

Summary of Bingaman's Taxpayer Bill of Rights Act of 2010

TITLE I. TAXPAYER BILL OF RIGHTS

Clarify a Taxpayer Bill of Rights. As the National Taxpayer Advocate has explained: “The [Internal Revenue] Code contains no comprehensive Taxpayer Bill of Rights that explicitly and transparently sets out taxpayer rights and obligations. Taxpayers do have rights, but they are scattered throughout the [Internal Revenue] Code and the Internal Revenue Manual and are neither easily accessible nor written in plain language that most taxpayers can understand.” The Act would rectify these shortcomings, by requiring Treasury to publish an easy-to-understand Taxpayer Bill of Rights enumerating all taxpayers’ rights and obligations (and corresponding Internal Revenue Code citations). This provision would not confer any rights or obligations not already provided for under law.

TITLE II. PREPARATION OF TAX RETURNS

Authorize Funding for Volunteer Income Tax Assistance (VITA) Programs. VITA programs across the country offer free tax assistance to low- to moderate-income individuals who cannot afford professional assistance. More than 75,000 VITA volunteers prepare basic tax returns for these taxpayers; typically VITA programs focus on at least one specific underserved group with special needs (*e.g.*, persons with disabilities, non-English speaking persons, Native Americans, rural taxpayers, and the elderly). During the 2009 filing season, VITA programs prepared more than 1.2 million tax returns and brought back over \$1.6 billion in tax refunds to working families.

The Act authorizes a \$35 million grant program for VITA programs nationwide. Additional federal support will enable community VITA programs to reach more underserved low-income taxpayers, resulting in more families accessing vital tax credits, such as the Earned Income Tax Credit (EITC) and the Child Tax Credit (CTC).

Authorize Referrals and Funding for Low-Income Taxpayer Clinics (LITCs). The Act authorizes the Treasury Secretary to refer taxpayers to Low-Income Taxpayer Clinics. These clinics, typically operated by community organizations and law schools, provide representation to low-income taxpayers in disputes with the IRS. The Act also authorizes an increase in funding for LITC grant programs to \$20 million.

Regulate Compensated Tax Return Preparers.

- **Current Law.** Nearly all professions – from beauticians to mortuaries to opticians – are regulated at the state level. But with only a handful of exceptions, states do not regulate tax return preparers. Nor does the federal government currently regulate unenrolled tax return preparers (*i.e.*, return preparers who are not CPAs, attorneys, enrolled agents, or enrolled actuaries – all already regulated under IRS Circular 230). A significant percentage of unenrolled preparers are well-trained and maintain high ethical standards. But untrained and unscrupulous tax return preparers can inflict serious harm on taxpayers and significantly undermine tax compliance. For years, taxpayers, tax professionals, and the National Taxpayer Advocate have been calling for federal regulation of unenrolled preparers. In early 2010, the IRS began taking steps to exercise oversight over these unenrolled preparers. But it is still unclear that the IRS’s program will be sufficiently

comprehensive. Moreover, many see a benefit in clarifying the scope of the IRS's regulatory authority.

- **Requirements for Compensated Tax Return Preparers.** The Act responds to these concerns by codifying a regulatory system for unenrolled preparers:
 - **Testing.** In order for a tax preparer to become registered and authorized by Treasury, the preparer must pass a basic background check and an examination of competency and ethics standards.
 - **Maintenance of License.** To remain in good standing, the preparer will be required to satisfy continuing education requirements or be reexamined every three years on changes in tax law and common preparation mistakes.
 - **Publication of Authorized Tax Preparers List.** The Act requires Treasury to maintain and publish for taxpayers a comprehensive list of all authorized tax return preparers, including Circular 230 preparers.

Monitor Tax Refund Delivery Products. Refund Anticipation Loans (RALs) are high-cost bank loans secured by a taxpayer's expected refund – loans that typically last 7-14 days until the actual IRS refund arrives and is used to repay the loan. RALs are often aggressively marketed by paid income-tax preparers, which advertise “Instant Refunds” or “Quick Cash,” sometimes disguising that they are selling advance loans on anticipated tax refunds. The Act requires Treasury to establish a registration program for all those involved in the process of facilitating a tax refund delivery product (RDP), including RALs.

