealing with the loss of RALs by attempting to convince customers to choose a RAC instead of a RAL. Ironically, some H&R Block personnel are advising their customers of the benefits of waiting for their refunds.⁸⁰ To its credit, however, we have not seen reports of H&R Block personnel claiming that no preparers have RALs, compared to reports of such claims by Jackson Hewitt personnel last year.

Jackson Hewitt and Liberty have taken full advantage of H&R Block's lack of RALs. Jackson Hewitt has run TV ads⁸¹ and billboards touting the availability of RALs. Of course, the ads do not mention that RALs are limited to \$1,500 or the high rejection rate faced by applicants.⁸²



Independent preparers who have access to RALs are also taking advantage of H&R Block's lack of RALs.⁸³ However, the departure of JPMorgan Chase and SBBT from the RAL market leaves many independent preparers, including fringe preparers, without RALs.

Some of these preparers appear to be engaged in bait-and-switch tactics. There are complaints that Instant Tax Service is advertising RALs but not providing them. Some complaints include:

“The tax service known as Instant Tax Service are advertising Rapid Anticipation Loans(RAL) This is totally not true. They will say you will get a check in as little as 2–3 days, but ultimately you will be denied by the bank for the (RAL) and told that you will receive a check in 8–15 days even though the IRS has approved your

⁸⁰ Donna McCollum, KTRE.com, Quick Loans on Your Tax Refund Harder to Get (Jan. 21, 2011).

⁸¹ For an example, see http://www.youtube.com/watch?v=BMMRN_3WqJI&feature=player_embedded (last visited Feb. 10, 2011).

⁸² See Section I.B, above.

⁸³ *Lansing-Area Preparers Expect Boost from Tax Refund Loans*, Lansing State Journal, Jan. 10, 2011.

loan This is a scam to collect bank fees and new customers, due to the fact that the RAL's are becoming a thing of the past and are not being offered like before. H&R Block at least had the dignity to let their customers know this year of the change, by mail. Which ultimately led to a bunch of vulture tax preparers preying on the vulnerable for quick money.”⁸⁴

“On January 9, 2011 I received a phone call from my preparer who told me that my return was ready and that they would file it on the 14th as soon as the IRS opened, (all this without my W-2) and that I should have my RAL loan of \$1000 on January 15th or 16th. On the 17th there was still nothing so I contributed it to being MLK, Jr. Day and called on the 18th around 12pm because there was still no funds on my card ... Wednesday the 19th rolled around and still nothing so I called around 12 pm and was told that on the 18th the bank had denied 100% of the applications, but as of this morning they were reversing some decisions. Then at 5:20 PM my preparer called and said I was denied, but couldn't tell me as to why. He also said that only 5 out of 67 applications or so had been accepted.

“I fell like I was completely given the run around. I had bills to pay and was waiting on that money and now I have to pay \$405 for a whopping \$50 loan basically. I would have filed my taxes my self (which I've done for the past 3 years) but I was assured several times that I would qualify for the RAL. Now I won't see my money until the 28th.”⁸⁵

J. Impact of RAL Reform on Independent and Fringe Preparers

We have previously discussed how the availability of RALs attracted fringe tax preparers into the business, such as check cashers, payday lenders, and retail outlets.⁸⁶ The sharp drop in availability of RALs in 2011 tax filing has led to drastic changes in this sector. In 2009 we reported that 178 of 617 registered RAL facilitators in Washington State were payday loan, check cashing, and rent-to-own outlets.⁸⁷ In 2011, almost none of these outlets are registered to sell RALs.⁸⁸ Another state that requires registration of RAL providers is North Carolina. Advocates in that state report that almost no fringe providers are registered to facilitate RALs.⁸⁹

Some fringe preparers still offer to prepare tax returns and promote quick tax money. However, these outlets are either providing loans not repaid directly by the

⁸⁴ Instant Tax Service (RAL) Is a Scam, <http://www.topix.com/forum/city/bellwood-il/T435JE7VO549K95I8> (viewed Feb. 9, 2011).

⁸⁵ Ripoff Report, Instant Tax Service ITS No RAL, Rip-Off Orlando, Florida, *available at* <http://www.ripoffreport.com/income-tax-service/instant-tax-service/instant-tax-service-its-no-ral-9fc88.htm> (last visited Feb. 9, 2011).

⁸⁶ Chi Chi Wu, RALs, *Tax Fraud, and Fringe Preparers*, National Consumer Law Center, Feb. 2009, *available at* http://www.nclc.org/images/pdf/high_cost_small_loans/ral/2009-ral-appendix.pdf.

⁸⁷ *Id* at 18.

⁸⁸ <http://www.dfi.wa.gov/cs/docs/ralreg.xls>, visited Feb. 25, 2011.

⁸⁹ Conversation with Peter Skillern, Community Reinvestment Association of North Carolina.

refund direct deposited by IRS and/or are promoting RACs or prepaid cards. It is likely that taxpayers are committing to pay for tax preparation in the expectation of quick cash without knowing that traditional RALs are unavailable from these outlets.

