

114TH CONGRESS  
1ST SESSION

# S. 935

To amend the Internal Revenue Code of 1986 and the Consumer Financial Protection Act of 2010 to regulate tax return preparers and refund anticipation payment arrangements, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 14, 2015

Mr. BOOKER introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 and the Consumer Financial Protection Act of 2010 to regulate tax return preparers and refund anticipation payment arrangements, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Tax Refund Protection  
5       Act of 2015”.

1 **SEC. 2. REGULATION OF TAX RETURN PREPARERS.**

2 (a) IN GENERAL.—Subchapter A of chapter 80 of the  
3 Internal Revenue Code of 1986 is amended by adding at  
4 the end the following new section:

5 **“SEC. 7812. REGULATION OF TAX RETURN PREPARERS.**

6 “(a) IN GENERAL.—The Secretary shall—

7 “(1) establish a program to license or certify  
8 tax return preparers subject to this section,

9 “(2) regulate such tax return preparers, and

10 “(3) before licensing or certifying a person as  
11 a tax return preparer subject to this section, require  
12 that the person demonstrate—

13 “(A) good character,

14 “(B) good reputation,

15 “(C) necessary qualifications to enable the  
16 person to provide to taxpayers valuable service  
17 as a tax return preparer, and

18 “(D) competency to perform the functions  
19 of a tax return preparer.

20 “(b) AUTHORITY TO IMPOSE A FEE.—The Secretary  
21 shall require tax return preparers subject to this section  
22 to pay a reasonable fee for licensing or certification under  
23 this section.

24 “(c) DISCLOSURE REQUIREMENTS.—The Secretary  
25 shall, by rule, require tax return preparers subject to this

1 section to provide a disclosure statement to taxpayers that  
2 shall contain statements—

3 “(1) identifying the amount of fees such tax re-  
4 turn preparer charges for preparing a Federal in-  
5 come tax return, filing a Federal income tax return,  
6 or executing a refund anticipation payment arrange-  
7 ment, and

8 “(2) identifying the average amount of time in  
9 which a taxpayer who files a Federal income tax re-  
10 turn electronically can expect to receive a refund by  
11 mail, according to information provided by the Inter-  
12 nal Revenue Service.

13 “(d) DISCIPLINARY PROCEDURES.—After notice and  
14 opportunity for a hearing, the Secretary may take any en-  
15 forcement action against a tax return preparer subject to  
16 this section who—

17 “(1) is incompetent,

18 “(2) is disreputable,

19 “(3) violates regulations prescribed under this  
20 section, or

21 “(4) with intent to defraud, willfully and know-  
22 ingly misleads or threatens a taxpayer.

23 “(e) TAX RETURN PREPARER SUBJECT TO SEC-  
24 TION.—A tax return preparer is subject to this section if

1 such preparer is not subject to section 330 of title 31,  
 2 United States Code.

3 “(f) DEFINITIONS.—For purposes of this section—

4 “(1) TAX RETURN PREPARER.—See section  
 5 7701(a)(36) for the definition of a tax return pre-  
 6 parer.

7 “(2) REFUND ANTICIPATION PAYMENT AR-  
 8 RANGEMENT.—The term ‘refund anticipation pay-  
 9 ment arrangement’ has the meaning given such term  
 10 by section 1029B(d)(2) of the Consumer Financial  
 11 Protection Act of 2010.”.

12 (b) CLERICAL AMENDMENT.—The table of sections  
 13 for subchapter A of chapter 80 of the Internal Revenue  
 14 Code of 1986 is amended by inserting after the item re-  
 15 lated to section 7811 the following new item:

“Sec. 7812. Regulation of tax return preparers.”.

16 (c) EFFECTIVE DATE.—The amendments made by  
 17 this section shall apply with respect to returns filed after  
 18 December 31, 2015.