- **Registration.** RDP facilitators will be required to register annually with Treasury.
- **Additional Disclosures.** RDP facilitators will be required to disclose in writing and in an easily understandable format the taxpayer's options for receiving tax refunds (listed from least expensive to most expensive), the RDP's loan terms and fee schedule, and any other costs that the taxpayer may incur in filing a tax return.
- **Refund Indicator.** Treasury will not issue a Refund Indicator (a score on which RDP facilitators rely before issuing a RDP) to a RDP facilitator unless Treasury first determines that the taxpayer's refund would not be prevented by debts owed on student loans, child support, or by other provisions in the Tax Code. This will minimize the likelihood that a taxpayer will be issued a loan based on a refund claim that will not ultimately materialize (and which the taxpayer would nonetheless be required to repay).

TITLE III. IMPROVING TAXPAYER SERVICES

Improve Taxpayer Services. The Act expresses the Sense of Congress that the IRS should, within 2 years:

- reduce the time between receiving a return and remitting the refund;
- expand assistance to low-income taxpayers;
- allocate resources to assist low-income taxpayers in establishing accounts at financial institutions that receive direct deposits from Treasury;

- deliver tax refunds on debit and prepaid cards and through other electronic means to assist individuals that do not have access to financial accounts and institutions;
- establish a pilot program for satellite walk-in centers to be located in rural underserved communities; and
- establish a pilot program for mobile tax return preparation offices in lower income communities, at least one of which would be near or on a Native American reservation.

Requires Additional Protections Prior to the Filing of a Federal Tax Lien. The IRS has a number of enforcement tools at its disposal to ensure tax compliance, but use of these tools must be balanced with the need to ensure taxpayers do not suffer unnecessary long-term harm as a result. One such tool is the filing of a Notice of Federal Tax Lien (NFTL) when a taxpayer owes back taxes. But as the National Taxpayer Advocate explains in her 2009 Report to Congress: “[T]he filing of a tax lien can significantly harm the taxpayer’s credit and affect his or her ability to obtain financing, find or retain a job, secure affordable housing or insurance, and ultimately pay the outstanding tax debt. For these reasons, the National Taxpayer Advocate believes that the IRS should not automatically file NFTLs but instead should carefully consider and balance these competing interests when determining whether a lien filing is appropriate.” The Act would require the IRS to make individualized determinations before filing an NFTL, and also requires consideration of several factors before these determinations are made (including the amount due, the taxpayer’s compliance history, and any extenuating circumstances).

Establish a Demonstration Program to Provide Accounts to the Unbanked. IRS data show that of the 60 million federal tax refunds that were issued via paper checks in 2005, almost half went to households earning \$30,000 or less. These households are most likely to lack access to reasonably-priced financial services – and thus most likely to pay a disproportionate amount of their income to conduct routine financial transactions. Yet the issuance of a refund check presents an important opportunity to bring these low-income taxpayers into the financial mainstream. The Act provides that Treasury may award demonstration project grants to eligible entities to establish banking accounts for individuals who currently do not have accounts. The Act also requires a study on the feasibility of delivering tax refunds on debit, prepaid, and other electronic cards.

Require Study on Processing of Information Returns. Currently, the IRS processes income tax returns before it processes most information returns, such as W-2s and 1099s. From the taxpayer’s perspective, this leads to millions of cases where taxpayers may inadvertently make overclaims that the IRS does not identify until months later, exposing the taxpayer not only to additional tax liability, but to penalties and interest. This sequence also provides opportunities for fraud and requires the IRS to devote resources that should have not been paid and that it often cannot recover. The Act requires Treasury to conduct a study to identify and recommend legislative and administrative changes that would enable the IRS to receive and process information reporting documents before it processes tax returns.

Require Study on the Effectiveness of Collection Alternatives. The Act requires Treasury to conduct a study to assess the effectiveness of collection alternatives, especially offers in compromise, on long-term tax compliance.