Some outlets are promoting their payday or other loan products as tax refund related. For example, CheckSmart in Phoenix is selling a “Tax Express Loan” of up to \$1,500 with no credit check. The fine print discloses that tax return preparation and estimates are done by CG1-eTax Partners, LLC in Alpharetta, Georgia. The tax refund from the IRS is direct deposited into an account at Urban Trust Bank or Palm Desert National Bank. These banks provide prepaid debit cards sold at CheckSmart. In Arizona, the lender for the “Tax Express Loan” is Buckeye Title Loans, Inc., a car title lender. In Ohio, the lender is Buckeye Small Loans, LLC; in California, it is Buckeye Title Loans of California, LLC, and in Kansas, Florida, Indiana, Kentucky, Virginia, Michigan and Utah, the lender is National Tax Lending LLC.⁹⁰

Other check cashing chains are promoting prepaid cards or check cashing for tax refund checks instead of offering tax preparation and RALs this year. Money Mart offers to cash tax refund checks or load them onto a Momentum Visa prepaid card and partners with Liberty Tax Service.⁹¹ Ace Cash Express offers a 20% off coupon for cashing a tax refund check or sells an ACE Elite Visa Prepaid Card for loading the tax refund.

Other check cashers and payday lenders are advertising vague tax-related services to clients. For example PLS, a chain of check cashers and payday lenders, advertises its tax service as consisting of Individual Tax Planning and Compliance (described as a FREE income tax evaluation and advice on how to file returns), Individual Tax Planning and Compliance for first time tax-filers (“PLS Tax Service can help. We provide FREE W-7 processing to help you obtain your IRS individual tax...”), and “Don’t wait: visit PLS Tax Service today for your FREE evaluation.”⁹²

We have previously reported on TRS Tax Max, a tax preparation and RAL program for car dealers to help them sell cars paid for by tax refunds.⁹³ TRS Tax Max continues to promote RALs and other tax-time financial products for 2011, although it is not clear which bank provides the loans. TRS Tax Max charges \$139 (\$119 with a \$20 coupon) for tax preparation and electronic filing. The RAL lender’s fees ranged from \$52 to \$85 in 2010.⁹⁴

⁹⁰ CheckSmart Tax Xpress Loan flyer, on file with authors.

⁹¹ <http://www.moneymart.com/MM/tax.asp>, visited Feb. 15, 2011.

⁹² <http://www.plsfinancial.com/default.asp?language=en&id=55&ngId=52>, visited January 24, 2011.

⁹³ Chi Chi Wu, *RALs, Tax Fraud, and Fringe Preparers*, National Consumer Law Center, Feb. 2009, at 13, available at http://www.nclc.org/images/pdf/high_cost_small_loans/ral/2009-ral-appendix.pdf

⁹⁴ <https://www.taxmax.com/TRSTaxMax/HowItWorks.aspx>, visited Feb. 15, 2011.

PART II. INDUSTRY PLAYERS

This section provides basic information on the RAL activity of key industry players, an overview that we provide annually in our RAL reports. We discuss certain other topics affecting these players, such as regulatory measures, law enforcement actions, and other events, in other parts of this report.

Prior to this year, the RAL industry was made up of a handful of RAL lending banks, three commercial preparation chains, and thousands of independent preparers that offered and arranged for RALs. The loans were made by banks because of the banks' ability to avoid state interest rate caps and because IRS rules prohibit the tax preparer from being the RAL lender.⁹⁵

A. H&R Block

H&R Block is the nation's largest tax preparation chain, accounting for 15.8% of all individual tax returns in 2009.⁹⁶ In 2009, H&R Block's RAL business made 2.95 million RALs,⁹⁷ which is a dramatic decrease from the 3.85 million RALs that it made in 2008.⁹⁸ H&R Block processed 15.2 million tax returns (excluding software/online processed returns) in 2009;⁹⁹ thus, about 19% of customers who went to an H&R Block office received RALs that year.

For 2010, H&R Block stated that “[w]e prepared 20.1 million U.S. returns [including software/online returns] in fiscal year 2010, and of those clients 16.8% also purchased a RAL.”¹⁰⁰ Thus, H&R Block appears to have made 3.4 million RALs in 2010, which is an increase of 15% from 2009.

In 2009–2010, H&R Block earned fees from RALs through its arrangement to have H&R Block Financial Corporation buy a 49.9% interest in RALs arranged by its tax preparation offices. In 2009, H&R Block earned \$142.7 million in revenues from RALs, representing about 4.7% of the company's revenues from tax services.¹⁰¹ In 2010, H&R Block's RAL profits rose slightly to \$146.2 million, constituting about 4.9% of tax services revenue.¹⁰² H&R Block also earned about \$78 million in interest revenues from its Emerald Advance line of credit.¹⁰³

⁹⁵ See NCLC/CFA 2002 RAL Report, *supra* note 2, at 18–19.

⁹⁶ H&R Block Inc., 2009 Form 10-K: Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, at 2 [hereinafter H&R Block 2009 Form 10-K].

⁹⁷ *Id.* at 18.

⁹⁸ H&R Block Inc., 2008 Form 10-K: Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, at 24.