19 **SEC. 3. REGULATION OF REFUND ANTICIPATION PAYMENT**  
 20 **INSTRUMENTS.**

21 (a) IN GENERAL.—Subtitle B of the Consumer Fi-  
 22 nancial Protection Act of 2010 (12 U.S.C. 5511 et seq.)  
 23 is amended by adding at the end the following:

1 **“SEC. 1029B. REGULATION OF REFUND ANTICIPATION PAY-**  
2 **MENT ARRANGEMENTS.**

3 “(a) IN GENERAL.—The Bureau shall regulate re-  
4 fund anticipation payment arrangements.

5 “(b) DISCLOSURE REQUIREMENTS.—The Bureau  
6 shall, by rule, require tax return preparers to provide a  
7 disclosure statement to a consumer that shall contain  
8 statements—

9 “(1) identifying the amount of fees for exe-  
10 cuting a refund anticipation payment arrangement;

11 “(2) describing, in the case of a refund antici-  
12 pation payment arrangement involving a depository  
13 account not controlled by the consumer, the dif-  
14 ference in days between the average amount of time  
15 by which a consumer receives the tax refund (in  
16 whole or in part) from a refund anticipation pay-  
17 ment arrangement and the average amount of time  
18 by which a consumer who files a Federal income tax  
19 return electronically receives the tax refund depos-  
20 ited directly to that consumer’s deposit account by  
21 the taxing authority;

22 “(3) that a refund anticipation payment ar-  
23 rangement is not necessary to receive a tax refund;  
24 and

25 “(4) that, if a consumer does not receive a tax  
26 refund or the amount of the tax refund is less than

1 the amount anticipated under the refund anticipa-  
 2 tion payment arrangement, the consumer may be re-  
 3 sponsible for paying any fees and interest associated  
 4 with a refund anticipation payment arrangement.

5 “(c) REQUIREMENTS UNDER TILA.—The Bureau  
 6 shall promulgate regulations that, to the extent prac-  
 7 ticable, require tax return preparers that enter into a re-  
 8 fund anticipation payment arrangement to comply with  
 9 section 128 of the Truth in Lending Act (15 U.S.C. 1638)  
 10 to the same extent as a creditor making a consumer credit  
 11 transaction other than under an open end credit plan.

12 “(d) DEFINITIONS.—In this section:

13 “(1) REFUND ANTICIPATION PAYMENT AR-  
 14 RANGEMENT.—The term ‘refund anticipation pay-  
 15 ment arrangement’ means an arrangement under  
 16 which, in exchange for Federal income tax prepara-  
 17 tion services, a consumer agrees to pay a fee or in-  
 18 terest upon receipt of the consumer’s tax refund to  
 19 a tax return preparer, lender, or other affiliated  
 20 lender by—

21 “(A) requesting the Federal Government  
 22 to deposit such tax refund, in whole or in part,  
 23 directly into a depository account designated by  
 24 either the consumer or the tax return preparer,  
 25 lender, or other affiliated lender; or

1 “(B) directly paying the fee or interest to  
 2 the tax return preparer, lender, or other affili-  
 3 ated lender.

4 “(2) TAX RETURN PREPARER.—The term ‘tax  
 5 return preparer’ means a tax return preparer (as de-  
 6 fined in section 7701(a) of the Internal Revenue  
 7 Code of 1986) who is not subject to regulation under  
 8 section 330 of title 31, United States Code.”.

9 (b) TECHNICAL AND CONFORMING AMENDMENT.—  
 10 The table of contents of the Dodd-Frank Wall Street Re-  
 11 form and Consumer Protection Act (12 U.S.C. 5301 et  
 12 seq.) is amended by inserting after the item relating to  
 13 section 1029A the following:

“Sec. 1029B. Regulation of refund anticipation payment arrangements.”.

