

*Orin Hatch*

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**THE INTERNAL REVENUE SERVICE'S PROCESSING OF 501(C)(3) AND  
501(C)(4) APPLICATIONS FOR TAX-EXEMPT STATUS SUBMITTED  
BY "POLITICAL ADVOCACY" ORGANIZATIONS FROM 2010-2013**

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COMMITTEE ON FINANCE  
UNITED STATES SENATE

BIPARTISAN INVESTIGATIVE REPORT  
AS SUBMITTED BY  
CHAIRMAN HATCH AND RANKING MEMBER WYDEN



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## Foreword

Since the inception of our Nation, the United States Committee on Finance (Committee) has conducted vigilant oversight of the Executive Branch agencies and departments under its jurisdiction. Given the significance of tax policy and its administration, the Committee has historically focused a large portion of its time and resources overseeing the activities of the Internal Revenue Service (IRS), the Executive Branch agency charged with tax matters. Two years and two months ago, the Committee became aware of allegations regarding the potential targeting by the IRS of certain tax-exempt organizations, based on the names and political views of those organizations. Serious allegations such as these strike at the very heart of the principal that the Nation's tax laws are to be administered fairly and without regard to politics of any kind. Accordingly, these allegations warranted swift Committee response in the form of an investigation – an activity the Committee is uniquely positioned to carry out as a result of its oversight authorities and responsibilities with respect to the IRS.

Despite the partisan political nature of these allegations, the Committee proceeded in true bipartisan spirit and initiated a joint investigation on May 21, 2013, under the direction of former Chairman Baucus and then-Ranking Member Hatch. When Senator Wyden assumed the Chairmanship of the Committee in February 2014, he agreed to continue the bipartisan work begun by Chairman Baucus. This bipartisan cooperation has continued unabated since I became Chairman in January 2015. Accordingly, despite several changes in the chairmanship, the Committee has continued its tradition of a bipartisan investigative effort.

While much has been reported about the alleged political targeting over the last two years, it is important to stress that this Committee has conducted the only bipartisan investigation into the matter. Consequently, this report will perhaps serve as the definitive account of events transpiring at the IRS and the management failures and other causes that were at the root of the IRS's actions. Hopefully, this report will provide a roadmap for how Congress and the public can act to make sure this type of conduct does not happen again.

We want to acknowledge the hard work and countless hours of time spent by Committee staff who conducted over 30 exhaustive interviews, reviewed more than 1.5 million pages of documentation, drafted numerous versions of this report, and performed countless other tasks necessary to bring this investigation to closure. The Committee staff whose diligence and devotion to duty made this investigation and report possible include the following: John Angell, Kimberly Brandt, John Carlo, Justin Coon, Michael Evans, Daniel Goshorn, Christopher Law, Jim Lyons, Todd Metcalf, Harrison Moore, Mark Prater and Tiffany Smith.



Orrin G. Hatch



Ron Wyden

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## **I. EXECUTIVE SUMMARY AND RECOMMENDATIONS**

This bipartisan investigation of the Senate Finance Committee examined the Internal Revenue Service's (IRS) handling of applications for tax-exempt status submitted by political advocacy organizations, following allegations that the IRS discriminated against some of these organizations based on their political views.

Our investigation found that from 2010 to 2013, IRS management was delinquent in its responsibility to provide effective control, guidance, and direction over the processing of applications for tax-exempt status filed by Tea Party and other political advocacy organizations. IRS managers either failed in their responsibility to keep informed about the very existence of the applications, or failed to recognize the sensitivity of these applications. In the case of the former, IRS managers forfeited the opportunity to shape the IRS's response to the influx of political advocacy applications by simply failing to read reports informing them of the existence of those applications. In the case of the latter, IRS managers did not take appropriate steps to ensure that the applications were processed expeditiously and accurately.

Our investigation focused particularly on the Exempt Organizations (EO) Division of the IRS, which is responsible for administering the tax code provisions related to tax-exempt organizations, including processing and deciding applications submitted by organizations seeking tax-exempt status. Lois Lerner served as the Director of the EO Division from January 2006 to May 2013. Lerner first became aware that the IRS received applications from Tea Party groups in April or May 2010. For the next two years, Lerner failed to adequately manage the EO employees who processed these applications. Moreover, Lerner failed to inform upper-level IRS management of the serious delays in processing applications for tax-exempt status from Tea Party and other politically sensitive groups. Consequently, it was a year before the IRS Office of Chief Counsel became involved, and nearly two years before Lerner's superiors in the IRS management chain were aware of the gross mismanagement of Tea Party and other sensitive advocacy applications.

While under the leadership of Lois Lerner, the EO Division undertook a number of initiatives aimed at finding a way to process the Tea Party and other political advocacy applications. Each of these initiatives was flawed in design and/or mismanaged. In one example, EO management sanctioned the use of the Be On the Lookout (BOLO) list, which improperly identified the Tea Party and other organizations by name and policy position. The IRS used the BOLO list to subject applications received from Tea Party groups to heightened scrutiny, even when that scrutiny was unwarranted because the applications gave no indication that the organizations would engage in political campaign intervention. Other initiatives to process political advocacy applications sanctioned by EO management were under-planned, under-staffed and under-executed. In each case, these poorly formed initiatives ended in predictable failure and each failure resulted in applicant organizations enduring inexcusably long delays in receiving

decisions on their applications. Those delays often proved to be harmful or fatal to the organizations by undermining the very purposes for which they were formed.

The workplace “culture” prevalent in the EO Division was one in which little emphasis was placed on providing good customer service, a fact inconsistent with the IRS’s promise to provide “top quality service.” Indeed, the EO Division operated without sufficient regard for the consequences of its actions for the applicant organizations. Not only did those organizations have to withstand delays measured in years, but many also were forced to bear a withering barrage of burdensome and inappropriate “development letters” aimed at extracting information the IRS wrongly concluded was necessary to properly process the applications.

Factors further contributing to the dysfunctional “culture” of the EO Division included the office structure of the Determinations Unit that placed managers in offices located in geographic locales far from the employees they supervised, and employees and managers who frequently teleworked, in some cases up to four days a week. The confluence of remote management and a dispersed workforce undoubtedly impaired coordination and communication within the Determinations Unit. Moreover, acrimony typified the relationship between various organizations within the EO Division and served to further embitter the workplace “culture.”

In the wake of the *Citizens United* decision in 2010, the IRS received an increasing number of allegations that tax-exempt organizations were engaged in political campaign intervention inconsistent with their exempt status. Recognizing the importance of having a process to evaluate these allegations, IRS management, including the Commissioner and Acting Commissioner, focused their efforts on devising a workable process that would allow the IRS to evaluate and investigate these allegations. Management’s efforts proved fruitless, and as a consequence, the IRS performed no examinations of 501(c)(4) organizations related to political campaign intervention from 2010 until 2014.

The Committee’s investigation included a review of more than 1,500,000 pages of documents and interviews of 32 current and former IRS and Treasury employees. Issuance of this report was delayed for more than a year when the IRS belatedly informed the Committee that it had not been able to recover a large number of potentially responsive documents that were lost when Lois Lerner’s hard drive crashed in 2011.

At the Committee’s request, the Treasury Inspector General for Tax Administration (TIGTA) investigated the circumstances behind the loss of data and other related issues, and was ultimately able to recover 1,330 emails that had not been produced to Congress. TIGTA’s findings are described below in Section II(C). Overall, the IRS’s less than complete response to these circumstances cast doubt about the thoroughness of their efforts to recover all relevant records related to the investigation, as well as their candor to this and other Congressional committees.

Although it was not possible to completely produce the records that were lost, the Committee exhausted all available measures to mitigate the amount of missing information by collecting additional information from the IRS, other executive agencies, and outside sources. This report accurately summarizes the facts known to the Committee, and we believe that our conclusions are supported by the record.

Committee staff have agreed on numerous bipartisan investigative findings. Some of these findings are highlighted below, along with corresponding recommendations to address the underlying problem. Greater discussion of these and other findings related to the determination process are contained in Section III, and ancillary findings are in Section IX.<sup>1</sup>

**Finding #1:** The IRS's handling of applications from advocacy organizations may affect public confidence in the IRS. To avoid any concerns that may exist that IRS decisions about particular taxpayers are influenced by politics, the following recommendations are made.

**Related Recommendation #1:** Publish in the instructions to all relevant application forms objective criteria that may trigger additional review of applications for tax-exempt status and the procedures IRS specialists use to process applications involving political campaign activity. Prohibit the IRS from requesting individual donor identities at the application stage, although generalized donor questions should continue to be allowed, as well as requests for representations that, e.g., there will be no private inurement.

**Related Recommendation #2:** Revise the Hatch Act to designate all IRS, Treasury and Chief Counsel employees who handle exempt organization matters as "further restricted." "Further restricted" employees are held to stricter rules than most government employees and are precluded from active participation in political management or partisan campaigns, even while off-duty. By designating those employees as "further restricted," the public can be assured that any impermissible political activity by an IRS employee that is detected will result in serious penalties, including removal from federal employment.

**Related Recommendation #3:** Create a position within the Taxpayer Advocate Service dedicated solely to assisting organizations applying for non-profit tax-exempt status.

**Finding #2:** The IRS systematically screened incoming applications for tax-exempt status from more than 500 organizations and implemented procedures that resulted in lengthy delays. Until

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<sup>1</sup> In addition to the recommendations enumerated below, Committee staff also considered whether the IRS should improve its employee training program and whether it should modify the expedited review process. We have omitted these recommendations because they were included in TIGTA's recent report, Status of Actions Taken to Improve the Processing of Tax-Exempt Applications Involving Political Campaign Intervention, TIGTA Audit Report 2015-10-025 (Mar. 27, 2015) at 2. We encourage the IRS to follow the recommendations outlined in TIGTA's report.

early 2012, certain top-level management was unaware that these applications were being processed in this manner. (See Section III(A).)

**Related Recommendation #1:** The Exempt Organizations division should track the age and cycle time of all of its cases, including those referred to EO Technical, so that it can detect backlogs early in the process and conduct periodic reviews of over-aged cases to identify the cause of the delays. A list of over-aged cases should be sent to the Commissioner of the Internal Revenue Service quarterly.

**Related Recommendation #2:** The Exempt Organizations division should track requests for guidance or assistance from the EO Technical Unit so that management can assess the timeliness and quality of the guidance and assistance it provides to both Determinations Unit employees and the public.

**Related Recommendation #3:** The Exempt Organizations division should track requests for guidance or assistance from the Office of Chief Counsel so that management can assess the timeliness and quality of the guidance and assistance it provides to both the Determinations Unit employees and the public. Any requests for guidance or assistance from the Office of Chief Counsel that have not been responded to on a timely basis should be promptly reported to the Commissioner of the Internal Revenue Service.

**Finding #3:** The IRS took as long as five years to come to a decision on applications for tax-exempts status submitted by Tea Party and other applicants potentially involved in political advocacy. The IRS lacked an adequate sense of customer service and displayed very little concern for resolving these cases. (See Section III(E)(1).)

**Related Recommendation #1:** The Internal Revenue Manual contains standards for timely processing of cases. Enforce these existing standards and discipline employees who fail to follow them. Managers should also be held accountable if their subordinates fail to follow these standards.

**Related Recommendation #2:** For all types of tax-exempt applicants, IRS guidelines should direct employees to come to a decision on whether or not it will approve an application for tax-exempt status within 270 days of when an application is filed.

**Finding #4:** Important issues were not elevated within the IRS. Some Sensitive Case Reports containing information about Tea Party applications were sent to top IRS managers in 2010, but the managers did not read them. (See Section III(A).)

**Related Recommendation:** Revise the Sensitive Case Report process or develop a more effective way to elevate important issues within the organization other than the Sensitive Case Reports system. Require the senior recipient of each Sensitive Case Report within the Division (a member of the Senior Executive Service) to memorialize specific actions

taken in relation to each issue raised in the report, and require such report to be forwarded to the IRS Commissioner for review.

**Finding #5:** A contributing factor to the IRS's management problems was the decentralization of its employees, including some who worked from home as often as 4 days per week, and managers who remotely supervised employees 2,000 miles away. (See Section III(E)(2).)

**Related Recommendation:** Evaluate whether current organizational structures and workplace locations are inhibiting performance. Make appropriate adjustments to improve communication between employees and their managers.

**Finding #6:** Some managers within the EO Division were not trained in the substantive tax areas that they managed, including one who did not complete any technical training during the 10 years that she served in a managerial EO position. (See Section III(E)(4).)

**Related Recommendation:** Set minimum training standards for all managers within the EO Division to ensure that they have adequate technical ability to perform their jobs.

**Finding #7:** The IRS did not perform any audits of groups alleged to have engaged in improper political activity from 2010 through April 2014. During that time, the IRS tried to implement new processes to select cases for examination, but a memo from Judy Kindell, Sharon Light and Tom Miller stated that this approach "arguably [gave] the impression that somehow the political leanings of [the organizations] mentioned were considered in making the ultimate decision." The IRS recently discontinued use of the Dual Track process and now uses generalized procedures when deciding whether to open an examination of an exempt organization's political activities. (See Section IX(A).)

**Related Recommendation #1:** Review the recently-enacted procedures to determine if: (1) the process enables the IRS to impartially evaluate allegations of impermissible political activity; (2) any of the referrals have resulted in the IRS opening an examination related to political activity, and if so, whether such an examination was warranted; and (3) if necessary, the IRS should make further modifications to ensure that it carries out the enforcement function in a fair and impartial manner.

**Related Recommendation #2:** The IRS should fully implement all recommendations of the Government Accountability Office in their July 2015 report titled "IRS Examination Selection: Internal Controls for Exempt Organization Selection Should be Strengthened," GAO-15-514.

**Related Recommendation #3:** No later than July 1, 2017, we request that TIGTA conduct a review of the three points noted above in Recommendation #1 related to the revised EO Exam procedures.

**Finding #8:** On multiple occasions, the IRS improperly disclosed sensitive taxpayer information when responding to Freedom of Information Act (FOIA) requests. Employees who were responsible for these disclosures received minimal or no discipline. (See Section IX(C).)

**Related Recommendation:** Require all outgoing FOIA responses to be reviewed by a second employee to ensure that taxpayer information is not improperly disclosed.

**Finding #9:** In 2010, the IRS received a FOIA request from a freelance journalist seeking information about how the agency was processing requests for tax-exempt status submitted by Tea Party groups. After 7 months, the IRS erroneously informed the journalist that they did not possess any documents that were responsive to her request. (See Section IX(B).)

**Related Recommendation #1:** Ensure that IRS procedures specify which organizational units within the agency should be searched when the IRS receives an incoming FOIA request on a particular topic. For example, when the IRS receives a FOIA request for records related to tax-exempt applications, the agency should search the records of all components within the Exempt Organizations division.

**Related Recommendation #2:** To be consistent with the intent of FOIA, employees handling FOIA requests should construe the requests broadly and contact the requestor to clarify the scope of the request whenever necessary. However, the IRS should also take appropriate measures to safeguard taxpayer information and avoid improper disclosure.

**Finding #10:** The IRS has made Office Communicator Server (OCS) instant messaging software available to its employees. Under the collective bargaining agreement with the National Treasury Employees' Union, the IRS agreed that it would not automatically save messages sent to and from employees. As a result, messages can only be recovered if an employee elected to save them. TIGTA opined that this policy does not necessarily violate federal recordkeeping laws, but noted that "[w]hether OCS is being used according to NARA's guidance depends on how OCS end-users are utilizing the system." (See Section II(C)(2)).

**Related Recommendation:** The IRS should review how employees use OCS. If the program is not used for IRS business, the agency should evaluate whether it is appropriate and necessary. If OCS is used for official IRS purposes, the IRS should take measures to ensure such use complies with federal recordkeeping laws.

While the above findings and others detailed more fully on the succeeding pages have been jointly agreed to by the Majority and Minority, those Staffs were unable to reach agreement on three areas as set forth below:

- The extent, if any, to which political bias of IRS employees, including Lois Lerner, affected the IRS's processing of applications for tax-exempt status.

- Whether the IRS used improper methods to screen and process applications for tax-exempt status submitted by progressive and left-leaning organizations.
- The involvement, if any, of Treasury Department and White House employees, including President Obama, in directing or approving the actions of the IRS.

The Majority and Minority have rendered their own conclusions on these and other topics which are set forth more fully in the sections of this report entitled Additional Views of Senator Hatch Prepared by Republican Staff and Additional Views of Senator Wyden Prepared by Democratic Staff.

## **II. BACKGROUND ON BIPARTISAN INVESTIGATION BY THE SENATE FINANCE COMMITTEE**

*This section describes the scope of the Senate Committee on Finance investigation; the Committee's access to taxpayer information and its use in this report; the Committee's access to information relevant to this investigation; the IRS's loss of records potentially relevant to this investigation; the legal background of tax-exempt organizations involved in the investigation; and, the way that the IRS processed applications for tax-exempt status.*

### **A. SCOPE OF THE INVESTIGATION AND THIS REPORT**

The United States Senate Committee on Finance (the Committee) has exclusive legislative jurisdiction and primary oversight authority over the IRS.

On May 10, 2013, Lois Lerner, IRS Director of EO, disclosed at a panel for the Exempt Organizations Committee of the Tax Section of the American Bar Association that IRS employees had selected certain 501(c)(4) tax-exempt applications that contained the words “Tea Party” and “Patriots” for further review simply because the applications had those terms in the title.<sup>2</sup>

On May 14, 2013, TIGTA released a report finding that the IRS “used inappropriate criteria that identified for review Tea Party and other organizations applying for tax-exempt status based upon their names or policy positions instead of indications of potential political campaign intervention.”<sup>3</sup>

At the time of the IRS and TIGTA disclosures that groups with the words “Tea Party,” “9/12” or “Patriot” in the name were selected for additional scrutiny, there was speculation and concern expressed that the singling out of conservative organizations by name may have been a consequence of political bias or motivation on the part of IRS employees. There was further speculation concerning the role of political appointees at the IRS, Treasury Department or the White House in the selection of these conservative organizations for heightened scrutiny.

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<sup>2</sup> American Bar Association, Transcript of The Exempt Organization Tax Review (May 10, 2013) ABA Tax Section's Exempt Organizations Committee Meeting, Vol. 72, No. 2 pp. 126-127.

<sup>3</sup> TIGTA, Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review (May 14, 2013) TIGTA Audit Report #2013-10-053.



On May 20, 2013, the Committee sent a detailed letter to the IRS requesting that the IRS answer questions and turn over internal documents relating to the targeting controversy.<sup>4</sup>

Simultaneously, the Committee began an in-depth bipartisan investigation to determine the facts surrounding the controversy. This investigation was prompted by the serious nature of allegations that political considerations may have driven the IRS's heightened scrutiny of conservative-leaning organizations applying for tax-exempt status.

The Committee held a hearing to publicly explore these issues on May 21, 2013, with Steven Miller, then Acting Commissioner, Internal Revenue Service; Douglas Shulman, Former Commissioner, Internal Revenue Service; and J. Russell George, Treasury Inspector General for Tax Administration, United States Department of the Treasury. The primary purpose of this report is to examine the IRS's handling of applications for tax-exempt status from 2010 through 2013, but it also covers other topics related to the IRS's oversight of tax-exempt organizations. Committee staff did not investigate the IRS's administration and enforcement of other parts of the Internal Revenue Code, including individual taxpayers and corporate for-profit entities; nor did it investigate the potential imposition of the gift tax for contributions made to tax-exempt organizations. Accordingly, these and other divergent topics are not covered by this report.

## **B. THE COMMITTEE'S ACCESS TO TAXPAYER INFORMATION PROTECTED BY SECTION 6103 OF THE INTERNAL REVENUE CODE, AND USE OF TAXPAYER INFORMATION IN THIS REPORT**

When taxpayers submit information to the IRS, they expect it to be treated confidentially. Accordingly, section 6103 of the Internal Revenue Code prohibits the IRS from disclosing any "returns" or "return information," and these terms are defined broadly.<sup>5</sup> Violating section 6103 is a felony, punishable by imprisonment and fines and also subject to civil lawsuits for damages.<sup>6</sup> Section 6103, which was substantially tightened in 1976 in the wake of the controversy surrounding the Nixon Administration's attempt to review the tax returns of political enemies, is an essential safeguard.<sup>7</sup> It protects taxpayer privacy and prevents the IRS or anyone else from using taxpayer information for political or otherwise inappropriate purposes.

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<sup>4</sup> Letter from Chairman Baucus and Ranking Member Hatch to the Acting Commissioner Steven Miller (May 20, 2013).

<sup>5</sup> 26 U.S.C. 6103 (2013).

<sup>6</sup> Section 7213 states that criminal violations of section 6103 must be knowing, while under section 7431, civil violations must be knowing or negligent. Under section 7431(b), someone who discloses section 6103 information through a good-faith, non-negligent mistake is not liable.

<sup>7</sup> This practice did not begin with the Nixon Administration. At a 1976 hearing by a subcommittee of the Senate Finance Committee, a witness included in the record a report by the Center for National Security Studies, which said, "[t]he IRS has from time to time used its power to conduct audits of groups and individuals whose political views and activities were of concern to others. Special groups were established to conduct such audits under the Kennedy, Johnson, and Nixon Administrations. On at least one occasion an audit was conducted at the request of a congressional committee." Hearing. Subcommittee of the Senate Finance Committee on Administration of the Internal Revenue Code, Federal Tax Return Privacy (Jan. 23, 1976) p. 10.

Section 6103 contains a set of narrow exceptions, which allow the IRS to disclose taxpayer information in certain limited circumstances and with appropriate safeguards. For example, there are exceptions for disclosure to federal or state law enforcement officials in certain circumstances and for disclosure to various federal agencies for the purpose of compiling government statistics.

One of the exceptions, in section 6103(f), requires the IRS to provide taxpayer-specific information requested by the Congressional tax committees (Senate Committee on Finance, House Committee on Ways and Means, and the Joint Committee on Taxation),<sup>8</sup> and it authorizes the chairmen of the tax committees to designate staff members to “inspect returns and return information at such time and in such manner as may be determined by [the] chairman.” This allows the committees to have access to taxpayer-specific information for the purposes of undertaking policy analyses or investigations.

As a general matter, staff who are designated by the chairman to review taxpayer-specific information are themselves subject to the confidentiality requirements of section 6103. In other words, they are required to keep the information confidential, subject to criminal and civil penalties. However, section 6103(f)(4)(A) goes on to provide that “[a]ny return or return information obtained by or on behalf of such committee ... may be submitted by the committee to the Senate or the House of Representatives, or to both.” Thus, taxpayer-specific information reviewed by the Finance Committee under section 6103(f) may be disclosed to the full Senate in open session, and, hence, to the public,<sup>9</sup> but only through the formal and careful process of a Committee vote to make a submission to the Senate.

In the course of this investigation, the Finance Committee has received extensive information under section 6103(f). For example, Committee staff examined, in detail, how specific applications for 501(c)(4) status were reviewed, to understand the decision-making process that the IRS applied. It also was important to consider whether particular applications were from “conservative” or “progressive” organizations, in order to determine whether the IRS was taking an even-handed approach.

In preparing this report of the investigation, the Finance Committee has decided, after careful consideration and after consultation with the Senate Legal Counsel’s office, to include limited

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<sup>8</sup> Section 6103(f) also allows other (i.e., non-tax) congressional committees to receive taxpayer-specific information, but only pursuant to a Senate or House resolution. Further, section 6103 contains a series of other exceptions, including allowing release of taxpayer-specific information to certain tax administrators, release of taxpayer-specific information of Presidential appointees, and release of taxpayer-specific information to criminal investigators pursuant to a court order.

<sup>9</sup> Contrast section 6103(f)(4)(A) with section 6103(f)(4)(B), which provides that information obtained by a committee *other* than the Finance, Ways and Means, or Joint Committee on Taxation may be submitted to the Senate or the House “only when sitting in closed executive session” (unless the taxpayer consents). In the case of a submission to the House or Senate by one of the tax committees, in contrast, there is no equivalent requirement that the submission occur in closed session.

taxpayer information available to the Senate and the public, by making a formal submission to the Senate under section 6103(f)(4)(A). We have decided to do so for several reasons.

First, this approach is clearly permissible under section 6103. Although the principal purpose of section 6103 is to protect taxpayer-specific information, section 6103 also clearly contemplates the need for the public disclosure in compelling circumstances, and it establishes a formal and carefully considered process for a release: a submission by one of the tax committees to the House or Senate.

Second, the disclosure of limited taxpayer information facilitates a fully informative report. There has been a great deal of speculation about exactly what happened during the IRS review of 501(c)(4) organizations, and this has important implications for our governmental and political institutions. Under Supreme Court and IRS interpretations of section 6103, it would be difficult to provide a comprehensive review of the facts without making a formal submission to the Senate and thereby allowing disclosure notwithstanding section 6103.<sup>10</sup> In light of this, we have included some of the names of specific organizations, both conservative and progressive, who submitted section 501(c)(4) applications during this period, along with details about the handling of the applications which are essential to understanding the underlying facts.

Third, we have limited the disclosure to the minimum necessary to provide an informative report. We have omitted material, redacted material, and summarized wherever appropriate, and we have disclosed no personal names, financial information, or other details that are not necessary to understanding the essential facts. We have also, wherever possible, relied on information that already is in the public record.

Accordingly, the Committee has decided, on a bipartisan basis, to submit this report, including limited material covered by section 6103, to the full Senate in open session. We expect that, in the future, the Committee will only disclose section 6103 material in similarly compelling circumstances and with similar safeguards.

### **C. LIMITATION ON THE COMMITTEE’S ACCESS TO RELEVANT INFORMATION**

To fully investigate this matter, the Committee sought all information that could have some bearing on how the IRS processed applications for tax-exempt status from 2010 through 2013. The Committee considered a vast amount of information – receiving approximately 1,500,000 pages of documents and conducting interviews of 32 individuals – that enabled investigators to conduct a thorough review and reach the conclusions set forth in this report. Unfortunately, the

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<sup>10</sup> Section 6103 broadly public prohibits disclosure of “return information” in order to protect taxpayer privacy. Section 6103(2)(b) defines “return information” as information that can be identified with a particular taxpayer, but allows for disclosure of aggregate data for statistical analysis as long as that data doesn’t directly or indirectly identify a taxpayer. Therefore, a report that does not contain return information protected under 6103 would necessarily be based on aggregated data, making a comprehensive review of the entity specific facts at issue difficult.

IRS failed to retain information that may have been relevant to this investigation, which was lost when Lois Lerner's computer crashed and the IRS errantly disposed of backup data. This loss of information was compounded by the IRS's lack of candor in notifying this and other Congressional committees about the missing documents. The Committee attempted to fill in the information gap with records of other employees at the IRS and outside agencies; however, as described below, a large number of Lerner's records were never recovered. As a result, the full extent of the IRS's failings in this matter may never be known.

In spite of these limitations, the large volume of information we have reviewed gives us a high degree of confidence in the accuracy of the conclusions reached during our investigation, as described in this report.

### **1. Summary of Information That Forms a Basis for this Report**

To complete this investigation, Committee staff interviewed 32 current and former IRS and Treasury Department employees. The interviewees included: (1) employees charged with reviewing and deciding tax-exempt applications; (2) managers who oversaw those employees, including former Acting Commissioner Steven Miller; (3) legal experts who were consulted on tax-exempt issues; (4) IRS executives and political appointees, including former Commissioner Douglas Shulman and Chief Counsel William Wilkins; and (5) two former senior Treasury officials, Deputy Secretary Neal Wolin and former Chief of Staff Mark Patterson, and current Treasury attorney Hannah Stott-Bumsted. Committee investigators also interviewed numerous individuals who submitted applications on behalf of nonprofit organizations or were otherwise involved in the application process for 501(c)(3) and 501(c)(4) entities. The Committee sought to interview Lois Lerner, but she declined the Committee's request.

In the course of this investigation, Committee staff reviewed approximately 1,500,000 pages of documents, the majority of which were produced by the IRS and TIGTA:

- In response to the Committee's May 20, 2013, document request letter and subsequent requests, the IRS provided the Committee with approximately 1,300,000 pages of documents.
- TIGTA provided the Committee with work papers and related documentation that were used in the compilation of the audit report they released on May 14, 2013. TIGTA also produced other materials requested by the Committee.

In response to requests of the Committee Chairman and/or Ranking Member, the Federal Election Commission (FEC), the Department of Treasury, and the Department of Justice (DOJ) provided records to the Committee. The White House also provided a production of the limited number of documents that were sent to or from Lerner. Additionally, a number of nonprofit organizations provided information to the Committee about their interactions with the IRS.

The Committee has asked the IRS and TIGTA to notify the Committee if they locate additional documents that are relevant to this investigation. We will supplement the findings of this report if necessary.

## **2. The IRS Loss of Data, Failure to Notify Congress in a Timely Manner, and Results of TIGTA Investigation**

At 2:00 PM on Friday, June 13, 2014, the IRS first informed the Committee that, due to a hard drive crash of Lerner's computer in 2011, the IRS had not produced all documents relevant to this investigation.<sup>11</sup> As described below, this disclosure came as a surprise to the Chairman and Ranking Member, who were prepared to start the formal process of issuing this report on Monday, June 16, 2014. Many of the 41 document requests in the Committee's May 20, 2013 letter to the IRS initiating this investigation involved records maintained by Lerner. Moreover, this Committee, as well as House committees, requested that the IRS produce all emails sent and received by Lerner from 2010 through May 2013. Thus, the IRS's unexpected announcement about Lerner's hard drive crash cast doubt on the completeness of the record upon which the Committee's draft report was based.

In its June 13 letter, the IRS stated that "Ms. Lerner's computer crashed in mid-2011" and despite "multiple processes to recover information ... the data stored on her computer's hard drive was determined at the time to be 'unrecoverable' by the IT professionals."<sup>12</sup> As a result, the IRS concluded that "[a]ny of Ms. Lerner's email that was only stored on that computer's hard drive would have been lost when the hard drive crashed and could not be recovered."<sup>13</sup> The IRS further explained that IRS employees, including Lerner, had limited storage space on the network drive and therefore had to save messages on their personal computers. Thus, the IRS's revelation about Lerner's hard drive meant that an unknown quantity of emails sent and received by Lerner had not been retained by the IRS or produced to the Committee. These emails were particularly significant since they included messages transmitted during 2010 and the first half of 2011 – the period when many of the most critical events in this matter occurred.

Based on the IRS's June 13 letter and subsequent meetings with Commissioner Koskinen, Senators Hatch and Wyden quickly determined that the full extent of data loss was not known. Accordingly, by letter dated June 23, 2014, then-Chairman Wyden and then-Ranking Member Hatch asked Inspector General George to investigate six issues, enumerated in the letter and reproduced below.<sup>14</sup> The Committee suspended release of this report until TIGTA completed its work.

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<sup>11</sup> Letter from Leonard Oursler to Senator Wyden and Senator Hatch (June 13, 2014).

<sup>12</sup> *Id.*, Enclosure 3 p. 5.

<sup>13</sup> *Id.*

<sup>14</sup> Letter from Chairman Wyden and Ranking Member Hatch to J. Russell George (June 23, 2014).

In response to the Committee's request, TIGTA commenced a thorough investigation that included interviews of 118 witnesses and processing and reviewing more than 20 terabytes of data. On June 30, 2015, TIGTA issued its final report of investigation. TIGTA's principal findings are as follows, and its full report of investigation is attached as an exhibit to this report.<sup>15</sup>

Committee Request #1 to TIGTA: Whether Lerner, and six other employees identified by the IRS as possibly suffering a loss of data,<sup>16</sup> did, in fact, lose data.

TIGTA concluded that four of the seven employees identified in the Committee's letter experienced hard drive crashes but did not lose any data. TIGTA found that the other three employees experienced computer problems that resulted in a data loss: Lerner, Julie Chen, and Nancy Heagney. The circumstances of each loss are discussed below in turn.

a. Lois Lerner

TIGTA confirmed that Lerner's hard drive crash resulted in a loss of data. TIGTA determined that Lerner's hard drive likely crashed between 5 and 7 P.M. on Saturday, June 11, 2011, based on the computer's failure to respond to a network query at 7 P.M.<sup>17</sup> TIGTA attempted to determine if anyone entered Lerner's office on the day of the crash; however, the building security vendor no longer maintained logs for this period, so TIGTA was unable to reach a conclusion on that issue.<sup>18</sup> Lerner "described coming into office in the morning [of Monday, June 13, 2011] and seeing 'the blue screen.'"<sup>19</sup> Later that morning, a work ticket "was entered indicating Lerner's computer screen is black and won't allow [the] employee to log in."<sup>20</sup>

At that point, an IRS IT Specialist was assigned to respond to Lerner's work ticket. He told TIGTA that "he was unable to recover any data from the hard drive, and following normal protocol, he replaced the hard drive in Lerner's computer with a new hard drive."<sup>21</sup> The IT Specialist "did not observe any indications of tampering or physical damage to Lerner's laptop."<sup>22</sup> After replacing the hard drive, the IT Specialist noted that Lerner's computer also "needed a new fan system and possibly a heatsink due to overheating."<sup>23</sup>

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<sup>15</sup> TIGTA, Exempt Organizations Data Loss, Report of Investigation 54-1406-008-I (June 30, 2014).

<sup>16</sup> The other six employees are Nikole Flax, former Chief of Staff to former Acting Commissioner Steven Miller; Michelle Eldridge, Supervisory Public Affairs Specialist; Kimberly Kitchens, Revenue Agent; Julie Chen, Revenue Agent; Tyler Chumney, Supervisory Revenue Agent; and Nancy Heagney, Revenue Agent.

<sup>17</sup> TIGTA, Exempt Organizations Data Loss, Report of Investigation 54-1406-008-I (June 30, 2014) p. 8. TIGTA noted that Lerner's computer received a software update on the afternoon of June 11, 2011; however, TIGTA concluded that "[t]here is no indication software [update] would have caused Lerner's hard drive to crash." *Id.* p. 9.

<sup>18</sup> *Id.* p. 9.

<sup>19</sup> *Id.* p. 10.

<sup>20</sup> *Id.* pp. 5-6.

<sup>21</sup> *Id.* p. 5.

<sup>22</sup> *Id.* p. 6.

<sup>23</sup> *Id.* pp. 5-6.

The IRS requested technical support from Hewlett-Packard. A Hewlett-Packard employee then “worked on Lerner’s laptop to replace the keyboard, trackpad, heat sink, and fan due to an overheating issue[.]”<sup>24</sup> When interviewed by TIGTA, the Hewlett-Packard employee did not specifically recall working on Lerner’s computer and “did not recall, or note in his records, any damage to the laptop.”<sup>25</sup> When asked for his opinion about the failure, he stated many different things, including the environment, can cause damage to a computer, and opined that “it was unusual for so many components to fail at the same time.”<sup>26</sup> He also stated that “there are many causes for hard drive failures, although overheating causing a hard drive failure” is uncommon.<sup>27</sup> The Hewlett-Packard employee further told TIGTA that “[i]f there was severe impact to a computer or hard drive, it could internally damage the mechanical components of the hard drive making it unusable.”<sup>28</sup>

An IRS Criminal Investigation Division technician later examined the hard drive in an attempt to recover data. He “noted concentric scoring of the hard drive platters, opining that the drive had failed because the drive heads had impacted the platters while in operation[.]”<sup>29</sup> When TIGTA asked Hewlett-Packard employee “what scenario could have caused hard drive heads to impact the platter of the disk, [he] opined an impact to the laptop or hard drive was the most likely cause.”<sup>30</sup>

During her interview with TIGTA, Lerner “denied hitting or damaging the hard drive intentionally” and “did not recall any incidents that could have damaged her laptop.” Moreover, Lerner “was not aware of anyone who might want to destroy the data on her computer.”<sup>31</sup>

Ultimately, TIGTA did not reach a conclusion about the cause of Lerner’s hard drive crash.

Regardless of the cause, Lerner’s hard drive crash erased data relevant to Lerner’s job. Lerner told TIGTA that she regularly received a large volume of email that exceeded the amount of network storage. To keep her email functioning, Lerner and her assistants, Dawn Marx and Diane Letourneau, regularly moved messages to folders on her hard drive that were organized by subject.<sup>32</sup> Lerner said that her June 2011 computer crash “resulted in a significant amount of data being lost” and told TIGTA that it “cost her ‘a lot of time’ because so much of her current work was lost.”<sup>33</sup>

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<sup>24</sup> *Id.* p. 6.

<sup>25</sup> TIGTA Memorandum of Interview or Activity, Personal Interview of Mauricio Terrazas (Aug. 28, 2014) p. 2; TIGTA, Exempt Organizations Data Loss, Report of Investigation 54-1406-008-I (June 30, 2014) p. 6.

<sup>26</sup> TIGTA Memorandum of Interview or Activity, Personal Interview of Mauricio Terrazas (Aug. 28, 2014) p. 3; TIGTA, Exempt Organizations Data Loss, Report of Investigation 54-1406-008-I (June 30, 2014) p. 6.

<sup>27</sup> TIGTA, Exempt Organizations Data Loss, Report of Investigation 54-1406-008-I (June 30, 2014) p. 6.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* p. 7.

<sup>30</sup> *Id.* p. 6.

<sup>31</sup> TIGTA Memorandum of Interview or Activity, Personal Interview of Lois Lerner (July 9, 2104).

<sup>32</sup> *Id.*

<sup>33</sup> TIGTA, Exempt Organizations Data Loss, Report of Investigation 54-1406-008-I (June 30, 2014) p. 10.

Neither TIGTA nor the IRS could determine the exact number of records that were lost, and not subsequently recovered, when Lerner's hard drive crashed. Using an email transaction log maintained by the Treasury Department, TIGTA calculated that "as many as 23,000 to 24,000 email messages may not have been provided to Congress," although TIGTA noted that this estimate "could be high" because TIGTA was unable to compare these logs to documents that the IRS was able to recover from other custodians and produced to Congress.<sup>34</sup> The IRS's efforts to recover Lerner's emails through alternate means as described below likely yielded some, but not all, of these emails.

b. Julie Chen

Chen is a revenue agent in the Cincinnati EO Determinations office. The hard drive on Chen's computer crashed on June 12, 2012. IRS IT was unable to recover data from her failed hard drive. Chen told TIGTA that she saved case documents to her hard drive but did not save emails – when her inbox was full, she would delete old emails instead of archiving them on her hard drive.<sup>35</sup> As a result, Chen's hard drive crash did not result in the loss of any emails potentially responsive to the Committee's investigation. The IRS technician who worked on Chen's crashed computer stated that she did not recall any damage to the computer and did not determine a cause of the crash; nor was there any indication of intentional data loss.<sup>36</sup>

c. Nancy Heagney

Like Chen, Heagney is a revenue agent in the Cincinnati EO Determinations office. The hard drive on Heagney's computer crashed on November 6, 2012. Heagney routinely saved letters to taxpayers and emails on her hard drive. After the crash, Heagney was able to recover some, but not all of the emails archived to her hard drive.<sup>37</sup> The IRS technician who worked on Heagney's crashed computer did not know if the computer was damaged and did not determine a cause for the hard drive failure.<sup>38</sup> The technician did not see any indication of intentional data loss.

Committee Request #2 to TIGTA: Whether, in addition to those seven employees, any of the 112 other IRS employees identified as custodians of potentially relevant records suffered a data loss.

Based on a review of IT helpdesk tickets, TIGTA determined that 31 of the 119 employees (including the 7 employees identified above in request #1) experienced "apparent hard drive failures since 2009."<sup>39</sup> Based on interviews of these employees and a review of records, TIGTA determined that seven of them lost data: Judith Kindell, Tax Law Specialist; Justin Palmer,

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<sup>34</sup> *Id.* pp. 2-3.

<sup>35</sup> TIGTA Memorandum of Interview of Activity, Personal Interview of Julie Chen (Aug. 28, 2014).

<sup>36</sup> TIGTA Memorandum of Interview of Activity, Personal Interview of Pamela Merritt (Sep. 15, 2014).

<sup>37</sup> TIGTA Memorandum of Interview of Activity, Personal Interview of Nancy Heagney (Aug. 28, 2014).

<sup>38</sup> TIGTA Memorandum of Interview of Activity, Personal Interview of Marilyn Florence (Sep. 15, 2014).

<sup>39</sup> TIGTA Memorandum of Interview of Activity, Records Review of IRS Custodians and Hard Drive Failures (Sep. 4, 2014).



Revenue Agent; Ronald Shoemaker, Supervisory Tax Law Specialist; Sonya Adigun, Supervisory Tax Examining Technician; Kenneth Drexler, Attorney Advisor; Chen; and Heagney. The IRS asserted that the failure rate of these employees' equipment "is consistent with the industry standard new equipment failure rate of 5 to 6% over a three-year period."<sup>40</sup>

TIGTA correctly noted that for three of these employees (Adigun, Drexler and Palmer), the IRS did not produce responsive emails or documents to Congress.<sup>41</sup> Based on the Committee's review of IRS records, it appears that their involvement with this matter was minimal, at most.

Kindell's hard drive crashed on August 11, 2010, which resulted in a loss of "all of her archived email and work documents."<sup>42</sup> Kindell recovered some of the lost emails by asking coworkers to resend them to her; she was unable to recover other electronic documents.<sup>43</sup> The IT Specialist who worked on Kindell's computer told TIGTA that he could not remember the circumstances of Kindell's crash, the cause, or if there were any indications that it may have been intentional.<sup>44</sup>

On March 4, 2011, Shoemaker's hard drive crashed, resulting in the loss of "all of his archived emails and saved files for the years 1994 through 2010," including Shoemaker's "managerial files[.]"<sup>45</sup> IRS IT was unable to recover the lost documents. When interviewed by TIGTA, the IT Specialist who worked on Shoemaker's computer stated that he was not sure if he had "ever determined what caused Shoemaker's hard drive to fail."<sup>46</sup>

Committee Request #3 to TIGTA: What steps, if any, the IRS took to attempt to recover data for each employee who lost data.

The measures taken by the IRS to attempt to recover data immediately following the hard drive crashes of Chen, Heagney, Kindell, and Shoemaker are described above.