⁹⁹ H&R Block 2009 Form 10-K, *supra* note 96, at 18.

¹⁰⁰ H&R Block Inc., 2010 Form 10-K: Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, at 10. [hereinafter H&R Block 2010 Form 10-K].

¹⁰¹ H&R Block 2009 Form 10-K, *supra* note 96, at 18–19.

¹⁰² H&R Block 2010 Form 10-K, *supra* note 100, at 19.

¹⁰³ *Id.*

H&R Block offers the Emerald Card, a bank account based on a prepaid debit card platform, to its tax preparation customers. The Emerald Card also allows customers to access the Emerald Advance Line of Credit, which is a pre-season or “pay stub” product that provides loans of up to \$1,000. H&R Block had about 2.7 million Emerald Cards users in 2009.¹⁰⁴ It made more than 1 million Emerald Advances in 2009.¹⁰⁵

H&R Block has experienced a significant loss of about 2 million customers during the last few years. Interesting, H&R Block revealed that “[n]early two-thirds of our client losses have occurred during the early season in January and February, primarily among lower income clients, who tend to also to take a financial settlement product.”¹⁰⁶ Indeed, despite the fact that H&R Block had RALs available for all of its offices in 2010, while Jackson Hewitt lost 50% of its RAL capacity, H&R Block lost 900,000 tax clients in 2010 and “over 90% of them were first-peak low income AGI filers looking for settlement products [i.e., RALs and RACs].”¹⁰⁷

B. Jackson Hewitt

Jackson Hewitt is the second largest tax preparation chain in the country, preparing 2.96 million returns in 2009, or about a 3–4% share of the paid preparer market.¹⁰⁸ This is a decline of 13% from the 3.4 million returns that it prepared in 2008.¹⁰⁹

Jackson Hewitt sold 2.75 million (or 93%) of its customers a financial product in 2009, which includes RALs, RACs and its “Gold Guarantee” product.¹¹⁰ It no longer breaks out the number of RALs it makes in its SEC filings. However, we had estimated that Jackson Hewitt brokered about 1.2 to 1.3 million RALs in 2008.¹¹¹ Given its 13% decline in 2009, we assume that the number of RALs declined similarly, to 1 to 1.1 million RALs.

In 2010, Jackson Hewitt lost half of its RAL capacity when its main RAL bank partner, Santa Barbara Bank & Trust, was forced out of the RAL market.¹¹² Not surprisingly, its volume of tax preparation business declined again in 2010, by about

¹⁰⁴ H&R Block, Inc., H&R Block CEO Discusses F1Q2011 Results—Earnings Call Transcript (Sept 2, 2010), available at <http://seekingalpha.com/>.

¹⁰⁵ H&R Block 2009 Form 10-K, *supra* note 96, at 18.

¹⁰⁶ H&R Block, Inc., H&R Block CEO Discusses F1Q2011 Results—Earnings Call Transcript (Sept 2, 2010), available at <http://seekingalpha.com/>.

¹⁰⁷ *Id.*

¹⁰⁸ Jackson Hewitt Tax Service Inc., 2009 Form 10-K: Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, at 2 [hereinafter Jackson Hewitt 2009 Form 10-K].

¹⁰⁹ Jackson Hewitt Tax Service Inc., 2008 Form 10-K: Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, at 2.

¹¹⁰ Jackson Hewitt 2009 Form 10-K, *supra* note 108, at 29.

¹¹¹ NCLC/CFA 2010 RAL Report, *supra* note 11, at 23.

¹¹² *Id.*

15%. That year, the company processed 2.53 million tax returns¹¹³ and about 2.2 million (or 87%) of these taxpayers were sold a financial product.¹¹⁴

Jackson Hewitt revealed that “our attachment rate of loan and non-loan refund-based products was 72.2% in 2010 versus 77.6% in the prior year.”¹¹⁵ Thus, we can calculate that Jackson Hewitt made 1.8 million RALs and RACs in 2010; however, the ratio or breakdown of RALs versus RACs is unclear.

Even with these declines, Jackson Hewitt continues to derive a large percentage of its profits from financial products. In 2009, it earned \$60 million in financial product fees, or 24% of its revenues.¹¹⁶ In 2010, it earned \$46.3 million in such fees, or 22% of revenues.¹¹⁷ Thus, Jackson Hewitt is much more dependent than H&R Block on RALs and other tax financial products. Indeed, in 2010, Jackson Hewitt’s tax preparation volume only declined 8% in markets where it had RALs available versus 21% in markets where it did not have RALs.¹¹⁸ The company has struggled, and almost faced delisting from the New York Stock Exchange.¹¹⁹

C. Liberty Tax Service

Liberty Tax is the third significant commercial tax preparation chain in the country, with 3,800 locations.¹²⁰ The chain is well-known for hiring people to dress up in Statue of Liberty costumes as a form of advertisement during tax season.