14 (c) EXCLUSION FOR CERTAIN TAX PREPARERS.—

15 (1) IN GENERAL.—Section 1027(d) of the Con-  
 16 sumer Financial Protection Act of 2010 (12 U.S.C.  
 17 5517(d)) is amended by striking paragraph (1) and  
 18 inserting the following:

19 “(1) IN GENERAL.—Except as permitted in  
 20 paragraph (2), the Bureau may not exercise any  
 21 rulemaking, supervisory, enforcement, or other au-  
 22 thority over any person that is a certified public ac-  
 23 countant, permitted to practice as a certified public  
 24 accounting firm, or certified or licensed for such  
 25 purpose by a State, or any individual who is em-

1       employed by or holds an ownership interest with re-  
 2       spect to a person described in this subparagraph,  
 3       when such person is performing or offering to per-  
 4       form—

5               “(A) customary and usual accounting ac-  
 6       tivities, including the provision of accounting,  
 7       tax (except as related to tax return preparers  
 8       pursuant to section 1029B), advisory, or other  
 9       services that are subject to the regulatory au-  
 10      thority of a State board of accountancy or a  
 11      Federal authority; or

12              “(B) other services that are incidental to  
 13      such customary and usual accounting activities,  
 14      to the extent that such incidental services are  
 15      not offered or provided—

16              “(i) by the person separate and apart  
 17      from such customary and usual accounting  
 18      activities; or

19              “(ii) to consumers who are not receiv-  
 20      ing such customary and usual accounting  
 21      activities.”.

22              (2)   CONFORMING    AMENDMENTS.—Section  
 23      1027(d) of the Consumer Financial Protection Act  
 24      of 2010 (12 U.S.C. 5517(d)) is amended—



1 (A) in the subsection heading, by striking  
 2 “AND TAX PREPARERS”; and

3 (B) in paragraph (2)—

4 (i) in subparagraph (A)—

5 (I) by striking “paragraph (1)(A)  
 6 or (1)(B)” and inserting “that para-  
 7 graph”; and

8 (II) by striking “paragraph  
 9 (1)(A)” each place it appears and in-  
 10 serting “paragraph (1)”;

11 (ii) in subparagraph (C)—

12 (I) by striking “For purposes of  
 13 subparagraphs (A) and (B), a person  
 14 described in paragraph (1)(A)” and  
 15 inserting “A person described in para-  
 16 graph (1)”;

17 (II) by striking “clause (i) or (ii)  
 18 of paragraph (1)(A)” and inserting  
 19 “subparagraph (A) or (B) of para-  
 20 graph (1)”;

21 (iii) in subparagraph (D), by striking  
 22 “paragraph (1)(A) or (1)(B)” and insert-  
 23 ing “that paragraph”.

1 **SEC. 4. SPLIT REFUNDS MAY INCLUDE TAX RETURN PRE-**  
2 **PARER.**

3 (a) IN GENERAL.—Section 6402 of the Internal Rev-  
4 enue Code of 1986 is amended by adding at the end the  
5 following:

6 “(m) SPLIT REFUNDS.—An income tax refund re-  
7 quested on a return of Federal income tax prepared by  
8 an income tax preparer may be split between the preparer  
9 and the taxpayer in accordance with the split requested  
10 by the taxpayer on the return, except that the amount des-  
11 ignated for the preparer may not exceed the amount pre-  
12 scribed by the Secretary by regulation or other guidance.  
13 A split of an individual income tax return under this sub-  
14 section shall not be treated as disreputable conduct merely  
15 because the taxpayer requested such split.”.

16 (b) EFFECTIVE DATE.—The amendment made by  
17 subsection (a) shall apply with respect to returns for tax-  
18 able years ending after the date of the enactment of this  
19 Act.

20 **SEC. 5. REGULATIONS.**

21 Regulations issued under section 7812 of the Internal  
22 Revenue Code of 1986, as added by section 2, and regula-  
23 tions issued under section 1029B of the Consumer Finan-  
24 cial Protection Act of 2010, as added by section 3, should  
25 be coordinated to the extent practicable.