Efforts to recover data from Lerner's computer were more substantial than for the other employees identified above. After the IT Specialist who initially responded was unable to recover data, Lerner contacted former IRS Associate Chief Information Officer Carl Froehlich to say that "some documents in the files that [were lost] are irreplaceable" and asked him to take further efforts to recover the files.<sup>47</sup> Additional efforts to recover data by the IRS IT support and several Hewlett-Packard technicians were unsuccessful, so the hard drive was then sent to IRS

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<sup>40</sup> Letter from Leonard Oursler to Chairman Camp (Sep. 5, 2014).

<sup>41</sup> TIGTA Memorandum of Interview or Activity, Records Review of IRS Custodians and Hard Drive Failures (Sep. 4, 2014).

<sup>42</sup> TIGTA Memorandum of Interview or Activity, Personal Interview of Judith Kindell (Aug. 6, 2014).

<sup>43</sup> *Id.*

<sup>44</sup> TIGTA Memorandum of Interview or Activity, Personal Interview of Frank Dematteis (Oct. 3, 2014).

<sup>45</sup> TIGTA Memorandum of Interview or Activity, Personal Interview of Ronald Shoemaker (Aug. 4, 2014).

<sup>46</sup> TIGTA Memorandum of Interview or Activity, Personal Interview of Aaron Signor (Sep. 5, 2014) (attachment omitted).

<sup>47</sup> Email chain between Lois Lerner, Carl Froehlich, Lillie Wilburn and others (July 19 - Aug. 6, 2011) IRS0000651488-50.

Criminal Investigation Division's forensic lab. The IRS Criminal Investigation Division was unable to recover any data from the hard drive.<sup>48</sup>

The IRS Criminal Investigation Division returned the hard drive to the IRS's IT depot in Washington, D.C. The IRS CI technician believed that "data could still potentially be recovered using a third party donor hard drive or [by] hiring an outside vendor."<sup>49</sup> The IRS IT manager "confirmed data may have been recoverable by an outside vendor, but ... decided the expense was not justified due to financial constraints[.]"<sup>50</sup> At this point, the IRS ceased attempts to recover data from Lerner's hard drive. Lerner told TIGTA that she "was 'surprised' that IRS IT could not do more to recover her email[.]"<sup>51</sup>

After the IRS Office of Chief Counsel became aware of Lerner's hard drive failure in February 2014, the IRS took additional measures to recover and produce Lerner documents to this Committee, other Congressional committees and the Department of Justice. The IRS summarized these steps in its June 13, 2013 letter to the Committee:

- "Retraced the collection process for Ms. Lerner's computer to determine that all materials available in May 2013 were collected;"
- "Located, processed, and included in [the IRS] production email from an earlier 2011 data collection of Ms. Lerner's email;"
- "Confirmed that back-up tapes from 2011 no longer exist because they have been recycled (which not uncommon [sic] for large organizations in both the private and public sectors);"
- "Searched email from other custodians for material on which Ms. Lerner appears as an author or recipient, then produced such email."<sup>52</sup>

The IRS calculated that these efforts yielded "approximately 24,000 Lerner-related emails between January 1, 2009 and April 2011," which were produced to this and other Committees.<sup>53</sup> On September 5, 2014, the IRS informed the Committee of similar efforts that it took to recover and produce emails sent and received by Chen, Heagney, Kindell, and Shoemaker.<sup>54</sup> After TIGTA opened its investigation of the lost documents in June 2014, the IRS largely ceased efforts to recover additional Lerner emails to avoid interfering with TIGTA's investigation, although it continued to produce documents to the Committee through January 2015.

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<sup>48</sup> TIGTA, Exempt Organizations Data Loss, Report of Investigation 54-1406-008-I (June 30, 2014) p. 7.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* TIGTA noted that the IRS IT manager believed that "Lerner had categorized the data present on the hard drive as being personal in nature." This point is contradicted by Lerner's own testimony about the contents of her hard drive, as discussed above.

<sup>51</sup> TIGTA Memorandum of Interview or Activity, Personal Interview of Lois Lerner (July 9, 2104).

<sup>52</sup> Letter from Leonard Oursler to Senator Wyden and Senator Hatch (June 13, 2014) Enclosure 3, p. 7.

<sup>53</sup> *Id.*

<sup>54</sup> Letter from Leonard Oursler to Chairman Camp (Sep. 5, 2014).

Committee Request #4 to TIGTA: Whether any additional measures could reasonably be taken to attempt to recover lost data; and if so, TIGTA should perform its own analysis of whether any data can be salvaged and produced to the Committee.

An initial question was whether TIGTA could recover data from Lerner's crashed hard drive, as well as hard drives of other custodians who lost data (Chen, Heagney, Kindell, and Shoemaker). TIGTA did not recover data from any of the hard drives:

- After the IRS ended its 2011 efforts to recover data from Lerner's hard drive, the IRS grouped it with other failed hard drives and gave the failed hard drives to the IRS's vendor in charge of disposing of electronic media. TIGTA determined that Lerner's hard drive was "more than likely destroyed" at a shredding facility in Marianna, Florida on April 16, 2012.<sup>55</sup>
- "TIGTA was able to locate and take possession of Heagney's failed hard drive, but was unable to recover any information from the drive using standard forensic tools."<sup>56</sup> TIGTA will see if an outside vendor can recover any information.<sup>57</sup>
- Chen's failed hard drive was sent to an IRS facility in Covington, Kentucky in 2012.<sup>58</sup>
- It is unclear if TIGTA determined the ultimate disposition of Kindell and Shoemaker's failed hard drives. It does not appear that TIGTA located either of them.

Next, TIGTA turned to other sources to attempt to recover lost data:

- Backup (disaster recovery) tapes from the IRS's email server;
- Decommissioned exchange server hard drives and associated backup tapes;
- Lerner's Blackberrys and the BlackBerry network server;
- Loaner laptops used by employees while waiting for resolution of IT problems; and
- Network transaction logs.

TIGTA's efforts, which constituted an enormous amount of work over the course of a year, are described in more detail on pages 12-20 of its report. In particular, TIGTA activated 744 disaster recovery backup tapes containing a backup of IRS email traffic from approximately November 2012. From the sources identified above, TIGTA produced approximately 6,400 documents to the Committee in April, May and June 2015. TIGTA subsequently determined that the IRS had

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<sup>55</sup> TIGTA, Exempt Organizations Data Loss, Report of Investigation 54-1406-008-I (June 30, 2014) pp. 7-8.

TIGTA noted that under IRS procedures and terms of the vendor's contract with the IRS, the serial numbers of electronic media were not tracked throughout the disposal process, so TIGTA could not confirm with certainty that Lerner's hard drive was, in fact, destroyed. Nonetheless, after interviewing the vendor employees who processed IRS media and visiting the Marianna shredding facility, TIGTA found no evidence that Lerner's hard drive had not been destroyed. We have no reason to doubt TIGTA's conclusion that Lerner's hard drive was "more than likely destroyed."

<sup>56</sup> *Id.* p. 12.

<sup>57</sup> *Id.*

<sup>58</sup> TIGTA Memorandum of Interview or Activity, Personal Interview of Pamela Merritt (Sep. 15, 2014).

not produced approximately 1,330 of these document to this Committee, other Congressional committees, DOJ, or TIGTA.<sup>59</sup>

Finally, TIGTA examined the IRS's instant messaging system (called the Office Communicator Server (OCS)) to see if they could recover records related to the Committee's investigation. These messages were of particular interest to the Committee, as Lerner had asked an IT employee in April 2013 if OCS conversations were searchable and could be produced to Congress:

I had a question today about OCS. I was cautioning folks about email and how we have had several occasions where Congress has asked for emails and there has been an electronic search for responsive emails – so we need to be cautious for what we say in emails. Someone asked if OCS conversations were also searchable – I don't know, but told them I would get back to them. Do you know?<sup>60</sup>

TIGTA determined that under the terms of the IRS's collective bargaining agreement, the IRS agreed that it would not automatically save OCS messages. The only way that messages would be saved is if an individual employee copied the text into an email or other electronic document. TIGTA found that this retention policy was not necessarily a violation of National Archives and Records Administration (NARA) guidance, noting that “[w]hether OCS is being used according to NARA's guidance depends on how OCS end-users are utilizing the program.”<sup>61</sup> TIGTA was not able to recover the substance of any OCS sessions between Lerner and other employees.<sup>62</sup>

Committee Request #5 to TIGTA: For each employee who lost data, the date when the IRS first became aware that it had lost information potentially relevant to the Committee's investigation.

The Committee asked this question because it did not learn of any loss of potentially relevant data until June 2014. TIGTA's report contains the following information about when the IRS first learned that it may have been missing data from Chen, Heagney, Kindell, and Shoemaker:

- In her interview with TIGTA, Chen noted that she disclosed the hard drive crash at the time when she received an IRS litigation hold in May or June 2013. It is unclear what, if anything, the IRS did in response.<sup>63</sup>
- In his interview with TIGTA, Shoemaker said that during at least one interview with a Congressional committee, DOJ, or TIGTA, he mentioned that his hard drive had crashed. (He did not disclose this issue during his interview with the Finance Committee.) It is

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<sup>59</sup> TIGTA, Exempt Organizations Data Loss, Report of Investigation 54-1406-008-I (June 30, 2014) p. 3.

<sup>60</sup> Email chain between Lois Lerner, Maria Hooke, and others (Apr. 9, 2013) IRS0000726247-48.

<sup>61</sup> TIGTA, Exempt Organizations Data Loss, Report of Investigation 54-1406-008-I (June 30, 2014) p. 22.

<sup>62</sup> *Id.* p. 21.

<sup>63</sup> TIGTA Memorandum of Interview or Activity, Personal Interview of Julie Chen (Aug. 28, 2014).

unclear if the IRS was aware of this disclosure and what, if anything, the IRS did in response.<sup>64</sup>

- TIGTA's report did not include information about when the IRS first learned that Kindell and Heagney lost data potentially relevant to this investigation.

TIGTA's report and interviews establish the following timeline of the IRS's knowledge of Lerner's hard drive crash, and whether it resulted in data loss:

- February 2 or 3, 2014 – While the IRS was preparing a production of Lerner emails, former Counselor to the IRS Commissioner Catherine Duval “noted a gap” in the number of Lerner emails sent before July 2011. Duval brought the gap to the attention of Thomas Kane, Deputy Associate Chief Counsel for Procedure & Administration.<sup>65</sup>
- February 3, 2014 – Duval and Kane mentioned the gap in Lerner emails at an internal meeting with Christopher Sterner, Deputy Chief Counsel for Operations, and Stephen Manning, Deputy Chief Information Officer. The group decided to further investigate.<sup>66</sup>
- February 4, 2014 – After investigation by attorneys under Kane's supervision, “it was determined that Lerner experienced a hard drive failure in June 2011.”<sup>67</sup>
- February 5 or 6, 2014 – Kane, Sterner, Duval and Manning met again to discuss the issue. Kane noted that IRS Chief Counsel William Wilkins “was included in the discussion at some point.” According to Kane, the discussion “included whether to notify Congress or whether more information was needed. The discussion also included how much of Lerner's emails could be located elsewhere.” In his interview with TIGTA, Kane noted that “one or two Congressional committees” were planning to release reports around that time, including the Senate Committee on Finance. Kane told TIGTA that it was decided to “not to report half or part of the story as Lerner emails were expected to be produced for some time in the future.”<sup>68</sup>
- March and April 2014 – The IRS searched electronic records of other IRS employees for emails to and from Lerner. The IRS located a total of 24,000 emails.<sup>69</sup>
- April 2014 – Koskinen told TIGTA that he was “first told about Lerner's hard drive failure in April 2014 by Duval, but was advised that a hard drive failure did not necessarily mean a loss of data.” Koskinen explained to TIGTA that at this point, “Duval was leading an effort to validate that email were actually missing; and, not that the gap in email was attributable to something like an error in the backup system” or some other error. Koskinen noted that this error checking “was completed in April 2014.”<sup>70</sup>

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<sup>64</sup> TIGTA Memorandum of Interview or Activity, Personal Interview of Ronald Shoemaker (Aug. 4, 2014).

<sup>65</sup> TIGTA Memorandum of Interview or Activity, Personal Interview of Thomas Kane (Oct. 22, 2014).

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> TIGTA Memorandum of Interview or Activity, Personal Interview of John Koskinen (June 19, 2015).

- Mid-April 2014 – Duval informed Treasury attorney Hannah Stott-Bumsted that “there was an issue they (the IRS Office of Chief Counsel) were looking into regarding Lerner’s emails.”<sup>71</sup>
- April, May, and June 2014 – Led by Duval, the IRS prepared a “white paper” that would be used to “notify Congress of the problem identified regarding the Lerner emails, how it was discovered and what steps were taken to fill in the apparent gap in her emails.”<sup>72</sup> Koskinen told TIGTA that he “wanted to secure as many emails that the IRS could locate ... in order to provide a more complete reporting to Congress ... .”<sup>73</sup>

In summary, in early February 2014, the IRS first became aware that it may have lost Lerner documents potentially relevant to this investigation. By the end of April 2014 at the latest, the IRS had confirmed that relevant emails had been lost.

Committee Request #6 to TIGTA: Whether there is any evidence of a deliberate effort to withhold information from the Committee.

As described above, TIGTA could not come to a conclusion about the cause of Lerner’s hard drive crash. TIGTA did not suggest that the hard drive failures of the other four employees was deliberate or intended to withhold information from Congress, DOJ, or TIGTA. Overall, TIGTA stated that “[n]o evidence was uncovered that any IRS employees had been directed to destroy or hide information from Congress, the DOJ, or TIGTA.”<sup>74</sup> The National Archives and Records Administration told the Committee that they do not believe the IRS violated federal recordkeeping laws<sup>75</sup> and Paul Wester, Chief Records Officer at NARA told TIGTA that IRS “did nothing wrong as far as safeguarding records.”<sup>76</sup>

However, several of TIGTA’s other findings cast doubt on the thoroughness of the IRS’s efforts to recover all relevant records related to this investigation, as well as its candor to this and other Congressional committees.

First, less than two weeks into its investigation, TIGTA identified 744 backup server tapes that were likely to contain Lerner documents.<sup>77</sup> The IRS did not attempt to recover data from these tapes, errantly determining that they had already been recycled, or believed that they did not contain relevant data. Indeed, until May 22, 2013, the IRS practice was to reuse and recycle old backup tapes every six months as a cost-saving measure.<sup>78</sup> Thus, with this practice in place, prior to the beginning of Congressional investigations the IRS should have already recycled any

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<sup>71</sup> TIGTA Memorandum of Interview or Activity, Personal Interview of Catherine Duval (July 1, 2014).

<sup>72</sup> TIGTA Memorandum of Interview or Activity, Personal Interview of Thomas Kane (Oct. 22, 2014).

<sup>73</sup> TIGTA Memorandum of Interview or Activity, Personal Interview of John Koskinen (June 19, 2015).

<sup>74</sup> TIGTA, Exempt Organizations Data Loss, Report of Investigation 54-1406-008-I (June 30, 2014) p. 18.

<sup>75</sup> Letter from David Ferriero to Senator Wyden and Senator Hatch (July 10, 2014) (some enclosures omitted).

<sup>76</sup> TIGTA, Exempt Organizations Data Loss, Report of Investigation 54-1406-008-I (June 30, 2014) pp. 21-22.

<sup>77</sup> *Id.* p. 13.

<sup>78</sup> *Id.* On May 22, 2013, the IRS CTO changed the backup tape policy to an indefinite retention in order to respond to ongoing investigations.

backup tapes containing Lerner emails lost when her hard drive crashed in June 2011. This would prove to be incorrect, and TIGTA was able to recover approximately 1,007 emails that had not been previously provided by the IRS to the Committee, although most of those messages were sent after Lerner's June 2011 hard drive crash.<sup>79</sup>

A second troubling finding is that in 2014, the IRS may have unwittingly destroyed a separate batch of relevant backup tapes. TIGTA discovered that in March of 2014 – after top IRS officials learned that Lerner's hard drive had crashed – IRS employees at a storage facility in West Virginia “magnetically erased 422 backup tapes that are believed to have contained Lerner's emails that were responsive to Congressional demands and subpoenas.”<sup>80</sup>

The email server housing these backup tapes was located in New Carrollton, Maryland, and around May 2011, the IRS migrated to a new location in order to consolidate data centers.<sup>81</sup> The New Carrollton server was then decommissioned and disassembled, and in April 2012, the majority, but not all, of the equipment was destroyed.<sup>82</sup> Several hard drives and backup tapes from the decommissioned server continued to be stored in New Carrollton until December 2013, when the IRS had them removed in order to renovate the space.<sup>83</sup> These components, server hard drives and backup tapes, were shipped to a storage facility in West Virginia.<sup>84</sup> According to TIGTA, the employees “did not degauss the server hard drives that were shipped with the backup tapes because their interpretation of the CTO's May 22, 2013, e-mail directive was that it was meant to preserve hard drives only.”<sup>85</sup> However, the IRS employees did degauss the server backup tapes. Ultimately, TIGTA identified an additional 422 backup tapes which were used to back up Lerner's email between January 1, 2008 and December 31, 2011, but were errantly erased on March 4, 2014.<sup>86</sup>

Although it took TIGTA extensive time and resources to locate, identify, and process these tapes and produce relevant records, this type of effort was justified given the extent of data lost and the interest in this matter by Congress, the DOJ and the public. The IRS should have exhausted this possibility before it informed the Committee that “back-up tapes from 2011 no longer exist,” which proved to be wholly incorrect.<sup>87</sup>

TIGTA noted that it “did not uncover evidence that the IRS and its employees purposely erased the tapes in order to conceal responsive e-mails from the Congress, the DOJ and TIGTA.”<sup>88</sup>

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<sup>79</sup> *Id.* p. 15.

<sup>80</sup> *Id.* p. 3.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.* pp. 3-4.

<sup>87</sup> Letter from Leonard Oursler to Senator Wyden and Senator Hatch (June 13, 2014) Enclosure 3, p. 7.

<sup>88</sup> TIGTA, Exempt Organizations Data Loss, Report of Investigation 54-1406-008-I (June 30, 2014) p. 3.

Instead, the decision to erase these tapes appeared to be the result of employees being unaware of, or misinterpreting, several IRS directives to preserve documents:

- The IRS issued litigation holds in May and June 2013 for records related to this matter.
- In May 2013, IRS Chief Technology Officer Terence Milholland “sent an e-mail to his senior managers responsible for destroying media and asked them to preserve media that might contain e-mail or data related to ‘investigations’ that were occurring.”<sup>89</sup>
- On February 3, 2014, Duval sent a message to Deputy CIO Manning confirming a previous conversation with him about an “apparent lack of Lois Lerner email from before May 9, 2011.” Per their earlier discussion, Duval asked Manning to take several steps, including to “ensure that the earliest possible network back-up tapes are available for review” and “[c]onfirm that no back-up tapes have been recycled since the hold on recycling was instituted last spring[.]”<sup>90</sup>

Milholland told TIGTA that he was “blown away” to learn that the 422 backup tapes had been destroyed and opined that it “was more significant than the loss of Lerner’s hard drive.”<sup>91</sup> We agree that these tapes should not have been destroyed and are disappointed that IRS senior management did not adequately secure them.

Finally, TIGTA’s report shines light on the IRS’s failure to notify Congress of the missing documents in a timely fashion. It is understandable that the IRS would take some amount of time to assess the information gap and possible solutions before contacting Congress. But the IRS’s decision to wait more than four months is inexcusable, particularly in view of the following:

- Duval and other senior employees believed the information gap to be significant enough to raise with Chief Counsel Wilkins in early February 2014, and with Commissioner Koskinen no later than April 2014.
- Based on testimony from Kane, it appears that the IRS was unconcerned with the possibility that this Committee or any other Congressional committee may have issued a report before the IRS disclosed the problem.
- Duval informed the Treasury Department about this issue in April 2014, which in turn informed the White House shortly thereafter.<sup>92</sup>
- During the period when the IRS knew about the data loss but did not tell the Committee, Committee staff were routinely in contact with the IRS – including Duval and other employees who had direct knowledge of the data loss – about issues related to production of documents. During these conversations, Committee staff informed Duval that the Committee would require Commissioner Koskinen to sign a statement attesting to the

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<sup>89</sup> TIGTA Memorandum of Interview or Activity, Personal Interview of Terence Milholland (June 11, 2015).

<sup>90</sup> Email from Catherine Duval to Stephen Manning, and others (Feb. 3, 2014).

<sup>91</sup> TIGTA Memorandum of Interview or Activity, Personal Interview of Terence Milholland (June 11, 2015).

<sup>92</sup> Letter from Neil Eggleston to Chairman Camp and Chairman Wyden (June 18, 2014).



completeness of the IRS's productions. Committee staff first raised this issue to Duval on March 27, 2014, and raised it repeatedly in April, May and early June. Neither Duval nor any other IRS employee gave any indication that the IRS had lost documents, a fact that would materially affect the IRS's ability to provide the required statement.

- The IRS disclosed the data loss only when Committee staff informed Duval that release of the report was imminent, and placed a deadline on receipt of Commissioner Koskinen's signed statement of Friday, June 13, 2014 – the date when the IRS finally informed the Committee of the data loss.
- Even after the IRS disclosed Lerner's hard drive crash, it failed to provide a full account of what it knew to the Committee. When IRS senior staff briefed Committee staff on June 16, they informed the Committee only of Lerner's hard drive crash. Just hours later, the IRS told staff of a House committee that the IRS may have lost records of several other IRS employees who were relevant to this investigation. As a result, the Chairman and Ranking Member did not get a complete account of what the IRS knew until later that week.

Instead of proactively informing the Committee about the information gap, the IRS took the opposite approach. In a March 19, 2014 letter to Senator Wyden, Commissioner Koskinen said:

**We are transmitting today additional information that we believe completes our production to your committee** and the House Ways and Means committee of documents we have identified as related to the processing and review of applications for tax-exempt status as described in the May 2013 TIGTA report. ...

**In light of these productions, I hope that the investigations can be concluded in the very near future.**<sup>93</sup>

Even if Commissioner Koskinen was not personally aware of the information gap at the time of this letter, the statements contained in this letter – which were surely made with the knowledge of senior IRS employees aware of the efforts underway to recover missing Lerner emails – were deeply misleading. These statements stood uncorrected for nearly three months, even after the Commissioner learned that his staff was still attempting to recover Lerner documents. Indeed, if the Committee had released its report as hoped for in the letter from Commissioner Koskinen, it would have been based on an incomplete record.

By failing to locate and preserve records, making inaccurate assertions about the existence of backup data, and failing to disclose to Congress the fact that records were missing, the IRS impeded the Committee's investigation. These actions had the effect of denying the Committee access to records that may have been relevant and, ultimately, delayed the investigation's

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<sup>93</sup> Letter from John Koskinen to Senator Wyden (Mar. 19, 2014) (emphasis added).

conclusion by more than one year. Without the IRS's candor, this Committee cannot fulfill its charge of overseeing the administration of the tax code.

### **3. Actions Taken by Committee Investigators to Mitigate the Information Gap**

After the IRS notified the Committee of the loss of data, the Committee took several actions to mitigate the information gap:

- As described above, the Committee asked TIGTA to search for and recover documents, which resulted in the discovery and production of 1,330 records that had not been previously produced to the Committee.
- The IRS took remedial steps to recover and produce emails for Lerner, Chen, Heagney, Kindell, and Shoemaker, as described in the letter of September 5, 2014.<sup>94</sup> On July 1, 2015, Commissioner Koskinen signed a declaration attesting to the completeness of the IRS's productions, and promising that the IRS will promptly produce any additional relevant records if they are discovered.<sup>95</sup>
- After a review of Lerner's communications, Committee staff determined that Lerner had sent and/or received emails from employees of the Treasury Department, the DOJ, and the FEC during the relevant period. Senator Hatch requested that these agencies search for communications between their employees and Lerner. In response, each agency produced documents to the Committee.
- On June 18, 2014, the White House produced emails between its employees and Lerner.<sup>96</sup>
- Based on a review of Lerner's communications, Committee staff determined that Lerner frequently sent and received messages from a friend who used his corporate email address. Some of these messages were relevant to the Committee's investigation. Senator Hatch requested that the employer produce all messages between this employee and Lerner, and the company complied.

Even with the benefit of information from these sources, an information gap remains. The full number of records that were lost and not recovered will never be known. Nor is it possible to know if these records would alter any of the findings in this report.

Although it was not possible to completely reproduce the records lost by the IRS, the Committee exhausted every possibility for obtaining copies of relevant records. We are satisfied that these efforts have enabled the Committee to issue as comprehensive of a report as possible under the circumstances, and we believe that our conclusions are supported by the record.

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<sup>94</sup> Letter from Leonard Oursler to Chairman Camp (Sep. 5, 2014).

<sup>95</sup> Declaration of John Andrew Koskinen (July 1, 2015).

<sup>96</sup> Letter from Neil Eggleston to Chairman Camp and Chairman Wyden (June 18, 2014).

#### D. LEGAL BACKGROUND OF 501(C)(3) AND 501(C)(4) ORGANIZATIONS

The Committee’s investigation chiefly concerns organizations applying for tax-exempt status under sections 501(c)(3) and 501(c)(4) of the Internal Revenue Code.

An organization may qualify for exemption under section 501(c)(3) of the Internal Revenue Code if it is organized and operated for religious, charitable, educational and certain other specified purposes.<sup>97</sup> These organizations may not directly or indirectly “participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.”<sup>98</sup> This prohibition is absolute.<sup>99</sup> Thus, if a 501(c)(3) organization engages in any amount of prohibited campaign intervention, the IRS may revoke its tax-exempt status and impose an excise tax.<sup>100</sup>

Section 501(c)(4) provides tax-exempt status for organizations operated “exclusively for the promotion of social welfare.”<sup>101</sup> In 1959, the Treasury promulgated regulations that interpreted “operated exclusively” to mean “primarily engaged” in social welfare activities.<sup>102</sup> As a result, the IRS considers an organization to qualify for tax-exemption under section 501(c)(4) if its primary activity is “promoting in some way the common good and general welfare of the people of the community.”<sup>103</sup> The regulations provide that political campaign intervention is not a social welfare activity,<sup>104</sup> but a group recognized as tax-exempt under section 501(c)(4) may

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<sup>97</sup> 26 U.S.C. § 501(c)(3) (2014).

<sup>98</sup> *Id.*

<sup>99</sup> IRS, The Restriction of Political Campaign Intervention by Section 501(c)(3) Tax-Exempt Organizations.

<sup>100</sup> *Id.*

<sup>101</sup> 26 U.S.C. § 501(c)(4) (2014).

<sup>102</sup> 26 C.F.R. § 1.501(c)(4)-1(a)(2)(i) (1990). The IRS did not create this definition out of whole cloth. The term “exclusively” appears in section 501(c)(3) as well as 501(c)(4), and in 1945 the U.S. Supreme Court ruled that a “substantial” nonexempt purpose will destroy exemption under section 501(c)(3). *Better Business Bureau v. United States*, 326 U.S. 279 (1945). But the Court did not interpret “exclusively” literally and forbid all non-exempt purposes. See Comment Letter on 501(c)(4) Exempt Organizations from the American Bar Association to Commissioner Koskinen dated May 7, 2014, at text accompanying footnotes 22-24. The 1959 regulations incorporated this interpretation, clarifying that “exclusively” means “primarily” for both section 501(c)(3) and section 501(c)(4) organizations. Congress also has demonstrated that the term “exclusively” cannot be interpreted literally. Organizations that operate exclusively to promote social welfare have had tax-exempt status since 1913. But in 1950, following revelations that some tax-exempt organizations also were operating businesses tax-free, Congress amended the law to add the unrelated business income tax (UBIT) regime. Under UBIT rules, nonprofits are allowed to engage in unrelated nonexempt activity as long as they pay taxes on the “unrelated business taxable income” generated as a result. See 26 U.S.C. §§ 511-513. According to one tax-exempt organizations expert, “exclusively” could not mean “exclusively” because “later law acknowledged these organizations could engage in other activities” if you tax them. See Alan Fram, *Inside Washington: Conflicting Laws, IRS Confusion*, Associated Press, June 5, 2013, *quoting* Tax Professor Ellen Aprill, an expert on tax-exempt organizations at Loyola Law School in Los Angeles, CA. Because of the statutory conflict in provisions allowing nonprofits to operate unrelated businesses, and the provision requiring section 501(c)(4) organizations to be operated exclusively for the promotion of social welfare, some suggest that the 1959 Treasury regulation interpreting “exclusively” to mean “primarily” was necessary to resolve this statutory conflict. *Id.* Thus, both the *Better Business Bureau* case and the UBIT regime support the argument that “exclusively” is not to be read literally.

<sup>103</sup> 26 C.F.R. § 1.501(c)(4)-1(a)(2)(i) (1990); IRS, Social Welfare Organizations.

<sup>104</sup> 26 C.F.R. § 1.501(c)(4)-1(a)(2)(i) (1990).

engage in unlimited issue advocacy related to its exempt purpose and some political campaign intervention, as long as the group is primarily engaged in social welfare.<sup>105</sup>

Section 501(c)(3) organizations must apply to the IRS to be recognized for tax-exempt status.<sup>106</sup> Although the tax law allows section 501(c)(4) organizations to operate as tax-exempt without applying for IRS recognition of their status, most organizations apply for an IRS determination.<sup>107</sup> Another important distinction is that donors to 501(c)(3) organizations may generally take a tax deduction for the amount of their donation, while donations to 501(c)(4) organizations are not tax-deductible.<sup>108</sup>

Generally, the tax laws do not require 501(c)(3) public charities or 501(c)(4) organizations to publicly disclose the identity of their donors.<sup>109</sup> By contrast, the identity of donors to section 527 political organizations are made public, as well as periodic reports of contributions and expenditures filed by such organizations.<sup>110</sup>

#### **E. STRUCTURE OF THE IRS EXEMPT ORGANIZATIONS DIVISION AND GENERAL IRS PROCEDURES FOR REVIEWING APPLICATIONS FOR TAX-EXEMPT STATUS**

The IRS used the general processes described in this section during all times relevant to the Committee's investigation from 2009 through May 2013.<sup>111</sup>

The EO Division within the IRS reviewed all applications for tax-exempt status. As described below, revenue agents in the Cincinnati EO Determinations office resolved approximately 85% of incoming applications after reviewing the initial application with little or no additional follow-up. On some occasions, EO Technical or the Office of Chief Counsel, which are both located in Washington, D.C., reviewed applications. The IRS routinely elevated "sensitive" issues within the EO Division and to higher-level IRS management, sometimes up to the Office of the Commissioner.

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<sup>105</sup> IRS, Social Welfare Organizations.

<sup>106</sup> 26 U.S.C. § 508(a) (2006).

<sup>107</sup> Notes of Steven Miller (undated) IRS0000505538-42.

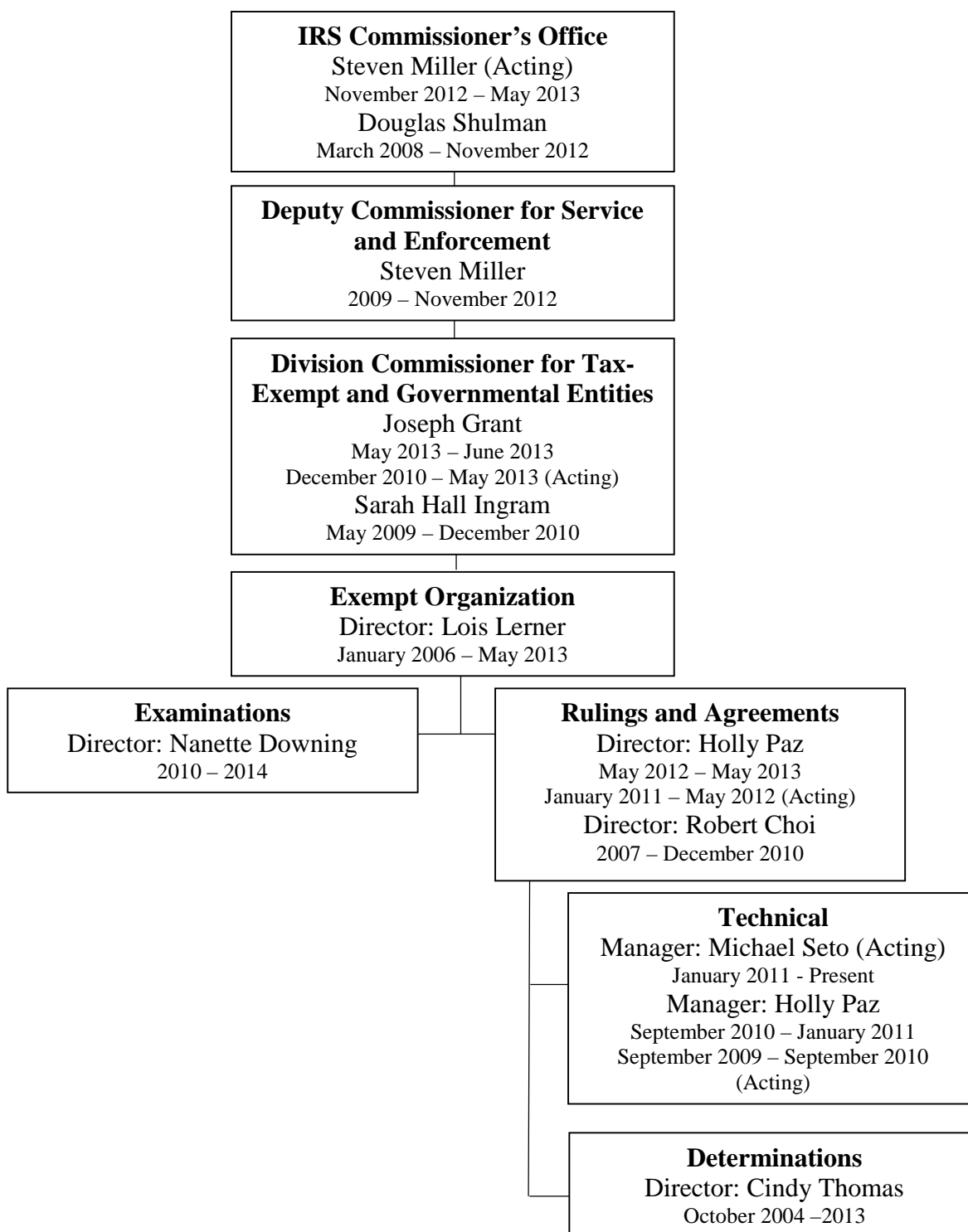
<sup>108</sup> 26 U.S.C. § 170 (2014).

<sup>109</sup> 26 U.S.C. § 6104(b), (d)(3)(A) (2014). 501(c) entities are required to submit to the IRS a list of persons who have donated \$5,000 or more on an annual basis. This information generally is not made public, except that the information is made public for private foundations only.

<sup>110</sup> 26 U.S.C. § 527(k) (2014).

<sup>111</sup> Information in this section relies on Notes of Steven Miller (undated) IRS0000505538-42; IRM §§ 1.54.1 (Jan. 1, 2006) and 7.29.3 (July 14, 2008).

At all times relevant to the Committee's investigation, the EO Division had the following basic structure and management:



All applications for tax-exempt status were initially routed to the IRS's EO Determinations office in Cincinnati, Ohio. The EO Determinations office was comprised of 13 "Groups" that processed applications for tax exemption. One group was responsible for performing an initial screening of applications. Employees in this group, referred to as "screeners," typically spent about 15-30 minutes reviewing an incoming application and completed 20-30 applications per day. Screeners had four options available for each application:

1. Recommend approval of applications that raised no issues (approximately 35% of applications). The screening group manager would then conduct a final review of the draft approval letter to the applicant.
2. Refer the case to other EO determinations agents for minor development (approximately 50% of applications). These applicants appeared to meet the requirements for tax-exempt status but lacked some required information, such as the articles of incorporation.
3. Refer the case to other EO determinations agents for full development (approximately 13% of applications). Applications in this category left open questions as to the adequacy and scope of their exempt purposes, the inurement of a private benefit, or the presence of activities inconsistent with exempt status.
4. Return a grossly incomplete application to the organization (approximately 2% of applications). If an application was missing pages or submitted on the wrong form, the screener could return the application and require re-submission.<sup>112</sup>

Applications in the second and third categories were sent from the screener to revenue agents in the EO Determinations office, who would then follow up with the applicant to develop the case. While many of these revenue agents worked in Cincinnati, some were located in other IRS offices around the country. The development process varied from case to case but typically included telephone calls and written correspondence (development letters) between the IRS and the applicant's point of contact. Revenue agents had a fair amount of discretion about which issues needed to be developed and how much information was necessary.

Most applications for tax-exempt status that were received by EO Determinations were processed to completion by EO Determinations employees without outside assistance. Certain applications, such as those that raised complex or novel questions or that contained sensitive or high-profile issues, were sent to EO Technical. Typically, applications that were received in EO Technical were assigned to a highly-graded Tax Law Specialist in one of the four EO Technical Groups. The Tax Law Specialist could either assume full control of the application or continue to work on the application in conjunction with an EO Determinations revenue agent. The Tax Law Specialist was responsible for developing the facts of the application, applying the law to those facts, reaching a conclusion, and preparing a proposed determination on the application for tax exemption. The Tax Law Specialist then submitted the proposed determination to a

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<sup>112</sup> SFC Interview of John Shafer (Sep. 17, 2013) pp. 7-9.

“reviewer” within the Tax Law Specialist’s Group. The Group Manager could also decide to review the proposed determination at this time, or could allow the Tax Law Specialist and the reviewer to make the final determination. A final determination was made on a majority of applications at the Group level.

The Internal Revenue Manual (IRM) also specified certain issues that should be elevated within the IRS organization, including “sensitive” issues, issues that impact a large number of individuals, issues involving significant dollar amounts, issues that were or could become newsworthy, and issues requiring coordination with the Office of Chief Counsel or Treasury. The primary way of elevating these issues was through a Sensitive Case Report (SCR), which was usually prepared by the manager in charge of the issue. The SCR contained a summary of the facts, why the issue was important, and the proposed resolution.<sup>113</sup> SCRs about tax-exempt issues were periodically distributed to EO management, including Lerner and her advisors, and certain reports were also sent to top-level IRS management, including the Office of the IRS Commissioner. As discussed in greater detail below, the Committee determined that SCRs had little practical value as a tool for guiding difficult issues to resolution, as they were routinely ignored – and sometimes not even read – by top management.

Once EO Technical placed an application on an SCR, additional procedures were followed before a final determination could be made. A proposed determination made at the Group level could not be effectuated without first providing the Manager of EO Technical with an opportunity to review the proposal. After the Manager of EO Technical completed his/her review, then the proposed determination was sent to the Director of Rulings and Agreements for additional review. Accordingly, including an application or other matter on an SCR meant that at a minimum, the proposed determination would undergo two additional levels of review (EO Technical Manager, Director, Rulings and Agreements). These additional levels of review invariably required more time to complete, thereby delaying the ultimate disposition of the application.

In limited circumstances, pending applications were referred to the Office of Chief Counsel in Washington, D.C. The only cases that required mandatory review by the Office of Chief Counsel were proposed denials of tax-exempt status under section 501(c)(3).<sup>114</sup> All other applications could be sent to the Office of Chief Counsel for discretionary reasons specified in the IRM, including applications that presented novel issues of law or the possibility of litigation.<sup>115</sup>

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<sup>113</sup> Section 7.29.3.2(C) of the IRM (July 14, 2008) provides that the Group Manager will determine whether an SCR should be prepared to alert “upper management” that a case: (i) is likely to attract media or Congressional attention; (ii) presents unique or novel issues; (iii) affects large numbers of taxpayers; (iv) potentially involves large dollar amounts; or (v) has another issue that warrants attention.

<sup>114</sup> IRM § 7.29.3.7(5) (July 14, 2008).

<sup>115</sup> IRM § 1.54.7.2 (Jan. 1, 2006).

### **III. FINDINGS OF THE SENATE FINANCE COMMITTEE AND SUMMARY OF SUPPORTING FACTS**

*This section sets forth the bipartisan findings of the investigation and summarizes the supporting facts, some of which are described in greater detail later in this report.*

The bipartisan investigation conducted by Committee Staff identified a pattern of mismanagement commencing in 2010 by IRS management officials in their direction, or lack thereof, of the processing of applications for tax exemption submitted by Tea Party and other political advocacy organizations. This pattern of mismanagement consisted of both an underestimation of the political sensitivity of these applications and an overestimation of the effectiveness of a number of management initiatives aimed at processing these legally and factually complex applications. Most of these initiatives ended in failure. As a result, Tea Party and other political advocacy groups experienced long delays in the resolution of their applications, extending in many instances for two, three or even four years.

#### **A. IRS MANAGEMENT LACKED AN APPRECIATION FOR THE SENSITIVITY AND VOLATILITY OF POLITICAL ADVOCACY APPLICATIONS**

One of the first Tea Party applications received by the IRS was flagged as a possible “high profile” case by Jack Koester, a screener in EO Determinations. (See Section VI(A).) Koester believed that the application was “high profile” because it had been submitted by an organization identifying itself as part of the Tea Party movement, a movement that was receiving substantial media coverage at the time. In addition to the potential for media interest in the application, Koester took note that the Tea Party organization indicated in its application that it was seeking to engage in political discourse, an issue that could affect its status as a tax-exempt entity.

Koester’s immediate managers, up to and including Cindy Thomas, EO Determinations Program Manager, agreed with Koester’s assessment that the application was “high profile.” Thomas elevated the application to EO Technical in Washington D.C. Shortly thereafter, Steve Grodnitzky, Acting Manager for EO Technical, concluded that the application, as well as all other applications received from Tea Party groups, met the criteria for the preparation of a SCR. The purpose of an SCR is to apprise upper management of applications that warrant their attention because they present a significant issue or raise a notable concern.<sup>116</sup> In the case of the Tea Party applications, the issue was that the applications could attract significant media and Congressional attention. Carter Hull, a Tax Law Specialist in EO Technical, was assigned the

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<sup>116</sup> IRM § 7.29.3.2 (July 14, 2008).



Tea Party cases and prepared the first SCR on them in April 2010. Thereafter, either Hull or Hilary Goehausen, another Tax Law Specialist in EO Technical, prepared an SCR on these applications every month until 2013.