Liberty earned \$23.8 million in RAL and RAC fees in 2009, or about 29% of revenues.¹²¹ It similarly earned \$20.3 million in RAL and RAC fees in 2010 or 23% of its revenue.¹²²

In 2009, about 37% of Liberty Tax customers obtained a RAL; another 37% obtained a RAC.¹²³ Thus, about three-quarters of Liberty’s customers get some sort of financial product. In 2010, Liberty made about 300,000 RALs.¹²⁴ Liberty’s percentage

¹¹³ Jackson Hewitt Tax Service Inc., 2010 Form 10-K: Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, at 3 [hereinafter Jackson Hewitt 2010 Form 10-K].

¹¹⁴ *Id.* at 35.

¹¹⁵ Jackson Hewitt Tax Service Inc., *Q4 2010 Jackson Hewitt Tax Service Inc. Earnings Conference Call—Final*, Fair Disclosure Wire, July 14, 2010.

¹¹⁶ Jackson Hewitt 2009 Form 10-K, *supra* note 108, at 29.

¹¹⁷ Jackson Hewitt 2010 Form 10-K, *supra* note 113, at 34.

¹¹⁸ *Id.* at 36.

¹¹⁹ Carol Lawrence, *Jackson Hewitt May Face Delisting*, New Jersey Record, June 26, 2010.

¹²⁰ Liberty Tax Service, About Liberty, <http://www.libertytax.com/about-liberty-tax-service.html> (last visited Feb. 9, 2011).

¹²¹ JTH Tax, Inc. and Subsidiaries (d/b/a/ Liberty Tax Service), Consolidated Financial Statements for April 30, 2010 and 2009 (With Independent Auditors’ Report Thereon) 3.

¹²² *Id.*

¹²³ Chyna Broadnax, *Tax Filers Desperate for Early Returns*, Statesville Record & Landmark, Feb. 27, 2009.

¹²⁴ Eileen AJ Connelly, *H&R Block Suit May Signal Sunset of Refund Loans*, Associated Press, Oct. 20, 2010.

of revenues from RALs and RACs, as well as the high percentage of its customers who get these products, indicate the chain has a similar RAL/RAC business as Jackson Hewitt.

Liberty Tax is reporting a 14.2% increase in the total number of tax returns filed through February 15, 2011. Analysts claim that Liberty has the highest RAL and RAC coverage of the major tax preparers and estimate that five percent of new customers are former H&R Block clients.¹²⁵

D. Republic Bank & Trust and Other FDIC-Supervised Banks

The biggest bank left in the RAL market is Republic Bank & Trust, a state-chartered bank located in Louisville, Kentucky. Republic became the main lending partner for Jackson Hewitt and Liberty Tax Service after Santa Barbara Bank & Trust was forced to exit the RAL market. Jackson Hewitt represents about 34% of Republic's RAL and RAC business; Liberty Tax represents another 29% of the business.¹²⁶

Republic made 837,000 RALs in 2010, which is a slight increase from 2009.¹²⁷ It earned \$20 million in net income from RALs and RACs in 2009, or about 48% of the bank's income.¹²⁸

Even though Republic is able to make RALs in 2011, its loan volume is expected to drop significantly. Republic reported that the IRS elimination of the Debt Indicator, as discussed in Section I.B, will result in the bank making only about one-third to one-half of the loan volume from 2010.¹²⁹

There are two other banks that make RALs, both of which are also supervised by the FDIC. For some reason, like Republic, the two banks are located in Louisville, Kentucky: River City Bank¹³⁰ and Ohio Valley Bank/Fort Knox Financial Services, which operates as Refund Advantage.¹³¹

E. Santa Barbara Bank & Trust/Tax Funding Group

Santa Barbara Bank & Trust (SBBT), a subsidiary of Pacific Capital Bancorp, was the main RAL partner for Jackson Hewitt. On December 24, 2009, Pacific Capital's

¹²⁵ David Burtzloff and Brittany Groce, Stephens Inc., *Industry Note: Consumer Finance*, Feb. 17, 2011.

¹²⁶ Republic Bancorp, Form 10-Q: Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the Quarterly Period Ended September 30, 2010, at 41 [hereinafter Republic September 2010 Form 10-Q].

¹²⁷ Steve Trager, Rodman Renshaw Annual Global Investment Conference, Republic Bancorp 29 (Sept. 13, 2010).

¹²⁸ Republic Bancorp, 2009 Form 10-K: Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, at 4.

¹²⁹ Republic September 2010 Form 10-Q, *supra* note 126, at 41 (predicting 1/3 loan volume); Kevin Eigelbach, *Republic Bancorp Earnings Rise 15 Percent In Fourth Quarter*, Business First (Louisville), Jan. 19, 2011 (predicting 50% or more decrease).

¹³⁰ See www.rcbral.com.

¹³¹ See www.refund-advantage.com.

federal banking regulator, the Office of Comptroller of Currency, refused to provide regulatory approval for the bank to make RALs in the 2010 tax season.¹³² Thus, SBBT is effectively out of the RAL business.