During the summer of 2010, Tax Exempt and Government Entities (TE/GE) Division Executive Assistant Richard Daly sent monthly emails to senior IRS management that contained SCRs about important pending issues within the TE/GE divisions. The SCRs transmitted by Daly were a subset of all SCRs that had been prepared by divisions within TE/GE, and included only the issues that were deemed most necessary for elevation to upper management.<sup>117</sup> Included in Daly's messages were the SCRs about the Tea Party applications prepared by Hull on May 24, 2010, June 22, 2010, and July 26, 2010.<sup>118</sup> These SCRs identified three Tea Party organizations by name; discussed the legal issue as "whether these organizations are involved in campaign intervention"; enumerated how many similar applications had been received; and explained how employees in Cincinnati and Washington were processing the applications.<sup>119</sup>

Although the Tea Party SCR was sent multiple times directly to IRS upper management in 2010, the SCR went unnoticed:

- Division Commissioner of TE/GE, Sarah Hall Ingram, received all three of Daly's messages containing the Tea Party SCR in 2010. Ingram had no memory of reviewing any of the Tea Party SCRs sent to her, asserting that "I did not read these [Tea Party SCRs]."<sup>120</sup> She explained that this was not out of the ordinary; Ingram routinely disregarded SCRs as she did "not personally [find] them particularly useful documents."<sup>121</sup> Instead of reading the SCRs herself, Ingram "relied on [the TE/GE] directors to bring me the ones they thought they were worried about."<sup>122</sup>
- Deputy Commissioner of TE/GE, Joseph Grant, also received all three of Daly's messages containing the Tea Party SCR in 2010. Grant viewed SCRs as "a heads up or an awareness of something that was going on," but, like Ingram, Grant did not routinely read them.<sup>123</sup> Although he received three Tea Party SCRs in 2010, Grant claimed that he was not aware of the Tea Party applications in 2010.<sup>124</sup>
- Assistant Deputy Commissioner for Services & Enforcement (S&E), Nikole Flax, received two of Daly's messages containing the Tea Party SCR. One of Flax's duties

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<sup>117</sup> SFC Interview of Sarah Hall Ingram (Dec. 16, 2013) pp. 44-45.

<sup>118</sup> Email from Richard Daly to Jennifer Vozne and others (June 6, 2010) IRS0000163997-4013 (email attachments containing taxpayer information omitted by Committee staff); Email from Richard Daly to Jennifer Vozne, Nikole Flax and others (July 1, 2010) IRS0000164020-43; Email from Richard Daly to Sarah Ingram and others (Aug. 5-6, 2010) IRS0000164044-72 (email attachments containing taxpayer information omitted by Committee staff).

<sup>119</sup> *Id.*

<sup>120</sup> SFC Interview of Sarah Hall Ingram (Dec. 16, 2013) p. 42.

<sup>121</sup> *Id.* p. 44.

<sup>122</sup> *Id.* p. 42.

<sup>123</sup> SFC Interview of Joseph Grant (Sep. 20, 2013) pp. 13-14.

<sup>124</sup> *Id.* p. 11.

was to review incoming SCRs and inform the Deputy Commissioner for S&E, Steven Miller, of the most significant issues.<sup>125</sup> Flax had no recollection of reviewing either of the Tea Party SCRs sent to her in summer 2010 or discussing them with Miller.<sup>126</sup> Miller also had no memory of reviewing these SCRs in 2010 or discussing them with Flax.<sup>127</sup> Flax noted that she never met with Miller to discuss SCRs.<sup>128</sup>

These IRS upper-level managers, by virtue of the positions they held, had the authority and the responsibility to ensure that the applications for exemption filed by Tea Party and other political advocacy groups did not languish in a bureaucratic morass. They were uniquely positioned to shape and direct the IRS's response to the influx of applications for exemption by Tea Party and other political advocacy groups first seen in 2010. Since they either did not bother to read the SCRs sent to them in 2010 or had no recollection of having read them, they forfeited the opportunity to exert their management influence to ensure that the applications were being properly processed. Each of these managers also told Committee Staff that they did not learn about the delays and other processing issues that Tea Party and other political advocacy groups had encountered until 2012, when media reports and Congressional inquiries regarding those processing issues began to appear. By that time, they were essentially managing a crisis.

Other managers like Lois Lerner, Rob Choi, Director of Rulings and Agreements, and Holly Paz, EO Technical Manager and later Director of Rulings and Agreements, all were aware of the Tea Party SCRs early in 2010.<sup>129</sup> Yet they simply failed to recognize the sensitivity of the applications and the potential for adverse media and Congressional reaction if those applications were not resolved in a reasonable period of time. Perhaps this failure to appreciate the sensitivity of the political advocacy applications was best summarized by Nikole Flax, who was asked by Committee Staff if the IRS was looking at the issue of political campaign intervention by 501(c)(4) organizations in 2010. Flax responded that "I wasn't aware that this was, like, a big issue at the time; that that was a bigger issue than all of the other sensitive issues that EO was dealing with."<sup>130</sup>

The volatility of these applications appears to have been better understood by staff-level employees than by their managers. For example, Elizabeth Hofacre, an EO Determinations agent, stated to Committee Staff that "because of the nature of these cases, the high profile characteristics, that it could really have, you know, imploded."<sup>131</sup> Hofacre likened working with

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<sup>125</sup> SFC Interview of Steven Miller (Dec. 12, 2013) pp. 37-39.

<sup>126</sup> SFC Interview of Nikole Flax (Nov. 1, 2013) p. 30.

<sup>127</sup> SFC Interview of Steven Miller (Dec. 12, 2013) p. 39.

<sup>128</sup> SFC Interview of Nikole Flax (Nov. 1, 2013) p. 34.

<sup>129</sup> Holly Paz experienced a rapid climb through the management ranks in EO. She was hired by the IRS in 2007 and thereafter promoted or assigned to the following management positions within EO: Manager of EO Guidance Group 2 in July 2008; Acting Manager of EO Technical in September 2009; Manager of EO Technical in September 2010; Acting Director of Rulings and Agreements in January 2011; and Director of Rulings and Agreements in May 2012.

<sup>130</sup> SFC Interview of Nikole Flax (Nov. 21, 2013) p. 33.

<sup>131</sup> SFC Interview of Elizabeth Hofacre (Sep. 24, 2013) p. 69.

the Tea Party cases during the period in 2010 when no determinations were being made on the applications to “[w]alking through a mine field.”<sup>132</sup>

In the context of the Tea Party and other political advocacy applications, the identification of applications as “sensitive” or “high profile” and the preparation of SCRs proved to be no more than a paper exercise. The managers who had the responsibility and the authority to oversee the processing of the applications and who were the intended recipients of the information in the SCRs, either elected to ignore the SCRs and thus missed the opportunity to ensure that the IRS properly managed this workload, or failed to recognize the sensitivity of the applications and take steps early in the process to develop a plan to address their resolution.

Moreover, placing the Tea Party and other political advocacy applications on the SCR subjected those applications to further delays by requiring that they undergo additional levels of review. (See Section VI(A)(5).) The managers – who either did not recognize the sensitivity of the applications or who did not make the effort to keep informed of issues that could adversely impact taxpayers or the IRS – effectively nullified the salutary effects of the SCR process, while leaving in place those parts of the SCR process that could delay resolution of the applications.

#### **B. IRS MANAGEMENT ALLOWED EMPLOYEES TO USE INAPPROPRIATE SCREENING CRITERIA THAT FOCUSED ON APPLICANTS’ NAMES AND POLICY POSITIONS**

Since the early 2000s, the IRS used various methods to alert EO employees of important issues that could arise when reviewing incoming applications for tax-exempt status. (See Section V.) In 2010, EO Determinations managers consolidated several lists of current and past issues into a single document, called the BOLO list or spreadsheet, an acronym for Be On the Lookout. From August 2010 until May 2013, the BOLO spreadsheet was distributed to all EO Determinations employees, who used it as a reference tool when screening and reviewing applications for tax-exempt status. The BOLO spreadsheet was comprised of five “tabs”:<sup>133</sup>

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<sup>132</sup> *Id.*

<sup>133</sup> Heightened Awareness Issues (undated) IRS0000557291-308.

Tab Name	Tab Characteristics / Purpose
Emerging Issues	<ul style="list-style-type: none"> <li>• Groups of applications for which there is no established case law or precedent</li> <li>• Issues arising from significant current events (excluding disaster relief organizations)</li> <li>• Issues arising from changes to tax law or other significant world events</li> </ul>
Watch List	<ul style="list-style-type: none"> <li>• Applications have not yet been received</li> <li>• Issues were the result of significant changes in tax law or world events and would require “special handling” by the IRS when received</li> </ul>
TAG (also referred to as Potential Abusive)	<ul style="list-style-type: none"> <li>• Abusive tax avoidance transactions including abusive promoters and fake determination letters</li> <li>• Activities that were fraudulent in nature including: applications that materially misrepresented operations or finances, activities conducted contrary to tax law (e.g. Foreign Conduits)</li> <li>• Applicants with potential terrorist connections</li> </ul>
TAG Historical (also referred to as Potential Abusive Historical)	<ul style="list-style-type: none"> <li>• TAG issues that were no longer encountered, but that were of historical significance</li> </ul>
Coordinated Processing	<ul style="list-style-type: none"> <li>• Multiple applications grouped together to ensure uniform processing</li> <li>• Existing precedent or guidance does not exist</li> </ul>

The BOLO spreadsheet itself was not problematic; on the contrary, if used properly, it could have been an effective way for management to communicate important directives to employees.

A managerial failure occurred when the initial BOLO spreadsheet was distributed in August 2010 containing a “Tea Party” entry that TIGTA found to be “inappropriate,” because the mere use of the words “Tea Party” should not have been enough to trigger review. At that time, EO Determinations managers up to, and including, Cindy Thomas were aware of the “Tea Party” entry.<sup>134</sup> The problematic “Tea Party” entry under the Emerging Issues tab of the spreadsheet read as follows: “[t]hese cases involve various local organizations in the Tea Party movement [that] are applying for exemption under 501(c)(3) or 501(c)(4).”<sup>135</sup> The BOLO spreadsheet

<sup>134</sup> SFC Interview of Cindy Thomas (July 25, 2013) p. 67.

<sup>135</sup> Email chain between Holly Paz, Lois Lerner and Nikole Flax (May 21, 2012) IRS0000352978-84.

directed agents to send Tea Party applications to Group 7822 and specified that Elizabeth Hofacre was the coordinator. A similar “Tea Party” entry remained on every subsequent version of the BOLO spreadsheet until July 2011.

During that time, EO Determinations employees also screened incoming applications using words related to the Tea Party, such as “Patriots” and “9/12.” As a result of these practices, every incoming application from a Tea Party or related conservative organization was sent to Group 7822 for further review – whether or not it reflected potential political campaign intervention – which ultimately resulted in heightened scrutiny and extended delays.

The versions of the BOLO spreadsheet that were circulated in 2010 and 2011 also contained entries describing “Progressive” applicants on the TAG Historical tab of the spreadsheet, as well as “ACORN Successors” on the Watch List tab of the spreadsheet. (See Section V(C).)

Paz and Lerner, who comprised upper-level EO management in Washington, D.C., claimed that they were unaware of the “Tea Party” BOLO spreadsheet entry until July 2011. As managers who were ultimately responsible for how the approximately 300 employees in EO Determinations reviewed incoming applications, this represents another significant management failing. Lerner, in particular, demonstrated a lack of understanding about how EO Determinations employees performed their day-to-day jobs, which hampered her ability to effectively manage EO.<sup>136</sup>

Following a meeting in July 2011, Lerner directed that the “Tea Party” BOLO criteria be changed to neutral language that identified activities of applicants, instead of policy positions or names of specific organizations. Although this successfully removed the inappropriate criteria that had been on the BOLO spreadsheet for almost a year, as discussed below, this ultimately resulted in a broader class of applicants across the political spectrum being flagged, delayed, and scrutinized.

The neutral criteria did not last for long. In January 2012, EO Determinations Group Manager Steve Bowling modified the BOLO spreadsheet to include policy terms intended to capture incoming applications from Tea Party organizations, and organizations affiliated with the Occupy Wall Street movement. Thomas approved these changes, as they did not identify any organizations by name. However, TIGTA determined – and we agree – that the January 2012 BOLO spreadsheet entry was also inappropriate.<sup>137</sup>

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<sup>136</sup> IRS management above Lerner uniformly claimed that they were unaware of the BOLO or any criteria on the document until May 2012 at the earliest. It is less obvious whether these managers should have taken a more active role in supervising how EO handled incoming applications for tax-exempt status; arguably, upper-level managers in TE/GE should have also been involved in decisions affecting large numbers of taxpayers.

<sup>137</sup> In January 2012, Bowling also added a separate BOLO entry for “‘Occupy’ Organizations” on the Watch List tab of the BOLO. TIGTA’s report did not discuss whether this entry was inappropriate.

Lerner and Paz again claimed that they were not aware of the problematic change on the BOLO spreadsheet until several months later. At that point, Lerner and Paz corrected the criteria and implemented new procedures that required all BOLO spreadsheet changes to be approved by Thomas. These events illustrate yet another failing of management: neglecting to oversee a process that they knew was wrought with problems, and only implementing controls after more damage had been done.

### **C. IRS MANAGEMENT FAILED TO DEVELOP AN EFFECTIVE PLAN FOR PROCESSING APPLICATIONS FOR POLITICAL ADVOCACY GROUPS**

Despite a number of attempts over a three-year period, EO management was never able to develop a cohesive, effective approach for the processing of the Tea Party and other political advocacy applications. Instead, the period from 2010 to 2013 was marked by a series of under-planned, under-supported and under-executed initiatives that individually and collectively proved inadequate to bring the applications to resolution.

#### **1. IRS Management Placed Exclusive Reliance on Test Cases for Too Long**

The initial plan developed by Cindy Thomas in conjunction with Holly Paz in February 2010 was for EO Technical to develop two Tea Party “test cases.” (See Section VI(A)(3).) EO Technical staff would then use its experience working these cases to provide guidance to EO Determinations agents so that those agents could process the balance of the then-pending Tea Party applications. That plan proved to be inadequate.

Carter Hull developed the two test cases, but took eight months to draft memos containing his findings. Those findings were then subjected to a variety of reviews from Elizabeth Kastenbergh, a Tax Law Specialist in EO Technical, in January 2011, Judith Kindell, a Senior Technical Advisor to the EO Director, in April 2011, and eventually staff of the Office of the Chief Counsel in August 2011. By the time Kindell reviewed Hull’s recommendations in April 2011, the initiative to work the two test cases was already more than one year old. Kindell expressed neither agreement nor disagreement with Hull’s views, but simply recommended an additional round of review by the Office of the Chief Counsel. The Office of the Chief Counsel, in turn, recommended further factual development of the organizations’ activities. Consequently, the IRS was not much closer to reaching resolution on the two test cases in August 2011 than it had been in April 2010.

It appears that only Cindy Thomas recognized that reliance on development of the two “test cases” alone was misplaced and that a more comprehensive plan was needed to move the applications that were forming a backlog in EO Determinations. Thomas told Paz in October 2010 that “we are just ‘sitting’ on these applications” and that “we need to coordinate these cases

as a group ... ”<sup>138</sup> Thomas asked Paz to meet with her “to discuss the approach that is being used and come up with a process so we can get these cases moving ... .”<sup>139</sup> Instead, Paz assured her that the test cases would be resolved soon, since Kindell would review Hull’s recommendations.<sup>140</sup>

Thomas’s concerns, coupled with a lack of results from Hull’s efforts to resolve the test cases, and the mounting backlog of undecided applications, should have prompted Paz, at some point in the continuum between April 2010 and August 2011, to look for another solution for developing the guidance required by EO Determinations to resolve the political advocacy applications. Instead of heeding the call sounded by Thomas in October 2010, Paz simply elected to press on with development of the test cases. As an added measure, Paz enlisted the assistance of yet another reviewer, Kindell, who was generally regarded as a slow worker. Indeed Paz herself told the Committee that Kindell “had a reputation of having difficulty with deadlines and taking a lengthy period of time on cases.”<sup>141</sup> Paz’s decision to continue with the test cases and involve Kindell caused months of additional delays and never yielded any useful guidance that could be passed on to EO Determinations.

## **2. Lois Lerner’s July 2011 Solution to Resolve the Political Advocacy Applications was Flawed and Ineffective**

In a July 2011 meeting, Lerner was apprised of the extent of the backlog of Tea Party applications – which had grown to nearly 100 – and of the criteria being used by the screeners to identify Tea Party applications. (See Section VI(B)(2).) At that time she was also aware that many of these applications dated back to late 2009 and early 2010, since Steve Grodnitzky had informed her as early as April 2010 of the existence of the Tea Party applications. Grodnitzky also informed Lerner in April 2010 that there were 15 Tea Party applications then pending resolution.

At the time of the July 2011 meeting, many of the Tea Party applications were nearly a year-and-a-half old. Furthermore, the two test cases were nowhere near completion after 15 months of effort by Hull, Kastenbergh and Kindell. Amid this backdrop, Lerner concluded, and Paz concurred, that the IRS should continue with the plan to develop the test cases. Lerner also concurred with Kindell that the recommendations on the test cases should be reviewed by the Office of the Chief Counsel, an organization known for taking substantial periods of time to respond to requests for assistance.<sup>142</sup>

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<sup>138</sup> Email from Cindy Thomas to Holly Paz (Oct. 26, 2010) IRS0000435238-39.

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> SFC Interview of Holly Paz (July 26, 2013) p. 166.

<sup>142</sup> SFC Interview of Steve Grodnitzky (Sep. 25, 2013) p. 145.

Additionally, Lerner agreed with her staff's recommendation that EO Technical prepare a guidesheet containing information and directions that would help EO Determinations agents process the potential political advocacy applications. Lerner also directed that the name "Tea Party" be removed from the BOLO list, a move that did nothing to help get the political advocacy applications resolved. In fact, the Lerner-directed name change in the BOLO from "Tea Party" to "Advocacy Orgs." only exacerbated the backlog by enlarging the universe of applications being systematically selected and placed on hold in the advocacy inventory from just Tea Party applications to organizations of every political (and in some cases non-political) stripe.

Lerner's decisions belie a lack of concern over the mounting numbers of political advocacy applications and their increasing age. Her decision to proceed with a guidesheet was, at best, a band-aid solution for the escalating number of unresolved political advocacy applications.

Committee staff found little evidence of further active involvement by Lerner in the matter of the political advocacy applications until February 2012. This may have reflected Lerner's belief that her July 2011 management directives were sufficient to resolve the mounting backlog and alleviate the long delays endured by many groups. In February 2012, the media started reporting on Tea Party and other political advocacy groups that received burdensome development letters. Spurred by these media reports and by complaints from constituents, Congressional interest in the IRS's handling of Tea Party and political advocacy applications also began to collect momentum. (See section IV(C).)

Both Lerner and Paz were caught unaware by these media reports and Congressional inquiries. Paz told Committee staff that "[e]veryone I think sort of became aware of it at the same time because of the press coverage. We all saw the letters through the press coverage."<sup>143</sup> The fact that Lerner and Paz were made aware by media reports that EO Determination employees were sending inappropriate and sometimes intrusive development letters to Tea Party and other political advocacy groups demonstrates their lack of management oversight regarding the processing of these applications, a serious abdication of their responsibilities as the senior managers within EO.

### **3. The 2011 Triage of Political Advocacy Applications Was Not Properly Supported by EO Management and Predictably Failed**

In September 2011, Cindy Thomas proposed to Holly Paz the idea of having EO Technical perform a "triage" on the political advocacy applications then pending in EO Determinations. (See Section VII(E).) This initiative appears to have resulted from Thomas's concern with EO Technical's inability to provide the guidance necessary to resolve the Tea Party and other political advocacy applications, guidance that she had first requested from Paz in February 2010.

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<sup>143</sup> SFC Interview of Holly Paz (July 26, 2013) p. 144.



Thomas asked that Paz assign someone knowledgeable to triage the nearly 160 backlogged political advocacy applications then awaiting development and decision in EO Determinations. While the idea to perform a triage of the applications was a precursor to the 2012 “bucketing” exercise that actually resulted in the resolution of a number of applications, unlike that later effort, this one was seriously under-supported by EO management.

Paz determined that Hillary Goehausen would perform the triage with assistance from Justin Lowe, a Tax Law Specialist in EO Guidance, and would review the applications in an electronic repository referred to as “TEDS” (Tax Exempt Determination System). At the time of this determination, Hillary Goehausen was relatively new to the IRS, having been hired as a Tax Law Specialist in EO Technical in April of that year. Accordingly, Paz assigned a relatively junior employee to undertake this important review. Unfortunately, the entire application package with supporting documents was not in TEDS so, for many of the applications, Goehausen reviewed an incomplete record. While Goehausen appears to have done a credible job with the limited information that she had to work with, her recommendations on the applications did not carry the level of certainty that Thomas required to actually begin rendering decisions. Paz described Goehausen’s recommendation to Committee Staff as follows: “[s]o I believe her advice was caveated that before Determinations ... issued a letter they should look and see if there was anything that had come in subsequently that ... could perhaps change that answer.”<sup>144</sup> Accordingly, Thomas found the recommendations to be of little or no use.

Had this triage been properly supported with additional staff to assist Goehausen, and had she reviewed the entire record instead of just a part, the recommendations for each application would have been more useful to Thomas. The triage presented Paz with a prime opportunity to bring some of these applications to resolution months, and in some cases years, before they were ultimately decided. Instead, Paz allowed the opportunity to slip away by inadequately staffing the initiative and further limiting the review to an incomplete set of records. Failure of this initiative contributed to the growing backlog of political advocacy applications and the mounting delays experienced by applicants.

#### **4. Lack of EO Management Oversight of the Political Advocacy Applications Allowed Development of the Guidesheet to Simply Stop in November 2011**

Goehausen and Lowe were tasked by Michael Seto, Manager of EO Technical, with developing a “guidesheet” in July 2011. (See Section VII(D).) The guidesheet was intended to contain information and directions that would assist EO Determinations agents process political advocacy applications. Goehausen and Lowe completed a draft of the guidesheet in September 2011 and circulated it to certain staff and managers for comment. Having received comments from only Hull, Goehausen sent the guidesheet out for comment again in early November. Several days later, David Fish, then Acting Director of Rulings and Agreements, decried the

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<sup>144</sup> *Id.* p. 135.

guidesheet as unworkable in its current form and “too lawyerly.”<sup>145</sup> At that point in time, it appears that further work by EO Technical to refine the guidesheet simply ceased.

It does not appear that management made any attempt to resume the process of completing the guidesheet again until February 2012. At that time, Lerner was called to Capitol Hill to explain to Congressional staff concerns about inappropriate and sometimes intrusive development letters received by constituents of a Congressman. During her meeting with Congressional staff, Lerner offered that EO had developed a guidesheet. Congressional staff requested a copy. Since development of the guidesheet had effectively ceased in November 2011, Lerner sought to expedite its completion so that she could comply with the request by Congressional staff. However, the guidesheet was never completed, as it was eventually superseded by a decision to instead train EO Determinations staff in May 2012 on processing political advocacy applications. Allowing development efforts on the guidesheet to simply stop in November 2011 represented yet another serious lapse in oversight by EO management.

Development of the guidesheet itself was an abject failure and again demonstrated the seeming indifference of EO management to finding a processing solution that would bring the political advocacy applications to resolution. As noted above, development of the guidesheet commenced in July 2011 and was terminated in May 2012. Over that period of time, and despite numerous attempts, staff of EO Technical with assistance from staff of the Office of Chief Counsel was unable to deliver a written guide on processing political advocacy applications that could be used by non-attorney EO Determination agents. EO management’s inability to harness its resources to produce a solitary deliverable on a subject for which EO is a source of authority further demonstrated its lack of competence.

##### **5. EO Management Allowed the Advocacy Team to Process Political Advocacy Applications Without Proper Training and Support, and Failed to Adequately Manage Its Activities**

In December 2011, EO formed an “Advocacy Team” to develop and decide the political advocacy applications. This project resulted in yet another failed attempt to reduce the backlog of applications. (See Section VII(F).) Like the triage of 2011, the Advocacy Team appears to have been a Thomas-inspired initiative. Thomas appears to be the only manager within EO who expressed concern with the time that the applications were pending resolution and who translated that concern into palpable action.

While Thomas’s idea to form the Advocacy Team was well-intentioned, unfortunately, she failed to properly manage its activities. Instead, she entrusted that responsibility to Steve Bowling, a first-line manager, and Stephen Seok, an EO Determinations employee, who both proved wholly inadequate for the task. Under the direction of Bowling and Seok, the Advocacy Team failed to

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<sup>145</sup> *Id.* pp. 132-33.

bring a single case to resolution until the “bucketing” exercise of May 2012. However, the Advocacy Team will be most remembered for its attempts to extract extraneous information from applicants through incredibly burdensome and onerous development letters. A share of the blame for the failure of the Advocacy Team must also go to EO Technical, which was responsible for providing technical guidance to the Advocacy Team. It is unclear to what extent, if any, EO Technical actually provided guidance to the Advocacy Team. What is clear is that EO management exercised little or no coordination and oversight over the activities of the Advocacy Team, thereby allowing it to issue oppressive development letters until that practice was halted in February 2012 by Lois Lerner.

#### **6. Although the “Bucketing” Exercise of 2012 Resolved Many Pending Political Advocacy Applications, the IRS Has Not Yet Issued Determinations for Some Applications**

One positive development that can be attributed to the Advocacy Team’s inappropriate and sometimes intrusive development letters was that they created intense media and Congressional interest in the complaints voiced by Tea Party and other political advocacy groups who were receiving these letters. This attention, in turn, sounded the “wake-up” call for upper IRS management, like Steve Miller. Once Miller became aware of the problem regarding the development letters, he ordered Nancy Marks, a Senior Technical Advisor, to conduct an internal investigation aimed at finding out what was going on in EO Determinations. (See Section VII(H).)

Upon getting a report back from Marks, Miller approved her suggestion to perform a “bucketing” exercise where a team of EO Technical Tax Law Specialists and EO Determinations agents scrutinized each application and its supporting documents to identify the applications that could be readily approved, those that required minor development before approval, and those that required further development. As a consequence of the bucketing exercise, a significant number of the Tea Party and other political advocacy applications were finally decided.

While the bucketing exercise was the first successful attempt to process some of the political advocacy applications, it came too late for many groups that had waited years and eventually ceased operating because they lacked approved tax-exempt status from the IRS. Moreover, the “bucketing” exercise did not resolve all backlogged political advocacy applications, as the IRS informed Committee Staff that 14 percent of the 298 political advocacy cases identified by TIGTA remained unresolved in March 2014. As of April 2015, 10 of these applications were still pending resolution. A number of those applications date back to 2010. Indeed, the Albuquerque Tea Party, one of the original test cases assigned to Carter Hull in April 2010, was still awaiting a determination as of April 2015. Accordingly, while substantial progress has been made since 2010 to reduce the backlog of political advocacy applications, IRS management has not yet been able to bring all of these applications to closure.

#### **D. THE IRS PLACEMENT OF LEFT-LEANING APPLICANTS ON THE BOLO LIST RESULTED IN HEIGHTENED SCRUTINY, DELAY AND INAPPROPRIATE AND BURDENSOME INFORMATION REQUESTS**

While most of the potentially political applications that the IRS set aside for heightened scrutiny were Tea Party and conservative groups, the IRS also flagged some left-leaning tax-exempt applicants for processing. In order to centralize these cases for review and processing, names and descriptions of several left-leaning groups were placed on the BOLO spreadsheet. Moreover, IRS employees were instructed in a training workshop to set aside applications received from several left-leaning organizations and to subject them to secondary screening. Some left-leaning applicants experienced lengthy processing delays and inappropriate and burdensome requests for information. (See Section VIII.)

##### **1. The IRS Instructed Employees to Flag “Progressive,” “Emerge,” and ACORN Successor Applications at Training Workshops.**

In the summer of 2010, the IRS EO Determinations office held training workshops where IRS employees were instructed to screen a wide range of potentially political applications. In addition to instructing screeners to flag applicants with names like “Tea Party,” “Patriots,” and “9/12 Project,” the screeners were also instructed to look for the names “Progressive,” and “Emerge,” and to be on the lookout for successors to disbanded Association of Community Organizations for Reform Now (ACORN) organizations.

##### **2. The IRS Placed the Terms “Progressive,” “ACORN,” and “Occupy” on the BOLO List**

Numerous iterations of the BOLO spreadsheet included the terms “Progressive,” “ACORN,” and “Occupy,” from August 2010 through July 2012. The term “Progressive” appeared on the BOLO spreadsheet tab titled TAG Historical or Potentially Abuse Historical, indicating that IRS employees no longer encountered applications with this term, but that the term still had historical significance. “ACORN Successors” appeared on the Watch List tab of the BOLO spreadsheet after an internal IRS research report concluded that ACORN may have engaged in activities inconsistent with its tax-exempt status. “Occupy” was placed on the BOLO spreadsheet under the Watch List tab after IRS Determinations employees noticed a news article that reported organizations affiliated with the Occupy movement were seeking tax-exempt status.

##### **3. IRS Scrutiny of Left-Wing Applicants Resulted in Years-Long Delays and Burdensome Information Requests**

The Committee found several examples of ACORN-affiliated and Emerge applicants that were delayed for over three years. The press also reported examples of delayed processing for left-leaning groups such as Alliance for a Better Utah and Progress Texas. Of the 27 organizations

that the IRS inappropriately requested information concerning their donors, at least three of those groups were left-leaning.

## **E. THE CULTURE IN EO CONTRIBUTED TO A LACK OF EFFICIENCY IN ITS OPERATIONS**

EO Management tolerated and even fostered a culture that was not conducive to efficient and effective operations. Lacking a sense of customer service, EO Management operated without regard to the effect of its actions on applicant organizations. Remote management and telework in EO Determinations may have impeded communications and coordination between its employees. Further, a pervasive atmosphere of antipathy existed between the Cincinnati and Washington D.C. offices of EO, fueled largely by the words and actions of Lois Lerner. Lastly, the culture within EO permitted a manager with no technical training in the subject matter area over which she exerted supervisory authority to remain in her job for nearly a decade.

### **1. EO Management Lacked a Sense of Customer Service**

The IRS mission statement reads as follows:

Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

While the mission statement pledges taxpayers much in regard to customer service, the IRS's recent record of processing political advocacy applications would suggest that many taxpayers received far less than promised.

Indeed, Committee Staff found little to suggest that EO management was concerned with the concept of customer service. Rather, EO management's focus was steadily centered on taking whatever actions it felt necessary to develop applications with the goal of obtaining sufficient information to support decisions (a goal that it has yet to achieve for some applications), even if that goal took years to achieve. While no one can fault EO management's desire to "get it right," the difficulty was that EO management struggled to find a method of doing so, even with multiple rounds of detailed development letters spanning over a number of years. Moreover, other than Cindy Thomas, EO management did not appear to be concerned with how its processing of applications might adversely affect the operations of the organizations awaiting the IRS's determination.

The IRS's treatment of the two test cases illustrates its customer service failings. The application for American Junto was closed in 2012 for failure to respond to a development letter. More accurately, the IRS sent American Junto three sets of development letters over a two-year period which caused its founders to give up on the notion of securing tax-exempt status and dissolve the organization. In an interview with a news agency, one of the founders of the group stated that

“[w]e never got it off the ground ... and the IRS is a large reason for that.”<sup>146</sup> As of April 2015, the second test case, Albuquerque Tea Party, was still awaiting a decision from the IRS on its application which it first filed in December 2009.

EO Technical Group Manager Steven Grodnitzky told Committee Staff the following:

Q. ... [D]id you ever hear anybody at the IRS express any concern about the effect of this processing of these cases on these organizations? Did anybody say anything about it?

A. Not – to my personal recollection.

\* \* \*

Q. ... Were you at all concerned about the fact that these cases, these organizations were – were either dissolving or not responding to the requests for development? Did that give you any sense for maybe there was not good customer service here to these organizations?

A. If an organization decided not to respond for whatever reason, that’s their prerogative. And our policy and rules are if they don’t respond to a particular letter, we close it out FTE ...<sup>147</sup>

Recognizing the impact that an organization’s “process” may have on its customers and then tailoring that process to minimize potential adverse effects would seem like a necessary and reasonable way to provide good customer service. It is abundantly clear from Grodnitzky’s statements that EO management was not concerned at all with the adverse impact that organizations could experience if the IRS took years to process and decide their applications.

Cindy Thomas told Committee Staff that the work plan goal for closing applications for exemption under 501(c)(4) was 158 days, or approximately 5 months.<sup>148</sup> Holly Paz was asked if three or four years between receipt of an application and decision was normal. Paz stated to Committee Staff that “[i]t’s not the norm.”<sup>149</sup> However, Paz also told Committee Staff that she was aware of instances in which applicants waited four or five years for a decision on their applications for tax-exempt status.<sup>150</sup>

EO managers and employees routinely ignored the established IRM guidelines, which specify deadlines at various stages throughout the application process. For example, when an EO

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<sup>146</sup> USA Today, Short-lived Ohio Group was early test case for IRS (Sep. 23, 2013).

<sup>147</sup> SFC Interview of Steven Grodnitzky (Sep. 25, 2013) pp. 135-37. “FTE” stands for “Failure to Establish,” which refers to applicants that stop responding to IRS communications and are deemed to have constructively withdrawn from the application process.

<sup>148</sup> SFC Interview of Cindy Thomas (July 25, 2013) pp. 186-87.

<sup>149</sup> SFC interview of Holly Paz (July 26, 2013) p. 11.

<sup>150</sup> *Id.*

Determination employee decides that more information is needed about an application, the IRM allows five workdays to prepare and mail a development letter to the applicant.<sup>151</sup> Numerous Tea Party and political advocacy organizations heard nothing from the IRS for a year or more while their applications were pending, and then received a lengthy development letter seeking more information. This is but one example of EO employees failing to follow established deadlines and managers failing to enforce them.

When asked about the long delays experienced by Tea Party and other political advocacy groups seeking tax exemption, Nikole Flax stated her views as follows:

“And I agree that was a problem. I mean, yes. And those are the problems that we were focused on, is all the organizations that ended up in the centralization, where they sat too long. I mean, I’m not defending any of that. That, in my mind, is the biggest offensive thing, is like, cases should not sit for 2 or 3 years or whatever they did. I mean, there is no excuse for that.”<sup>152</sup>

While Flax’s statements are an encouraging sign that someone at the IRS recognizes that EO owes taxpayers seeking exemption better customer service than they have recently received, the facts appear to suggest that her views are not universally shared within EO. Indeed, as of March 2014, nearly a year after TIGTA released its report on the IRS’s use of inappropriate criteria to identify tax-exempt applications for review, more than 20 percent of the political advocacy applications that were centralized between the years 2010 and 2013 were still awaiting a decision from the IRS. As indicated in the chart below, by April 2015, the IRS still had not rendered a decision on 10 of those political advocacy organizations.<sup>153</sup>

#### Disposition of Centralized Political Advocacy Applications

Date	Total Apps Centralized	Open/Pending	Resolved
<b>Dec. 31, 2010</b>	89	88	1
<b>Dec. 31, 2011</b>	290	288	2
<b>Dec. 31, 2012</b>	487	319	168
<b>Dec. 31, 2013</b>	542	158	384
<b>Dec. 31, 2014</b>	547	17	530
<b>Apr. 1, 2015</b>	547	10	537

<sup>151</sup> IRM § 7.20.2.4.2 (Nov. 1, 2004).

<sup>152</sup> SFC Interview of Nikole Flax (Nov. 21, 2013) p. 135.

<sup>153</sup> Based on data provided to the SFC by the IRS (Apr. 8, 2015).

## **2. Remote Management and Workplace Flexibilities Affected the Efficiency of EO Determinations**

From 2010 to 2013, EO Determinations in Cincinnati consisted of 13 Groups, each led by a Group Manager. Each Group consisted of approximately 12 EO Determinations agents. While many of EO Determinations' personnel were located in Cincinnati, there were a number of EO Determinations Groups situated in other locations across the United States, such as El Monte, California, Sacramento, California, Laguna Niguel, California, and Baltimore, Maryland. Agents in these Groups performed the same tasks as the agents located in Cincinnati, which included reviewing, developing and making recommendations on the disposition of applications for tax-exempt status.

While the EO Determinations offices were geographically dispersed, so was the management chain. For example, Sharon Camarillo, an EO Determinations Area Manager from 2002 to 2010, had responsibility in 2010 for eight Groups, five of which were located in Cincinnati, two of which were located in El Monte, California, and one of which was located in Sacramento, California. For a portion of the time Camarillo was an Area Manager, she was located in Los Angeles. In 2010, she was located in El Monte, California, together with two of the eight Groups that she supervised. Camarillo reported to Cindy Thomas, Program Manager of EO Determinations, who was located in Cincinnati. In 2010, Camarillo oversaw Group 7822 located in Cincinnati – the Emerging Issues Group managed by Steve Bowling, which was responsible for the processing of Tea Party and other political advocacy applications.

In addition to the dispersal of offices, staff and managers located throughout the country and time zone variances between offices, communications and coordination within EO Determinations may also have been affected by telework. For example, Gary Muthert, a screener in the Screening Group headed by John Shafer, told Committee Staff that he worked from home four days a week. Shafer, his manager, also worked from home two days a week. Steve Bowling, another Group Manager told Committee Staff that he worked from home 2 to 3 days a week. Shafer indicated that every one of the 13 screeners who worked in the screening Group worked from home up to a maximum of four days per week, in accordance with the terms of a collective bargaining agreement. Regarding all other employees in EO Determinations, Shafer told Committee Staff the following:

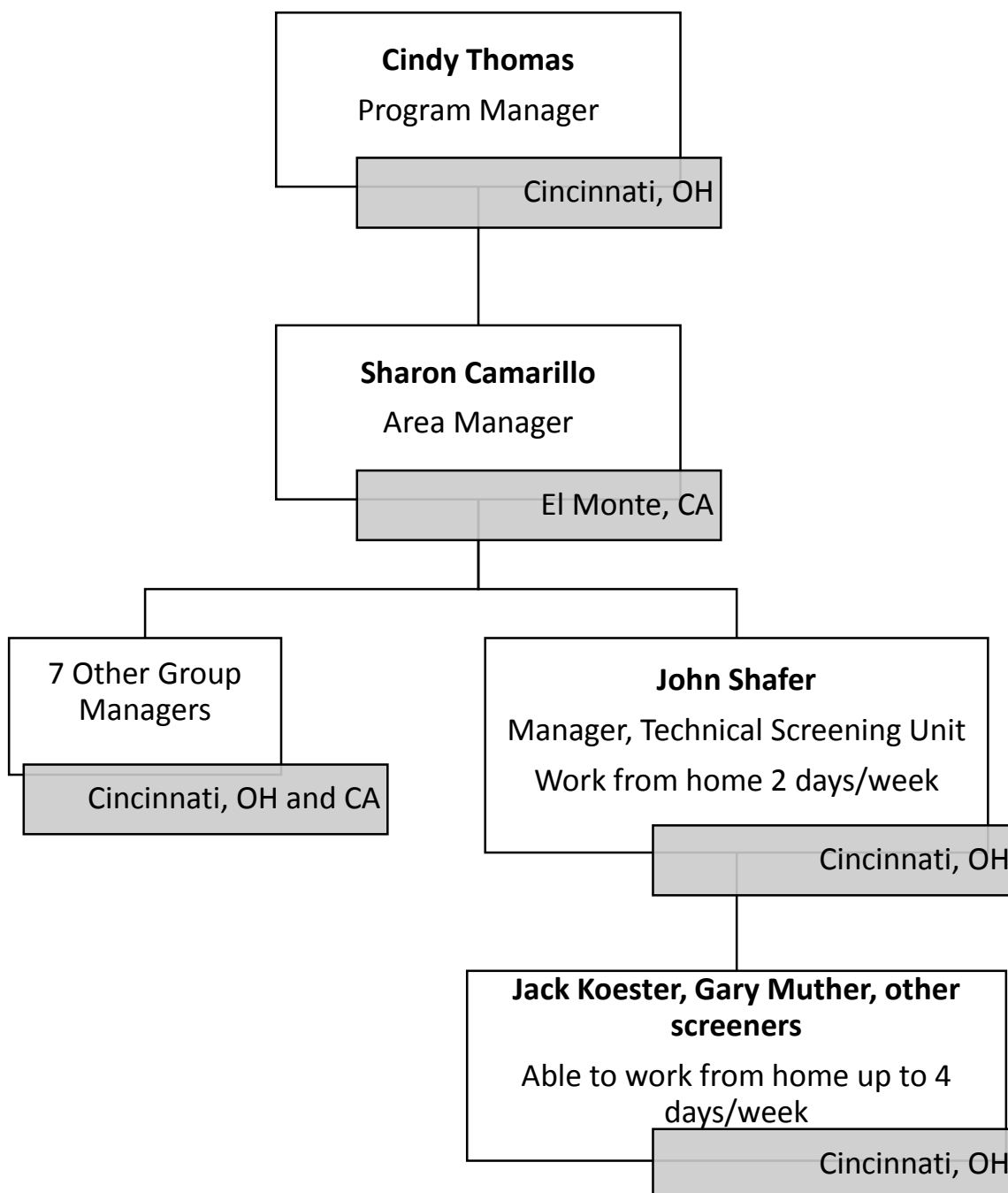
- Q. And the other employees that were in the EO Determinations group in Cincinnati outside the screening group, the rest of them, were they also covered by that union agreement?
- A. Yes they were. Bargaining unit folks. Not, again, the managers.
- Q. So they could have worked at home up to 4 days a week?



A. Yes.<sup>154</sup>

The following chart illustrates the difficulties that remote workplaces and telework placed on EO Determinations.

**Location of EO Determinations Employees Who Processed and Supervised Tea Party Applications in 2010**



<sup>154</sup> SFC Interview of John Shafer (Sep. 17, 2013) p. 96.

This dispersal of staff and management undoubtedly complicated communication and coordination within EO Determinations. For example, the first Tea Party application identified as a “high profile” case by Jack Koester, a screener in EO Determinations, was sent by Koester to his manager, John Shafer, who was located in Cincinnati. Shafer then alerted Camarillo in California that the application had been received. Camarillo, in turn, apprised Thomas in Cincinnati of the development and sought guidance on how to handle the application. Camarillo not only contended with the geographic challenges of managing employees spread across the country and communicating with her superior who was in another locale, but also had to surmount the differences in time zones between her office and that of many of her employees and her supervisor. The circuitous path that information between staff and the various levels of management travelled surely hindered communications in EO Determinations.

Telework unquestionably serves a legitimate purpose. However, the pervasiveness of it in an office as fractionated as EO Determinations could only impede communications and coordination among the staff and managers.

### **3. Antagonism Existed Between EO Senior Executive Level Management and EO Determinations Managers and EO Line Employees**

Another symptom of the problematic culture within the EO Division is the clear divide that existed between EO senior executive level management in Washington, D.C. and the mid-level managers and line employees in EO Determinations. Cindy Thomas explained her views of Lois Lerner as follows:

... I don't think that she valued what employees were doing ... she didn't really listen to what others had to say. She would cut you off and didn't allow people to express what was going on ... it was like it didn't matter if other people had questions, so to speak. So I don't think she was a very good leader.<sup>155</sup>

Regarding Lerner's opinion of the line employees in EO Determinations, Thomas related the following to Committee Staff:

- Q. ... Going back, you had said that Ms. Lerner had referred to the Cincinnati office, which does the kind of day-to-day work, as backwater?
- A. Right.
- Q. As low-level. Did employees in Cincinnati know that?
- A. Oh, yes.

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<sup>155</sup> SFC Interview of Cindy Thomas (July 25, 2013) pp. 116-17.

Q. Was there, a reaction – but I mean, did Lois realize that her words actually went back to employees, or did she perhaps just not?

A. I know that when she referred to employees as backwater at one point in time, that ... employees were talking about it, you know, in Cincinnati ... As far as “low-level,” she did [say] that on May the 10<sup>th</sup> ...<sup>156</sup>

Thomas also felt that Lerner did not value EO Determinations because the employees were not attorneys. She expressed her views as follows:

... Everybody has different levels of experience and different ideas and things, and we all have things to bring to the table. And just because a person is a lawyer doesn’t make them any more important than anybody else ... But I think that it was almost like a feeling like we’re superior – I’m superior because I’m in the Washington Office, and you people in Determinations, you’re all not lawyers and you’re, like, backwater.<sup>157</sup>

Lois Lerner’s polarizing words and actions had a demoralizing effect on both EO Determinations management and line employees. Those words and actions clearly exacerbated the atmosphere of antagonism that existed between the Cincinnati and Washington, D.C. EO offices.

#### **4. The IRS Failed to Ensure That All EO Employees Received Technical Training**

EO employees administer a complex and nuanced area of the Internal Revenue Code, which includes statutes, regulations, revenue rulings, and other guidance issued by the Treasury Department. Although the IRS offered technical training to EO employees, it did not ensure that all employees received proper – or in some cases, any – technical training.

Sharon Camarillo was an area manager in EO Determinations for 8 years before she retired in December 2010. In that role, Camarillo oversaw several Groups of EO employees who evaluated applications for tax-exempt status that were submitted to the IRS, including the Technical Screening Unit, which was responsible for making the initial assessment of incoming applications. Yet Camarillo told Committee Staff that she “had no technical training in the area of Exempt Organizations, so I was not able to address technical issues.”<sup>158</sup>

As a result of her lack of technical training, Camarillo was unable to provide feedback on substantive issues and instead deferred to other managers within EO. An example of Camarillo’s deference occurred in February 2010, when the manager of the Technical Screening Unit, John Shafer, brought the first Tea Party application to her attention. Camarillo explained that she

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<sup>156</sup> *Id.* p. 122.

<sup>157</sup> *Id.* pp. 117-18.

<sup>158</sup> SFC Interview of Sharon Camarillo (Sep. 26, 2013) p. 7. Camarillo explained that she was scheduled to attend a 6-week training session at one time during her tenure in EO, but she was removed from the session after one day by Thomas. *Id.* p. 25.

“simply reiterated what John had said and forwarded it on” to her manager, Thomas, “[b]ecause I was so untechnical, I did not have the EO background.”<sup>159</sup>

In the culture of the IRS organization, it was not only acceptable for an employee who had no technical knowledge to be elevated to a managerial position, it was also acceptable for an employee to remain in that position for nearly a decade without completing any meaningful technical training.

#### **F. LOIS LERNER OVERSAW THE HANDLING OF TEA PARTY APPLICATIONS AND PROVIDED LIMITED INFORMATION TO UPPER-LEVEL MANAGEMENT**

As the Director of EO who was well-versed in the tax law of exempt organizations, Lerner was given a great amount of autonomy to manage the work of her division. The most senior official in EO, Lerner was responsible for keeping upper IRS management informed about significant issues within the organization that she oversaw. As she explained to one of her subordinates:

[W]e ensure that all of our [senior] managers are aware of all highly visible hot button issues. Our job is to report up to our bosses on anything that might end up on the front page of the NY Times.<sup>160</sup>

Lerner first became aware that the IRS received applications from Tea Party groups in April or May 2010. Although Lerner became personally involved with the handling of these applications, upper-level IRS management remained largely unaware that the IRS had received applications from Tea Party groups. As a result, Lerner was left to oversee the processing of these applications with negligible oversight or accountability.

##### **1. Lois Lerner Was Informed About the Tea Party Applications in April 2010 and Received Updates About Them**

The Tea Party applications were first brought to Lerner’s attention soon after Jack Koester in Cincinnati flagged them. On April 28, 2010, the Acting Manager of EO Technical, Steven Grodnitzky, sent Lerner a chart summarizing the SCRs. The first entry on the chart was the Tea Party applications. Grodnitzky drew Lerner’s attention to this entry in his cover email, where he stated:

Of note, we added one new SCR concerning 2 Tea Party cases that are being worked here in DC. Currently, there are 13 Tea Party cases out in EO Determinations and we are coordinating with them to provide direction as to how to consistently develop those cases based on our development of the ones in DC.<sup>161</sup>

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<sup>159</sup> *Id.* p. 16.

<sup>160</sup> Email chain between Lois Lerner, Nanette Downing and others (May 10-11, 2011) IRS0000014917-20.

<sup>161</sup> Email from Steven Grodnitzky to Lois Lerner, Robert Choi and others (Apr. 28, 2010) IRS0000141809-11.

On May 13, 2010, Grodnitzky updated Lerner on the status of the Tea Party applications and other SCRs prepared by EO Technical.<sup>162</sup> Lerner responded by asking about the Tea Party applications, and specifically, the basis of their exemption requests. Lerner instructed Grodnitzky that “[a]ll cases on your list should not go out without a heads up to me please.” Grodnitzky then provided more information about the status of the cases (emphasis added):

We have tea party cases here in EOT and in Cincy. In [EO Technical], there is a (c)(3) application and a (c)(4) application. In Cincy, there are 10 (c)(4)s and a couple of (c)(3)s. **The organizations are arguing education, but the big issue for us is whether they are engaged in political campaign activity.** We are in the development process at this point here in DC, and I have asked the [Tax Law Specialist] and front line manager to coordinate with Cincy as to how to develop their cases, but not resolve anything until we get clearance from you and Rob.

The tea party cases, like the others on the list, are the subject of an SCR, and I customarily give Rob a heads up, **but of course can let you know as well before anything happens.**<sup>163</sup>

Lerner continued to receive updates about the status of the Tea Party applications throughout 2010, including revised SCRs that she received at the end of May 2010, in July 2010, in September 2010, and in November 2010.<sup>164</sup>

Lerner grew more concerned about the Tea Party applications in early 2011. On February 1, 2011, Michael Seto, the Acting Manager of EO Technical, sent an updated SCR table to Lerner. She responded, “Tea Party Matter very dangerous – This could be the vehicle to go to court on the issue of whether Citizen’s United overturning the ban on corporate spending applies to tax exempt rules.” Lerner indicated that Chief Counsel and Judy Kindell needed to be involved with these applications and that they should not be handled by Cincinnati.<sup>165</sup>

The following day, Paz advised Lerner that Carter Hull was supervising the applications handled by Cincinnati at every step and that no decision would be made until EO Technical completed the review of the 501(c)(3) and 501(c)(4) applications. Lerner noted that “even if we go with a 4

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<sup>162</sup> Email chain between Steven Grodnitzky, Lois Lerner, Robert Choi and others (May 13-16, 2010) IRS0000167872-73.

<sup>163</sup> *Id.*

<sup>164</sup> Email from Steven Grodnitzky to Lois Lerner, Robert Choi and others (May 27, 2010) IRS0000141812-14; Email chain between Theodore Lieber, Lois Lerner and others (July 27-30, 2010) IRS0000807076-115 (email attachments containing taxpayer information omitted by Committee staff); Email from Steven Grodnitzky to Lois Lerner, Robert Choi and others (Sep. 30, 2010) IRS0000156433-36; Email from Holly Paz to Lois Lerner, Robert Choi and others (Nov. 3, 2010) IRS0000156478-81.

<sup>165</sup> Email chain between Holly Paz, Lois Lerner and Michael Seto (Feb. 1-2, 2011) IRS0000159431-33.

on the Tea Party cases, they may want to argue they should be 3s, so it would be great if we can get there without saying the only reason they don't get a 3 is political activity.”<sup>166</sup>

A few months later, Lerner convened a meeting to further discuss the Tea Party and other advocacy applications. In preparation for the meeting, Justin Lowe developed a briefing paper for Lerner.<sup>167</sup> The paper indicated that EO Determinations Screening identified as an “emerging issue” a number of 501(c)(3) and (c)(4) applications by organizations “advocating on issues related to government spending, taxes and related matters.” These applications were being sent to a specific group if they met any of the following criteria:

- “Tea Party,” “Patriots,” or “9/12 Project” is referenced in the case file.
- Issues include Government spending, Government debt, or taxes.
- Education of the public via advocacy/lobbying to “make America a better place to live.”
- Statements in the case file criticize how the country is being run.

The briefing paper also noted that:

- More than 100 cases that meet these criteria have been identified so far, but only two 501(c)(4) organizations have been approved.
- EO Technical is assisting EO Determinations by reviewing files and editing development letters; and
- EO Determinations requests guidance on how to process the cases to ensure uniformity.<sup>168</sup>

On July 5, 2011, Lerner discussed the Tea Party applications, including the BOLO entry and screening criteria, with Thomas, Paz, Kindell and others.<sup>169</sup> Lerner directed changes, as described herein in Section VI(B)(2), although her management was largely passive until the media and Congress became involved in 2012.

## **2. Lois Lerner Failed to Inform IRS Upper Management About the Tea Party Applications**

Lerner's first line of management was the TE/GE Division Commissioner, a position that was held at relevant times first by Ingram and then by Grant.<sup>170</sup> While Ingram was Division

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<sup>166</sup> *Id.*

<sup>167</sup> SFC Interview of Holly Paz (July 26, 2013) p. 86. The meeting was originally scheduled for June 29, 2011, but was rescheduled for July 5, 2011.

<sup>168</sup> Email from Justin Lowe to Holly Paz and others (June, 27, 2011) IRS0000431165-66.

<sup>169</sup> SFC Interview of Holly Paz (July 26, 2013) pp. 86-89; SFC Interview of Cindy Thomas (July 25, 2013) pp. 53-55.

<sup>170</sup> Ingram served in that role from May 2009 to December 2010, when she became the Acting Director of the newly-created Services and Enforcement Affordable Care Act Office. Until the spring of 2013, Ingram also continued to serve as the Commissioner of TE/GE, providing high-level direction while Joseph Grant performed most of the duties as the Acting Director of TE/GE. Grant's position as Division Commissioner of TE/GE became

Commissioner of TE/GE, she had little face-to-face contact with Lerner – their chief interactions were at quarterly meetings and reviews – although they did regularly exchange emails.<sup>171</sup> Ingram did not learn that the IRS had received Tea Party applications until late 2011 or early 2012, when she read newspaper articles about problems the groups were encountering with the IRS.<sup>172</sup> The first time that she learned of allegations that the IRS was treating certain applications inappropriately was during a staff meeting in 2012, when Grant or Flax presented information about congressional inquiries related to these organizations.<sup>173</sup>

Although Grant directly supervised Lerner from December 2010 through May 2013, they had “relatively minimal interaction” with each other.<sup>174</sup> Grant first became aware of the allegations that the IRS was treating Tea Party applications differently than other applicants in February or March of 2012, when the IRS began receiving letters from Congress.<sup>175</sup> He also asserted that Lerner did not tell him about the July 5, 2011 meeting about Tea Party applications until April of the following year.<sup>176</sup>

Lerner’s second level of management was the Deputy Commissioner for Services & Enforcement, a position held by Steven Miller from late 2009 through November 2012, when he became Acting Commissioner of the IRS. As Deputy Commissioner for Services & Enforcement, Miller oversaw the IRS’s four primary operating divisions, including the TE/GE Division, and reported directly to the IRS Commissioner.<sup>177</sup> Lerner worked closely with Steven Miller on issues related to exempt organizations, sometimes bypassing Ingram and Grant, as Miller had previous experience in that area and had served as the Director of EO in the early 2000s.<sup>178</sup>

Miller generally found that Lerner was “pretty good about elevating” important issues to him.<sup>179</sup> But he claims that he did not become aware of how the IRS was handling Tea Party applications until early 2012, when he saw accounts in the press of the IRS asking overly burdensome questions of these applicants, including requests for donor information.<sup>180</sup> Miller discussed these issues with Commissioner Shulman while Shulman was preparing to testify before Congress in

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permanent in May 2013, shortly before he retired from the IRS on June 3, 2013. SFC Interview of Sarah Hall Ingram (Dec 16, 2013) pp. 10, 19-20; SFC Interview of Joseph Grant (Sep. 20, 2013) pp. 5-6.

<sup>171</sup> SFC Interview of Sarah Hall Ingram (Dec 16, 2013) p. 18.

<sup>172</sup> *Id.* pp. 42-43.

<sup>173</sup> *Id.* pp. 64-68.

<sup>174</sup> SFC Interview of Joseph Grant (Sep. 20, 2013) p. 63.

<sup>175</sup> *Id.* p. 9.

<sup>176</sup> *Id.* pp. 14-15.

<sup>177</sup> SFC Interview of Steven Miller (Dec. 12, 2013) pp. 16-17.

<sup>178</sup> SFC Interview of Joseph Grant (Sep. 20, 2013) pp. 53-55; SFC Interview of Sarah Hall Ingram (Dec. 16, 2013) p. 12.

<sup>179</sup> SFC Interview of Steven Miller (Dec. 12, 2013) p. 242.

<sup>180</sup> *Id.* pp. 123-128.

March 2012. Around that time was also the first point when Shulman became aware of the pending Tea Party applications.<sup>181</sup>

Miller became increasingly concerned with how the applications were being handled and, as Ingram explained, during a meeting with senior staff “express[ed] great frustration, and I’m putting that mildly, that ... he wasn’t ... getting a complete description of what was going on[.]”<sup>182</sup> Based on the information he received from Lerner, Miller “was not comfortable responding to the congressional [requests] that he had at that point.”<sup>183</sup> To alleviate these concerns, in April 2012 Miller ordered Nancy Marks to visit Cincinnati and find out what was going on, then report to him directly. Lerner was notably absent from the group of employees sent to Cincinnati. Around that time, Miller informed Shulman of Marks’ planned visit and also told Shulman that TIGTA was starting a review.<sup>184</sup>

On May 3, 2012, Marks briefed Miller on the key findings from her trip to Cincinnati, which included:

- The use of inappropriate and sometimes intrusive development questions resulted from a lack of guidance and training by EO Technical to EO Determinations;
- There were 250-300 political advocacy cases in the queue;
- EO Determinations agents used a “BOLO” list with “Tea Party” and “9/12” on it as screening criteria but that the problem with using such criteria had been “fixed” earlier;
- Among the political advocacy cases in the queue were cases on both sides of the political spectrum;
- TIGTA was reviewing EO’s treatment of the cases; and
- Marks found no evidence of political bias.<sup>185</sup>

Soon after being briefed by Marks, Miller conveyed to Shulman the salient points of Marks’ findings, including the existence of the BOLO list and its criteria, one of which was “Tea Party.” Shulman was concerned that “Tea Party” was on the BOLO, but he didn’t follow up because Miller told him that the issue was resolved and TIGTA was investigating.<sup>186</sup> On May 30, 2012, Inspector General George briefed Miller and Shulman about TIGTA’s audit, and specifically discussed his concern about screening criteria including the Tea Party, Patriots, 9/12 and other policy issues.<sup>187</sup>

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<sup>181</sup> SFC Interview of Douglas Shulman (Dec. 3, 2013) pp. 32-35.

<sup>182</sup> SFC Interview of Sarah Hall Ingram (Dec. 16, 2013) p. 77.

<sup>183</sup> *Id.* p. 79.

<sup>184</sup> SFC Interview of Douglas Shulman (Dec. 3, 2013) pp. 35-37.

<sup>185</sup> SFC Interview of Steven Miller (Dec. 12, 2013) pp. 133-141.

<sup>186</sup> SFC Interview of Douglas Shulman (Dec. 3, 2013) pp. 37-44.

<sup>187</sup> TIGTA Summary of Briefings to IRS and Treasury Leadership, Provided to SFC on May 19, 2014.



After May 2012, Miller asked for periodic updates about the status of political advocacy applications and monitored their processing, keeping track of the number of applications that were still open. Miller “periodically” gave Shulman updates about the political advocacy applications, telling Shulman, “[W]e’ve got people on it, we’re moving cases, we’re putting determinations out; and [giving] the impression that, you know, the lag issue of approval was being worked on.”<sup>188</sup>

Upon reflection, Miller believes that Lerner “under-managed” the political advocacy applications and should have made him aware of them sooner: “Certainly, before May [2012] I should’ve been aware that she found [problems with the handling of political advocacy applications].”<sup>189</sup>

### **3. Lerner Did Not Consult With IRS Chief Counsel William Wilkins About the Tea Party Applications**

It does not appear that Lerner directly contacted IRS Chief Counsel William Wilkins to discuss the pending applications submitted by Tea Party and other political advocacy organizations. Like many senior officials within the IRS, Wilkins first learned that the IRS was reviewing applications from political advocacy groups in March of 2012.

The issue first rose to Wilkins when the Office of Chief Counsel was asked to review a guidesheet that was initially prepared by EO Technical.<sup>190</sup> Wilkins skimmed the guidesheet but never provided substantive comments or edits. He understood that EO Determinations employees would use the guidesheet to decide if applicants were engaging in political campaign intervention, but he did not know that the guidesheet was spurred by uncertainty over how to handle the Tea Party applications.<sup>191</sup> By that point, other attorneys in the Office of Chief Counsel had been assisting with political advocacy applications for nearly a year – but no one had informed Wilkins of their work.<sup>192</sup>

As the most senior attorney available to IRS management, Wilkins could have perhaps assisted with the legal questions posed by the political advocacy applicants if Lerner – or any other manager within the TE/GE chain – sought his help. Instead, Wilkins first learned that Tea Party organizations had applied for tax-exempt status, and that the IRS had screened organizations for full development based on their names, when he read the draft TIGTA report in April 2013.<sup>193</sup>

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<sup>188</sup> SFC Interview of Douglas Shulman (Dec. 3, 2013) p. 80.

<sup>189</sup> SFC Interview of Steven Miller (Dec. 12, 2013) pp. 184, 240-41.

<sup>190</sup> SFC Interview of William Wilkins (Nov. 7, 2013) p. 24; Email from Michael Blumenfeld to William Wilkins and others (Mar. 13, 2012) IRS0000061498-505.

<sup>191</sup> SFC Interview of William Wilkins (Nov. 7, 2013) p. 24.

<sup>192</sup> *Id.* pp. 38-39.

<sup>193</sup> *Id.* pp. 24, 35.

**G. EVEN DURING THE COMMITTEE’S INVESTIGATION, SOME IRS EMPLOYEES  
CONTINUED TO SCREEN TEA PARTY APPLICATIONS BASED ON THE  
ORGANIZATION’S NAMES**

On June 20, 2013, the IRS suspended use of the BOLO list and instructed EO employees to follow generally-applicable procedures when reviewing applications for tax-exempt status.<sup>194</sup> Committee staff interviewed a number of EO Employees in the months following this directive. From these interviews, it is clear that the suspension of the BOLO left a procedural void and that at least some EO Determinations employees continued to screen cases by looking for “Tea Party” and other inappropriate terms in the organization name.

Cindy Thomas, who oversaw EO Determinations, explained that some types of applications were still sent to particular groups of employees for processing, even in the absence of a formal BOLO:

I have asked the question about what are we supposed to do with like health care cases? We have a group that coordinates the cases when they come in and we have the advocacy cases. Are we, what are we supposed to do? And what I was told is that we can still have cases go to a designated group for consistency purposes, that maybe the BOLO was really more of a routing document to instruct specialists or screeners where to route cases more than anything. And we are still having cases to be routed to the group that worked health care cases, they still get cases routed to them, and the group that was coordinating advocacy cases they still are going to that group that was coordinating those cases.

One employee who screened incoming applications, Gary Muthert, opined that the absence of the BOLO “will lead to more inconsistent processing of applications.”<sup>195</sup> Muthert also expressed confusion about how he should handle incoming applications from Tea Party organizations:

- Q. Let me ask you if currently, if you get two applications, one is for the Tea Party of Arkansas or whatever, the other is for Americans for Apple Pie, or something else, are the cases treated the same or is there still concern over how to consistently treat Tea Party cases?
- A. In my opinion there’s still concern because no one’s resolved the issue. I mean, for me, it’s like what am I supposed to do with this thing?<sup>196</sup>

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<sup>194</sup> Memorandum from Karen Schiller, Interim Guidance on the Suspension of BOLO List Usage (June 20, 2013). The memorandum instructed employees to immediately stop using the BOLO spreadsheet, including the Emerging Issues tab and the Watch List tab. However, employees were permitted to continue using other lists to identify and prevent waste, fraud and abuse.

<sup>195</sup> SFC Interview of Gary Muthert (July 30, 2013) (not transcribed).

<sup>196</sup> *Id.*

Another screener, Jack Koester, stated that screeners “really don’t have any direction or we haven’t had any” since the BOLO was suspended.<sup>197</sup> On August 1, 2013, Koester explained that if he was assigned to review an incoming application with the words “Tea Party” in its name, he would ask another IRS employee to also review the application, even if there was no evidence of political activity:

- Q. If you saw – I am asking this currently, if today if a Tea Party case, a group – a case from a Tea Party group came in to your desk, you reviewed the file and there was no evidence of political activity, would you potentially approve that case? Is that something you would do?
- A. At this point I would send it to secondary screening, political advocacy.
- Q. So you would treat a Tea Party group as a political advocacy case even if there was no evidence of political activity on the application. Is that right?
- A. Based on my current manager’s direction, uh huh.<sup>198</sup>

Based on this testimony, it appears that several months after TIGTA released their report, employees lacked appropriate instructions from management and possibly continued to pull out applications containing the words “Tea Party” for separate processing, despite the suspension of the BOLO and other assurances that the IRS had stopped these practices.<sup>199</sup>

#### **H. FOR A THREE-YEAR PERIOD, THE IRS DID NOT PERFORM ANY AUDITS OF TAX-EXEMPT ORGANIZATIONS THAT WERE ALLEGED TO HAVE ENGAGED IN IMPROPER POLITICAL CAMPAIGN INTERVENTION**

After the Supreme Court’s *Citizens United* decision in January 2010, the IRS became increasingly concerned with the amount of money spent to influence elections by tax-exempt organizations. (See Section IV.) The IRS received an increasing number of allegations after *Citizens United* that tax-exempt organizations were engaging in an impermissible level of political campaign intervention. Under existing procedures, these allegations would be reviewed by EO Examinations employees who had discretion to open an audit. EO Examinations Director Nanette Downing, Lerner and other managers believed that the IRS needed new procedures and better employee training to effectively process these allegations. By the end of 2010, Downing

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<sup>197</sup> SFC Interview of Jack Koester (Aug. 1, 2013) p. 29.

<sup>198</sup> *Id.* pp. 39–40. As Koester and other EO Determinations employees explained, the secondary screening process entailed a second review by an employee who was familiar with a particular type of applications. This same process was first used to screen incoming applicants from Tea Party organizations in 2010. *Id.* p. 35; SFC Interview of Elizabeth Hofacre (Sep. 24, 2013) pp. 27–28, 44–45.

<sup>199</sup> Since the Committee conducted the interviews referenced in this section, the IRS has issued additional guidance to employees implementing new procedures for reviewing tax-exempt applications. See, e.g., Memorandum from Kenneth Corbin, Expansion of Optional Expedited Process for Certain Exemption Applications Under Section 501(c)(4) (Dec. 23, 2013); Memorandum from Stephen Martin, Streamlined Processing Guidelines for All Cases (Feb. 28, 2014). We have no knowledge of whether the IRS’s recent guidance has affected the screening procedures applied to incoming applications for tax-exempt status.

suspended all examinations of 501(c)(4) organizations that were alleged to have engaged in improper political campaign intervention. (See Section IX(A).)

High-level IRS managers, including Miller, Lerner and Downing, spent the next three years attempting to devise a new approach that would enable the IRS to effectively evaluate allegations related to political campaign intervention of tax-exempt organizations. Although these managers understood the importance of the issue and devoted significant time and resources to the project, they failed to put a new approach in place. As a result, from the end of 2010 until April 2014, the IRS did not perform any examinations of 501(c)(4) organizations related to impermissible political campaign intervention.

**Sections IV through VIII provide further detail about the facts that support the Committee's findings related to the Determinations process.**

**IV. FOLLOWING THE CITIZENS UNITED CASE, THE IRS FACED EXTERNAL PRESSURE TO MONITOR AND CURTAIL POLITICAL SPENDING OF TAX-EXEMPT ORGANIZATIONS**

*This section describes the environment within which the IRS EO Division operated from 2010-2013 in the wake of the Citizens United case.*

The IRS has long been concerned with political spending by tax-exempt organizations. As Sarah Hall Ingram, former Commissioner of TE/GE and an employee of the IRS for more than 30 years, explained:

For decades, the issue of what activities are on which side of the line and what's permitted, and the factual issues around who's crossed the lines and who hasn't, that is a very old question.<sup>200</sup>

Ingram further observed that the focus on political spending tended to intensify at the close of election cycles.<sup>201</sup> Although the issue was not a novel one for the IRS, the level of external scrutiny on the agency increased dramatically after the Supreme Court issued its decision in *Citizens United v. Federal Election Commission*, 130 S. Ct. 876 (2010).

**A. EMPLOYEES THROUGHOUT THE IRS EXEMPT ORGANIZATIONS DIVISION WERE AWARE OF THE *CITIZENS UNITED* DECISION**

On January 21, 2010, the Supreme Court issued its decision in *Citizens United*, striking down parts of the Bipartisan Campaign Reform Act of 2002 (McCain-Feingold Act). The chief holding was that “[p]olitical spending is a form of protected speech under the First Amendment, and the government may not keep corporations or unions from spending money to support or denounce individual candidates in elections.”<sup>202</sup> Although *Citizens United* directly addressed laws administered by the FEC, observers quickly predicted that the case might also have

<sup>200</sup> SFC Interview of Sarah Hall Ingram (Dec. 16, 2013) p. 33.

<sup>201</sup> *Id.* p. 32.

<sup>202</sup> *Citizens United v. Federal Election Commission*, SCOTUSblog.

implications for the Internal Revenue Code and IRS regulations. On the day after the decision was announced, Lerner brought the case to the attention of upper-level TE/GE management and the Chief Counsel's office. Lerner believed that the case would probably not change IRS rules regarding tax exemption, but she recommended that the IRS prepare itself for inquiries regarding campaign spending by 501(c)(3) and 501(c)(4) organizations.<sup>203</sup> Ingram agreed that the agency should prepare Q&As as she thought that the case might result in a "test of the tax-exemption issue" in the courts.<sup>204</sup>

Lerner and others then prepared a few draft Q&As that could be posted to the IRS website to explain the effect of the holding on the IRS's enforcement of its regulations.<sup>205</sup> The Q&As restated established law regarding the activities of tax-exempt organizations and explained that *Citizens United* did not address the requirements that Congress imposed on organizations as a condition of being tax-exempt.<sup>206</sup> Ultimately, the IRS decided not to post any guidance about the case on its website though, as Ingram believed "it was sort of hard to explain why the IRS would be commenting on the FEC case in an affirmative way and also because all the other answers [in the Q&As] were already up on the Web in one format or another."<sup>207</sup> Lerner also observed that "[t]his is the danger zone no matter what we say."<sup>208</sup> The Q&As were provided to Commissioner Shulman and Steve Miller, so they could be prepared if the issue came up at a public event.<sup>209</sup>

Line employees in the EO Division were also aware of the *Citizens United* decision, independent of any notification by management. On the day after the decision was issued, an EO employee in Cincinnati forwarded *Politico's* analysis of the case to several of his colleagues, noting that it "[l]ooks like yesterday's Supreme Court ruling is going to result in more (c)(4)s engaging in political activities and the death of 527s."<sup>210</sup>

Two EO Determinations employees in Cincinnati assessed the potential impact of *Citizens United* on incoming applications for tax-exempt status. In August 2010, a screener in EO Determinations noted that an incoming application "appears to be using a recently decided Supreme Court case, '*Citizens United v Federal Election Commission*' which loosened some of the limits on for profit and nonprofit organizations with regard to political activities and expenditures."<sup>211</sup> The screener then recommended forwarding the case to upper management

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<sup>203</sup> Email chain between Sarah Ingram, Lois Lerner, Steve Miller and others (Jan. 22-24, 2010) IRS0000444375-77.

<sup>204</sup> *Id.*

<sup>205</sup> Email chain between Nikole Flax, Sarah Hall Ingram, Cathy Livingston and others (Jan. 24-25, 2010) IRS0000442110-12.

<sup>206</sup> *Id.*

<sup>207</sup> SFC Interview of Sarah Hall Ingram (Dec. 16, 2013) p. 40.

<sup>208</sup> Email chain between Nikole Flax, Sarah Hall Ingram, Cathy Livingston and others (Jan. 24-25, 2010) IRS0000575821-24.

<sup>209</sup> *Id.*

<sup>210</sup> Email from Michael Tierny to Faye Ng and others (Jan. 22, 2010) IRS0000639344-48.

<sup>211</sup> Email chain between Jack Koester, John Shafer and Gary Muthert (Aug. 3-4, 2010) IRS0000487033-35.

based on “the current political climate and possible sensitivity of the application”.<sup>212</sup> The following month, an EO Determinations employee alerted a colleague about political contributions made by a potential applicant for tax-exempt status, which the employee believed were possible because of the *Citizens United* ruling.<sup>213</sup>

The impact of the *Citizens United* ruling on the IRS would remain a topic of discussion throughout the agency during the next several years, as noted below.

## **B. THERE WAS EXTENSIVE PRESS COVERAGE OF POLITICAL SPENDING BY TAX-EXEMPT ORGANIZATIONS FOLLOWING CITIZENS UNITED**

Political spending was a topic of continued interest in the press during the 2010 election year and beyond. The IRS had an active role in media coverage, and sometimes made senior employees available for interviews with reporters or offered comments on behalf of the agency. Some senior managers and employees in EO monitored the news and shared relevant articles about political spending by tax-exempt organizations with colleagues. These articles were often critical of the IRS and encouraged the agency to do more to rein in political spending.

At times, the IRS helped reporters understand the tax law and agency processes. The following examples occurred during the height of the 2010 election cycle:

- In August 2010, *The Washington Post* reporter Tim Farnam had contacted the IRS about campaign-related activity by 501(c)(4) and 527 organizations.<sup>214</sup> An employee in the media relations branch notified Ingram, Miller and Jonathan Davis, Commissioner Shulman’s Chief of Staff, that employees in TE/GE provided existing data to Tim Farnam.<sup>215</sup> *The Washington Post* published Mr. Farnam’s story a few days later, which discussed how *Citizens United* “has indirectly thrust the Internal Revenue Service into the more prominent role of overseeing [campaign] expenditures.”<sup>216</sup> The published article was circulated among IRS managers, including Lerner and Ingram.<sup>217</sup>
- In September 2010, a reporter from the *New York Times* contacted the IRS about the operations of 501(c)(4) organizations after the *Citizens United* decision, and specifically, Crossroads GPS.<sup>218</sup> IRS press staff alerted Commissioner Shulman, Miller, Ingram, Lerner, and others about the expected story, noting, “One area raised as a concern are those groups that set up and function for a short period of time, and we are not aware of

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<sup>212</sup> *Id.*

<sup>213</sup> Email from Michael Condon to Gary Muthert (Sep. 28, 2010) IRS0000487036.

<sup>214</sup> Email from Michelle Eldridge to Steve Miller, Sarah Ingram, Lois Lerner and others (Aug. 6, 2010) IRS0000452184.

<sup>215</sup> *Id.*

<sup>216</sup> Email chain between Lois Lerner, Joe Urban and others (Aug. 22, 2010) IRS0000210591-93.

<sup>217</sup> *Id.*

<sup>218</sup> Email chain between Steve Pyrek, Terry Lemons, Sarah Ingram and others (Sep. 21, 2010) IRS0000508974-76.

them until they file their return, well after their potential lobbying efforts and other activities are complete.”<sup>219</sup> Ingram, Lerner and senior EO employee Judy Kindell spoke with the reporter on background, and Ingram provided a statement on the record that was drafted by Miller, Lerner, Ingram, and others.<sup>220</sup> The reporter subsequently published an article focusing on political spending by 501(c)(4) organizations in the 2010 election, focusing on Crossroads GPS.<sup>221</sup> Ingram stated that the article “came out pretty well” and she opined that “the ‘secret donor’ theme will continue.”<sup>222</sup>

The press continued to run articles on political advocacy spending by tax-exempt organizations throughout 2011 and 2012. These articles were routinely distributed among EO managers, TE/GE management, and the Commissioner’s office.<sup>223</sup>

Employees outside of IRS management also followed the media’s coverage of this topic. Indeed, some staff-level employees in EO Determinations monitored the news and shared among themselves many of the same articles noticed by upper managers – particularly the *EO Tax Journal*, which often compiled relevant stories from other media sources.<sup>224</sup> A number of the EO Determinations employees who shared articles were responsible for reviewing and deciding incoming applications for tax-exempt status. Thus, employees at every level of the IRS were aware of the media’s coverage of spending by tax-exempt organizations in the wake of the *Citizens United* ruling.

### **C. MANY MEMBERS OF CONGRESS EXPRESSED THEIR INTEREST IN POLITICAL SPENDING BY TAX-EXEMPT ORGANIZATIONS**

In recent years, Congress has become increasingly engaged in the issue of political spending by tax-exempt organizations. Members of both houses of Congress – and from both major political parties – frequently encouraged IRS action through speeches and direct requests to the IRS.

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<sup>219</sup> Email chain between Michelle Eldridge, Steve Miller and others (Sep. 20, 2010) IRS0000211382.

<sup>220</sup> *Id.*; Email chain between Nikole Flax, Steve Miller, Ron Shultz and others (Sep. 20, 2010) IRS0000219086-91.

<sup>221</sup> Email chain between Steve Pyrek, Terry Lemons, Sarah Hall Ingram and others (Sep. 21, 2010) IRS0000508974-76.

<sup>222</sup> *Id.*

<sup>223</sup> IRS Urged to Investigate Charity for Possible Political Activity, *Tax Analysts* (Apr. 1, 2010) IRS0000230462-77; As Campaign Money Pours In So Do Complaints, *The Washington Post* (Oct. 13, 2010) IRS0000071305-06; 3 Groups Denied Break by I.R.S. Are Named, *New York Times* (July 21, 2011) IRS0000012346-47; The I.R.S. Does Its Job, *New York Times* (Mar. 8, 2012) IRS0000212452-53; How Dark-Money Groups Sneak by the Taxman, *Mother Jones* (June 13, 2012) IRS0000177467-75; How Nonprofits Spend Millions on Elections and Call it Public Welfare, *ProPublica* (Aug 20, 2012) IRS0000180278-304; The IRS’s Feeble Grip on Big Political Cash, *Politico* (Oct. 15, 2012) IRS0000180729-30.

<sup>224</sup> Is 501(c)(4) Status Being Abused?, *EO Tax Journal* (Sep. 14, 2010) IRS0000512236-40; *New York Times* Primer on EO Tax Law, *EO Tax Journal* (Oct. 18, 2010) IRS0000385201-06; If You Can’t Beat Them, Join Them, *EO Tax Journal* (Apr. 14, 2011) IRS0000645590; 3 Groups Denied Break by I.R.S. Are Named, *New York Times* (July 21, 2011) IRS0000531334-39; Groups Challenge Legality of IRS Regs as Failing to Properly Limit Campaign Activity by 501(c)(4) Organizations, *EO Tax Journal* (July 28, 2011) IRS0000385238-50; Seven Democratic Senators Ask Whether IRS Investigating Political (c)(4)s, *EO Tax Journal* (Feb. 17, 2012) IRS0000529987-93.



From the end of 2008 through early 2013, the IRS received 35 formal Congressional requests about tax-exempt organizations.<sup>225</sup> These requests covered a wide range of issues, including political spending by tax-exempt organizations; imposition of the gift tax on donors to tax-exempt organizations; questions about the status of a particular organization; and suggested changes to IRS regulations.<sup>226</sup> Incoming Congressional requests were forwarded to senior IRS management and the typical clearance process for requests related to tax-exempt issues involved getting feedback from high-level management in TE/GE, the Legislative Affairs office, and often the Commissioner's office. Beginning in July 2012, all Congressional responses involving 501(c)(4) organizations were vetted by Steve Miller's Chief of Staff, Nikole Flax, before being finalized.<sup>227</sup>

In addition to these 35 formal requests, members of Congress also spoke about political spending in floor speeches<sup>228</sup> and made informal requests to the IRS, sometimes through staff.<sup>229</sup> The continued interest by Congress ensured that the IRS – and particularly its top managers – stayed focused on these issues.

#### **D. PRACTITIONERS AND INTEREST GROUPS REQUESTED IRS ACTION ON POLITICAL SPENDING BY TAX-EXEMPT ORGANIZATIONS**

As an agency charged with serving the public, IRS employees had frequent interaction with tax practitioners and other interested parties about political spending by tax-exempt organizations. Many supported specific reforms to the IRS regulations; but others focused on the actions of particular organizations applying for, or holding, tax-exempt status. A few examples that are generally representative of IRS interactions with the public are described below:

- In February 2011, Citizens for Responsibility and Ethics in Washington wrote to Commissioner Shulman asking the IRS to revoke the tax-exempt status of American Future Fund, Inc. The request was circulated among EO managers.<sup>230</sup>
- In March 2011 and September 2012, Lerner, Kindell and Treasury employee Ruth Madrigal corresponded directly with attorneys from the law firm of Adler & Colvin about proposed changes to the regulations for 501(c)(4) organizations. Lerner considered the possibility of meeting with the outside firm to discuss their proposals.<sup>231</sup>

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<sup>225</sup> Email from Jorge Castro to Nikole Flax (Jan. 28, 2013) IRS0000292300-09. During that time, the IRS also received numerous informal requests from members of Congress and staff that are not captured in this exhibit.

<sup>226</sup> *Id.*

<sup>227</sup> Email from Lois Lerner to Holly Paz and others (July 24, 2012) IRS0000179669.

<sup>228</sup> *E.g.*, Email from Lois Lerner to Holly Paz and others (Apr. 17, 2012) IRS0000325929-30.

<sup>229</sup> *E.g.*, Email from Holly Paz to Lois Lerner (May 2, 2013) IRS0000409884.

<sup>230</sup> Email from Joseph Urban to Holly Paz and others (Feb. 2, 2011) IRS0000350193-97.

<sup>231</sup> Email chain between Lois Lerner, Ruth Madrigal, Holly Paz and others (Mar. 2, 2011) IRS0000634267-69; Email chain between Gregory Colvin, Lois Lerner and Judith Kindell (Aug. 24-27, 2012) IRS0000572618-19.

- In September 2011, Democracy 21 and the Campaign Legal Center wrote to Lerner to request an IRS investigation of the tax-exempt status of four organizations, including Crossroads GPS, alleging that the groups conducted impermissible amounts of political campaign intervention. Lerner forwarded the request to EO Exam and instructed that it be treated as a referral for examination. Lerner also informed the TE/GE Acting Commissioner, Joseph Grant, and Nikole Flax about the request and noted that it “also went to the Commissioner.”<sup>232</sup>
- In February 2012, a tax practitioner contacted a local IRS office about an article titled “Is the IRS Attempting to Intimidate Local Tea Parties?” The request was flagged as practitioner “noise” and forwarded to management for their awareness, and was ultimately sent to Miller.<sup>233</sup>
- In December 2012, Democracy 21 and the Campaign Legal Center requested to meet with the IRS about its petition for rulemaking on candidate election activities by 501(c)(4) organizations. On January 4, 2013, the groups met with Lerner, Victoria Judson from the Office of Chief Counsel and Treasury employee Ruth Madrigal to discuss the proposal.<sup>234</sup>

These continual discussions with outside groups ensured that the IRS stayed focused on the issue of political spending by tax-exempt organizations.

**E. IN RESPONSE TO EXTERNAL SCRUTINY AND INCREASED POLITICAL SPENDING BY TAX-EXEMPT ORGANIZATIONS, THE IRS TRACKED POLITICAL SPENDING AND PROPOSED REGULATORY CHANGES**

Lois Lerner described what she may have believed was pressure on the IRS to address political advocacy activities, especially within the TE/GE office, in a speech at Duke University’s Sanford School of Public Policy in October 2010:

The Supreme Court dealt it a huge blow [in *Citizens United*], overturning a 100-year old precedent that said basically corporations could give directly in political campaigns, and everyone is up in arms because they don’t like it. The Federal Election Commission can’t do anything about it. They want the IRS to fix the problem. The IRS laws are not set up to fix the problem. ... So everybody is screaming at us right now, “Fix it now before the election, can’t you see how much these people are spending?” I won’t know

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<sup>232</sup> Email from Lois Lerner to David Fish (Sep. 30, 2011) IRS0000511994-2018.