SBBT sold its tax financial products division for \$10 million to a private equity firm, which named itself Santa Barbara Tax Products Group (SBTPG).¹³³ SBTPG had a partnership with MetaBank, a federal thrift based in Iowa, to process RACs.¹³⁴ SBTPG and MetaBank announced their plans to make RALs for the 2011 filing season; however, in October 2010, the Office of Thrift Supervision effectively prohibited MetaBank from making RALs.¹³⁵

In 2009, SBBT made 8.1 million RALs and RACs.¹³⁶ SBBT had a mix of 77% RACs and 23% RALs,¹³⁷ so we estimate SBBT made about 1.86 million RALs in 2009.

F. Software Companies

Providers of professional tax preparation software play a major role in making RALs and RACs available to independent preparers.¹³⁸ A scan of websites for these companies in mid-February 2011 finds many of them promoting RACs and prepaid debit cards as a means of delivering tax refunds, but a few still list RALs as available.

For example, Drake Software, a major provider of tax software for independent preparers, lists the following as banking partners: Advent Financial; EPS Financial, LLC; Republic Bank and Trust; River City Bank; and Santa Barbara Tax Products Group. These providers sell prepaid debit cards, RALs and RACs.¹³⁹ In particular, Bancorp Bank Payment Solutions Group has a partnership with EPS Financial, LLC to serve Drake Software customers.¹⁴⁰ Options include the E1 Visa prepaid card, issued by The Bancorp Bank; ACH transfer; or a paper check delivered at the tax preparer's office.

Another software company, OLTPro, lists Refund Advantage (Ohio Valley Bank), Santa Barbara Tax Products Group, River City Bank, EPS Financial, Advent

¹³² Press Release, Pacific Capital Bancorp Announces Planned Sale of Refund Anticipation Loan and Refund Transfer Businesses (Dec. 24, 2010).

¹³³ Press Release, Pacific Capital Bancorp Completes Sale of Refund Anticipation Loan and Refund Transfer Businesses (Jan. 14, 2010).

¹³⁴ Rich Turner, CEO, Santa Barbara Tax Products Group, LLC, Message Sent to Transmitters from SBTPG (Jan. 13, 2010) (on file with authors).

¹³⁵ See Section I.B, *supra*.

¹³⁶ Press Release, Pacific Capital Bancorp Reports Second Quarter 2009 Financial Results (July 30, 2009).

¹³⁷ Pacific Capital Bancorp (PCBC), Transcript of Q1 2009 Earnings Call, May 1, 2009, from Seeking Alpha, <http://seekingalpha.com/article/134722-pacific-capital-bancorp-q1-2009-earnings-call-transcript> (last viewed Feb. 9, 2011).

¹³⁸ For further discussion, see Chi Chi Wu, *RALs, Tax Fraud, and Fringe Preparers*, National Consumer Law Center, Feb. 2009, at 12-13, available at http://www.nclc.org/images/pdf/high_cost_small_loans/ral/2009-ral-appendix.pdf.

¹³⁹ <http://www.drakesoftware.com/Products/BankProducts.aspx>, visited Feb. 15, 2011.

¹⁴⁰ Press Release, *The Bancorp Bank Teams Up with EPS Financial and Drake Software*, March 10, 2010.

Financial, and Atlas Financial Services as its bank options for delivering refunds.¹⁴¹ In turn, Atlas Financial Services has three bank partners to provide its “QIK” refund product: First Security Bank (Mackinaw, IL), New Capital Bank (Peoria Heights, IL), and Citizens Bank (Sandusky, OH). The QIK refund agreement authorizes the bank to deduct a multitude of fees, including the Refund Account fee, QIK Processing Fee, tax preparation fee, Federal Electronic Filing Fee, State Electronic Filing Fee, Service Bureau Fee, Other Charges, Check Processing Fee, and Technology Fee.¹⁴²

TaxVision software also offers QIK refund products and lists bank partners as First Security Bank, New Capital Bank, Citizens Bank, and Kenny Bank.¹⁴³ Other software companies that use Republic Bank and Trust, River City Bank, Refund Advantage (Ohio Valley Bank), and/or Santa Barbara Tax Products Group include: TaxSlayer Pro software,¹⁴⁴ Taxware Systems,¹⁴⁵ TaxWise,¹⁴⁶ TaxACT Professional Tax Software,¹⁴⁷ and CrossLink. The link to Refund Advantage reveals that tax preparers can earn \$6 per taxpayer using any tax software for selling their RALs, RACs, prepaid debit cards, or State Refund Products.¹⁴⁸

Many of the fringe preparers rely on software or online services. For example, Allied Cash Advance, a national chain of payday and car title loan stores, prepares tax returns for clients using the website eTax.com with the store clerk entering taxpayers’ information online.¹⁴⁹ At one store in Arizona, Allied handed out fliers in January titled “We Prepare Taxes & Give You Quick Cash! Get CASH NOW ... Before You Receive Your Tax Refund.” However, the clerk acknowledged that the store offered a RAC to deliver refund money, not a RAL. Clients can deposit the RAC or pay Allied to cash it.¹⁵⁰

ACE Cash Express promotes online at-home use of ezTaxReturn.com from the ACE website for a fee of \$24.95 to e-file online with ezTaxReturn.com.¹⁵¹ Cash America offers in-store tax preparation at its Payday Advance, Cashland and many of the

¹⁴¹ <http://www.oltpro.com/main/pro/bank.asp>, visited Feb. 15, 2011.