<sup>233</sup> Email chain between Steven Miller, Faris Fink and others (Feb. 29, 2012) IRS0000341677-80.

<sup>234</sup> Email chain between Lois Lerner, Ruth Madrigal and others (Dec. 14-19, 2012) IRS0000446771-75; SFC Interview of Victoria Judson (Sep. 11, 2013) pp. 40-43.

until I look at their 990s next year whether they have done more than their primary activity as a political or not. So I can't do anything right now.<sup>235</sup>

After the 2010 election, the IRS became increasingly concerned with the amount and frequency of money spent to influence elections by tax-exempt organizations. Writing in 2012, Steve Miller observed that after the decision, there was a “rise of super PACS.”<sup>236</sup> Miller noted that the decision contributed to an increase in 501(c)(4) organizations that can engage in “unlimited issue advocacy” but “limited political campaign activity.”<sup>237</sup> Miller also noted an increase in political spending by 501(c)(4) organizations at the Senate Finance Committee hearing on May 21, 2013:

There is no doubt that since 2010 when *Citizens United* sort of released this wave of cash that some of that cash headed towards (c)(4) organizations. This is proven out by FEC data and IRS data. That does put pressure on us to take a look.<sup>238</sup>

Near the end of 2012, employees in the EO division began considering whether it was possible to quantify the effect that *Citizens United* had on political campaign intervention by tax-exempt organizations. In December 2012, TE/GE employee Cristopher Giosa sent Lerner his preliminary analysis on sources of data that might be available.<sup>239</sup> Giosa suggested that EO consider enlisting the Office of Compliance Analytics to help with this project.<sup>240</sup>

By April 2013, EO and the Office of Compliance Analytics had prepared a detailed presentation on political spending in 501(c)(4) organizations.<sup>241</sup> As background information for the report, the authors noted:

Since *Citizens United* (2010) removed the limits on political spending by corporations and unions, concern has arisen in the public sphere and on Capitol Hill about the potential misuse of 501(c)(4)s for political campaign activity due to their tax exempt status and the anonymity they can provide to donors.<sup>242</sup>

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<sup>235</sup> SFC Transcription of Video Available on Youtube.com, Lois Lerner Discusses Political Pressure on IRS in 2010 (Oct. 19, 2010) <<https://www.youtube.com/watch?v=EH1ZRyq-1iM>>.

<sup>236</sup> Steve Miller notes (March 14, 2012) IRS0000506870-71.

<sup>237</sup> *Id.*

<sup>238</sup> Senate Finance Committee Hearing, A Review of Criteria Used by the IRS to Identify 501(c)(4) Applications for Greater Scrutiny (May 21, 2013).

<sup>239</sup> Email from Christopher Giosa to Lois Lerner and others (Dec. 6, 2012) IRS0000185323-27.

<sup>240</sup> *Id.*

<sup>241</sup> Email from Justin Abold to Lois Lerner, Holly Paz and others (Apr. 12, 2013) IRS0000195666-90.

<sup>242</sup> *Id.*

The authors then provided a “problem statement,” which stated that “[t]he public purpose of 501(c)(4)s may be diluted by political campaign activities as an unintended consequence of *Citizens United*.”<sup>243</sup>

In May 2013, EO and the Office of Compliance Analytics revised the presentation in advance of a May 7 briefing for then-Acting Commissioner Miller.<sup>244</sup> The revised presentation, which was sent to Miller’s office, made the following findings:

- The number of 501(c)(4)s reporting political campaign activities almost doubled from tax year 2008 through tax year 2010; and
- The amount of political campaign activities for large filers (defined as organizations with total revenue of more than \$10 million) almost tripled from tax year 2008 through tax year 2010.<sup>245</sup>

The report identified two events that occurred contemporaneously with the drastic rise in the number of 501(c)(4) organizations that reported political campaign activities: the *Citizens United* decision and Congress’s consideration of the Affordable Care Act.<sup>246</sup> Although the report did not conclude that those events caused a rise in political spending, by singling them out, it is clear that the IRS viewed them as significant, relevant factors.

The IRS took a step to address concerns about political campaign intervention by tax-exempt organizations on November 29, 2013, when it proposed regulations that would provide guidance to 501(c)(4) organizations on the types of political activities that would not be considered social welfare. After receiving more than 150,000 comments on the proposed regulations, on May 22, 2014, the IRS withdrew the regulations and stated that it planned to re-propose them after a thorough review of the submitted comments.<sup>247</sup>

As of the issuance of this report, the IRS has not proposed additional regulations or issued further guidance on this topic. However, the statements of Lerner and Miller, as well as the analytical work performed in 2013, make clear that the IRS has been working since 2010 to determine an appropriate response to external pressure following the *Citizens United* ruling.

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<sup>243</sup> *Id.*

<sup>244</sup> Miller’s calendar shows that he organized a meeting on May 7, 2013 to discuss “EO Data Matters” with Nikole Flax, Dean Silverman, Eric Schweikert and Joseph Grant (May 7, 2013) IRS0000456399.

<sup>245</sup> Email chain between Justin Lowe, Justin Abold and others (May 6, 2013) IRS0000494805-29.

<sup>246</sup> *Id.*

<sup>247</sup> IRS, Update on the Proposed New Regulation on 501(c)(4) Organizations (May 22, 2014).

**V. THE IRS IMPLEMENTED A SPECIAL PROCESS FOR HANDLING CERTAIN TYPES OF APPLICATIONS**

*This section describes the special procedures that the IRS put in place to process applications that involved political advocacy, which were enabled by the creation of the BOLO spreadsheet.*

The general process that the IRS followed for processing applications for tax-exempt status is described above in Section II(E). Over time, the IRS developed special procedures for handling certain types of applications, particularly those that posed difficult issues.

**A. THE TOUCH AND GO (TAG) SPREADSHEET WAS DEVELOPED TO ASSIST EO DETERMINATION AGENTS**

Each of the Groups within EO Determinations had specialty areas and processed applications that fell within those areas.<sup>248</sup> Cindy Thomas believed that having one Group work applications with similar issues promoted consistency in results, fostered greater efficiency, and improved customer satisfaction, as well as employee and manager satisfaction, since no agent was required to be an expert in all issues.<sup>249</sup>

The “Touch and Go” or “TAG” Group (Group 7830) worked on applications that involved:

1. Abusive tax avoidance transactions:
  - a. abusive promoters;
  - b. fake determination letters;
2. Activities that were fraudulent in nature:
  - a. applications that materially misrepresented operations or finances;
  - b. activities conducted contrary to tax law (e.g. Foreign Conduits); and
3. Applicants with potential terrorist connections.<sup>250</sup>

If an agent in the screening group determined that an application met the TAG criteria, he/she sent the application to Group 7830, the group assigned to work TAG applications.<sup>251</sup> In Group 7830, another agent performed a “secondary screening” of the application to ensure that the application, in fact, met the TAG criteria. If it did, the application was retained in Group 7830 and worked to completion.<sup>252</sup>

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<sup>248</sup> Email from Cindy Thomas to Holly Paz (Mar. 16, 2011) IRS0000008593-602.

<sup>249</sup> *Id.*

<sup>250</sup> Heightened Awareness Issues (undated) IRS0000557291-308.

<sup>251</sup> SFC Interview of Elizabeth Hofacre (Sep. 24, 2013) pp. 31-32.

<sup>252</sup> *Id.*

Over the course of time, the IRS identified many applications that met the TAG criteria. In an effort to catalog those applications so that screening agents could properly identify them, around 2002 or 2003, EO Determinations developed a TAG spreadsheet.<sup>253</sup> The TAG spreadsheet identified the various TAG applications, explained the tax law issue presented in each application and provided further processing guidance to the EO Determinations agents.<sup>254</sup> The TAG spreadsheet eventually was expanded to include a second tab that referenced TAG issues that were no longer encountered, but were of historical significance.<sup>255</sup> When new entries were made to the spreadsheet, a “TAG alert” email was sent to EO Determinations agents. Starting in April 2007, copies of TAG alert emails were also sent to Thomas, EO Quality Assurance Manager Donna Abner and Washington D.C. EO attorney Ted Lieber, who was, “responsible for disseminating the information to others in D.C. should he deem it necessary.”<sup>256</sup>

The TAG spreadsheet was used not only by the screeners but also by all EO Determinations agents.<sup>257</sup> On occasion, an application presenting a TAG issue might slip through screening and not be identified as a TAG application.<sup>258</sup> Ultimately, the application would be assigned to an EO Determinations agent who, in developing the facts surrounding the applicant’s activities, would determine that those facts involved a potential fraudulent transaction, or a tax avoidance scheme, or that the applicant might have terrorist connections.<sup>259</sup> In identifying the application as a TAG application, the agent would be guided by the descriptive information contained in the TAG spreadsheet. The agent would then send such an application to the TAG Group for work-up. Accordingly, it was considered important for all agents, not just the screeners, to have access to the TAG spreadsheet.<sup>260</sup>

## **B. THE TAG SPREADSHEET EVOLVED INTO THE JOINT TAG/EMERGING ISSUES SPREADSHEET**

Applications often presented new issues that were not related to TAG matters, and for which there was little established precedent. These issues also needed to be identified and described for EO Determinations agents so that the applications could be sent to a specific Group where they could be processed and determinations could be made in a consistent fashion.<sup>261</sup> Screeners identified most of these issues through the initial screening process.<sup>262</sup> Applications containing these issues were initially referred to as “consistency cases.”<sup>263</sup> EO Determinations agents and

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<sup>253</sup> *Id.*; SFC Interview of Cindy Thomas (July 25, 2013) p. 66.

<sup>254</sup> SFC Interview of Elizabeth Hofacre (Sep. 24, 2013) pp. 31-32.

<sup>255</sup> *Id.* pp. 135-136.

<sup>256</sup> Email from Cindy Thomas to Jon Waddell (Apr. 18, 2007) IRS0000008413-14.

<sup>257</sup> SFC Interview of Elizabeth Hofacre (Sep. 24, 2013) pp. 30-33.

<sup>258</sup> *Id.*

<sup>259</sup> *Id.*

<sup>260</sup> *Id.*

<sup>261</sup> Email from Cindy Thomas to Holly Paz (Mar. 16, 2011) IRS0000008593-602.

<sup>262</sup> *Id.*

<sup>263</sup> SFC Interview of Elizabeth Hofacre (Sep. 24, 2013) pp. 17-18.

managers were apprised of these “consistency cases” by email and provided direction on how to treat them.<sup>264</sup> However, at some point, agents had difficulty keeping track of all the emails they were receiving on the “consistency cases.”<sup>265</sup> Accordingly, a decision was made to consolidate the “consistency case” information sent by email into the existing TAG spreadsheet so that EO Determinations agents could easily access all of the information that they required in one convenient document.<sup>266</sup>

Accordingly, Jon Waddell and Joseph Herr, Group Managers in EO Determinations (Groups 7830 and 7825 respectively), began creating a “Joint TAG/Emerging Issues Spreadsheet.”<sup>267</sup> The spreadsheet contained a tab for TAG applications encountered over the past 2-3 years, as well as tabs for Emerging Issues and a Watch List.<sup>268</sup> Emerging Issues were defined as follows:

- Groups of applications for which there is no established case law or precedent
- Issues arising from significant current events (not disaster relief); and
- Issues arising from changes to tax law or other significant world events.<sup>269</sup>

The Watch List contained a list of issues that the IRS had not yet received, but that it might receive in the future. These issues were the result of significant changes in tax law or world events and would require “special handling” by the IRS when received.<sup>270</sup> Issues on the Watch List tab were generally identified by EO Technical staff and brought to the attention of the EO Determinations Program Manager.<sup>271</sup>

In April 2010, Thomas determined that the joint issues spreadsheet then under development should also contain a tab for “consistency cases,” which she described as applications “where we want to ensure consistent treatment ... (these cases are not TAG or Emerging Issues). For example, a group ruling disbands and subordinates decide to apply for individual exemption – we need to make sure they are worked/treated the same.”<sup>272</sup> She also decided that EO Determinations agents and managers would be informed about the new spreadsheet during the June/July 2010 Continuing Professional Education (CPE) training sessions that they would be attending, and asked that the draft spreadsheet be completed and presented to her for review by

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<sup>264</sup> *Id.* pp. 94-95.

<sup>265</sup> *Id.*

<sup>266</sup> Email from Jon Waddell to Sharon Camarillo and Brenda Melahn (Apr. 6, 2010) IRS0000629335-48.

<sup>267</sup> *Id.*

<sup>268</sup> *Id.* Waddell noted that “the previous tabs for Archived and Removed TAG Issues have been taken out of the spreadsheet. Since the spreadsheet is now a joint one between TAG and Emerging Issues, we felt it would be too cumbersome to include additional tabs of 100’s [of] former TAG issues.”

<sup>269</sup> Heightened Awareness Issues IRS0000557291-308.

<sup>270</sup> *Id.*

<sup>271</sup> Email Chain between Holly Paz, Lois Lerner and Cindy Thomas (Feb. 18 - Mar. 16, 2011) IRS0000008593-602.

<sup>272</sup> Email chain between Cindy Thomas, Sharon Camarillo and Joseph Herr (Apr. 6-13, 2010) IRS0000629335-48.

the end of April 2010.<sup>273</sup> Thomas suggested that the name of the spreadsheet be changed since it no longer was limited to just TAG issues, but she offered no suggestions for a new name.<sup>274</sup>

In accordance with Thomas's direction, Jon Waddell revised the "Joint Spreadsheet" to include tabs for TAG cases, Emerging Issues, Coordinated Cases, and a Watch List.<sup>275</sup> Subsequently, on May 6, 2010, Elizabeth Hofacre, Emerging Issues Coordinator for Group 7825, sent a copy of the "joint issues" spreadsheet to her manager, Joseph Herr. The draft spreadsheet referred to "Tea Parties" as a sample entry under the Emerging Issues tab and directed agents to "[c]oordinate with group 7825."<sup>276</sup>

### **C. EO DETERMINATIONS AGENTS WERE TRAINED IN THE USE OF THE NEW SPREADSHEET AT A JUNE/JULY 2010 CPE TRAINING**

In June and July of 2010, EO Determinations provided CPE training to its specialists.<sup>277</sup> During the course of the training, the specialists were advised that they would soon be provided with a "Combined Issues Workbook" that contained tabs for TAG, TAG Historical, Emerging Issues, Coordinated Processing Issues, and a Watch List.<sup>278</sup> The specialists were shown a PowerPoint presentation that advised them that a designated coordinator would maintain the workbook and disseminate alerts in one standard email.<sup>279</sup> During the course of the training, the specialists were instructed that "Tea Party Cases" were an Emerging Issue because they involved:

1. High Profile Applicants
2. Relevant Subject in Today's Media
3. Inconsistent Requests for 501(c)(3) and 501(c)(4)
4. Potential for Political/Legislative Activity
5. Rulings Could be Impactful<sup>280</sup>

EO Determinations also told its specialists that "Successors to Acorn" was an example of a Watch List issue. The PowerPoint presentation instructed employees that Watch List Issues had the following characteristics:

- Typically Applications Not Yet Received
- Issues are the Result of Significant Changes in Tax Law
- Issues are the Result of Significant World Events

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<sup>273</sup> *Id.*

<sup>274</sup> *Id.*

<sup>275</sup> Email from Jon Waddell to Sharon Camarillo and Brenda Melahn (Apr. 27, 2010) IRS0000629455-57.

<sup>276</sup> Email from Elizabeth Hofacre to Joseph Herr (May 6, 2010) IRS0000542119-24.

<sup>277</sup> SFC Interview of Cindy Thomas (July 25, 2013) p. 43.

<sup>278</sup> Email chain between Cindy Thomas and Holly Paz (May 9-10, 2012) IRS0000004755-62.

<sup>279</sup> Heightened Awareness Issues (undated) IRS0000557291-308.

<sup>280</sup> *Id.*



- Special Handling is Required when Applications are Received.<sup>281</sup>

Following up on this training, on July 27, 2010, Elizabeth Hofacre prepared a “Combined Issue Spreadsheet” and distributed it to managers in EO Determinations.<sup>282</sup> The Emerging Issues tab of the spreadsheet informed the agents about Tea Party applications. The spreadsheet indicated that “[t]hese cases involve various local organizations in the Tea Party movement [that] are applying for exemption under 501(c)(3) or 501(c)(4).” The entry in the spreadsheet further directed that “[a]ny cases should be sent to Group 7825. Liz Hofacre is coordinating. These cases are currently being coordinated with EOT.” Hofacre was provided the language for this spreadsheet entry by Jon Waddell.<sup>283</sup>

The spreadsheet distributed by Hofacre also contained an entry for “Progressive” on the Tag Historical tab with the issue listed as “political activities.” Further, the entry stated that the “[c]ommon thread is the word ‘progressive.’ Activities appear to lean toward a new political party. Activities are partisan and appear as anti-Republican. You see references to ‘blue.’”<sup>284</sup>

In addition, the spreadsheet included a reference to “Acorn Successors” on the Watch List tab. The description stated that “[f]ollowing the breakup of ACORN, local chapters have been reforming under new names and resubmitting applications.”<sup>285</sup> Screeners were instructed to send these cases “to the TAG Group.”<sup>286</sup>

#### **D. THE NEW SPREADSHEET WAS RENAMED THE “BOLO” SPREADSHEET**

From the outset of the development of the Joint TAG/Emerging Issues spreadsheet in April 2010, there was some question about what to call the new consolidated spreadsheet. While in development, various iterations of the spreadsheet had been called “Joint Spreadsheet,” “Combined Issues Workbook” and “Combined Issue Spreadsheet.” Cindy Thomas stated that

... no one really could think of a name for calling it so everyone would know what we are talking about, we decided to have – when we introduced this we said we will have a contest to see if anyone can name it and we will give – whoever came up with a name we would give them 59 minutes of administrative time.

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<sup>281</sup> *Id.*

<sup>282</sup> Email from Elizabeth Hofacre to Steve Bowling, John Shafer and others (July 27, 2010) IRS0000008609-24.

<sup>283</sup> SFC Interview of Elizabeth Hofacre (Sep. 24, 2013) p. 109.

<sup>284</sup> Email from Liz Hofacre to IRS Staff (July 27, 2010) IRS0000008609-24.

<sup>285</sup> *Id.*

<sup>286</sup> *Id.*

So Liz Hofacre was actually the one who came up with a name and we gave her 59 minutes of admin. And she came up with “Be on the Look Out,” and that was in August 2010.<sup>287</sup>

Elizabeth Hofacre indicated that Joseph Herr had suggested the name “Be on the Look Out” or “BOLO” but gave credit for the suggestion to her, because he did not feel that it was appropriate to accept the award himself, since he had been a manager.<sup>288</sup>

On August 12, 2010, Hofacre distributed the first “BOLO” spreadsheet to EO Determinations agents in her capacity as Emerging Issues Coordinator. “Tea Party” applications were specifically identified under the Emerging Issues tab of the spreadsheet as follows: “[t]hese cases involve various local organizations in the Tea Party movement [that] are applying for exemption under 501(c)(3) or 501(c)(4).” The BOLO directed agents to send Tea Party applications to Group 7822 and advised that Hofacre was the coordinator.<sup>289</sup> Jon Waddell provided Hofacre with the language for the Tea Party entry on the Emerging Issues tab.<sup>290</sup>

The BOLO spreadsheet distributed by Hofacre also contained an entry for “Progressive” on the Tag Historical tab with the issue listed as “political activities.” Further, the entry stated that the “[c]ommon thread is the word ‘progressive.’ Activities appear to lean toward a new political party. Activities are partisan and appear as anti-Republican. You see references to ‘blue.’”<sup>291</sup>

#### **E. EO DETERMINATIONS DEVELOPED A PROCESS TO UPDATE THE BOLO SPREADSHEET**

Along with the introduction of the BOLO spreadsheet, EO determinations developed a process for making changes, from time to time, to the spreadsheet. Prior to May 17, 2012, for TAG issues, Coordinated Processing applications, and Watch List applications, a group manager would send an email requesting a revision to the manager of Group 7822.<sup>292</sup> If the Manager of Group 7822 agreed with the suggested revision, then the change was made and the Emerging Issues Coordinator sent out a BOLO alert to all EO Determinations agents and managers. If there was disagreement, then the manager of Group 7822 elevated the issue to Cindy Thomas for resolution. In addition, if the EO Technical Manager contacted Thomas to advise her to “watch for” certain types of applications, she would direct the Manager of Group 7822 to add the issue to the Watch List.

For changes to the Emerging Issues tab, prior to May 17, 2012, suggestions were sent to the Emerging Issues Coordinator in Group 7822, who researched the matter and reported his/her

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<sup>287</sup> SFC Interview of Cindy Thomas (July 25, 2013) p. 43.

<sup>288</sup> SFC Interview of Elizabeth Hofacre (Sep. 24, 2013) pp. 127-128.

<sup>289</sup> Email chain between Holly Paz, Lois Lerner and Nikole Flax (May 21, 2012) IRS0000352978-84.

<sup>290</sup> SFC Interview of Elizabeth Hofacre (Sep. 24, 2013) pp. 129-131.

<sup>291</sup> Combined Spreadsheet TAG 8 12 10 (Aug. 10, 2010).

<sup>292</sup> Email chain between Cindy Thomas and Holly Paz (May 9-10, 2012) IRS0000004755-62.

conclusions to the Manager of Group 7822. The Manager of Group 7822 then consulted with the Area Manager and/or the EO Determinations Program Manager for a final decision. The Emerging Issues Coordinator then emailed changes to EO Determinations agents and managers.<sup>293</sup>

Subsequent to May 17, 2012, this process changed. On that date, Holly Paz, Director of Rulings and Agreements, issued a memorandum requiring that all changes to the BOLO spreadsheet tabs (Abusive Transaction and Fraud Applications (TAG), Emerging Issues, Coordinated Processing applications and Watch List applications) receive the approval of the Group Manager of the Emerging Issues Group, the EO Determinations Program Manager, and the Director of Rulings and Agreements.<sup>294</sup>

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<sup>293</sup> *Id.*

<sup>294</sup> Email chain between Holly Paz, Lois Lerner and Nikole Flax (May 17, 2012) IRS0000437639-41.

**VI. APPLICATIONS SUBMITTED BY TEA PARTY ORGANIZATIONS WERE SYSTEMATICALLY IDENTIFIED, CENTRALIZED AND SUBJECTED TO HEIGHTENED SCRUTINY BY THE IRS**

*This section explains how the IRS used the BOLO spreadsheet to systemically identify incoming applications submitted by Tea Party organizations, and how being placed on the BOLO spreadsheet affected the processing of those applications.*

**A. AFTER THE IRS RECEIVED AND APPROVED THE FIRST FEW “TEA PARTY” APPLICATIONS, IT PREPARED SENSITIVE CASE REPORTS AND ADDED AN ENTRY TO THE BOLO SPREADSHEET**

The first applications for tax exemption filed by Tea Party organizations were received by EO Determinations prior to March 2010.<sup>295</sup> EO Determinations processed the initial applications it received and in doing so, it approved two Tea Party organizations that had applied for exemption under 501(c)(4), and one Tea Party organization that had submitted an application for exemption under 501(c)(3).<sup>296</sup> It would be more than 18 months before the IRS approved another application from a Tea Party organization.<sup>297</sup>

**1. Tea Party Applications Began to Draw Attention in EO Determinations**

In early 2010, an application filed by the Albuquerque Tea Party was assigned to Jack Koester, a screener in Group 7838, EO Determinations.<sup>298</sup> Koester had heard about the Tea Party in news reports.<sup>299</sup> Upon receiving the application from the Albuquerque Tea Party, Koester concluded that it was “high profile” because of the possibility that it would attract media attention, so he informed his Group Manager, John Shafer. It was standard practice for screeners to bring “high profile” applications to the attention of their manager.<sup>300</sup> Subsequently, Koester sent Shafer an email in which he noted that “recent media attention to this type of organization indicates to me

<sup>295</sup> Email chain between Cindy Thomas, Steven Grodnitzky and others (Mar. 31 - Apr. 12, 2010) IRS0000165413-14.

<sup>296</sup> *Id.*

<sup>297</sup> Based on data provided to the SFC by the IRS (Mar. 26, 2014).

<sup>298</sup> SFC Interview of Jack Koester (Aug. 1, 2013) p. 8.

<sup>299</sup> *Id.* p. 23.

<sup>300</sup> *Id.* pp.12-13.

that this is a high profile case.”<sup>301</sup> Koester also indicated that the organization stated in its Form 1024 that it may engage in “possible future political activities.”<sup>302</sup>

Shafer, in turn, forwarded Koester’s email to Sharon Camarillo, his Area Manager, who sent it to Cindy Thomas, asking that Thomas “let ‘Washington’ know about this potentially politically embarrassing case involving a ‘Tea Party’ organization.”<sup>303</sup>

## **2. EO Technical Had Early Awareness of the Tea Party Applications**

Upon receiving Camarillo’s February 25, 2010 email, Thomas contacted Holly Paz, then the Acting Manager of EO Technical. Thomas told Paz that “[w]e have a Form 1024 for: Albuquerque Tea Party Inc. We’re wondering if EO Technical wants the case because of recent media attention.”<sup>304</sup> Paz, in reply, stated to Thomas, “I think sending it up here is a good idea given the potential for media interest.”<sup>305</sup>

## **3. EO Technical Assumed Responsibility for Working Two Tea Party Applications as “Test Cases”**

In early March 2010, Shafer asked Gary Muthert, a screener in his Group, to conduct a search of the case and inventory management systems used by TE/GE to determine if any other Tea Party organizations had filed applications for tax exemption.<sup>306</sup> Muthert found that there were seven applications pending from Tea Party organizations, and that three additional applications had already been approved for tax-exempt status.<sup>307</sup> When Thomas was made aware of the existence of these 10 application, she apprised Paz, asking Paz whether she wanted “all of them or do you only want a few and then give us advice as to what to do with the remaining?”<sup>308</sup> Paz acknowledged receipt of the “one Tea Party case up here – that was sent up from [EO Determinations] just a few weeks ago ... .” Paz then stated that she was unaware that there were more, and said “I think we should take a few more cases (I’d say 2) and would ask that you hold the rest until we get a sense of what the issues may be. Then we will work with [EO Determinations] in working the other cases.”<sup>309</sup>

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<sup>301</sup> Email chain between Jack Koester, John Shafer, Sharon Camarillo, Cindy Thomas and others (Feb. 25 - Mar. 17, 2010) IRS0000180869-73.

<sup>302</sup> *Id.*

<sup>303</sup> *Id.*

<sup>304</sup> *Id.*

<sup>305</sup> *Id.*

<sup>306</sup> SFC Interview of Gary Muthert (July 30, 2013) (not transcribed).

<sup>307</sup> *Id.*

<sup>308</sup> Email chain between Cindy Thomas, Holly Paz and others (Feb. 25 - Mar. 17, 2010) IRS0000180869-73.

<sup>309</sup> *Id.*

#### 4. EO Technical Prepared the First SCR for the Tea Party Applications

On or around March 18, 2010, Steve Grodnitzky, Manager of EO Technical Group 1, became Acting Manager of EO Technical.<sup>310</sup> Several weeks later, Grodnitzky inquired of Donna Elliot-Moore, a Tax Law Specialist in EO Technical, about the specific activities of the two Tea Party organizations whose applications were then pending in EO Technical. One of those applications was for exemption under 501(c)(4) from the Albuquerque Tea Party, and the other was for exemption under 501(c)(3) from the Prescott Tea Party. Elliot-Moore advised Grodnitzky on April 1, 2010 that with regard to the activities of both organizations, “I looked briefly and it looks more educational but with a republican slant obviously.”<sup>311</sup> Grodnitzky responded “[t]hese are high profile cases as they deal with the Tea Party so there may be media attention. May need to do an SCR on them.”<sup>312</sup> Elliot-Moore noted in response that “[t]he Tea Party movement is covered in the Post almost daily. I expect to see more applications.” Grodnitzky then contacted Cindy Thomas on April 2, 2010, and advised her that “I think there needs to be an SCR on the Tea Party cases, due to the high media attention. Actually, you can’t turn on the television news without hearing about the movement.”<sup>313</sup> Thomas concurred in Grodnitzky’s assessment.

Grodnitzky assigned the two Tea Party applications to EO Technical Group 2, managed by Ronald Shoemaker.<sup>314</sup> Shoemaker, in turn, assigned the two applications to Carter (Chip) Hull, a Tax Law Specialist in Group 2. Hull, a veteran of the IRS since 1965, was considered to be a subject-matter expert on 501(c)(4) organizations.<sup>315</sup> Grodnitzky directed Shoemaker to prepare an SCR on the Tea Party applications.<sup>316</sup> The Tea Party cases met the criteria for preparation of an SCR because the applications were likely to attract media attention. Accordingly, Hull prepared the first SCR on the Tea Party applications which is dated April 19, 2010. In the SCR, Hull noted that the applications from the Albuquerque Tea Party and the Prescott Tea Party were “[l]ikely to attract media or Congressional attention.” Hull further indicated that “[t]he various ‘tea party’ organizations are separately organized but appear to be part of a national politically conservative movement that may be involved in political activities. The ‘tea party’ organizations are being followed closely in national newspapers (such as the *Washington Post*) almost on a daily basis.”<sup>317</sup>

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<sup>310</sup> SFC Interview of Holly Paz (July 26, 2013) p. 16.

<sup>311</sup> Email chain between Donna Elliot-Moore, Steve Grodnitzky and others (Mar. 31 - Apr. 2, 2010) IRS0000165413-14.

<sup>312</sup> *Id.*

<sup>313</sup> *Id.*

<sup>314</sup> Email chain between Steve Grodnitzky, Ronald Shoemaker and others (Mar. 31 - Apr. 5, 2010) IRS0000166266-67.

<sup>315</sup> SFC Interview of Ronald Shoemaker (July 31, 2013) (not transcribed); SFC Interview of Carter Hull (July 23, 2013) (not transcribed).

<sup>316</sup> Email chain between Steve Grodnitzky, Ronald Shoemaker and others (Mar. 31 - Apr. 5, 2010) IRS0000166266-67.

<sup>317</sup> TE/GE Division Sensitive Case Report (Apr. 19, 2010) IRS0000164074-75.

## **5. Placing the Tea Party Applications on the SCRs Caused Delays in Their Processing**

Grodnitzky's decision to place Tea Party applications on the SCR effectively meant that proposed determinations for those applications now required at least two additional levels of review before they could be released. Since the applications on the SCR were the "test cases," those needed to first be resolved before all other Tea Party applications pending in EO Determinations could also be brought to closure. Any delay in the disposition of the applications on the SCR would result in a corresponding delay in the disposition of all other Tea Party applications pending in EO Determinations. As explained in greater detail in Section VII(C), there were substantial delays in the processing of the "test cases" and those delays, in turn, contributed to delays in the processing of the Tea Party applications awaiting action in EO Determinations.

## **6. Identification of the Tea Party Applications as an Emerging Issue on the BOLO Spreadsheet Resulted in Centralization and Full Development of those Applications**

As described more fully above, EO Determinations developed the new "Joint Tag Emerging Issues Spreadsheet" (subsequently refined and renamed "BOLO Spreadsheet") in early 2010, coincidentally with the identification of the first Tea Party applications and their placement on the SCR.<sup>318</sup> Joseph Herr and Elizabeth Hofacre added applications received from Tea Party organizations to a draft version of the spreadsheet as early as May 6, 2010, because these applications met the criteria for an "emerging issue" (absence of established precedent, issues arising from significant events, etc.).<sup>319</sup> Ultimately, the spreadsheet was renamed the "BOLO" spreadsheet and distributed to EO Determinations agents on August 12, 2010.<sup>320</sup>

Inclusion of the Tea Party reference in the Emerging Issues tab of the BOLO spreadsheet shaped the manner in which the Tea Party applications were processed by EO Determinations over the next few years. Specifically, applications identified as originating from Tea Party groups were then "centralized" by sending them to the Emerging Issues Group (7822). There they were subjected to full development for possible political advocacy.<sup>321</sup>

In order to identify what was, in fact, a "Tea Party" application, the screening agents and secondary screeners in EO Determinations developed screening criteria. If an application met

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<sup>318</sup> Email chain between Jon Waddell, Sharon Camarillo, Brenda Melahn and others (Apr. 6-13, 2010) IRS0000629335-48.

<sup>319</sup> Email chain between Elizabeth Hofacre, Joseph Herr and others (May 6-7, 2010) IRS0000542119-24.

<sup>320</sup> Email chain between Holly Paz, Lois Lerner and Nikole Flax (May 21, 2012) IRS0000352978-84.

<sup>321</sup> SFC Interview of Elizabeth Hofacre (Sep. 24, 2013) p. 47.

the screening criteria, it was sent to Group 7822 for centralized handling as a Tea Party application. John Shafer summarized the criteria as follows:

The following are issues that could indicate a case to be considered a potential “tea party” case and sent to Group 7822 for secondary screening.

1. “Tea Party,” “Patriots” or “9/12 Project” is referenced in the case file.
2. Issues include government spending, government debt and taxes.
3. Educate the public through advocacy/legislative activities to make America a better place to live.
4. Statements in the case file that are critical of how the country is being run.<sup>322</sup>

Applications that merely contained the words “Tea Party,” “9/12,” “Patriots,” and other like terms, but did not otherwise evidence political campaign intervention, were nevertheless centralized in Group 7822 as “Tea Party” applications and there received full development.<sup>323</sup> Similarly, applications that referenced activities such as advocating for smaller government and balanced budgets, that criticized how the country was being run, or that suggested ways to make America a better place to live, but that did not contain words like “Tea Party” or “9/12” or “Patriots,” were also considered to be “Tea Party” applications. Accordingly, they were centralized in Group 7822 where they were fully developed.<sup>324</sup>

During Elizabeth Hofacre’s tenure as Emerging Issues Coordinator in Group 7822 (May 2010 to October 2010), screeners sometimes sent to Group 7822 applications received from organizations on the left of the political spectrum that involved possible political campaign intervention.<sup>325</sup> Hofacre returned these applications to the screeners or placed them in general inventory and they were subsequently assigned to any EO Determinations agent, since they did not meet the criteria for a Tea Party application.<sup>326</sup> Similarly, Hofacre returned to the screeners or to general inventory applications received from groups on the right of the political spectrum that did not meet the Tea Party criteria.<sup>327</sup> Applications so returned were assigned, processed and determinations were made on them.<sup>328</sup> In contrast, and as described more fully in succeeding sections, applications identified as “Tea Party” applications by EO Determinations and centralized in Group 7822 were subjected to long delays, multiple reviews, and unnecessarily burdensome development.

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<sup>322</sup> Email chain between Holly Paz, John Shafer, Cindy Thomas and others (June 1-10, 2011) IRS0000066837-40.

<sup>323</sup> SFC Interview of Elizabeth Hofacre (Sep. 24, 2013) p. 118.

<sup>324</sup> *Id.* pp. 50-52; Email chain between Holly Paz, John Shafer, Cindy Thomas and others (June 1-10, 2011) IRS0000066837-40.

<sup>325</sup> SFC Interview of Elizabeth Hofacre (Sep. 24, 2013) pp. 45-52.

<sup>326</sup> *Id.*

<sup>327</sup> *Id.*

<sup>328</sup> *Id.*



## **B. EO DETERMINATIONS PERIODICALLY UPDATED THE EMERGING ISSUES TAB OF THE BOLO SPREADSHEET**

The Emerging Issues tab of the BOLO spreadsheet underwent several major revisions between 2010 and 2012. Until May 2012, most of these changes had little practical effect in the way that EO Determinations employees screened and processed incoming applications from Tea Party organizations.

### **1. Until July 2011, the Emerging Issues Tab of the BOLO Spreadsheet Specifically Referenced the Tea Party Movement**

From its earliest iteration in May 2010 until the July 2011 revision, the BOLO specifically referenced the Tea Party movement.<sup>329</sup> For example, in October 2010, when Elizabeth Hofacre relinquished her position as the Emerging Issues Coordinator to Ronald Bell, the Emerging Issue tab read as follows:

**Issue Name:** Tea Party

**Issue Description:** These cases involve various local organizations in the Tea Party movement that are applying for exemption under 501(c)(3) or 501(c)(4).

**Disposition of Emerging Issue:** Any cases should be sent to Group 7822. Liz Hofacre is coordinating. These cases are currently being coordinated with EOT.<sup>330</sup>

In February 2011, the language was revised slightly as follows:

**Issue Name:** Tea Party

**Issue Description:** Organizations involved with the Tea Party movement applying for exemption under 501(c)(3) or 501(c)(4).

**Disposition of Emerging Issue:** Forward case to Group 7822. Ron Bell (coordinator). Cases are being coordinated with EO Tech – Chip Hull.<sup>331</sup>

The references to the “Tea Party movement” in the Emerging Issues tab of the BOLO spreadsheet were meant to describe organizations that were part of the actual Tea Party movement.<sup>332</sup>

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<sup>329</sup> Email chain between Holly Paz, Lois Lerner and Nikole Flax (May 21, 2012) IRS0000352978-84.

<sup>330</sup> *Id.*

<sup>331</sup> *Id.*

<sup>332</sup> SFC Interview of Joseph Herr (June 18, 2013) (not transcribed); SFC Interview of Ronald Bell (July 30, 2013) (not transcribed).

## **2. In July 2011, Lois Lerner Directed that the References to “Tea Party” be Removed From the Emerging Issues Tab of the BOLO Spreadsheet**

On July 5, 2011, Lois Lerner convened a meeting with various members of her staff including Holly Paz, Cindy Thomas and others, to discuss the Tea Party applications and options for processing those applications.<sup>333</sup> In preparation for the meeting, Lerner’s staff assembled a briefing paper that stated the criteria that the screeners in EO Determinations were using to identify applications as “Tea Party” applications.<sup>334</sup> The criteria were then discussed by the participants.<sup>335</sup> During the course of the meeting, Lerner directed that “Tea Party” organizations should no longer be referred to as such, but instead should be called “advocacy organizations.”<sup>336</sup> Lerner was apparently concerned that referring to the organizations by their name would create the impression of bias.<sup>337</sup> On July 5, 2011, Cindy Thomas described to her staff Lerner’s motivation for the name change as follows:

Lois expressed concern with the “label” we assigned to these cases. Her concern was centered around the fact that these type things [sic] can get us in trouble down the road when outsiders request information and accuse us of “picking on” certain types of organizations even though we all know that isn’t what is taking place.<sup>338</sup>

During the meeting, Lerner and those present worked out new language to replace the “Tea Party” reference in the Emerging Issues tab of the BOLO spreadsheet with a more general reference to advocacy organizations.<sup>339</sup>

## **3. Cindy Thomas Removed References to the “Tea Party” From the Emerging Issues Tab of the BOLO Spreadsheet**

Immediately after the meeting, Thomas made the agreed-to changes to the Emerging Issues tab.<sup>340</sup> The entry now read as follows:

**Issue:** Advocacy Orgs

**Issue Description:** Organizations involved with political, lobbying or advocacy for exemption under 501(c)(3) or 501(c)(4).

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<sup>333</sup> Email chain between Cindy Thomas, Ronald Bell and others (July 5, 2011) IRS0000620735-40.

<sup>334</sup> Email from Justin Lowe to Holly Paz (June 27, 2011) IRS0000431165-66.

<sup>335</sup> Email chain between Cindy Thomas, Steve Bowling, John Shafer and others (July 5, 2011) IRS0000620735-40.

<sup>336</sup> *Id.*

<sup>337</sup> SFC Interview of Holly Paz (July 26, 2013) p. 87.

<sup>338</sup> Email chain between Cindy Thomas, Steve Bowling, John Shafer and others (July 5, 2011) IRS0000620735-40.

<sup>339</sup> *Id.*

<sup>340</sup> *Id.*

**Disposition of Emerging Issue:** Forward case to Group 7822. Ron Bell is coordinating cases with EO Tech – Chip Hull.<sup>341</sup>

Thomas informed Steve Bowling and John Shafer that she had made the above-described change to the Emerging Issues tab.<sup>342</sup> She also advised Bowling and Shafer that “Lois did want everyone to know that we are handling the cases as we should, i.e., the Screening Group starts seeing a pattern of cases and is elevating the issue.”<sup>343</sup>

On July 11, 2011, Ronald Bell sent the revised BOLO spreadsheet to EO Determinations employees in accordance with his responsibilities as the Emerging Issues Coordinator.<sup>344</sup> While Bell informed recipients of the BOLO Alert email to be on the lookout for applications for exemption under 501(c)(3) for “green” energy, his cover email failed to apprise recipients of the changes made to the Emerging Issues tab.<sup>345</sup>

#### **4. After July 11, 2011, Cindy Thomas and John Shafer Made No Changes to the Screening Criteria Used by Screeners to Identify Applications Received from Tea Party Groups**

After Bell transmitted the revised July 11, 2011, BOLO spreadsheet to EO Determinations staff, John Shafer, the Screening Group Manager, made no changes to the use of the criteria by the screeners to identify Tea Party applications.<sup>346</sup> The following colloquy occurred during Shafer’s interview by the Committee:

- Q. Okay. Okay. So Exhibit 8, whatever you want to call it, the numbers 1 through 4 that are in your Exhibit 8 [applicant’s name included “Tea Party,” “Patriots,” or “9/12,” or statements existed in the application about government spending/debt, making America a better place to live, or that were critical of the way the country was being run], that’s how the cases were being screened at that time in June of 2011?
- A. Yes, it was.
- Q. And then after this meeting with Lois Lerner in July of 2011, you did not direct your screeners to make any changes in how they were screening cases?
- A. Not to my knowledge ...<sup>347</sup>

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<sup>341</sup> Email chain between Holly Paz, Lois Lerner and Nikole Flax (May 21, 2012) IRS0000352978-84.

<sup>342</sup> Email chain between Cindy Thomas, Steve Bowling, John Shafer and others (July 5, 2011) IRS0000620735-40.

<sup>343</sup> *Id.*

<sup>344</sup> Email from Ronald Bell to EO Determinations employees (July 11, 2011) IRS0000618365-70.

<sup>345</sup> *Id.*

<sup>346</sup> SFC Interview of John Shafer (Sep. 17, 2013) pp. 120-122.

<sup>347</sup> *Id.* p. 121 and Interview Exhibit 8.

Shafer made no changes because he interpreted Thomas's email in which she advised that "Lois did want everyone to know that we are handling the cases as we should ..." as confirmation that his screening Group was handling the Tea Party cases correctly.<sup>348</sup> Therefore, after July 11, 2011, the screeners received no direction to change the way that they had been processing Tea Party applications.

Similarly, Cindy Thomas understood the July 11, 2011 change directed by Lerner from "Tea Party" to "advocacy org." in the Emerging Issues tab to be no more than a name change.<sup>349</sup> She did not feel that the name change necessitated any revisions to the way EO Determinations was processing cases that involved political advocacy issues. Thomas told the Committee:

Again, I believe that all along that we were including all cases with political activity. So why would I believe that something needed to be changed when I believed that we were treating all cases the same and putting them all in the bucket.<sup>350</sup>

The Committee found no evidence to suggest that Lois Lerner followed up with Thomas or any other manager to ensure that EO Determinations was properly screening applications in accordance with the revised "Advocacy orgs." entry of the July 2011 Emerging Issues tab of the BOLO spreadsheet.

a. How Screeners Processed Applications Received from Tea Party and Affiliated Groups After the July 2011 BOLO Change

The screeners appear to have continued to apply the Tea Party screening criteria to identify cases as "Advocacy orgs." after the July 2011 change to the Emerging Issues tab of the BOLO spreadsheet.<sup>351</sup> During the Committee's interview of Gary Muthert, a screener in John Shafer's Group, Muthert was shown a copy of the July 27, 2011 Emerging Issues tab of the BOLO spreadsheet and was asked the following:

Q. But if I'm understanding what you said just a couple of minutes ago, you continued to look for organizations that were affiliated with the Tea Party, you flagged them as advocacy organizations, and you sent them to the BOLO group, is that right?

A. Yes.

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<sup>348</sup> SFC Interview of John Shafer (Sep. 17, 2013) p. 120.

<sup>349</sup> SFC Interview of Cindy Thomas (July 25, 2013) p. 91.

<sup>350</sup> *Id.*

<sup>351</sup> SFC interview of Gary Muthert (July 30, 2013) (not transcribed). Muthert stated that after the July 2011 change to the Emerging Issues tab of the BOLO spreadsheet, he continued to send applications that contained the words "Tea Party," to Group 7822 for full development.

Q. Okay. And that continued when this was, this document, Exhibit 6 [July 27, 2011 Emerging Issues tab], was out?

A. Yes.<sup>352</sup>

It is probable that the screeners' continued use of the Tea Party criteria after the issuance of the July 11, 2011 Emerging Issues tab was a consequence of Thomas and Shafer's understanding that the screeners were "handling the cases as [they] should." Moreover, continued use of the Tea Party screening criteria was not necessarily inconsistent with the July 2011 revised description now found in the Emerging Issues tab, since cases that met the Tea Party criteria may also have met the description of "Advocacy orgs."<sup>353</sup>

Thomas herself believed that all Tea Party applications involved political activity and required full development. She stated to the Committee as follows:

Q. Did you think that all Tea Party cases involved political activity?

A. There was actually a case that had, from my understanding, there was a case that had Tea Party in the name and it was not a political case at all, that it was like Little Suzie's Tea Party, a little kid's group.

Q. But other than those that involved children's tea parties, all of the ones that are associated with the Tea Party movement, did you think they were all involving political activity?

A. Yes, those as well as all cases that involved any political activity.<sup>354</sup>

Accordingly, even after the July 2011 change to the Emerging Issues tab of the BOLO spreadsheet, EO Determinations management and EO Determinations screeners continued to treat applications received from Tea Party organizations much the same as they had before the July change.

b. How Screeners Processed Applications Received from Organizations that Did Not Engage in Political Campaign Intervention After the July 2011 BOLO Change

In September 2011, Paz grew concerned about the growing number of political advocacy cases pending in EO Determinations. She told David Fish that there were now over 100 political advocacy cases on hold in EO Determinations. She went on to state that "[i]n meeting with

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<sup>352</sup> *Id.*

<sup>353</sup> This is consistent with TIGTA's finding that all applications received by EO from organizations with "Tea Party," "Patriots," or "9/12" in their names were forwarded to Group 7822 for full development. TIGTA, *Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review*, TIGTA Audit Report 2013-10-053 (May 14, 2013) p. 6.

<sup>354</sup> SFC Interview of Cindy Thomas (July 25, 2013) p. 91.

Cindy in Cincy last week and looking at some of the cases, it is clear to me that we cast the net too wide and have held up cases that have nothing to do with lobbying or campaign intervention (e.g., org distributing educational material on the national debt).”<sup>355</sup> Thomas shared Paz’s concern. In her view, the description of “Advocacy orgs.” in the Emerging Issues tab was “way too broad,” and resulted in sending to Group 7822 for full development applications that did not contain political advocacy issues, but rather presented lobbying issues.<sup>356</sup> Thomas stated that the July 2011 description of “Advocacy orgs.” “caused confusion among the groups in Cincinnati and the employees because they then started believing it included many, many more types of cases than just political advocacy-type cases.”<sup>357</sup>

## **5. Steve Bowling and Cindy Thomas Changed the BOLO Spreadsheet in January 2012**

In January 2012, Steve Bowling discussed with several of the revenue agents in Group 7822, including Ronald Bell, the Emerging Issues Coordinator, ways to revise the Emerging Issue tab so as to narrow its focus to avoid selecting applications that did not include political advocacy issues.<sup>358</sup> At the same time, Cindy Thomas told Steve Bowling that an entry for Occupy organizations needed to be included on the Watch List or BOLO because of press reports that Occupy organizations may apply for tax-exempt status.<sup>359</sup> Initially, Bowling emailed Thomas two options for updating the BOLO criteria as follows:

1st scenario = 1 BOLO

Current Political Issues: Political action type organizations involved in limiting/expanding government, educating on the constitution and bill of rights, Social economic reform / movement.

Note: typical advocacy type issues that are currently listed on the Case Assignment Guide (CAG) do not meet these criteria unless they are also involved in activities described above.

2nd scenario = 2 BOLOs

Tea Parties: Typically involved in the tea party movement, further the principles of the constitution and bill of rights, promote voter

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<sup>355</sup> Email from Holly Paz to David Fish and Andy Megosh (Sep. 21, 2011) IRS0000010131.

<sup>356</sup> SFC Interview of Cindy Thomas (July 25, 2013) p. 80.

<sup>357</sup> *Id.* p. 82.

<sup>358</sup> *Id.* p. 93; SFC Interview of Ronald Bell (July 30, 2013) (not transcribed).

<sup>359</sup> SFC Interview of Cindy Thomas (July 25, 2013) pp. 93-94; Email chain between Mary Sheer and Peggy Combs (Jan. 9-20, 2012) IRS0000013412.

registration, may refer to governmental reform, and/or 912 projects.

“Occupy” orgs: Involve organizations occupying public space protesting in various cities, call people to assemble (people’s assemblies) claiming social injustices due to “big-money” influence, claim the democratic process is controlled by wall street/banks/multinational corporations, could be linked globally. Claim to represent the 99% of the public that are interested in separating money from politics and improving the infrastructure to fix everything from healthcare to the economy.<sup>360</sup>

Thomas vetoed the second suggestion based on her understanding of Lerner’s concerns about how the reference to “Tea Party” would create the appearance of bias.<sup>361</sup> As a compromise, Thomas suggested that Bowling use the first scenario for the Emerging Issues tab while adding Occupy to the Watch List tab.<sup>362</sup> Bowling accepted Thomas’s suggestion and revised the Emerging Issue and Watch List tabs of the BOLO spreadsheet accordingly.<sup>363</sup>

The references to “political action type organizations involved in limiting” government and “educating on the constitution and bill of rights” were attempts to describe the agenda of the Tea Party without using the term “Tea Party.”<sup>364</sup> The reference to “\$social economic reform/movement” was “code” for the Occupy organizations.<sup>365</sup> Bell queried Bowling why it was necessary to include the “\$social economic” reference in the Emerging Issues tab as well, but

<sup>360</sup> Email chain between Cindy Thomas and Steven Bowling (Jan. 20-24, 2012) IRS0000621814-17.

<sup>361</sup> *Id.*; SFC Interview of Cindy Thomas (July 25, 2013) pp. 93-95.

<sup>362</sup> *Id.*

<sup>363</sup> SFC Interview of Cindy Thomas (July 25, 2013) pp. 93-95; Email chain between Holly Paz, Lois Lerner and Nikole Flax (May 21, 2012) IRS0000352978-84. When asked by Committee Staff who was responsible for the January 25, 2012 revisions to the BOLO spreadsheet, Bowling stated as follows:

- Q. Can you tell me who the change came from, the language here under “issue description” that’s different?
- A. No, I don’t know where the change came from.
- \*\*\*
- Q. So you’re not sure who instructed you to make this change but it was somebody above you in the command chain?
- A. Yes, that’s the way it would be.
- \*\*\*
- Q. Do you know if this change ... was directed by Ms. Esrig, Ms. Thomas or was it somebody in Washington who directed it?
- A. I don’t know who directed it.

SFC Interview of Steve Bowling (June 13, 2013) (excerpt above transcribed by SFC staff). These statements by Bowling to Committee staff were not only inconsistent with the documentary evidence that the Committee received from the IRS subsequent to Bowling’s interview on June 13, 2013, but also with Thomas’s statements to Committee staff.

<sup>364</sup> SFC Interview of Ronald Bell (July 30, 2013) (not transcribed).

<sup>365</sup> Email chain between Ronald Bell and Steve Bowling (Jan. 25, 2012) IRS0000013187.

Bowling responded that organizations other than the Occupy groups were advocating a similar position.<sup>366</sup>

## **6. Holly Paz and Lois Lerner Were Informed That EO Determinations Revised the July 2011 Emerging Issues Tab**

On February 22, 2012, Paz asked Thomas to provide some information regarding the number of political advocacy cases that were then pending, whether cases that met the BOLO description received full development, and “how do we currently have this described on the bolo?”<sup>367</sup> Thomas replied to Paz on that same day that there were 208 pending political advocacy cases, that “[a]ll cases meeting BOLO criteria are supposed to go to full development,” and she attached a copy of the then-current BOLO spreadsheet.<sup>368</sup> The Emerging Issues tab of the attached spreadsheet reflected the changes that Bowling had made, and Thomas had approved, on January 25, 2012.

Subsequently, on May 15, 2012, Thomas sent Paz and Lerner another copy of the BOLO spreadsheet, including the Emerging Issues tab that reflected the changes made on January 25, 2012.<sup>369</sup>

## **7. After Steve Miller Became Aware of the BOLO Criteria, Holly Paz Revised the Process for Making Changes to the BOLO Spreadsheet and a New BOLO Spreadsheet Was Issued**

On May 3, 2012, Steve Miller was briefed by Nancy Marks on the existence of the BOLO entry for “Tea Party” and the criteria used to identify applications as Tea Party applications.<sup>370</sup> Miller told the Committee that when he first heard of the criteria, he thought that it “was stupid and inappropriate.”<sup>371</sup> When Lerner found out that the July 2011 description of “Advocacy orgs.” in the Emerging Issues tab had been subsequently changed, she “put her head on the table and said, ‘I thought I had fixed it.’”<sup>372</sup> Miller then directed Holly Paz to look into the process by which changes were made to the BOLO spreadsheet and to make adjustments to the process.<sup>373</sup> It is

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<sup>366</sup> *Id.* In response to a written questionnaire from the Committee, Bowling alleged that he did “not understand the difference between liberal organizations, Tea Party groups, or any other political groups.” See IRS Employee Responses to Written Questions from Finance Committee Staff (Dec. 19, 2013). He also made similar assertions to the Committee staff during an interview on June 13, 2013. Bowling’s statements to the Committee are at odds with his apparent understanding of the political viewpoints espoused by both Tea Party and Occupy organizations, as evidenced by the language he developed and proposed to Thomas for inclusion in the BOLO spreadsheet.

<sup>367</sup> Email chain between Holly Paz, Cindy Thomas, Roberta Zarin, Lois Lerner and others (Feb. 22, 2012) IRS0000013739-48.

<sup>368</sup> *Id.*

<sup>369</sup> Email chain between Lois Lerner, Holly Paz and Cindy Thomas (May 15, 2012) IRS0000013776-82.

<sup>370</sup> SFC Interview of Steven Miller (Dec. 12, 2013) pp. 133-141.

<sup>371</sup> *Id.* p. 139.

<sup>372</sup> SFC Interview of Sarah Hall Ingram (Dec. 16, 2013) p. 107.

<sup>373</sup> Email chain between Holly Paz and Cindy Thomas (May 9-10, 2012) IRS0000004755-62.



possible that Miller was concerned about how the Emerging Issue tab had been changed without Lerner or Paz's knowledge or consent.

On May 10, 2012, Paz asked Thomas to explain the process by which the Emerging Issues tab was amended.<sup>374</sup> Thomas informed Paz that suggestions for additions were sent to the Emerging Issues Coordinator who then consulted with the Area Manager and/or the Program Manager to determine if the matter would be added to the Emerging Issue tab.<sup>375</sup>

On May 17, 2012, Paz issued a Memorandum to Thomas advising that any changes to the Emerging Issue tab would now require the approval of the Emerging Issues Group Manager, the EO Determinations Program Manager, and the Director of Rulings and Agreements.<sup>376</sup>

In June 2012, 2012, the BOLO Spreadsheet was revised.<sup>377</sup> The Emerging Issues tab stated as follows:

**Issue:** Current Political Issues

**Issue Description:** 501(c)(3), 501(c)(4), 501(c)(5) and 501(c)(6) organizations with indicators of significant amounts of political campaign intervention (raising questions as to exempt purpose and/or excess private benefit). Note: advocacy action type issue (e.g., lobbying) that are currently listed on the Case Assignment Guide (CAG) do not meet this criteria.

**Disposition of Emerging Issue:** Forward case to Group 7822.

Paz also directed Thomas to remove references to ACORN and Occupy from the Watch List tab of the spreadsheet, since "the issues we are concerned about in those cases should be captured" by the revised language in the Emerging Issues tab.<sup>378</sup>

This description remained in the Emerging Issues tab until April 2013 when the "Disposition of Emerging Issue" entry was changed to reflect that the cases should be sent to Group 7823.<sup>379</sup> Shortly thereafter, on June 20, 2013, the IRS suspended the use of the BOLO spreadsheet.<sup>380</sup>

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<sup>374</sup> *Id.*

<sup>375</sup> *Id.*

<sup>376</sup> Email chain between Holly Paz, Lois Lerner and Nikole Flax (May 17, 2012) IRS0000437639-41.

<sup>377</sup> Email chain between Holly Paz, Nancy Marks and Sharon Light (May 14, 2013) IRS0000195830-31.

<sup>378</sup> Email from Holly Paz to Cindy Thomas (June 1, 2012) IRS0000013799.

<sup>379</sup> BOLO Spreadsheet (Apr. 19, 2013) IRS0000002718-30.

<sup>380</sup> Memorandum from Karen Schiller, Interim Guidance on the Suspension of BOLO List Usage (June 20, 2013).

**VII. THE PROCESSES USED BY THE IRS TO WORK THE TEA PARTY APPLICATIONS WERE INEFFICIENT, CUMBERSOME, INVOLVED MULTIPLE LEVELS OF REVIEW, AND WERE PLAGUED BY DELAY**

*This section identifies various measures taken by the IRS that harmed Tea Party applicants.*

No solitary event can be said to have caused the lengthy delays experienced by the Tea Party and other political advocacy organizations in the processing of their applications from 2010 to 2013. Rather, a confluence of events, some inter-related and most involving poor management decisions or the absence of management oversight, effectively resulted in the IRS taking years to make decisions on these applications.

**A. THE INITIAL PROCESS USED TO REVIEW THE TEA PARTY APPLICATIONS IN 2010 WAS LABORIOUS AND TIME CONSUMING**

In early April 2010, Carter (Chip) Hull, Tax Law Specialist, EO Technical Group 2, began working on two of the first applications received from Tea Party groups (i.e., Albuquerque Tea Party and Prescott Tea Party).<sup>381</sup> Hull had been assigned to process these two “test cases” so that his experiences could then be shared with EO Determinations, the entity with primary responsibility for processing the Tea Party applications.<sup>382</sup> Hull commenced his work by reviewing the case files and preparing development letters aimed at eliciting information from the organizations about their planned activities.<sup>383</sup> This information was necessary for Hull to determine whether the planned activities of these organizations were consistent with the tax-exempt status they were seeking.<sup>384</sup>

All other applications received from Tea Party organizations remained in EO Determinations and in late April 2010, were assigned to Elizabeth Hofacre, the Emerging Issues Coordinator in EO Determinations, Group 7822.<sup>385</sup> In mid-May 2010, Steve Grodnitzky, Acting Manager of EO Technical, directed Hull to share with Hofacre the development letters Hull had prepared for the Albuquerque and Prescott Tea Party applications.<sup>386</sup> Grodnitzky told Hull to explain to Hofacre how the questions had been tailored to the facts of each application, lest Hofacre simply copy the

<sup>381</sup> SFC Interview of Carter Hull (July 23, 2013) (not transcribed).

<sup>382</sup> SFC Interview of Ronald Shoemaker (July 31, 2013) (not transcribed).

<sup>383</sup> SFC Interview of Carter Hull (July 23, 2013) (not transcribed).

<sup>384</sup> *Id.*

<sup>385</sup> Email chain between Cindy Thomas, Steve Grodnitzky, Ron Shoemaker and others (Apr. 23-26, 2010) IRS0000181051-52.

<sup>386</sup> Email chain between Steve Grodnitzky and Carter Hull (May 17, 2010) IRS0000631583-84.

development letters. In carrying out this directive, Hull advised Hofacre to send each of her draft development letters to him, together with copies of the applications and supporting documents.<sup>387</sup> Under the process imposed by Hull, Hofacre could not release the development letters to the applicants without Hull's concurrence.<sup>388</sup> When Hofacre began to receive responses to some of the development letters, Hull instructed Hofacre to send those responses to him, as well.<sup>389</sup>

Hofacre described this process as highly unusual.<sup>390</sup> In Hofacre's experience, EO Determinations agents would sometimes contact EO Technical specialists, with prior management approval, to pose a question or two.<sup>391</sup> Typically, EO Determinations agents had broad discretion in processing applications and could make recommendations regarding the ultimate disposition of an application, or whether additional information was required of the applicant.<sup>392</sup> This was not the case for the Tea Party applications.<sup>393</sup> With regard to those applications, Hofacre was not permitted by Hull to exercise any discretion regarding the applications.<sup>394</sup> Hofacre felt that for several of the Tea Party applications, she had sufficient information in her possession to make a recommendation to either approve or deny the application, or to request additional information.<sup>395</sup> However, she was unable to do so, as Hull effectively controlled all the decisions regarding how the Tea Party applications were handled.<sup>396</sup>

In October 2010, Cindy Thomas grew concerned with the efficacy of this process under which Hull reviewed each determination letter and informed Holly Paz, then Manager of EO Technical, as follows:

I have a concern with the approach being used to develop the tea party cases we have here in Cincinnati. Apparently, an additional information letter is prepared for each case and the letter is faxed to Chip Hull for him to review. After he reviews, we send out the letter. In some instances, the organizations have responded and we are just "sitting" on these cases. **Personally, I don't know why Chip needs to look at each and every additional information letter ... we need to coordinate these cases as a group and not try to work them one by one.**<sup>397</sup>

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<sup>387</sup> SFC Interview of Elizabeth Hofacre (Sep. 24, 2013) pp. 52-70.

<sup>388</sup> *Id.*

<sup>389</sup> *Id.*

<sup>390</sup> *Id.*

<sup>391</sup> *Id.*

<sup>392</sup> *Id.*

<sup>393</sup> *Id.*

<sup>394</sup> *Id.*

<sup>395</sup> *Id.*

<sup>396</sup> *Id.*

<sup>397</sup> Email chain between Cindy Thomas, Holly Paz, Sharon Camarillo, Steve Bowling and others (Oct. 26, 2010 - Jan. 28, 2011) IRS0000435238-39 (emphasis added).

Sometime in August 2010 and continuing unabated through to October 2010, Hull ceased communicating with Hofacre for reasons unknown to Hofacre.<sup>398</sup> She continued to draft development letters and to send them to Hull along with copies of the applications and supporting documents, but Hull never responded to her.<sup>399</sup> Without Hull's concurrence, Hofacre was unable to send any further development letters to applicant organizations.<sup>400</sup> When organizations called Hofacre to inquire about the status of their applications, Steve Bowling, her Group Manager instructed her to tell the callers that their applications were "under review."<sup>401</sup> Hofacre grew increasingly frustrated with this process.<sup>402</sup> She likened it to "working in lost luggage" and she "dreaded when the phone rang."<sup>403</sup> While she elevated the matter of Hull's non-responsiveness to Bowling, Bowling merely instructed Hofacre to continue to prepare development letters and to send them to the silent Hull.<sup>404</sup>

In October 2010, Hofacre left EO Determinations, in large part due to her frustration over a lack of "autonomy" in the processing of the Tea Party applications and because of her concern that these were "high-profile" applications that could have "imploded" at any time.<sup>405</sup> When Hofacre left EO Determinations, only a few development letters had been sent out on the 40 Tea Party applications then pending in EO Determinations.<sup>406</sup> A substantial number of the applications either remained unworked, or had been reviewed by Hofacre and draft development letters had been prepared, but not released.<sup>407</sup> This was due in large measure to the requirement that Hull review each application, development letter, and response, a process that was necessarily laborious and which was delayed, for unexplained reasons, in August 2010 when Hull ceased communicating with Hofacre.

**B. BECAUSE OF MISCOMMUNICATIONS BETWEEN EO DETERMINATIONS MANAGEMENT AND STAFF, NO TEA PARTY APPLICATIONS WERE PROCESSED BY EO DETERMINATIONS FOR MORE THAN ONE YEAR (OCTOBER 2010 TO NOVEMBER 2011)**

With Hofacre's departure from EO Determinations in October 2010, Ronald Bell assumed responsibility as the Emerging Issues Coordinator in Group 7822.<sup>408</sup> Before her departure, Hofacre briefed Bell on his new duties, told him that Chip Hull was the EO Technical contact for

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<sup>398</sup> SFC Interview of Elizabeth Hofacre (Sep. 24, 2013) pp. 58-70.

<sup>399</sup> *Id.*

<sup>400</sup> *Id.*

<sup>401</sup> *Id.*

<sup>402</sup> *Id.*

<sup>403</sup> *Id.*

<sup>404</sup> *Id.*

<sup>405</sup> *Id.*

<sup>406</sup> SFC Interview of Ronald Bell (July 30, 2013) (not transcribed).

<sup>407</sup> *Id.*

<sup>408</sup> *Id.*

the Tea Party applications, and forwarded to Bell some draft development letters that she had prepared.<sup>409</sup>

Upon the assumption of his new duties, Bell was also apprised by Steve Bowling, his Manager, that EO Technical was preparing guidance for EO Determinations to use to process the Tea Party applications.<sup>410</sup> Bell interpreted this to mean that he should perform no work on the Tea Party applications until receiving that guidance from EO Technical.<sup>411</sup> Thus, in lieu of reviewing Tea Party applications and preparing draft development letters as Hofacre had done, Bell worked on auto-revocation cases.<sup>412</sup>

In November 2010, Hull's three-month period of inaccessibility appears to have come to an end when he contacted Bell and requested that Bell send him draft development letters for his review.<sup>413</sup> Bell informed Bowling of Hull's request and Bowling, in turn, informed Sharon Camarillo, the Area Manager.<sup>414</sup> Bowling told Camarillo that "Ron is getting phone calls on these cases and his typical answer is 'the case is under review.'"<sup>415</sup> Camarillo sent Bowling's email to Thomas who advised that she would follow up with Holly Paz for a status report.<sup>416</sup>

Thomas called Paz and discussed with her EO Technical's plan for dealing with the Tea Party applications.<sup>417</sup> Paz told Thomas that EO Technical was writing a briefing paper on the two applications under its review and would soon raise the issues in these applications with Judith Kindell, Senior Technical Advisor to Lois Lerner.<sup>418</sup> After her conversation with Paz, Thomas advised Bowling and Camarillo as follows:

If Judy does not believe they have a basis for denial for the egregious situations, then they will most likely recommend all cases be approved. **In the meantime, the specialist(s) need to continue working the applications as they have and will need to advise applicants that the cases are still under review.**<sup>419</sup>

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<sup>409</sup> SFC Interview of Elizabeth Hofacre (Sep. 24, 2013) pp. 150-152.

<sup>410</sup> SFC Interview of Ronald Bell (July 30, 2013) (not transcribed).

<sup>411</sup> *Id.* Bell told the Committee that Bowling did not directly instruct him not to work the Tea Party applications. Rather, Bell stated that Bowling knew that Bell was working on the auto-revocation cases, and therefore must have known that he was not working on the Tea Party applications. Bell also told the Committee that Bowling prepared Bell's performance appraisal for this time period, an act that would have necessarily required Bowling to know what work Bell had performed during the performance assessment period.

<sup>412</sup> *Id.* Section 6033(j) of the Internal Revenue Code (2010) requires the automatic revocation of exempt status for any organization that fails to file a required return for three consecutive years.

<sup>413</sup> Email chain between Steve Bowling, Sharon Camarillo and Cindy Thomas (Nov. 16-17, 2010) IRS0000163029-30.

<sup>414</sup> *Id.*

<sup>415</sup> *Id.*

<sup>416</sup> *Id.*

<sup>417</sup> Email chain between Cindy Thomas, Sharon Camarillo, Steve Bowling, Holly Paz and others (Oct. 26, 2010 - Jan. 28, 2011) IRS0000435238-39.

<sup>418</sup> *Id.*

<sup>419</sup> *Id.*

Bowling apparently failed to communicate to Bell the clear directive of Thomas that the Tea Party applications needed to be worked, and/or failed to take any action to ensure that Bell was, in fact, working the applications. As a result, Bell sent no development letters to Hull and continued to work auto-revocation cases.<sup>420</sup>

In March 2011, Thomas requested of Michael Seto that EO Technical develop an “action plan” for processing the Tea Party applications.<sup>421</sup> In reply, Seto provided Thomas with an update on the two “test cases” being worked by Hull.<sup>422</sup> Thomas passed this information to Bowling, stating:

**We still need to continue to work cases to the extent we can and then wait to issue the approval or denial letter.** EOT needs to meet with Judy Kindell, senior technical advisor to EO Director, and then Lois Lerner before they can finalize the guidance for us. I would not expect to receive anything until sometime in May 2011.<sup>423</sup>

For reasons that are unclear to the Committee staff, Bowling once again failed to follow through with Thomas’s directive and ensure that Bell understood that he should be working on the Tea Party applications, or was, in fact, actually working on the applications.

Steve Bowling’s failure to communicate Thomas’s directives of November 2010 and March 2011 to Bell regarding the processing of the Tea Party applications, and his neglect to take any measures to ensure that Bell was actually working those applications, resulted in Bell focusing almost exclusive attention on auto-revocation cases from October 2010 to November 2011.<sup>424</sup> A factor further contributing to Bell’s disregard of the Tea Party applications was that he received no guidance from EO Technical on what to do with those applications during his tenure as Emerging Issues Coordinator. When the screening group sent Bell an application from a Tea Party group during this period of time, he performed secondary screening on the application to ensure that it was, in fact, a Tea Party application.<sup>425</sup> If it was, he placed the application in a file cabinet and returned to his work on auto-revocation cases.<sup>426</sup> Aside from performing the secondary screening function, Bell did not review the Tea Party applications and did not prepare any development letters from October 2010, when he assumed responsibility as Emerging Issues

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<sup>420</sup> SFC Interview of Ronald Bell (July 30, 2013) (not transcribed).

<sup>421</sup> Email chain between Cindy Thomas, Michael Seto, Holly Paz and others (Mar. 29 - Apr. 13, 2011) IRS0000576953-55 (Email attachments containing taxpayer information omitted by SFC staff).

<sup>422</sup> *Id.*

<sup>423</sup> *Id.*

<sup>424</sup> SFC Interview of Ronald Bell (July 30, 2013) (not transcribed).

<sup>425</sup> *Id.*

<sup>426</sup> *Id.*

Coordinator, until November 2011, when Stephen Seok replaced Bell as Emerging Issues Coordinator.<sup>427</sup> Instead, the applications simply sat in a file cabinet during this period of time.<sup>428</sup>

Accordingly, miscommunications at the first level of management in EO Determinations between Bowling and Bell, coupled with a failure of EO Technical to provide guidance on how to develop the Tea Party applications, caused those applications to remain unworked in Cincinnati for over a year.

### **C. PREPARATION AND REVIEW OF EO TECHNICAL’S “TEST CASES” FROM 2010 TO 2012 ADDED SUBSTANTIAL DELAY TO THE PROCESSING OF THE TEA PARTY APPLICATIONS**

In February 2010, Holly Paz, the then-Acting Manager of EO Technical, advised Cindy Thomas that EO Technical would work two Tea Party applications to completion and then, based on the lessons learned in doing so, would provide EO Determinations with guidance on how to process the remaining Tea Party applications.<sup>429</sup> The IRS’s inability to resolve the “test cases” over a several year period directly impeded its ability to develop the guidance required by EO Determinations to process the Tea Party and other political advocacy applications then pending.

Hull’s case notes for one of the two “test cases” assigned to him, the Albuquerque Tea Party, show that he completed development of the application on July 8, 2010 when he received the Albuquerque Tea Party’s articles of incorporation.<sup>430</sup> Hull’s next entry in the case history is dated January 10, 2011, some six months later.<sup>431</sup> On that date, Hull noted that he had completed a memorandum for the file (memo).<sup>432</sup> In the two-page memo, Hull concluded that the Albuquerque Tea Party should be granted tax-exempt status.<sup>433</sup> It is unclear why it took Hull six months to prepare the two page memorandum.

On the following day, January 11, 2011, Hull submitted the memo to his reviewer, Elizabeth Kastenberg, a Tax Law Specialist in EO Technical, Group 2.<sup>434</sup> Kastenberg reviewed the memo and recommended that it be sent to Judith Kindell, Senior Technical Advisor to Lois Lerner, for her consideration.<sup>435</sup> Kindell regarded herself as the “go to” person for issues relating to political campaign intervention by tax-exempt entities.<sup>436</sup>

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<sup>427</sup> *Id.*

<sup>428</sup> *Id.*

<sup>429</sup> Email chain between Holly Paz, Cindy Thomas and others (Feb. 25 - Mar. 17, 2010) IRS0000180869-73.

<sup>430</sup> Technical Case History for Albuquerque Tea Party, IRS0000001323-24.

<sup>431</sup> *Id.*

<sup>432</sup> *Id.*

<sup>433</sup> Email chain between Michael Seto, Cindy Thomas, Holly Paz and others (Mar. 29 - Apr. 13, 2011) IRS0000622735-53.

<sup>434</sup> Technical Case History for Albuquerque Tea Party, IRS0000001323-24.

<sup>435</sup> SFC Interview of Carter Hull (July 23, 2013) (not transcribed).

<sup>436</sup> SFC Interview of Judith Kindell (July 18, 2013) p. 12.

In accordance with Kastenberg's recommendation, on March 24, 2011, Hull forwarded the memo to Kindell.<sup>437</sup> Around this time, Hull completed a draft denial of the other "test case" assigned to him, an application for 501(c)(3) status from a conservative organization called American Junto.<sup>438</sup>

Hull and Kastenberg met with Kindell on April 6, 2011, nearly three months after Kastenberg initially recommended consulting with Kindell, to discuss both the memo and the draft denial letter.<sup>439</sup> During the meeting, Kindell raised a question whether American Junto was organized primarily for private benefit rather than for a tax-exempt purpose.<sup>440</sup> Consequently, Kindell recommended that the issue of private benefit be developed and that the memo and draft denial letter be sent to the Office of the Chief Counsel so as to secure its views.<sup>441</sup> Hull followed up on Kindell's recommendation and sent a development letter to American Junto on April 27, 2011.<sup>442</sup> Subsequently, he sent his draft approval memo for the Albuquerque Tea Party to the Chief Counsel's Office on May 25, 2011,<sup>443</sup> followed on July 19, 2011 by his draft denial letter for American Junto.<sup>444</sup>

Hull and Kastenberg next met with Don Spellman, Senior Counsel, and several other representatives from the Office of the Chief Counsel on August 10, 2011, to discuss the two "test cases."<sup>445</sup> Four months had now lapsed since Kindell first recommended that the Office of Chief Counsel review the memo and draft letter. During the course of the meeting, Spellman recommended that EO Technical further develop the activities of both organizations during election year 2010.<sup>446</sup> Spellman offered to review the development letters aimed at eliciting this information, but EO Technical never sought further involvement of the Chief Counsel's Office in either of the applications.<sup>447</sup>

In November 2011, Michael Seto transferred the "test cases" to Hillary Goehausen, a Tax Law Specialist in EO Technical, Group 1.<sup>448</sup> In that same month, Goehausen prepared and sent out a development letter (the third) for American Junto and a development letter (the second) for the

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<sup>437</sup> Technical Case History for Albuquerque Tea Party, IRS0000001323-24.

<sup>438</sup> Email chain between Michael Seto, Cindy Thomas, Holly Paz and others (Mar. 29 - Apr. 13, 2011) IRS0000622735-53. Hull had been assigned an application for exemption under 501(c)(3) from the Prescott Tea Party but had closed the application in May 2010 for "failure to establish" when the Prescott Tea Party did not respond to a development letter. On June 30, 2010, Hull was assigned the application for exemption under 501(c)(3) submitted by American Junto as a replacement "test case."

<sup>439</sup> Technical Case History for Albuquerque Tea Party, IRS0000001323-24.

<sup>440</sup> Email chain between Judith Kindell, Lois Lerner, Holly Paz and others (Apr. 7, 2011) IRS0000634444.

<sup>441</sup> *Id.*

<sup>442</sup> Email chain between Hillary Goehausen, Michael Seto, Carter Hull and others (Feb. 28, 2012) IRS0000058356-61.

<sup>443</sup> Technical Case History for Albuquerque Tea Party, IRS0000001323-24.

<sup>444</sup> Sensitive Case Report (Oct. 19, 2011) IRS0000644656-57.

<sup>445</sup> SFC Interview of Carter Hull (July 23, 2013) (not transcribed).

<sup>446</sup> SFC Interview of Donald Spellman (July 10, 2013) pp. 23-36.

<sup>447</sup> *Id.*

<sup>448</sup> SFC Interview of Carter Hull (July 23, 2013) (not transcribed).



Albuquerque Tea Party.<sup>449</sup> In December 2011, a representative of American Junto informed Goehausen that it would not respond to the third IRS development letter and that the organization had been dissolved.<sup>450</sup> Goehausen closed the American Junto application for “failure to establish,” thus leaving only one remaining “test case,” the Albuquerque Tea Party.<sup>451</sup> Goehausen received the Albuquerque Tea Party’s response to the development letter in January 2012, and commenced drafting a letter denying that group tax exemption.<sup>452</sup> Goehausen’s draft letter reversed the conclusion that Hull had previously reached in his January 2011 memo in which he concluded that the application should be approved.

In April of 2012, Nancy Marks visited Cincinnati at the direction of Steve Miller, then Deputy Commissioner for Services and Enforcement, because of Miller’s concerns over how EO Determinations was processing political advocacy applications.<sup>453</sup> Among other things, Marks found that there were between 250-300 political advocacy applications awaiting determination, so she recommended to Miller that EO Technical staff provide direct assistance to EO Determinations by reviewing each political advocacy application through a “bucketing” exercise.<sup>454</sup> The object of this endeavor would be to separate applications that could be quickly decided from those that either required varying degrees of development or that were likely denials, and to place them in respective “buckets” where they could be worked to completion.<sup>455</sup> Miller concurred in the recommendation and the “bucketing” exercise began in mid-May 2012 and extended into early June 2012.<sup>456</sup>

The decision to assist EO Determinations by “bucketing” the applications in this fashion effectively superseded the plan to develop guidance for EO Determinations by working the “test cases.” In May of 2012, when the IRS decided to pursue the “bucketing” exercise and to no longer rely on the “test cases” for the development of guidance, two out of three of the “test cases” had been closed for “failure to establish” and the third was still in the development/drafting stage. The two year period during which the “test cases” had been worked resulted in the development of little or no guidance that could be used by EO Determinations to reach decisions on the growing backlog of Tea Party and other political advocacy applications. Moreover, much of the two year period that EO Technical, Judith Kindell and the Office of the Chief Counsel spent focusing on the “test cases” was marked with protracted delays, unexplained intervals of inactivity, and a lack of any sense of urgency.

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<sup>449</sup> Email chain between Hilary Goehausen, Michael Seto, Carter Hull and others (Feb. 28, 2012) IRS0000058356-61.

<sup>450</sup> *Id.*

<sup>451</sup> *Id.*

<sup>452</sup> *Id.*

<sup>453</sup> SFC Interview of Steve Miller (Dec. 12, 2013) pp.128-145.

<sup>454</sup> *Id.*

<sup>455</sup> *Id.*

<sup>456</sup> Email chain between Cindy Thomas, Bonnie Esrig, Peggy Combs and others (May 8-9, 2012) IRS0000596252; SFC Interview of Holly Paz (July 26, 2013) pp. 153-162.

Inability to resolve the “test cases” and to develop the guidance that EO Determinations had first asked for in February 2010 contributed substantially to the delays experienced by the Tea Party and other advocacy organizations in securing decisions on their applications for tax exemption.

**D. THE INITIATIVE TO DEVELOP A GUIDESHEET FOR EO DETERMINATIONS WAS A FAILURE THAT FURTHER CONTRIBUTED TO PROCESSING DELAYS IN 2011 AND 2012**

On July 5, 2011, Lois Lerner convened a meeting with Holly Paz, Nancy Marks, Cindy Thomas, and staff from EO Guidance and EO Technical, including Justin Lowe and Hillary Goehausen.<sup>457</sup> The purpose of the meeting was to discuss the Tea Party applications then pending in EO Determinations, which at that time, numbered in excess of 100, and to decide how to best process those applications.<sup>458</sup> After being brought up to date on the Tea Party screening criteria and the efforts of EO Technical to assist EO Determinations, Lerner made three decisions regarding the processing of these applications. First, Lerner directed that the groups no longer be referred to as Tea Party organizations, but rather be called “advocacy organizations.”<sup>459</sup> Second, Lerner determined that EO Technical should proceed to secure review of the two test cases by the Office of the Chief Counsel.<sup>460</sup> Third, Lerner approved the suggestion contained in the briefing paper prepared by staff for the meeting that a “guidesheet” be prepared by EO Technical for use by EO Determinations.<sup>461</sup> As Paz explained to the Committee,

[t]he idea is that the guide sheet would help the Determinations Unit in developing the cases and then also analyzing what they got in response to the development letter, in figuring out, for example, whether certain pieces of information indicated campaign intervention or did not indicate campaign intervention.<sup>462</sup>

Later in July 2011, Michael Seto directed Hillary Goehausen to draft the guidesheet and Justin Lowe, a Tax Law Specialist in EO Guidance, to review Goehausen’s draft.<sup>463</sup> Goehausen had commenced her career at the IRS in April 2011.<sup>464</sup> She prepared a draft that was reviewed by Lowe and sent it out to Judith Kindell, Chip Hull, David Fish, Elizabeth Kastenbergh and others for comment on September 21, 2011.<sup>465</sup> Only Hull provided comments to Goehausen, so Goehausen sent a slightly revised version to the same recipients on November 3, 2011, again

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<sup>457</sup> SFC Interview of Holly Paz (July 26, 2013) pp. 86-96.

<sup>458</sup> *Id.*; Email from Justin Lowe to Holly Paz (June 27, 2011) IRS0000431165-66.

<sup>459</sup> SFC Interview of Holly Paz (July 26, 2013) pp. 86-96.

<sup>460</sup> *Id.*

<sup>461</sup> *Id.* The suggestion contained in the briefing paper used for the meeting stated that “EOT composes a list of issues or political/lobbying indicators to look for when investigating potential political intervention and excessive lobbying, such as reviewing website content, getting copies of educational and fundraising materials, and close scrutiny of expenditures.” Email from Justin Lowe to Holly Paz (June 27, 2011) IRS0000431165-66.

<sup>462</sup> SFC Interview of Holly Paz (July 26, 2013) p. 96.

<sup>463</sup> Email chain between Michael Seto, Hillary Goehausen and others (July 23-24, 2011) IRS0000644018.

<sup>464</sup> SFC Interview of Hilary Goehausen (July 11, 2013) (not transcribed).

<sup>465</sup> Email from Hilary Goehausen to Judith Kindell and others (Sep. 21, 2011) IRS0000636285-97.

requesting comments.<sup>466</sup> Regarding the four months that it required to move from Lerner's decision in early July 2011 to prepare a guidesheet to the circulation of a draft for comment in early November 2011, Paz told the Committee the following:

Q. Did you feel that the 4 months to get to this stage was a suitable or an appropriate period of time to develop a document like this?

A. I thought it could have been done faster.<sup>467</sup>

On November 6, 2011, David Fish, then-Acting Director of Rulings and Agreements,<sup>468</sup> opined with regard to the guidesheet that "the document won't work in its present form. I think we need to work with [EO Determinations] to make it a usable document."<sup>469</sup> Fish apparently felt that the guidesheet was "too lawyerly" to be of assistance to the agents in EO Determinations.<sup>470</sup> Paz stated to the Committee as follows:

Q. Okay. So November 6<sup>th</sup> Mr. Fish, who is the Acting Director of Rulings and Agreements, concludes that the guidesheet ... won't work in its present form. So now that means that all the effort that has been expended since what, July 5, or since whenever Ms. Goehausen began working on that, to November 6, which is a period of about four months, is pretty much gone. Right? That effort hasn't resulted in anything useful at this point.