¹⁴² Link to QIK Bank Application for each bank at <http://www.atlasfinancialservices.com/>, visited Feb. 15, 2011.

¹⁴³ TaxVision Software website, <http://www.ntslink.com/banks.aspx>, visited Feb. 15, 2011.

¹⁴⁴ <http://www.taxslayerpro.com/supportedbanks.htm>, visited Feb. 15, 2011.

¹⁴⁵ <http://www.taxwaresystems.com/links.asp>, visited Feb. 15, 2011.

¹⁴⁶ <http://www.taxwise.com/products/o-bank.html>, visited Feb. 15, 2011.

¹⁴⁷ <http://prep.taxact.com/bank-products/bank-products.asp>, visited Feb. 15, 2011.

¹⁴⁸ http://www.refund-advantage.com/Bank_Products.asp, visited Feb. 15, 2011.

¹⁴⁹ Conversation with store clerk, Prescott, Arizona, January 2011. No tax preparation fee schedules were posted.

¹⁵⁰ Allied Cash Advance flier, on file with the authors. Store visit January 2011.

¹⁵¹ <http://www.acecashexpress.com/tax-refund-checks.aspx>, visited Feb. 15, 2011.

Cash America locations. Cash America offers a \$25 off coupon for tax filing fees. The pawn chain sells RACs, IRS e-file, and check cashing for an additional fee.¹⁵²

¹⁵² <http://www.cashamerica.com/FinancialServices/TaxFilingServices.aspx>, visited Feb. 15, 2011.

PART III. REGULATION, ENFORCEMENT, LITIGATION AND ADVOCACY

A. RAL Legislation

During 2010, three states enacted RAL laws. Maryland enacted a RAL law that was based in part on the NCLC Model RAL Act.¹⁵³ Colorado and Louisiana enacted RAL laws that primarily focus on disclosures, but do require that RAL facilitators be tax preparers or financial service providers.

*Maryland*¹⁵⁴

Maryland enacted a law regulating RAL facilitators. The new law prohibits facilitators from charging the consumer a fee or other consideration in the making or facilitating of a RAL or RAC, apart from the fee charged by the creditor. Thus, the new law bans add-on fees, such as document preparation, service bureau, or transmitter fees. The Maryland law does permit facilitators to charge a tax preparation fee if the same fee in the same amount is charged to all customers, including those who do not obtain RALs or RACs.

The Maryland law contains additional prohibitions for RAL facilitators against (1) directly or indirectly arranging for any third party to charge a fee for check cashing, insurance, attorney's fees, or collection costs and (2) misrepresenting a material fact or condition of a RAL or RAC.

As for disclosures, the Maryland law requires facilitators to post a list of RAL fees in a 16 by 20 inch document in 28-point type, as well as provide a written document with disclosures in 14-point type. Both the wall posting and written document disclosures must include a warning that: (1) a RAL is a loan; (2) the consumer is liable for the full amount of the loan if the tax refund is less than expected; and (3) the consumer can receive a refund in eight to fifteen days without paying any extra fees or taking out a loan.

The Maryland law also requires oral disclosures by the facilitator. The oral disclosures include: (1) a RAL is a loan; (2) the consumer is liable for the full amount of the loan if the tax refund is less than expected; (3) the RAL fee; and (4) the RAL interest rate. The oral disclosures must be made in the language primarily used between the facilitator and consumer.

¹⁵³ Available at http://www.nclc.org/images/pdf/high_cost_small_loans/ral/model-refund-anticipation-loan-act.pdf.

¹⁵⁴ Md. Code Ann., Com. Law §§ 14-801 to 14-3807.

*Colorado*¹⁵⁵

Colorado enacted a RAL law primarily focused on disclosures. Prior to completion of the application, the preparer must disclose: (1) the RAL loan fee schedule; (2) the fact that a RAL is a loan and not the actual refund; (3) that the consumer may have the return filed electronically without a RAL; (4) that the consumer is responsible for repayment of the loan in the event the refund is not paid or is not paid in full; (5) that any fee that will be charged for the RAL is not approved by the lender (*i.e.*, the RAC fee); (6) the average time in which the consumer could expect to receive the refund with electronic filing and direct deposit/mail or with paper filing and direct deposit/mail; (7) that the IRS does not guarantee the amount or time of the payment of a refund; (8) the estimated time when the consumer will receive the loan proceeds; (9) the estimated total RAL fees; (10) the estimated APR under the Truth in Lending Act; and (11) the procedure for making a complaint about a RAL, including the contact information for the Uniform Credit Code Administrator in the Colorado Attorney General's Office. There is no mandatory type size or mandatory language for the written disclosures.

The Colorado law requires facilitators to post a list of RAL fees in 28-point type. The wall posting must also include a warning that: (1) a RAL is a loan; (2) the consumer is liable for the full amount of the loan if the tax refund is less than expected; (3) the consumer can receive a refund in eight to fifteen days without paying any extra fees or taking out a loan; and (4) the consumer can file any complaints regarding RALs to the Uniform Credit Code Administrator in the Colorado Attorney General's Office.