A. That's correct.<sup>471</sup>

Subsequently, on February 24, 2012, Paz transmitted a copy of the November 2011 iteration of the guidesheet to Don Spellman, Senior Counsel in the Office of the Chief Counsel, for his review.<sup>472</sup> Because Paz sent Spellman a version of the guidesheet from November 2011, it appears that further work by EO Technical on the guidesheet was essentially suspended in November 2011, possibly because of the determination made by David Fish that the guidesheet would not be helpful to EO Determinations agents. Spellman reviewed the guidesheet shortly after receiving it from Paz and sent an email to Janine Cook letting her know that:

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<sup>466</sup> Email chain between Hillary Goehausen, Judith Kindell and others (Sep. 21 - Nov. 3, 2011) IRS0000057352-65.

<sup>467</sup> SFC Interview of Holly Paz (July 26, 2013) p. 125.

<sup>468</sup> *Id.* p. 18. Paz was on maternity leave from October 24, 2011 to February 6, 2012. During that time, David Fish, Manager of EO Guidance, served as Acting Director of Rulings and Agreements.

<sup>469</sup> Email chain between David Fish, Michael Seto, Cindy Thomas and others (Oct. 24 - Nov. 6, 2011) IRS0000520827-41; SFC Interview of Holly Paz (July 26, 2013) pp. 133-134.

<sup>470</sup> SFC Interview of Holly Paz (July 26, 2013) p. 133.

<sup>471</sup> *Id.* p. 134.

<sup>472</sup> Email chain between Holly Paz, Don Spellman and others (Nov. 21, 2011 - Feb. 24, 2012) IRS0000056937-50.

[i]t's nowhere near ready for prime time. It's a good start, but needs corrections, additions, changes all over. The law in particular needs fixing. The development questions are good, but not complete.<sup>473</sup>

On that same day, Lerner emailed Spellman and his supervisor Janine Cook and asked that they let Lerner know their concerns with the guidesheet as soon as possible, as Lerner intended to provide the guidesheet to Congressional staff and to post it on the IRS website.<sup>474</sup>

Spellman provided comments to Lerner on the guidesheet during the week of March 5, 2012.<sup>475</sup> However, Lerner did not feel that the revisions made by Spellman would be helpful to EO Determinations agents working the applications and requested further changes in the format.<sup>476</sup> Spellman provided yet another version of the guidesheet to Lerner on April 25, 2012.<sup>477</sup> On April 27, 2012, Nikole Flax, the Assistant Deputy Commissioner for Services and Enforcement, sent the April 25, 2012 version of the guidesheet prepared by Counsel to Cathy Livingston, Health Care Counsel in the Office of Chief Counsel, and asked Livingston to provide a "gut reaction."<sup>478</sup> Livingston reviewed the guidesheet and concluded as follows:

I am concerned about this document that Counsel has sent forward, both for its practical utility in Cincinnati and also for what it doesn't make clear and what it may be perceived as implying about existing guidance . . . . The product reflects, to me, the best efforts of a team that has not had the requisite experience working with the cases and issues.<sup>479</sup>

Paz expressed the following to the Committee:

- Q. Okay. But I guess my point is, though, that this effort that had been undertaken to prepare a guidesheet had commenced sometime after July 5<sup>th</sup>, and here we are now April of the following year and we are still talking about a draft document where people are commenting on. Is that correct?
- A. Yes.
- Q. And in all that intervening period of time the guidesheet hasn't been able to be used by anyone in EOD in kind of the way it was intended to be used. Is that correct?

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<sup>473</sup> *Id.*

<sup>474</sup> Email chain between Lois Lerner, Don Spellman, Janine Cook and others (Feb. 24 - March 1, 2012) IRS0000594977-80.

<sup>475</sup> Email chain between Don Spellman, Lois Lerner and others (Mar. 5, 2012) IRS0000057789-90.

<sup>476</sup> Email chain between Janine Cook, Lois Lerner, Victoria Judson and others (Mar. 19-21, 2012) IRS0000056992-7043.

<sup>477</sup> Email from Don Spellman to Lois Lerner and others (Apr. 25, 2012) IRS0000512392-446.

<sup>478</sup> Email chain between Nikole Flax, Cathy Livingston and others (Apr. 26 - May 1, 2012) IRS0000063118-21.

<sup>479</sup> *Id.*

A. That's correct.<sup>480</sup>

In May 2012, Steve Miller approved a recommendation to send a team of employees from EO in Washington D.C. to Cincinnati to provide a training workshop to the EO Determinations agents on how to process applications involving potential political advocacy issues.<sup>481</sup> The training took place on May 14-15, 2012.<sup>482</sup> Paz told the Committee that

... the workshop was an alternative to the guidesheet. We were never able to get Counsel to sign off on the guidesheet and give a final blessing to it. So we, at that point, had abandoned the guidesheet.<sup>483</sup>

Nearly 10 months after Lerner had first decided to develop a guidesheet, and after substantial investment of time and labor by staff from EO Technical, EO Guidance and the Office of the Chief Counsel, the IRS abandoned further efforts to complete the guidesheet. Together with the "test cases," the guidesheet was intended to serve as part of the guidance that EO Technical was responsible for providing to EO Determinations to assist it in processing the Tea Party and other political advocacy applications. As with the "test cases," EO Technical was never able to deliver to EO Determinations a useful product. EO Technical's inability to produce a set of written instructions in the form of a guidesheet for processing political advocacy applications after nearly 10 months of effort further delayed EO Determinations processing of Tea Party and other political advocacy applications. It cannot be disputed that the initiative to develop the guidesheet was an unmitigated failure. Miller best summed it up as follows:

Q. ... Was [the guidesheet] the tool that EOD really needed to get the cases moving along?

A. Clearly it wasn't, because it didn't work.<sup>484</sup>

**E. THE INITIAL "TRIAGE" OF TEA PARTY AND OTHER POLITICAL ADVOCACY CASES IN 2011 REPRESENTED YET ANOTHER UNSUCCESSFUL ATTEMPT BY EO TECHNICAL TO ASSIST EO DETERMINATIONS**

In September 2011, Holly Paz and Sharon Light, Senior Technical Advisor to Lois Lerner, visited EO Determinations in Cincinnati.<sup>485</sup> During this visit, Paz and Light met with Cindy Thomas and during the course of a discussion on the advocacy applications, Thomas showed an advocacy application to Light.<sup>486</sup> In one sitting, Light reviewed the application and did internet

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<sup>480</sup> SFC Interview of Holly Paz (July 26, 2013) p. 153.

<sup>481</sup> SFC Interview of Steve Miller (Dec. 12, 2013) pp. 121-122.

<sup>482</sup> Email chain between Cindy Thomas, Bonnie Esrig and others (May 8-9, 2012) IRS0000596252.

<sup>483</sup> SFC Interview of Holly Paz (July 26, 2013) p. 163.

<sup>484</sup> SFC Interview of Steve Miller (Dec. 12, 2013) p. 122.

<sup>485</sup> SFC Interview of Cindy Thomas (July 25, 2013) pp. 143-148.

<sup>486</sup> *Id.*

research on the organization and concluded that the application should be approved.<sup>487</sup> Thomas then suggested to Paz and Light that perhaps other political advocacy applications could also be quickly approved, if EO Technical staff knowledgeable about political advocacy issues could review those applications.<sup>488</sup> Thomas suggested providing EO Technical with a list of all the political advocacy applications then pending in EO Determinations so that Tax Law Specialists in EO Technical could “triage” the applications.<sup>489</sup> The “triage” would consist of reviewing the applications in TEDS, the electronic data base that served as a repository for those records, and identifying applications that could be approved as well as those that could not.<sup>490</sup> Paz stated to the Committee as follows:

Q. What was the overall goal of the triage?

A. It was to find some cases that could be approved based on the information that we had so that we could close some of the cases, the taxpayers wouldn’t have to wait any longer.<sup>491</sup>

Paz agreed with Thomas’s suggestion to perform a “triage” on the pending applications and indicated that Hillary Goehausen and Justin Lowe would perform triage responsibilities.<sup>492</sup> Shortly thereafter, on September 15, 2011, Thomas sent to Paz a list of all advocacy applications then pending in EO Determinations together with their EINs and other information.<sup>493</sup> Goehausen and Lowe commenced reviewing PDF copies of the applications in TEDS and on October 24, 2011, a spreadsheet containing the results of their review of 162 Tea Party and other political advocacy applications was sent to Thomas.<sup>494</sup> Goehausen and Lowe made notations on the spreadsheet for each application, such as “general advocacy,” “lobbying,” “website has substantial inflammatory rhetoric,” “political campaign activity,” etc.<sup>495</sup> On October 25, 2011, Thomas wrote to Michael Seto regarding these notations and stated the following:

[n]ot sure where this leaves us and I’m unclear as to what action is being suggested for some of these cases. Specifically, if the comment indicates “general advocacy,” what does that mean – additional development or what?<sup>496</sup>

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<sup>487</sup> *Id.*

<sup>488</sup> *Id.*

<sup>489</sup> *Id.*

<sup>490</sup> Email chain between Cindy Thomas, Holly Paz and others (Sep. 15 - Nov. 15, 2011) IRS0000057399-426; IRM § 7.15.6 (June 12, 2013).

<sup>491</sup> SFC Interview of Holly Paz (July 26, 2013) p. 131.

<sup>492</sup> SFC Interview of Cindy Thomas (July 25, 2013) pp. 145-146.

<sup>493</sup> Email chain between Cindy Thomas, Holly Paz and others (Sep. 15 - Nov. 15, 2011) IRS0000057399-426.

<sup>494</sup> *Id.*

<sup>495</sup> *Id.*

<sup>496</sup> *Id.*

Goehausen attempted to explain the notations to Thomas on October 26, 2011.<sup>497</sup> Thomas wrote to Seto on October 30, 2011, again expressing confusion over the notations and stating her expectation that the “triage” would specifically identify applications that could be approved, or that required more development, or that should be denied.<sup>498</sup> Seto followed up with Thomas on November 6, 2011, promising that Goehausen would revise the spreadsheet to comply with Thomas’s expectation.<sup>499</sup> Thomas explained her concerns with Goehausen’s notations as follows:

... when I reviewed some of the comments, I didn’t find it very helpful, because what I was looking to get is just tell us whether this case can be approved or not, similar to what Sharon Light did when she reviewed that one case. But there were comments on the spreadsheet and I didn’t know whether that meant approve the case, don’t approve the case, or what. So I sent it back to Mike and this process happened, I believe, three times that the spreadsheet was sent back and that the review took place like about three times.<sup>500</sup>

On November 22, 2011, Seto sent Thomas a revised spreadsheet and informed Thomas that of the 162 applications Goehausen reviewed, 12 might qualify for exemption, 15 were possible denials, and that the remainder (135) required further development.<sup>501</sup> Goehausen’s recommendations were based only on a review of the organizations’ applications, and not on any supporting documentation that the organizations may have submitted after filing their applications.<sup>502</sup> Since Goehausen’s review was limited to examining applications, her recommendations were offered with the caveat that EO Determinations needed to perform further development before approving or denying any applications.<sup>503</sup>

In view of the tentative nature of Goehausen’s recommendations, Thomas was unable to direct her staff to approve or deny any application.<sup>504</sup> She explained her actions to the Committee as follows:

... I just wanted them to tell us this case is okay to approve or not approve ... . I didn’t give this [spreadsheet] to anybody that worked for me because I wanted it perfected in D.C. so that I could take this spreadsheet and give it out and say here, follow this

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<sup>497</sup> *Id.*

<sup>498</sup> *Id.*

<sup>499</sup> *Id.*

<sup>500</sup> SFC Interview of Cindy Thomas (July 25, 2013) p. 146.

<sup>501</sup> Email chain between Michael Seto, Cindy Thomas and others (Nov. 22 - Dec. 12, 2011) IRS0000439824-26.

<sup>502</sup> SFC Interview of Holly Paz (July 26, 2013) p. 135.

<sup>503</sup> *Id.*

<sup>504</sup> SFC Interview of Cindy Thomas (July 25, 2013) p. 147.

direction. But I didn't do that because it was unclear to me. It was unclear to me what was being recommended by the Washington office.<sup>505</sup>

The effort expended in performing the “triage” of Tea Party and political advocacy applications from September 15, 2011 to November 22, 2011, failed to achieve its goal of providing EO Determinations with the information and direction necessary for it to approve or deny any of the pending applications.

Paz summarized the utility of the triage effort as a whole in the following terms:

Q. ... Was EOD able to take the results of that triage effort and actually implement them?

A. From what I understand, they did not ... .

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Q. Okay. So would it be fair to say that the entire triage effort, the triage effort, at least this first triage effort in 2011 then resulted in nothing useful?

A. That's correct.<sup>506</sup>

**F. THE ADVOCACY TEAM FAILED TO APPROVE OR DENY ANY APPLICATIONS RECEIVED FROM TEA PARTY OR OTHER POLITICAL ADVOCACY ORGANIZATIONS FROM ITS FORMATION IN DECEMBER 2011 TO JUNE 2012**

Throughout 2010 and 2011, Cindy Thomas had repeatedly asked EO Technical for the guidance to process the Tea Party applications that she had first been promised by Holly Paz in February 2010.<sup>507</sup> Thomas did not receive the promised guidance in 2010 or 2011. In late 2011, Michael Seto provided Thomas with a copy of the draft guidesheet, but Thomas was told that EO Determinations agents may not find it useful.<sup>508</sup> Thomas, now armed with the draft guidesheet and the tentative results produced by the “triage” of applications performed by Hillary Goehausen and Justin Lowe, decided to try to move the political advocacy applications.<sup>509</sup> Accordingly, on Steve Bowling's recommendation, Thomas replaced Ronald Bell as coordinator

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<sup>505</sup> *Id.*

<sup>506</sup> SFC Interview of Holly Paz (July 26, 2013) p. 135.

<sup>507</sup> Email chain between Holly Paz, Cindy Thomas and others (Feb. 25 - Mar. 17, 2010) IRS0000180869-73; Email chain between Cindy Thomas, Holly Paz and others (Oct. 26, 2010 - Jan. 28, 2011) IRS0000435238-39; Email chain between Cindy Thomas, Holly Paz and others (Oct. 26, 2010 - Mar. 2, 2011) IRS0000620724-26; Email chain between Cindy Thomas, Michael Seto and others (Mar. 29 - Apr. 13, 2011) IRS0000576953-55; Email chain between Cindy Thomas, Holly Paz and others (Sep. 15 - Nov. 15, 2011) IRS0000057399-426; Email chain between Cindy Thomas, Lois Lerner and others (Nov. 3, 2011) IRS0000162845-46 (Email attachment containing taxpayer information omitted by Committee staff); Email chain between Michael Seto, Cindy Thomas and others (Nov. 22 - Dec. 12, 2011) IRS0000439824-26.

<sup>508</sup> SFC Interview of Cindy Thomas (July 25, 2013) p. 147.

<sup>509</sup> *Id.* pp. 147-48.



for the political advocacy applications with Stephen Seok, an EO Determinations agent in Group 7822.<sup>510</sup> Concurrent with that change, Thomas formed the “Advocacy Team” to process the Tea Party and political advocacy applications.<sup>511</sup> The team consisted of 12 GS-13 agents, one from each of the Groups within EO Determinations.<sup>512</sup> These agents were among the highest graded agents in each Group.

To assist in processing the applications, Seok was provided a copy of the guidesheet and the results of the “triage.”<sup>513</sup> He provided the team members with a copy of the draft guidesheet<sup>514</sup> and shortly thereafter convened the first meeting of the Advocacy Team on December 16, 2011.<sup>515</sup> At this point, the Office of the Chief Counsel had not reviewed the guidesheet nor had it been approved for use by management. During the December 16, 2011 meeting, the members discussed the history of the advocacy applications, the purpose of the team, and how they would process the political advocacy applications through the use of “template” development letters.<sup>516</sup> At the time of the meeting, Seok identified approximately 172 political advocacy applications awaiting decision.<sup>517</sup> While Seok served as Coordinator for the team, he reported to Steve Bowling and provided Bowling with periodic updates on the team’s activities.<sup>518</sup>

Throughout the remainder of December 2011 and into the first half of January 2012, Seok assigned political advocacy applications to the team members and reviewed their draft development letters.<sup>519</sup> In his report to Bowling dated February 13, 2012, Seok indicated that development letters had been sent out for most of the applications that had been assigned and that except for a few applications, no responses had yet been received.<sup>520</sup> On February 15, 2012, Seok circulated to the Advocacy Team members as well as to Bowling copies of several draft documents, including a document that contained template development questions.<sup>521</sup> Among the template questions, which numbered in excess of 80, were questions seeking: the identity of donors and the amounts and dates of donations; the identity of volunteers; copies of every webpage including social networking sites and blog sites; detailed descriptions of all events sponsored by the organizations; and copies of all handouts distributed by the organizations.<sup>522</sup>

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<sup>510</sup> *Id.*

<sup>511</sup> Email chain between Michael Seto, Cindy Thomas and others (Nov. 22 - Dec. 12, 2011) IRS0000439824-26.

<sup>512</sup> *Id.*; Email chain between Cindy Thomas, Nancy Marks and others (Apr. 17-23, 2012) IRS0000013058-61.

<sup>513</sup> SFC Interview of Cindy Thomas (July 25, 2013) pp. 147-48.

<sup>514</sup> Email from Stephen Seok to Ronald Bell and others (Dec. 12, 2011) IRS0000059316-28.

<sup>515</sup> Email chain between Cindy Thomas, Nancy Marks and others (Apr. 17-23, 2012) IRS0000013058-61.

<sup>516</sup> *Id.*

<sup>517</sup> *Id.* Text discussing the 172 pending cases notes “37 c3 125 c4;” “[m]ostly advocacy with strong or some political activities, at least implied;” “[a]bout 155 cases reviewed by EO Tech: Favorable 13, Denial 13, All others: Development Needed;” “30 Something TEA party, Several 912, Repeal PPACT (Patient Protection and Affordable Care Act), Enact Universal Single –Payer Health Case [sic] System, etc.”

<sup>518</sup> Email chain between Stephen Seok, Steve Bowling, Holly Paz and others (Jan. 8 - Aug. 7, 2012) IRS0000434203-08.

<sup>519</sup> *Id.*

<sup>520</sup> *Id.*

<sup>521</sup> Email from Stephen Seok to Steve Bowling and the Advocacy Team (Feb. 15, 2012) IRS0000594910-29.

<sup>522</sup> *Id.*

Seok used the draft guidesheet that had been provided to him to prepare the template questions.<sup>523</sup> In addition, Seok and other Advocacy Team members apparently used earlier iterations of the draft template questions to prepare some of the development letters sent to Tea Party organizations in January and early February 2012.

Beginning about the middle of February 2012, the IRS began to receive Congressional inquiries about the processing of applications for tax exemption filed by Tea Party organizations.<sup>524</sup> The inquiries were prompted by complaints from Tea Party groups seeking tax-exempt status that had recently received development letters from the IRS containing questions that appeared to be burdensome, inappropriate, and sometimes intrusive.<sup>525</sup> Many of the development letters requested information such as the names of all donors, donation amounts and dates of donations; the identities of all volunteers; and whether board members and officers would run for political office.<sup>526</sup> The application for tax-exempt status (IRS Form 1023) does not require the provision of donor-identifying information. However, if an organization seeking tax-exempt status under section 501(c) provided information to the IRS regarding its donors during the application process pursuant to a follow-up request by an agent for donor-identifying information in connection with an application, then that information could be disclosed if the organization's application were subsequently approved. In contrast, 501(c) filers are required to disclose annually the names and addresses of anyone who contributed \$5,000 or more as part of the Form 990 Schedule B, but Schedule B is not required to be made public, except in the case of private foundations. Therefore, IRS agents requesting an organization's donor information during the application process subjected that donor information to a different standard of disclosure than otherwise applicable to 501(c) organizations.

In addition to Congressional inquiries, news articles began to appear in February 2012 reporting that Tea Party organizations that were awaiting determinations from the IRS on their requests for tax-exempt status had recently received burdensome development letters.<sup>527</sup> These development letters, which in some cases contained over 80 separate questions, also allowed only 14 days for reply. Moreover, many of the letters received by the applicant organizations contained duplicate requests.<sup>528</sup>

In response to both mounting Congressional inquiries and media stories about intrusive development questions that had been received by Tea Party organizations, Steve Miller, then

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<sup>523</sup> SFC Interview of Steve Miller (Dec. 12, 2013) p. 113. The close relationship between the draft guidesheet and the template questions clearly suggests that the former was used to prepare the latter.

<sup>524</sup> SFC Interview of Holly Paz (July 26, 2013) pp. 141-142; Letter from Senator Orrin G. Hatch to IRS Commissioner Shulman (Mar. 14, 2012) IRS0000488582-85.

<sup>525</sup> Email chain between David Fish, Keith Frank, Andy Megosh and others (Feb. 17-21, 2012) IRS0000610957-60.

<sup>526</sup> Email from Michele Eldridge to Steve Miller and others (Mar. 1, 2012) IRS0000341681-83.

<sup>527</sup> Email chain between Faris Fink, Steve Miller, Shane Ferguson and others (Feb. 29, 2012) IRS0000341677-80.

<sup>528</sup> Email chain between Lois Lerner, Holly Paz, Cindy Thomas and others (Feb. 24 - Mar. 1, 2012) IRS0000594977-80.

Deputy Commissioner for Services and Enforcement, took several remedial actions.<sup>529</sup> Regarding donor information, Miller directed that the IRS inform recipients of the development letters that they need not provide the donor information.<sup>530</sup> For organizations that had already provided that information, Miller was apprised by the Office of the Chief Counsel that the donor information could be destroyed since it had not been used.<sup>531</sup> Accordingly, in most cases, the donor information was destroyed.<sup>532</sup> Organizations were also allowed more time to respond to the development letters and were permitted to submit sample web pages, in lieu of screen shots of every page.<sup>533</sup> Moreover, Cindy Thomas disciplined Seok as the majority of instances where donor information had been requested were applications that Seok had worked.<sup>534</sup> In addition, Seok was eventually replaced as Coordinator for political advocacy applications.<sup>535</sup> However, in January 2013, Thomas promoted Seok to the Group Manager position.<sup>536</sup>

The most significant consequence for the processing of political advocacy applications resulting from the issuance of the inappropriate, burdensome and sometimes intrusive development letters occurred on February 29, 2012. On that date, Lois Lerner instructed Paz to ensure that EO Determinations sent no further development letters until the letters were adjusted.<sup>537</sup> Paz so advised Thomas, and Thomas in turn directed Bowling to cease assigning any more political advocacy applications “until we have the template questions from DC.”<sup>538</sup> On February 29, 2012, the Advocacy Team effectively ceased processing Tea Party and political advocacy applications, an activity that it would not resume again until mid-May 2012, when the IRS next attempted to process the Tea Party and other political advocacy applications through the “bucketing” initiative described below.

While the idea to form the Advocacy Team to finally work the Tea Party and other political advocacy applications appears to have been well-intentioned, the team was ill-equipped to carry out that task. The guidesheet relied on by the team was a draft only, and as explained in greater detail within this report, the IRS was never able to resolve its shortcomings. Additionally, the results of the “triage” performed in 2011 which the Advocacy Team also used as guidance were of dubious value, since the conclusions reached in that exercise were premised on a review of only partial records. Lastly, and perhaps most significantly, the Advocacy Team appears to have suffered from a lack of effective leadership. While Seok’s errors may be explained somewhat by

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<sup>529</sup> SFC Interview of Steve Miller (Dec. 12, 2013) pp. 123-129.

<sup>530</sup> *Id.*

<sup>531</sup> *Id.* Miller explained during his interview that if donor information had been retained by the IRS and the organization’s application was subsequently approved, the donor information would then become public.

<sup>532</sup> *Id.* However, in at least one instance, donor information was not destroyed. See Email from Sharon Light to Lois Lerner (Apr. 19, 2013) IRS0000195724-25.

<sup>533</sup> SFC Interview of Steve Miller (Dec. 12, 2013) pp. 123-129.

<sup>534</sup> SFC Interview of Cindy Thomas (July 26, 2013) pp. 134-39.

<sup>535</sup> *Id.*

<sup>536</sup> *Id.*

<sup>537</sup> Email chain between Lois Lerner, Holly Paz, Cindy Thomas and others (Feb. 29, 2012) IRS0000594977-80.

<sup>538</sup> *Id.*

his apparent lack of managerial experience, Bowling was aware of the template questions, but failed to recognize the predictable consequences of their use. In sum, Bowling failed to properly manage the activities of the Advocacy Team, allowing burdensome, often irrelevant and sometimes intrusive questions to be asked of a group of organizations whose sensitivities were already heightened by years of delay in the resolution of their applications.<sup>539</sup>

**G. THE MULTI-STEP REVIEW PROCEDURE ESTABLISHED BY EO TECHNICAL IN 2012 FOR POLITICAL ADVOCACY APPLICATIONS REFLECTED A LACK OF CONCERN BY IRS MANAGEMENT FOR THE NEED TO PROCESS THE APPLICATIONS EXPEDITIOUSLY**

In March 2012, Cindy Thomas informed Michael Seto, EO Technical Manager, that EO Determinations was ready to send to EO Technical the first application for exemption under 501(c)(4) that it thought should be approved.<sup>540</sup> In apparent anticipation of reviewing the first application and recommendation, and presumably the others that would follow, Michael Seto announced a multi-step process for providing technical assistance to EO Determinations on advocacy applications.<sup>541</sup> The process involved the following steps:

1. Hilary Goehausen, EO Technical, analyzes the application and forms a recommendation;
2. Goehausen submits her analysis and recommendation to Justin Lowe, EO Guidance for his review;
3. When Goehausen and Lowe complete their review and recommendation, it is sent to Michael Seto for his review;
4. Seto then schedules a meeting with Cindy Thomas and Donna Abner, Director EO Quality Assurance, to update them on EO Technical's analysis and recommendation;
5. The analysis and recommendation are then sent to the Office of the Chief Counsel for its comment/concurrence;
6. When the Office of Chief Counsel completes its review, Seto schedules a meeting with Lois Lerner, Holly Paz and David Fish to discuss the recommendation;
7. The analysis/recommendation is released to EO Determinations.

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<sup>539</sup> These egregious deficiencies in Bowling's management of the advocacy team do not appear to have adversely affected the IRS's assessment of his performance. In fact, the IRS performance review board gave him the highest recommendation for an award for the period which encompassed the events described above in late 2011 and early 2012. As a result, Bowling received a bonus that was among the highest for TEGE front-line managers, an amount that exceeded 2% of his annual salary. Email from Brent Brown to Lois Lerner and Dawn Marx (Nov. 29, 2012) (attachment containing sensitive personnel information omitted by Committee staff). Not only did the IRS give Bowling a stellar cash performance award in 2012, but upon Cindy Thomas's reassignment in August 2013, it also elevated him to the position of EO Determinations Manager along with Jon Waddell and Donna Abner. IRS Briefing for SFC Staff (July 7, 2015).

<sup>540</sup> Email chain between Cindy Thomas, Michael Seto, Steve Bowling and others (Mar. 6, 2012) IRS0000617020-21.

<sup>541</sup> Email chain between Justin Lowe, Michael Seto, Steve Grodnitzky and others (Jan. 31 - Mar. 5, 2012) IRS0000594982-84; Email from Michael Seto to Steve Grodnitzky and others (Mar. 9, 2012) IRS0000066875.

It is unclear who the originator of this process was, and how many requests for technical assistance from EO Determinations were actually subjected to the multiple handoffs that characterize this “process.”<sup>542</sup> What is clear, however, is that any request for technical assistance from EO Determinations that was processed in this fashion would take considerable time to move through all the steps. Steve Grodnitzky stated to the Committee as follows:

- Q. ... and looking at this process and the seven steps, do you think it would have an effect on your – the processing speed or the time it would take to move cases through your – your Group 1?
- A. Well, the more individuals that look at a particular case, theoretically the longer it would take to resolve.
- Q. Okay. In looking at this process, do you think that this would expedite or perhaps slow down the movement of cases through your group?
- A. Having more people that are involved in the process would result in a case taking longer to resolve.
- Q. So this process would slow things down, right?
- A. Yes, it could.<sup>543</sup>

When asked about the length of time that it generally required for the Office of Chief Counsel to respond to a request for advice, Grodnitzky told the Committee the following:

It could be 3 months, 6 months, a year. It – depends. I – it varies on what their – well, let me step back. I don’t want to speak for counsel, but I can only speak for my experience in working with counsel, and it would – it’s varying lengths of time, but in my experience, counsel has taken – can take a great deal of time.<sup>544</sup>

This process was instituted at a time when some of the applications received from the Tea Party groups were already two and a half years old. It was also instituted after better than two years of fruitless effort by EO Technical in working “test cases,” developing guidesheets, and triaging applications. Implementation of the multi-step review process at this juncture clearly evidences that management within EO, whether at the EO Technical level or higher, was seemingly unconcerned about the already long delays endured by many Tea Party and other applicants seeking to engage in some level of political advocacy. Rather than looking for ways to expedite the processing of these long delayed applications, EO devised a process that virtually guaranteed that any application subject to the seven steps would languish without resolution for many more months.

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<sup>542</sup> SFC Interview of Steve Grodnitzky (Sep. 25, 2013) pp. 137-146.

<sup>543</sup> *Id.*

<sup>544</sup> *Id.*

## **H. THE MAY 2012 “BUCKETING” INITIATIVE RESULTED IN EO DETERMINATIONS ISSUING THE FIRST APPROVALS OF TEA PARTY AND OTHER POLITICAL ADVOCACY APPLICATIONS AFTER NEARLY TWO AND A HALF YEARS**

In March 2012, Steve Miller, then Deputy Commissioner for Services and Enforcement, grew increasingly concerned about the processing of Tea Party and other political advocacy applications.<sup>545</sup> His concern was prompted by stories in the media and Congressional inquiries regarding the apparent issuance of intrusive and burdensome development letters by EO Determinations to Tea Party groups.<sup>546</sup> Miller sent Nancy Marks, Special Assistant to the TE/GE Commissioner, to Cincinnati to determine how EO Determinations was processing the Tea Party and other political advocacy applications.<sup>547</sup> In late April, Marks and several others arrived in Cincinnati and interviewed employees involved in the processing of political advocacy applications.<sup>548</sup> Marks also examined applications for exemption filed by political advocacy organizations.<sup>549</sup> She reported back to Miller on May 3, 2012 and among other revelations, indicated that the use of unnecessary and sometimes intrusive development questions resulted from a failure by EO Technical to provide EO Determinations with adequate training and guidance.<sup>550</sup> Marks also told Miller that there were approximately 250-300 applications pending decision that involved possible political advocacy.<sup>551</sup> Marks recommended, and Miller agreed, that EO Technical and EO Determinations personnel would review all of the political advocacy applications through a “bucketing” exercise that would allow applications to be quickly approved if they met the requirements for exemption.<sup>552</sup>

In May 2012, Cindy Thomas advised members of her staff that certain EO Determinations personnel, as well as “a few additional folks from D.C.,” would place the advocacy applications in one of the following four buckets:

1. Favorable (no further substantive development needed).
2. Favorable (limited development with approximately two or three questions to ask the applicant).
3. Significant development.
4. Probable denial.<sup>553</sup>

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<sup>545</sup> SFC Interview of Steve Miller (Dec. 12, 2013) pp. 129-145.

<sup>546</sup> *Id.*

<sup>547</sup> *Id.*

<sup>548</sup> Email chain between Holly Paz, Cindy Thomas, Donna Abner and others (Apr. 20-23, 2012) IRS0000003152-55.

<sup>549</sup> *Id.*

<sup>550</sup> SFC Interview of Steve Miller (Dec. 12, 2013) pp. 129-145.

<sup>551</sup> *Id.*

<sup>552</sup> *Id.*

<sup>553</sup> Email chain between Cindy Thomas, Bonnie Esrig and others (May 8-9, 2012) IRS0000596252.

Thomas further informed her staff that, “[m]ost likely, we’ll try to get those cases in Bucket 1 closed quickly and then move to Bucket 2.”<sup>554</sup>

The bucketing was preceded by several days of classroom training for the EO Determinations specialists. Holly Paz described the approach used to train the specialists as follows:

We did it in a workshop format where we used the real cases that we had and used those as a way to discuss issues that come up. We also talked a lot about, here’s an issue you see on the application; how would you ask a development question about it? What would the question look like? And then worked through what would be a good question that would get at what you needed to know but not be too burdensome to the applicant.<sup>555</sup>

The bucketing of applications commenced on May 16, 2012<sup>556</sup> and extended for three weeks.<sup>557</sup> Two employees, one from EO Determinations and the other from EO Technical, reviewed each application.<sup>558</sup> Each employee reviewed the application independently and made a recommendation as to the bucket to which the application should be assigned.<sup>559</sup> If the two employees agreed on the bucket, the application was assigned to that bucket.<sup>560</sup> If there was disagreement, the employees would meet and attempt to reconcile their differences.<sup>561</sup> If they could not, then the disagreement was elevated to Sharon Light, Senior Technical Advisor to the EO Director, who would make the determination as to the appropriate bucket.<sup>562</sup>

On June 7, 2012, Paz reported to Cindy Thomas and Lois Lerner the results of the now completed bucketing exercise as follows:

83 c/3s bucketed:

16 approval

16 limited development

23 general development

28 likely denial

199 c/4s bucketed:

65 approval

48 limited development

56 general development

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<sup>554</sup> *Id.*

<sup>555</sup> SFC Interview of Holly Paz (July 26, 2013) p. 162.

<sup>556</sup> Email chain between Cindy Thomas, Bonnie Esrig and others (May 8-9, 2012) IRS0000596252.

<sup>557</sup> SFC Interview of Holly Paz (July 26, 2013) pp. 160-161.

<sup>558</sup> *Id.*

<sup>559</sup> *Id.*

<sup>560</sup> *Id.*

<sup>561</sup> *Id.*

<sup>562</sup> *Id.*

30 likely denial<sup>563</sup>

While the bucketed applications were from groups on both the political right as well as the left, the majority of the applications were from right-leaning organizations. On July 18, 2012, Judith Kindell noted this fact to Lois Lerner as follows:

Of the 84 (c)(3) cases, slightly over half appear to be conservative leaning groups based solely on the name. The remainder do not obviously lean to either side of the political spectrum.

Of the 199 (c)(4) cases, approximately  $\frac{3}{4}$  appear to be conservative leaning while fewer than 10 appear to be liberal/progressive leaning groups based solely on name. The remainder do not obviously lean to either side of the political spectrum.<sup>564</sup>

Political advocacy applications received after June 8, 2012, were bucketed in EO Determinations.<sup>565</sup> Commencing in June 2012, 41 applicants for exemption, including Tea Party and other political advocacy groups, received approval letters from the IRS.<sup>566</sup> These approvals represented the first approvals of political advocacy applications since early 2010 when the IRS had granted tax exemption to one 501(c)(3) and two 501(c)(4) Tea Party organizations. In addition, 31 development letters were prepared and sent out in June 2012 by EO Determinations on other bucketed applications.<sup>567</sup> These were the first development letters issued by EO Determinations since February 29, 2012, when Lois Lerner suspended the further issuance of development letters. For applications that were likely denials and that had been placed in bucket 4, EO Technical prepared the majority of development letters and worked the applications.<sup>568</sup> From June 2012 to December 2012, the IRS approved a total of 133 political advocacy applications.<sup>569</sup>

While not entirely free from problems, the “bucketing” exercise represented the first IRS initiative in two and a half years that actually succeeded in bringing political advocacy applications to closure. Yet, as of March 2014, more than four years since the first political advocacy applications were filed, 22% of those applications were still unresolved. While the IRS succeeded in closing most of the applications in the ensuing year, 10 organizations were still waiting a determination as of April 2015.<sup>570</sup>

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<sup>563</sup> Email chain between Holly Paz, Lois Lerner, Donna Abner and others (June 8, 2012) IRS0000578664-66.

<sup>564</sup> Email from Judith Kindell to Lois Lerner (July 18, 2012) IRS0000585328.

<sup>565</sup> Email chain between Holly Paz, Lois Lerner, Donna Abner and others (June 8, 2012) IRS0000578664-66.

<sup>566</sup> Email chain between Cindy Thomas, Holly Paz, and Donna Abner (June 27-28, 2012) IRS0000005239.

<sup>567</sup> *Id.*

<sup>568</sup> SFC Interview of Cindy Thomas (July 26, 2013) p. 108.

<sup>569</sup> Calculation based on data provided to the SFC by the IRS (Mar. 26, 2014).

<sup>570</sup> Based on data provided to the SFC by the IRS (Apr. 8, 2015).



## **VIII. THE IRS SELECTED LEFT-LEANING APPLICANTS FOR REVIEW AND SUBJECTED THEM TO HEIGHTENED SCRUTINY AND DELAYS**

*This section discusses how the IRS handled applications for tax-exempt status submitted by various types of progressive and left-leaning organizations.*

IRS Exempt Organizations employees also selected left-leaning and progressive organizations applying for tax-exempt status for special processing:

- Names associated with left-leaning applicants were placed on the Watch List and Tag Historical tabs of the BOLO list.
- IRS screeners were instructed during training sessions in 2010 to select left-leaning applications that were potentially political organizations.

In some cases, after selecting left-leaning applicants, EO Determinations transferred the cases to EO Technical or placed them on hold while awaiting technical assistance from the Washington D.C. office, a process that delayed their resolution for years.

### **A. EO DETERMINATIONS FLAGGED LEFT-LEANING APPLICANTS WITH THE NAMES “PROGRESSIVE,” “ACORN,” AND “OCCUPY”**

#### **1. PowerPoint Presentation Directs Employees to Flag “Progressive” and “Emerge” Applicants**

A PowerPoint presentation and notes from a July 28, 2010 screening workshop meeting in Cincinnati show that IRS employees were instructed to flag applications with the words “progressive” and applications associated with Emerge (an organization that sought to train female Democratic political candidates) and to send them to Group 7822 for secondary screening.<sup>571</sup> The notes from the meeting state that Gary Muthert indicated that the “following names and/or titles were of interest and should be flagged for review:”

- 9/12 Project
- Emerge
- Progressive
- We The People
- Rally Patriots, and

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<sup>571</sup> Screening Workshop Notes (July 28, 2010) IRS0000012315-17; Screening Workshop Presentation IRSR0000169695-720.

- Pink-Slip Program<sup>572</sup>

This PowerPoint presentation from this screening workshop also had a slide that read, “Politics” with a picture of an elephant and a donkey. One slide stated “Look for names like” preceding additional slides with the words “Tea Party ... Patriots ... 9/12 Project ... Emerge ... Progressive....We the People” under the heading “Current Activities.”<sup>573</sup>

## **2. BOLO Spreadsheets Include the Phrase “Progressive”**

Numerous iterations of the BOLO spreadsheet included the term “Progressive” on the TAG Historical tab. For example, a BOLO list dated August 12, 2010, instructed screeners to send applications containing the word “Progressive” to the TAG Group. The BOLO list entry for “progressive” further instructed screeners that the:

Common thread is the word “progressive.” Activities appear to lean towards a new political party. Activities are partisan and appear as anti-Republican. You see references to “blue” as being “progressive.”<sup>574</sup>

According to IRS agent Ron Bell, who was responsible for the BOLO list, screening terms were placed on the Tag Historical tab after IRS employees were not seeing applications as frequently.<sup>575</sup>

## **3. IRS Determinations Manager Instructed Employees to Be Alert for “Emerge” Groups**

In October 2008, the IRS placed two applications from Emerge groups, an organization with state chapters that trained Democratic women to run for political office, on SCRs subjecting the applicants to multiple layers of review. The Emerge applications that screeners were instructed to flag at the screening workshop were not specifically listed on the BOLO, but an IRS Determinations manager alerted screeners via email on September 24, 2008, to look for applicants with “Emerge” in their name along with other “politically sensitive” cases.<sup>576</sup>

The EO Technical review of the applications was delayed because of pending litigation between the IRS and the Democratic Party Leadership Council.<sup>577</sup> Two additional Emerge cases were put on the SCR, one in June 22, 2009, and another on January 18, 2010.<sup>578</sup> As explained in

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<sup>572</sup> Screening Workshop Notes (July 28, 2010) IRS0000012315-17.

<sup>573</sup> Screening Workshop Presentation (July 28, 2010) IRS0000169695-720.

<sup>574</sup> BOLO Spreadsheet (Aug. 12, 2010).

<sup>575</sup> SFC Interview of Ron Bell (July 30, 2013) (not transcribed).

<sup>576</sup> Email from Joseph Herr to Elizabeth Hofacre and others (Sep. 24, 2008) IRS0000011492-4.

<sup>577</sup> TE/GE Division Sensitive Case Report (Oct. 21, 2008) IRS0000012307-08.

<sup>578</sup> TE/GE Division Sensitive Case Report (June 22, 2009) IRS0000633497-98; TE/GE Division Sensitive Case Report (Jan. 18, 2010) IRS0000147518-19.

greater detail in Section (B) below, the decision to review the Emerge cases pending the outcome of litigation contributed to delays in processing these cases.

#### **4. Employees Were Instructed to Give “Special Handling” to Groups Related to ACORN**

Another PowerPoint presentation presented at training events in June and July of 2010 titled “Heightened Awareness Issues,” listed “Successor to Acorn” as a Watch List Issue specifying that “[s]pecial handling is [r]equired when [a]pplications are [r]eceived.”<sup>579</sup> ACORN (Association of Community Organizations for Reform Now) was a national “community organization group” with local chapters that “fought for liberal causes like raising the minimum wage, registering the poor to vote, stopping predatory lending and expanding affordable housing.”<sup>580</sup> In addition, ACORN assisted lower income families with tax return preparation.<sup>581</sup> The national organization declared bankruptcy in the wake of accusations of fraud, embezzlement, and mismanagement, but several local organizations decided to regroup under new names.<sup>582</sup>

On March 22, 2010, Cindy Thomas notified EO Technical that descendants of ACORN were reorganizing, citing three specific organizations that were likely to submit applications.<sup>583</sup> In April 2010, Sharon Camarillo emailed Cindy Thomas and Robert Choi telling them that EO Determinations received two ACORN-successor cases.<sup>584</sup>

Also in April 2010, an IRS interoffice research team completed its research into allegations of illegal activity by ACORN, its affiliates and employees. The research team was formed to investigate allegations that ACORN was engaged in actions inconsistent with tax-exempt status, including systematic commingling of funds between taxable and tax-exempt entities and individuals associated with ACORN. The Research team found evidence of: the cover-up of an embezzlement committed by a board member; possible conflicts created by employees working for multiple affiliates and staffers and members serving on the Board of Directors; improper money transfers among the affiliates; lack of proper documentation of financial transactions; and possible improper use of donations as well as pension and health care benefit funds. The research team concluded that these findings, together with ACORN’s apparent loose governance and a lack of respect for the corporate structure, warranted a closer examination by the IRS into the financial practices of ACORN and its affiliates to determine if its tax-exempt status was

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<sup>579</sup> Heightened Awareness Issues (undated) IRS0000557291-308; Email from Chadwick Kowalczyk to Donna Abner and others (May 18, 2010) IRS0000195587.