The Colorado law also requires oral disclosures by the facilitator. The oral disclosures include: (1) a RAL is a loan only lasting one to two weeks; (2) the consumer is liable for the full amount of the loan if the tax refund is less than expected; (3) the RAL fee; and (4) the RAL interest rate. The oral disclosures must be made in the language used primarily used between the facilitator and consumer.

The Colorado law contains one important substantive protection. It requires that a RAL facilitator must be either an electronic return originator (essentially a tax preparer approved by the IRS to file electronically) or be employed by an electronic return originator. There are exceptions for financial institutions, certified public accountants, and attorneys.

¹⁵⁵ Colo. Rev. Stat. §§ 5-9.5-101 to 5-9.5-109.

*Louisiana*¹⁵⁶

Louisiana enacted a RAL law primarily focused on disclosures. Prior to completion of the application, the preparer must disclose: (1) the RAL loan fee schedule; (2) the fact that a RAL is an extension of credit and not the actual refund; (3) that the consumer may have the return filed electronically without a RAL; (4) that the consumer is responsible for repayment of the loan in the event the refund is not paid or is not paid in full; (5) any fee that will be charged in the RAL is not approved; (6) the average time in which the consumer could expect to receive the refund with electronic filing and direct deposit/mail or with paper filing and direct deposit/mail; (7) that the IRS does not guarantee the amount or time of the payment of a refund; (8) the estimated time when the consumer will receive the loan proceeds; (9) the estimated total RAL fees; and (10) the estimated APR under the Truth in Lending Act. There is no mandatory type size or mandatory language for the written disclosures.

Similar to the Colorado RAL law, the Louisiana law also requires that a RAL facilitator must be primarily involved in tax preparation or financial services. Finally, it requires that the facilitator post the RAL loan fee schedule in a conspicuous manner in the facilitator's location.

There are currently a total of twenty states regulating RALs. The other seventeen states are Arkansas, California, Connecticut, Illinois, Maine, Michigan, Minnesota, Nevada, New Jersey, New York, North Carolina, Oregon, Tennessee, Texas, Virginia, Washington State, and Wisconsin. The laws for thirteen of these states are summarized in Appendix A to NCLC's model state RAL law.¹⁵⁷ Most of these laws rely on disclosures to protect consumers from RAL abuses, which are limited in their effectiveness. However, RAL laws in Arkansas, Maine, Maryland, and New York provide substantive protection by prohibiting add-on fees. The Connecticut law prohibits RAL facilitators from facilitating a RAL over 60% APR; however, the federal Court of Appeals for the Second Circuit struck down this provision, holding that it was preempted by federal banking law.¹⁵⁸

¹⁵⁶ La. Rev. Stat. §§ 9:3579.1 to 3579.4.

¹⁵⁷ Available at http://www.nclc.org/images/pdf/high_cost_small_loans/ral/model-refund-anticipation-loan-act.pdf.

¹⁵⁸ *Pacific Capital Bank, N.A., v. Conn.*, 542 F.3d 341 (2d Cir. 2008).

B. Regulation

During 2010, there were a number of regulatory actions by federal and state agencies involving RALs. The most important regulatory action, of course, was the IRS elimination of the Debt Indicator, discussed in Section I.B, above. In addition:

- The Office of Comptroller of Currency issued a Policy Statement setting forth its expectations for national banks making RALs.¹⁵⁹ These expectations require banks to have:
 - Board responsibility for risk management of RAL lending.
 - Procedures to monitor and oversee third-party tax preparers to ensure compliance with relevant laws, regulations, and policies.
 - Procedures to review and approve all advertising copy and video for RAL marketing.
 - Programs to screen tax preparers partnering with the bank, including background checks.
 - Programs to monitor and verify the practices of these preparers, and to conduct mystery shopping of these preparers.
- The Illinois Division of Finance and Professional Regulation issued a statement prohibiting check cashers in that state from facilitating RALs unless authorized by the division.¹⁶⁰ The Division sent notices to 128 check cashers that offered RALs and tax preparation services.¹⁶¹
- Virginia issued regulations governing auto title lenders who facilitate RALs, including prohibiting title lenders from facilitating a RAL to pay off a title loan.¹⁶² This is similar to Virginia regulations governing payday lenders who facilitate RALs.¹⁶³
- The Conference of State Banking Supervisors issued a policy statement opposing high-rate RALs.¹⁶⁴

C. Enforcement

During 2010, there were a number of developments in government enforcement actions involving RALs. As discussed in Section I.B, above, the most significant were the actions of the bank regulators in ordering certain banks out of the RAL market.

¹⁵⁹ Office of Comptroller of Currency, OCC Bulletin 2010-7, Guidance on Consumer Protection and Safety and Soundness (Feb. 18, 2010).

¹⁶⁰ Illinois Dep't of Fin and Prof. Reg., Statement Regarding Refund Anticipation Loans in Currency Exchanges (Nov. 2009).

¹⁶¹ Press Release, Governor Quinn Cracks Down on Predatory Refund Anticipation Loans (Nov. 23, 2009).

¹⁶² 10 Va. Admin. Code § 5-210-70(G).

¹⁶³ 10 Va. Admin. Code § 5-200-100(J).

¹⁶⁴ Conference of State Banking Supervisors, CSBS and ACSBS Issue Policy Statement on Refund Anticipation Loans (Feb. 2010).

These actions include the FDIC's notice to Republic Bank that RALs are unsafe and unsound, the OCC's action in forcing HSBC out of the RAL market, and the OTS action preventing MetaBank from making RALs.

Other significant actions include:

*Arkansas Attorney General*¹⁶⁵

The Arkansas Attorney General filed a lawsuit against Mo' Money Taxes for violations of the Arkansas RAL Act. The complaint alleged that Mo' Money violated the Act by charging add-on fees, which are prohibited in Arkansas. The complaint also alleged that Mo' Money failed to provide required written and oral disclosures, and failed to post a mandatory warning and schedule of RAL fees in its offices. Mystery shopper testing conducted by consumer advocacy groups had found similar violations by Mo' Money.¹⁶⁶

*New Jersey Division of Consumer Affairs*¹⁶⁷

The New Jersey Division of Consumer Affairs, along with the New Jersey Attorney General's Office, inspected 574 tax preparers in search of false and misleading RAL advertising. Investigators found five businesses falsely advertising RALs in storefront signs, posters, or flyers as "instant" or "same day" refunds.

New York State Division of Human Rights

The New York State Division of Human Rights obtained successful decisions on its ongoing lawsuits against H&R Block and Jackson Hewitt for discriminatory targeting of minority communities for RALs. These decisions are discussed in Section III.C below.

*New York State Division of Consumer Affairs*¹⁶⁸

The New York City Division of Consumer Affairs (DCA) inspected nearly 800 tax preparers for deceptive RAL marketing. DCA issued 2,010 charges against preparers for violations of New York law, including illegally advertising RALs as "instant" or "rapid" refunds.

¹⁶⁵ Complaint, *State v. Mo' Money Tax Serv.*, Case No. CV 2010 6958 (Ark Cir. Ct. Pulaski Cty. Dec. 6, 2010).

¹⁶⁶ 2010 RAL Mystery Shopper Report, *supra* note 7.

¹⁶⁷ Press Release, New Jersey Division of Consumer Affairs, Deceptive "Instant Tax Refunds" Actually a Pitch for High-Cost, High-Interest Loans, NJ Division of Consumer Affairs Reminds Taxpayers (Feb. 7, 2011), available at <http://www.njconsumeraffairs.gov/press/instantrefunds.htm>.

¹⁶⁸ Press Release, New York City Division of Consumer Affairs, New York City Department of Consumer Affairs Issues More Than 2,000 Violations in Citywide Crackdown of Income Tax Preparers (Mar. 2, 2010).

North Carolina Commissioner of Banks

The North Carolina Commissioner of Banks took action against Mo' Money Taxes for its failure to comply with the North Carolina RAL law. Mo' Money had failed to register its thirteen offices in North Carolina with the Office of the Commissioner of Banks (OCOB), as required by the North Carolina RAL law. Mo' Money agreed to pay a civil penalty of \$13,000 and to properly register as a RAL facilitator. In addition, Mo' Money agreed not to have any meritorious complaints filed against it with the OCOB for the next five years.¹⁶⁹

¹⁶⁹ Consent Order, *In re* Application of Mo' Money of North Carolina, Inc., Docket No. 10:036:RAL (Feb. 8, 2010).

C. Litigation

*Jackson Hewitt Tax Serv. v. Kirkland*¹⁷⁰

Jackson Hewitt had sued the New York State Division of Human Rights in an attempt to stop Division's enforcement action against Hewitt for alleged discriminatory targeting of minorities for RALs. The court held that the Division's enforcement action was not preempted by the National Bank Act.

*New York State Division of Human Rights v. H&R Block Tax Services*¹⁷¹

The New York State Division of Human Rights had issued a subpoena against H&R Block in its investigation of H&R Block for potential violation of state anti-discrimination laws. The trial court refused to squash the subpoena. The Appellate Division upheld that order, compelling H&R Block to produce the documents. The Appellate Division held that the investigation was not preempted by the National Bank Act.

*Harper v. Jackson Hewitt*¹⁷²

This was one of several class actions alleging that H&R Block and Jackson Hewitt's facilitating of RALs violated state Credit Services Organization (CSO) laws. These laws regulate both credit repair organizations and "any person or organization who assists or offers to assist consumers in obtaining an extension of credit." The West Virginia Supreme Court held that this provision covers tax preparers who offer to arrange RALs. NCLC, CFA and other consumer groups filed an amicus brief in the case supporting the plaintiffs.

¹⁷⁰ 2010 WL 3398524 (S.D.N.Y. Aug. 3, 2010).

¹⁷¹ 879 N.Y.S.2d 75 (N.Y. App. Div. 2010).

¹⁷² ___ S.E.2d ___, 2010 WL 4723380 (W. Va. Nov. 23, 2010).