<sup>580</sup> Acorn on Brink of Bankruptcy, Officials Say, *New York Times* (May 19, 2014).

<sup>581</sup> *Id.*

<sup>582</sup> *Id.*

<sup>583</sup> Email chain between Cindy Thomas, Steven Grodnitzsky and others (Mar. 22, 2010) IRS0000458448-51.

<sup>584</sup> Email from Sharon Camarillo to Cindy Thomas and Robert Choi (Apr. 28, 2010) IRS0000458467.

appropriate.<sup>585</sup> This report was shared with IRS management, including Sarah Hall Ingram, Joseph Grant and Lois Lerner, in June and July 2010.<sup>586</sup>

The August 12, 2010 BOLO listed “ACORN Successors” as an “Issue Name” on the “BOLO List” tab. The description states that “Following the breakup of ACORN, local chapters have been reforming under new names and resubmitting applications.” Screeners were instructed to send these cases “to the TAG Group.”<sup>587</sup> An entry for “Acorn Successors” appeared on copies of the BOLO lists, first on the BOLO List tab and then on the Watch List tab, examined by Committee staff from 2010 until Holly Paz removed it in June 2012.<sup>588</sup>

An October 7, 2010 email from Jon Waddell alerted Steven Bowling and Sharon Camarillo to two ACORN-related cases. Waddell recommended “an alert be sent informing agents/screeners that to be on the lookout for the following name an application factors associated with Acorn related cases.”<sup>589</sup> In addition, he suggested adding the following “factors to the Watch Issue Description section for this category”:

1. The name(s) Neighborhoods for Social Justice or Communities Organizing for Change
2. Activities that mention Voter Mobilization of the Low-Income/Disenfranchised
3. Advocating for Legislation to Provide for Economic, Healthcare, and Housing Justice for the poor.
4. Educating Public Policy Makers (i.e. Politicians) on the above subjects.<sup>590</sup>

Sharon Camarillo forwarded the alert to John Shafer instructing that his screeners “be on the lookout for these cases.”<sup>591</sup> John Shafer forwarded Camarillo’s email to IRS screeners in his group.<sup>592</sup>

The Watch List tab of the February 2, 2011 BOLO instructed IRS screeners to look for the words “ACORN” or “Communities for Change in the name and/or throughout the application.” It read:

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<sup>585</sup> IRS, ACORN Research Activities Summary Report (Apr. 28, 2010) IRS0000713482-87.

<sup>586</sup> IRS, Memorandum on Investigative Research Findings (June 21, 2010) IRS0000713488; Email from Nancy Todd to Sarah Hall Ingram, Joseph Grant, Lois Lerner, and others (July 8, 2010) IRS0000713482.

<sup>587</sup> Combined Spreadsheet TAG 8 12 10 (Aug. 12, 2010).

<sup>588</sup> *Id.*; Email chain between Holly Paz, Cindy Thomas and others (June 1, 2012) IRS0000013434-35.

<sup>589</sup> Email chain between Jon Waddell, Steven Bowling, Sharon Camarillo and others (Oct. 7-8, 2010) IRS0000410433-34.

<sup>590</sup> *Id.*

<sup>591</sup> Email chain between Jon Waddell, Sharon Camarillo, John Shafer and others (Oct. 7-8, 2010) IRS0000389342.

<sup>592</sup> *Id.*

Local chapters of the former ACORN organization have reformed under new names and are requesting exemption under section 501(c)(3). Succession indicators include ACORN and Communities for Change in the name and/or throughout the application.<sup>593</sup>

ACORN cases were also being screened in 2012. Ron Bell wrote an email to Carter Hull on May 13, 2012 stating:

I've got a case that I believe is an acorn successor org. I googled the name of the org and that is where several websites (such as the capital research center) indicate that it is an acorn successor. The BOLO list states to contact you...Please advise how you want to process this case.<sup>594</sup> [sic]

#### **5. Groups Using "Occupy" in Their Name Were Flagged Using the BOLO Watch List Tab**

In January 2012, the IRS Determinations office began screening organizations with the term Occupy in their name on the Watch List tab on the BOLO. After a news article was distributed within the IRS that suggested some organizations affiliated with the Occupy movement were seeking tax-exempt status, Cindy Thomas told Steven Bowling, the manager of the IRS Determinations group that handled political advocacy cases, that the Occupy cases should be referred to his Group so they could be worked "with the advocacy cases."<sup>595</sup>

Steven Bowling told Cindy Thomas that the BOLO list would need to be modified in order to properly flag the Occupy cases, but expressed frustration that the IRS did not want to use the words "Tea Party" or "Occupy" in screening.<sup>596</sup> Thomas replied:

We can't refer to "tea party" cases because it would appear as though we're singling them out and not looking at other Republican groups or Democratic groups.

How about a compromise – What do you think about changing the description for advocacy organizations on the Emerging Issues tab to that which you've included under scenario #1; then, you could include the Occupy description from your scenario #2 on the Watch For tab specifying that these cases should be referred to your group? We could still have the same grade 13 agents working the advocacy and Occupy cases.<sup>597</sup>

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<sup>593</sup> BOLO Spreadsheet (Feb. 2, 2011) IRS0000389362.

<sup>594</sup> Email from Ronald Bell to Carter Hull (May 13, 2012) IRSR0000054963.

<sup>595</sup> Email chain between Cindy Thomas, Steven Bowling and Peggy Combs (Jan. 20, 2012) IRS0000013418-19; Email chain between Cindy Thomas, Steve Bowling, Peggy Combs and Mary Sheer (Jan. 20, 2012) IRSR0000013414-15.

<sup>596</sup> Email chain between Cindy Thomas, Steven Bowling and Peggy Combs (Jan. 20, 2012) IRS0000013418-19.

<sup>597</sup> Email from Cindy Thomas to Steven Bowling (Jan. 24, 2012) IRSR0000621814-17.

After receiving this instruction from Thomas, Bowling added “Social economic reform / movement” to the BOLO entry for “current political issues.” In addition, Bowling added “Occupy orgs” to the BOLO Watch List tab. Ronald Bell wrote an email to Bowling questioning the need for a separate entry for “Occupy orgs” on the Watch List since he thought “Social economic reform...was our ‘code word’ for the occupy organizations.” Bowling replied, “I think we can leave it in. Some of the orgs are pushing that other than occupy groups.”<sup>598</sup>

Emails written in May 2012 show that at least two Occupy cases were flagged by IRS screeners after the term was added to the BOLO list.<sup>599</sup> The next month, Holly Paz had Cindy Thomas revised the BOLO list to “remove the references to Acorn and Occupy from the “Watch List” and replaced the “Emerging Issue” description of ideological positions of conservative and liberal groups with neutral language.”<sup>600</sup>

## **B. LIBERAL AND PROGRESSIVE ORGANIZATIONS EXPERIENCED DELAYED PROCESSING**

Some tax-exempt applicants affiliated with Emerge, ACORN successor groups, and other left-leaning applications waited years for a determination from the IRS after their applications were flagged by screeners and held up or forwarded to the EO Technical office in Washington, D.C.

In the case of three of the Emerge groups, it took three years from the time they applied until the applications were denied. Previously, the IRS erroneously approved five applications affiliated with Emerge for 501(c)(4) status from 2004 through 2008, including the main umbrella organization Emerge America.<sup>601</sup> These five Emerge approvals were subsequently determined to have been in error because Emerge groups were found to benefit the Democratic Party. Their 501(c)(4) status was revoked.<sup>602</sup>

On September 2008, emails show that IRS employee Donna Abner recommended issuing an “alert” for other incoming Emerge cases because of the “partisan nature of the cases” as well as a reminder that “‘sensitive political issue’ cases are subject to mandatory review” per IRS guidelines and subject to full development.<sup>603</sup>

EO Technical staff asked EO Determinations to transfer the Emerge Maine and Emerge Nevada applications on October 10, 2008, to be held “until the litigation on this issue has concluded and then we will work them.”<sup>604</sup> EO Technical instructed EO Determinations to hold any additional

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<sup>598</sup> Email between Steven Bowling and Ronald Bell (Jan. 25, 2012) IRS0000013187.

<sup>599</sup> Email chain between Tyler Chumney, Peggy Combs and others (May 24-27, 2012) IRSR0000013234-48.

<sup>600</sup> Email chain between Holly Paz, Cindy Thomas and others (June 1, 2012) IRS0000013434-35.

<sup>601</sup> Email chain between Donna Abner, Cindy Thomas and others (Sep. 8, 2008) IRS0000012292-93.

<sup>602</sup> Email from Nalee Park to Justin Lowe (Nov. 16, 2011) IRS0000636384 (Email attachments containing taxpayer information omitted by Committee staff).

<sup>603</sup> Email chain between Donna Abner, Cindy Thomas and others (Sep. 8, 2008) IRSR0000012292-93.

<sup>604</sup> Email chain between Justin Lowe to Jon Waddell (Oct. 10, 2008) IRS0000012299-300.

Emerge cases “pending the outcome of a similar issue in the DLC litigation.”<sup>605</sup> A January 2011 Sensitive Case Report indicates that Emerge Massachusetts applied for tax-exempt status on August 15, 2008, and was transferred to EO Technical on April 16, 2009. Emerge Oregon applied on February 9, 2010, and its application was transferred to EO Technical on April 14, 2010. The IRS did not inform the four Emerge groups, whose cases were selected for review and then developed at EO Technical until 2011, that their applications had been denied, creating delays of approximately three years for some of the organizations.<sup>606</sup>

### C. ORGANIZATIONS DEEMED TO BE ACORN SUCCESSORS EXPERIENCED DELAYS

Organizations the IRS determined to be related to the disbanded ACORN organizations also experienced significant delays. EO Determinations began receiving ACORN-successor organization applications in April 2010.<sup>607</sup> On June 8, 2010, the Acting Manager of EO Technical, Steven Grodnitzky, instructed Cindy Thomas not to develop or resolve ACORN-related cases until they received further instruction.<sup>608</sup>

On July 15, 2010, Cindy Thomas alerted Robert Choi that EO Determinations received another “potential successor to Acorn” applying for 501(c)(3) status related to a 501(c)(4) ACORN-successor application received in April 2010.<sup>609</sup> Thomas reported that “[w]e placed the other case in suspense pending guidance from the Washington Office and are doing so with this case.”<sup>610</sup>

Cindy Thomas emailed Holly Paz on October 24, 2010, with a request for technical assistance on ACORN-successor cases from EO Technical. Over a month later, on November 26, 2010, Holly Paz told Cindy Thomas to work with Carter Hull in EO Technical on the Acorn-successor cases, the same employee in charge of developing the Tea Party cases in 2010 and early 2011.<sup>611</sup>

An EO Determinations employee contacted Carter Hull on March 4, 2011, telling him that “we have four exemption applications for organizations that have previously operated as ACORN. Could we arrange to discuss these cases with you by phone sometime next week?”<sup>612</sup> It is unclear what guidance Carter Hull provided EO Determinations on the ACORN-successor applications but he informed another EO Determinations employee in July 2011, that “his

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<sup>605</sup> Email chain between Deborah Kant, Cindy Wescott and others (Oct. 16, 2008) IRS0000012304.

<sup>606</sup> TE/GE Division Sensitive Case Report (Jan. 18, 2011) IRSR0000147518. Although this document is dated “January 18, 2010,” it references events in January 2011. Therefore, we believe that it was mistakenly dated 2010 instead of 2011.

<sup>607</sup> Email from Sharon Camarillo to Cindy Thomas and Robert Choi (Apr. 28, 2010) IRS0000458467.

<sup>608</sup> Email chain between Steven Grodnitzky, Cindy Thomas, Donna Abner and others (June 8, 2010) IRS0000054956.

<sup>609</sup> Email chain between Cindy Thomas, Robert Choi and others (July 15-16, 2010) IRS0000054949-50.

<sup>610</sup> *Id.*

<sup>611</sup> Email chain between Holly Paz, Cindy Thomas and others (Oct. 14, 2010 - Jan. 19, 2011) IRS0000054942-44.

<sup>612</sup> Email from John McGee to Carter Hull (Mar. 4, 2011) IRS0000631878.

manager informed him that he should not be doing research for our cases.”<sup>613</sup> Hull asked EO Determinations to remove his name “from the BOLO list as a contact person.”<sup>614</sup>

In April 2013, EO Technical was still developing two ACORN-successor applications, including one of the applications that spurred EO Determinations managers to alert screeners to flag ACORN-successor cases in October 2010.<sup>615</sup> The other case mentioned in the email was transferred from EO Determinations to EO Technical in April 2012.<sup>616</sup> ACORN-successor cases were still on hold as of May 2013, according to Cindy Thomas.<sup>617</sup>

Other left leaning and progressive groups told media outlets their applications were delayed as well. One left-leaning group, Alliance for a Better Utah, told *NPR Morning Edition* in a story that aired on June 13, 2013, that it had been waiting almost 600 days for a determination on its application for 501(c)(3) status to do “voter-education work.”<sup>618</sup> The same group told *Politico* a month later that the delay was “causing problems because it can’t apply for foundation and grant money while that application to become a charitable organization is in limbo.”<sup>619</sup> Progress Texas reported that it took “18 months to get its 501(c)(4) approval.”<sup>620</sup>

#### **D. INAPPROPRIATE AND BURDENSOME INFORMATION REQUESTS**

As described in Section VII(F) of this report, in January 2012 the IRS Determinations Unit made unnecessary and burdensome requests to some tax-exempt applicants that in some cases included requests for donor information. IRS officials decided the request of the donor information was inappropriate and ordered the donor information destroyed.<sup>621</sup> Some left-leaning/progressive groups received inappropriate development questions regarding donor information while experiencing lengthy delays in the application process. At least three of the twenty-seven groups that received donor information requests were left-leaning applicants for tax-exempt status.<sup>622</sup>

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<sup>613</sup> Email chain between Melissa Conley, William Agner and others (July 11, 2011) IRS0000054945-46.

<sup>614</sup> *Id.*

<sup>615</sup> Email chain between Holly Paz, Cindy Thomas and others (Apr. 3, 2013) IRS0000054976-78.

<sup>616</sup> *Id.*

<sup>617</sup> See response submitted by Cindy Thomas, IRS Employee Responses to Written Questions from Finance Committee Staff (Dec. 19, 2013).

<sup>618</sup> *NPR*, Liberal Groups say They Received IRS Scrutiny Too (June 19, 2013).

<sup>619</sup> *Politico*, IRS Scrutinized Some Liberal Groups (July 22, 2013).

<sup>620</sup> *Id.*

<sup>621</sup> SFC Interview of Holly Paz (July 26, 2013) pp. 146-147.

<sup>622</sup> Email chain between Judith Kindell, Holly Paz and Sharon Light (Apr. 25, 2012) IRS0000013868 (email attachment containing taxpayer information omitted by Committee staff).



## **IX. ADDITIONAL FINDINGS NOT RELATED TO THE DETERMINATIONS PROCESS**

*This section includes findings that are not directly related to the processing of applications for tax-exempt status, but are nonetheless relevant to the IRS's treatment of tax-exempt organizations. We describe how the IRS failed to perform any audits of political advocacy performed by tax-exempt organizations for more than three years. We also describe how the IRS failed to produce documents that were responsive to a 2010 FOIA request seeking information about how the IRS was processing Tea Party applications. Finally, we discuss TIGTA's investigation of several improper disclosures of information related to conservative organizations.*

### **A. THE IRS STRUGGLED TO DECIDE HOW TO REVIEW ALLEGATIONS OF IMPROPER POLITICAL CAMPAIGN INTERVENTION BY TAX-EXEMPT ORGANIZATIONS, INCLUDING TEA PARTY GROUPS**

The first area of supplemental findings concerns the IRS's process for examining allegations of impermissible political campaign intervention by tax-exempt organizations. The Committee's investigation revealed numerous serious problems that rendered the IRS incapable of resolving allegations regarding the Tea Party and other political advocacy organizations.

#### **1. General Processes for Audits of Tax-Exempt Organizations**

The Examinations unit, within the Exempt Organizations Division, monitors whether organizations that have been approved for tax-exempt status are operating in accordance with federal tax law.<sup>623</sup> At all times relevant to the Committee's investigation, Nanette Downing was the Director of EO Examinations and reported directly to Lois Lerner.<sup>624</sup> Unlike most other IRS divisions, which are administered at the IRS headquarters in Washington, D.C., EO Examinations has its head office in Dallas, Texas. IRS officials explained that EO Examinations was placed outside of Washington to ensure that other divisions of the IRS in Washington did not improperly influence the tax enforcement decisions for exempt organizations.<sup>625</sup>

EO Examinations serves as the repository for allegations that tax-exempt organizations are engaged in improper conduct (or "referrals"). All referrals – including those that originate in

<sup>623</sup> IRS, Charity and Nonprofit Audits: Exempt Organizations Examinations.

<sup>624</sup> SFC Interview of Nanette Downing (Dec. 6, 2013) pp. 6, 9, 15.

<sup>625</sup> *Id.* p. 53; SFC Interview of Sarah Hall Ingram (Dec. 16, 2013) p. 71.

other divisions within the IRS, as well as those made by individuals or entities outside of the IRS – are all given the same consideration.<sup>626</sup> EO Examinations employees evaluate the referral based on its content and decide if the IRS will investigate further.<sup>627</sup> Apart from the referral process, EO Examinations employees also use other criteria to determine if the IRS needs to open a review.

EO Examinations performs two kinds of reviews of tax-exempt organizations:

- **Examinations** (also known as **audits**) are reviews of a taxpayer's books and records to determine tax liability, and may involve the questioning of third parties. For exempt organizations, an examination also determines an organization's qualification for tax-exempt status. If the IRS determines that an organization is not complying with the tax law, the IRS may impose a tax liability and, in some instances, may also revoke the organization's tax-exempt status.<sup>628</sup>
- **Compliance checks** are less comprehensive reviews used to determine if an organization is following the required recordkeeping and reporting requirements, and whether its activities are consistent with its stated tax-exempt purpose. Compliance checks are usually conducted using information already in the possession of the IRS, although the IRS will sometimes request additional information from the taxpayer. If the IRS concludes that the organization might owe a tax liability, it may refer the organization for a full examination.<sup>629</sup>

The Review of Operations (ROO) is a division within EO Examinations that performs compliance checks on tax-exempt organizations, usually 3-5 years after an organization has been approved for tax-exempt status. Unlike other types of compliance checks, IRS employees are not permitted to contact the taxpayer during ROO compliance checks.<sup>630</sup> In addition, because the ROO does not conduct an examination, it is not authorized to review an organization's books and records or ask questions regarding tax liabilities or the organization's activities.<sup>631</sup>

When the ROO receives a referral, ROO employees review the referral, along with information in the possession of the IRS, to determine if the allegations can be supported. The ROO then recommends one of the following options:

- Start an examination;
- Start a compliance check; or

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<sup>626</sup> SFC Interview of Nanette Downing (Dec. 6, 2013) pp. 35-37.

<sup>627</sup> *Id.* pp. 26-29.

<sup>628</sup> IRS Memorandum produced to SFC (Sep. 4, 2013) IRS0000378444-46; IRS, Charity and Nonprofit Audits: Closing/Conclusion.

<sup>629</sup> IRS Memorandum produced to SFC (Sep. 4, 2013) IRS0000378444-46; IRS Publication 4386, *Compliance Checks*, Rev. 4-2006.

<sup>630</sup> IRS Memorandum produced to SFC (Sep. 4, 2013) IRS0000378444-46.

<sup>631</sup> *Id.*

- Take no further action.<sup>632</sup>

Thus, a referral has the effect of bringing the referred group to the attention of the ROO and subjecting the group's information to review by ROO employees – thereby increasing the probability (but not guaranteeing) that the IRS will commence an examination or compliance check of the subject organization.<sup>633</sup>

## 2. The Changing Process for Handling Allegations of Improper Political Campaign Intervention

In recent years, the IRS altered its process for reviewing the political activities of tax-exempt organizations. These changes were spurred by an increasing number of referrals to EO Examinations starting in 2010, after the *Citizens United* decision, particularly referrals related to political campaign intervention by 501(c)(4) organizations.<sup>634</sup> By the end of 2010, Downing had suspended all examinations of 501(c)(4) organizations that were alleged to have engaged in improper political activities.<sup>635</sup>

In 2011, under the direction of Miller, Lerner and Downing, the IRS developed a new approach for referrals of political campaign intervention called the “Dual Track” process. This process allowed the ROO to perform its own analysis of organizations, using information from the annual Form 990 that tax-exempt organizations are required to file. The ROO would consider its analysis of the data, as well as any referral, when deciding if it should recommend a review of an organization's political campaign intervention.<sup>636</sup>

The ROO's recommendation would then be reviewed by a panel of career Federal employees, known as the Political Action Review Committee (PARC).<sup>637</sup> The PARC could either concur

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<sup>632</sup> Email from Diane Letourneau to Sarah Ingram, Nikole Flax, Lois Lerner and others (Oct. 13, 2011) IRS0000468121-28.

<sup>633</sup> Downing repeatedly disputed this conclusion during her interview conducted by Committee staff:

- Q. But you had indicated earlier that if a group is referred to the ROO, one potential outcome is that there will be an exam. Is that right?
- A. Correct.
- Q. Okay. So that referral to the ROO would increase the chances that it will have an exam.
- A. No.
- Q. That follows, right?
- A. No. No, I don't agree with that statement. I mean, pulling up project data analytics – I mean, it doesn't give you a higher chance than anything else.

SFC Interview of Nanette Downing (Dec. 6, 2013) pp. 65. The Committee did not find Downing's testimony on this point to be credible.

<sup>634</sup> SFC Interview of Nanette Downing (Dec. 6, 2013) pp. 30-31.

<sup>635</sup> *Id.* pp. 63-64. The IRS continued to examine other types of allegations against tax-exempt organizations.

<sup>636</sup> Email from Diane Letourneau to Sarah Ingram, Nikole Flax, Lois Lerner and others (Oct. 13, 2011) IRS0000468121-28.

<sup>637</sup> IRS Memorandum produced to SFC (Sep. 4, 2013) IRS0000378444-46.

with the ROO's recommendation or modify it. If the PARC selected an organization for examination or a compliance check, the PARC would also determine if the referral was high- or regular-level priority.<sup>638</sup>

The Dual Track process was modified in 2012, after an internal review found that the ROO's written explanations of its decisions "arguably [gave] the impression that somehow the political leanings of [the organizations] mentioned were considered in making the ultimate decision" of whether or not to recommend an examination or compliance check.<sup>639</sup> The internal review also noted other problems with the Dual Track process, including choices made for reasons unrelated to the tax issues presented (such as the effect that an examination might have on an organization's fundraising ability).<sup>640</sup>

Although examinations related to political campaign intervention were suspended, the IRS continued to receive allegations that Tea Party organizations and other advocacy groups had engaged in improper political campaign intervention. The IRS treated those allegations as referrals and sent them to EO Examinations.<sup>641</sup> In all, the IRS received 53 referrals related to 24 applicants for tax-exempt status that the IRS identified as "political advocacy" organizations.<sup>642</sup> These referrals were eventually reviewed using the Dual Track criteria and some were selected for examination;<sup>643</sup> however, as of June 2015, the IRS had not conducted any examinations in response to these referrals and was not actively considering the referrals.<sup>644</sup>

Ultimately, the Dual Track process was suspended in June 2013 at the direction of TE/GE managers installed by then-Principal Deputy Commissioner Daniel Werfel,<sup>645</sup> and permanently discontinued in 2015.<sup>646</sup> As a result, from the end of 2010 until April 2014, the IRS did not perform any examinations of 501(c)(4) organizations related to impermissible political campaign intervention.<sup>647</sup> Since the Dual Track process was discontinued in 2015, the IRS has sent referrals of impermissible political campaign intervention to the PARC, where they are reviewed in the same manner as other referrals related to tax-exempt organizations.<sup>648</sup> The IRS also

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<sup>638</sup> Email from Diane Letourneau to Sarah Ingram, Nikole Flax, Lois Lerner and others (Oct. 13, 2011) IRS0000468121-28.

<sup>639</sup> Email from Lois Lerner to Nikole Flax, Nanette Downing and others (July 9, 2012) IRS0000179069-71.

<sup>640</sup> *Id.*

<sup>641</sup> Email chain between Lois Lerner, Nicole Flax, David Fish and others (Sep. 28 - Oct. 3, 2011) IRS0000263043-67.

<sup>642</sup> IRS Memorandum produced to SFC (Sep. 4, 2013) IRS0000378444-46.

<sup>643</sup> *Id.*

<sup>644</sup> IRS Briefing for SFC Staff (June 22, 2015).

<sup>645</sup> *Id.*

<sup>646</sup> IRS Briefing for SFC Staff (June 22, 2015).

<sup>647</sup> SFC Interview of Nanette Downing (Dec. 6, 2013) pp. 63-64; IRS Briefing for SFC Staff (Aug. 26, 2014). In April 2014, the IRS re-opened 26 examinations that had been selected under the Dual Track process related to allegations of impermissible political campaign intervention. These 26 examinations were all concluded by June 2015. None resulted in revocation of tax-exempt status, although some of the organizations received a written advisory. IRS Briefing for SFC Staff (June 22, 2015).

<sup>648</sup> *Id.*

continues to evaluate data submitted on Form 990 tax returns to assess if organizations have engaged in improper political activity.<sup>649</sup>

### **3. EO Determinations Employees Recommended that the ROO Review the Activities of Some Tea Party Organizations, and a Smaller Number of Progressive Organizations, for Improper Political Campaign Intervention**

In 2011, as the number of political advocacy applications in EO Determinations' inventory increased, the IRS considered whether all Tea Party cases should simply be approved and then referred to the ROO for follow-up compliance checks. As Paz explained in July 2011:

EOD Screening has identified an increase in the number of (c)(3) and (c)(4) applications where organizations are advocating on issues related to government spending, taxes, and similar matters. ... Over 100 cases have been identified so far, a mix of (c)(3)s and (c)(4)s. ...

Lois would like to discuss our planned approach for dealing with these cases. We suspect that we will have to approve the majority of the c4 applications. Given the volume of applications and the fact that this is not a new issue (just an increase in frequency of the issue), we plan to [have] EO Determinations work the cases. ... We will also refer these organizations to the Review of [O]perations for follow-up in a later year.<sup>650</sup>

This idea was discussed during the July 5, 2011 meeting that Lerner convened with Thomas and other EO employees. Lerner elected not to follow this approach, because she did not think that EO Examinations had enough employees to handle the increased workload.<sup>651</sup>

Although Lerner did not uniformly implement this approach, EO Determinations employees started to recommend that the ROO review the activities of certain political advocacy groups in the future. This happened with greater frequency during the "bucketing" process in 2012, when a large number of applications were recommended for approval subject to later review by the ROO.<sup>652</sup> EO managers, including Thomas and Paz, were aware of at least some of these recommendations.<sup>653</sup>

From the end of 2011 through May 2013, EO Determinations employees recommended that the ROO review 60 political advocacy organizations.<sup>654</sup> After the TIGTA report came out, Downing

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<sup>649</sup> *Id.*

<sup>650</sup> Email chain between Holly Paz and Janine Cook (July 18-19, 2011) IRS0000429489.

<sup>651</sup> SFC Interview of Holly Paz (July 26, 2013) p. 139; Email chain between Cindy Thomas, Ronald Bell, Steve Bowling and others (July 5, 2011) IRS0000620735-40.

<sup>652</sup> Email chain between Sharon Light, Cindy Thomas and others (Aug. 27-28, 2012) IRS0000573175-76; Email from Janine Estes to Hilary Goehausen (July 11, 2012) IRS0000582651 (Email attachment containing taxpayer information omitted by Committee staff).

<sup>653</sup> Email chain between Sharon Light, Cindy Thomas and others (Aug. 27-28, 2012) IRS0000573175-76.

<sup>654</sup> IRS Chart produced to SFC (Sep. 4, 2013) IRS0000378447-48.

learned that these 60 “Tea Party case referrals” had been “sitting in a pile for quite a while” in the ROO.<sup>655</sup> Analysis performed by the Committee staff indicated that of these groups, 41 (68%) were conservative or Tea Party groups, 7 (12%) were progressive or liberal, and 12 (20%) had no obvious political affiliation. After consulting with managers installed by then-Principal Deputy Commissioner Werfel, Downing returned these referrals to EO Determinations for further processing.

Despite substantial time and effort expended by the IRS, the agency failed to perform any meaningful oversight of political advocacy performed by tax-exempt organizations for a three-year period. Although management has made recent changes to the examination process, concerns persist that the IRS could open examinations for an inappropriate reason. In July 2015, the Government Accountability Office (GAO) issued a report on the criteria and processes used by the IRS to select exempt organizations for examination.<sup>656</sup> GAO concluded that “EO has some controls in place that are consistent with internal control standards, and has implemented those controls successfully,” but found “several areas where EO’s controls were not well designed or implemented.” Most significantly, GAO stated that:

The control deficiencies GAO found increase the risk that EO could select organizations for examination in an unfair manner—for example, based on an organization’s religious, educational, political, or other views.<sup>657</sup>

Although the GAO did not consider whether these deficiencies actually led to improper selection of organizations for examination, these findings confirm that the IRS must continue to implement changes to ensure that examinations are opened only when warranted, based on a fair and impartial decision.

## **B. THE IRS FAILED TO PRODUCE RESPONSIVE DOCUMENTS TO A FOIA REQUEST IN 2010 SEEKING INFORMATION ABOUT ITS HANDLING OF TEA PARTY APPLICATIONS**

The second area of supplemental findings concerns the IRS’s handling of a 2010 Freedom of Information Act (FOIA) request.

In June 2010, a freelance reporter made a FOIA request to the IRS for records that explained how the IRS was processing applications for tax-exempt status submitted by Tea Party organizations.<sup>658</sup> As described below, by the time of the request, the IRS had generated numerous documents that satisfied the search criteria and explained how the agency was handling Tea Party applications. But the IRS performed a deficient search that revealed only a few of these numerous responsive documents in existence at the date of the request. Then, the

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<sup>655</sup> SFC Interview of Nanette Downing (Dec. 6, 2011) pp. 47-48.

<sup>656</sup> GAO, IRS Examination Selection: Internal Controls for Exempt Organization Selection Should be Strengthened (July 2015) GAO-15-514.

<sup>657</sup> *Id.*

<sup>658</sup> 5 U.S.C. § 552 (2009).

IRS elected not to produce any of the documents it identified, incorrectly claiming that the agency had “no responsive documents.” As a result, the reporter did not obtain any of the documents showing how Tea Party cases were handled in 2010.

On June 3, 2010, the IRS received a FOIA request from freelance reporter Lynn Walsh that sought:

Documents relating to any training, memos, letters, policies, etc. that detail how the “Tax Exempt/Government Entities Division” reviews applications for non-profits, 501(c)(3)s, and other not-for-profit organizations specifically mentioning “Tea Party,” “the Tea Party,” “tea party,” “tea parties.”<sup>659</sup>

The IRS determined that Walsh’s letter was a valid request under FOIA and assigned it to Sharon Baker, a Senior Disclosure Specialist in the Washington, D.C. Disclosure Office. Baker prepared an SCR for the FOIA request, noting that it was “likely to attract media or Congressional attention” and forwarded a search notice to Michael Guiliano in EO Guidance and Michael Seto in EO Technical.<sup>660</sup> A copy of the incoming request was also sent to the Office of Chief Counsel and to Media Relations.<sup>661</sup>

On July 6, 2010, EO Guidance manager David Fish sent two responsive documents to the disclosure division: the April 19, 2010 and May 24, 2010 SCRs prepared by Hull that explained how the Tea Party cases were being handled.<sup>662</sup> After that, there were several additional document searches that were done within the EO Division and the Office of Chief Counsel’s through early November 2010.<sup>663</sup>

Inexplicably, Baker and her managers in the Disclosure Office determined that these two documents were not responsive to Walsh’s FOIA request. Baker excluded the SCRs because she deemed them to be outside of Walsh’s request as they were not “guidance,” despite Giuliano’s assertion that these documents were indeed responsive. Baker notes in the Case Report that “I have been back and forth with Matthew and I am tried [sic].”<sup>664</sup> Tiffany Eder and others in the Office of Chief Counsel also questioned Baker’s interpretation of the request and suggested that she follow up with Walsh to clarify the scope of the request.<sup>665</sup> It appears that the follow up never occurred.

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<sup>659</sup> FOIA Request Letter from Lynn Walsh (June 3, 2010) IRSC003801.

<sup>660</sup> Email chain between Sharon Baker, Valerie Barta and others (June 14, 2010) IRSC003861-63.

<sup>661</sup> *Id.*

<sup>662</sup> Memorandum from David Fish to Manager, Disclosure with Attachments (July 6, 2010) IRSC003845-49.

<sup>663</sup> Case Notes Report (Jan. 6, 2011) IRSC003756-61.

<sup>664</sup> *Id.*

<sup>665</sup> *Id.*

In response to one of the searches, a third document was sent to Baker: a “Coordinating Tea Party Cases Update Memorandum” prepared by Hull on October 18, 2010.<sup>666</sup> This document explained how Hull was working with Hofacre in EO Determinations to review and develop incoming Tea Party applications. Baker excluded the October 2010 memorandum on grounds that the document was not responsive to the FOIA request “since it occurred after the FOIA request was received in our office.”

Ultimately, the IRS did not produce any documents to Walsh. On January 6, 2011, Disclosure Manager Marie Twarog, formally responded to Walsh’s June 3, 2010 FOIA request, advising the journalist that “I found no documents specifically responsive to your request.”<sup>667</sup>

The IRS’s handling of this FOIA request reveals several troubling issues.

First, the search for responsive documents was deficient.

The IRS failed to search for relevant records in EO Determinations’ Cincinnati office, even though they learned from the SCRs and Hull’s memorandum that the Tea Party applications were being processed by EO Determinations employees in Cincinnati. The IRS also failed to locate numerous responsive emails generated by Rulings & Agreement employees in Washington regarding the handling of Tea Party cases, including emails to and from Lerner and Paz.

Second, the IRS’s narrow reading of Walsh’s FOIA request caused the agency to exclude responsive documents.

Although some IRS employees disagreed with Baker’s interpretation of the request, no one in Baker’s management chain overruled Baker or required her to follow up with Walsh to clarify the scope of the request. By excluding these records, the IRS violated its policies as stated in the IRM:

Disclosure personnel must be careful not to read a request so narrowly that the requester is denied information that the agency knows exists. Some requesters may have little or no knowledge of the types of records maintained by the Service while others have greater knowledge of IRS files.<sup>668</sup>

Walsh’s request far exceeded this standard and, in fact, was precise enough that some IRS employees, including Guiliano and others, were able to locate responsive records. The IRS erred by ruling that these records were outside of the request.

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<sup>666</sup> Fax transmission from James Mackay to Sharon Baker (Oct. 26, 2010) IRSC003782-84.

<sup>667</sup> Letter to Lynn Walsh (Jan. 6, 2011) IRSC003765.

<sup>668</sup> IRM § 11.3.13.6.2(2) (Oct. 1, 2007).



Finally, the IRS also took a narrow view of the time limits of Walsh's request

The IRS regulations implementing FOIA state that the agency's response "shall include only those records within the official's possession and control as of the date of the receipt of the request by the appropriate disclosure officer."<sup>669</sup> But the IRM allows staff to include such documents at their discretion, particularly when there are delays in processing:

In rare circumstances, a lengthy delay (e.g., 90 days) may be unavoidable before search efforts are initiated. If this occurs, the case history must be documented to explain the delay and the search period must be extended to the date of search. **Also, when appropriate in terms of good customer service and/or in the spirit of openness in government, Disclosure personnel may make a determination to include records created after the receipt date of the request.** This determination is to be made on a case-by-case basis.<sup>670</sup>

In this case, the IRS asked Walsh for five extensions to respond to her letter and provided its ultimate response more than 7 months after the initial request – far outside of the 20 business-day period prescribed by law.<sup>671</sup> IRS also conducted multiple searches of its records after finding that the initial searches were deficient, circumstances that meet the criteria of "lengthy delay" set forth in the IRM. Despite these lengthy delays and multiple searches, Baker and other officials chose not to extend the search period and instead construed the IRS policies narrowly to exclude responsive records.

Although there is no reason to believe that the IRS's handling of this FOIA request was motivated by political bias, its treatment was not consistent with the purpose of FOIA, which states "that the public has a right to know what goes on in government without having to demonstrate a need or reason".<sup>672</sup> The IRS's deficient response to Walsh deprived her of the information that she was entitled to under the law, including SCRs; information about the purpose and use of the BOLO; and emails between Paz, Lerner and other managers containing instructions about how these cases should be handled. If the IRS had chosen to extend the responsive period until November 2010 – when EO and Chief Counsel employees performed their final searches – they could have also produced information about training on screening procedures for Tea Party applications given to EO Determinations screeners; Hull's October 2010 update on the status of Tea Party cases; and the first circulated BOLO spreadsheet. If this information had been made public in 2010 pursuant to a lawful FOIA request, the IRS's treatment of applications received from Tea Party organizations may have been exposed to the public in 2010, far sooner than it was. Shining the light of transparency on how the IRS was

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<sup>669</sup> 26 C.F.R. § 601.702(c)(8)(ii) (2002).

<sup>670</sup> IRM § 11.3.13.6.3(13) (Oct. 1, 2007) (emphasis added).

<sup>671</sup> 5 U.S.C. § 552(a)(6)(A) (2009).

<sup>672</sup> IRM § 11.3.13.1(3) (Oct. 1, 2007).

processing Tea Party applications in 2010 may have forced the IRS to have resolved those applications sooner than it eventually did. Instead, the IRS elected to release nothing and consequently, these applications were left to fester for years.

### **C. TIGTA REVIEWED SEVERAL ALLEGATIONS OF IMPROPER DISCLOSURES OF TAXPAYER INFORMATION BY THE WHITE HOUSE AND IRS**

The final area of supplemental findings concerns allegations that the IRS and White House improperly disclosed taxpayer information.

The Committee requested that TIGTA provide information about its investigations into four high-profile incidents of alleged disclosure of confidential taxpayer information by the White House and the IRS. Three of the alleged disclosures involved information about conservative organizations that applied for, or received, tax-exempt status. While the results of the investigations are considered tax return information and are thus confidential under section 6103 of the Internal Revenue Code, Committee staff believes it is in the public interest to lawfully disclose the results and status of these TIGTA investigations because the high-profile nature of the alleged disclosures raised serious concerns about public officials' handling of confidential taxpayer information.

#### **1. Koch Industries, Inc.**

On August 27, 2010, White House advisor Austan Goolsbee, during a briefing to reporters about a newly released report from the President's Economic Recovery Board on corporate tax reform, made the statement that Koch Industries may be avoiding corporate income taxes by structuring itself as an S-corporation. Mark Holden, senior vice president and general counsel of Koch Industries provided *The Weekly Standard* with a transcript of these remarks:

So in this country we have partnerships, we have S corps, we have LLCs, **we have a series of entities that do not pay corporate income tax. Some of which are really giant firms, you know Koch Industries is a multibillion dollar businesses.** So that creates a narrower base because we've literally got something like 50 percent of the business income in the U.S. is going to businesses that don't pay any corporate income tax. They point out [in the report] you could review the boundary between corporate and non-corporate taxation as a way to broaden the base.<sup>673</sup>

Holden told *The Weekly Standard* in the same article:

I'm not accusing any one of any illegal conduct. But it's my understanding that under federal law, tax information, is confidential and it's not to be disclosed or obtained by

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<sup>673</sup> *The Weekly Standard*, Koch Industries Lawyer to White House: How Did You Get Our Tax Information? (Sep. 20, 2010).

individuals except under limited circumstances. ... I don't know what [the senior administration official] was referring to. I'm not sure what he's saying. I'm not sure what information he has. But if he got this information – confidential tax information – under the internal revenue code ... if he obtained it in a way that was inappropriate, that would be unlawful. But I don't know that that's the case.<sup>674</sup>

On September 23, 2010, seven Republican members of the Senate Finance Committee wrote a letter to TIGTA Inspector General Russell George asking that he “investigate a very serious allegation that Administration employees may have improperly accessed and disclosed confidential taxpayer information.”<sup>675</sup>

On September 25, 2010, Holden issued a statement supporting an investigation while also stating that the “senior Obama administration official’s August 27<sup>th</sup> statement is wrong – Koch Industries does pay corporate income taxes and complies with all its tax obligations.”<sup>676</sup>

Inspector General George informed the Senate Finance Committee Republicans on September 28, 2010 that he would initiate a review of the matter.<sup>677</sup> The TIGTA investigation concluded in August 2011, but TIGTA refused to release the results of its inquiry to Koch Industries or Senator Grassley, citing the same confidentiality provisions that were allegedly violated.<sup>678</sup>

In response to inquiries from Senate Finance Committee staff in connection with this investigation, Inspector General George stated in a letter to Chairman Wyden that there was no improper disclosure on the part of Austan Goosbee. He wrote: “[t]he allegation was disproved. We developed no evidence that IRS information pertaining to Koch Industries was either accessed for or disclosed to the President’s Economic Recovery Advisory Board.”<sup>679</sup>

## 2. National Organization for Marriage

On March 30, 2012, *The Huffington Post* and *Human Rights Watch* published the National Organization for Marriage’s (NOM) confidential Form 990 Schedule B that contains donor information.<sup>680</sup> *The Huffington Post* reported that the “pro-gay rights Human Rights Campaign was sent a private IRS filing from NOM via a whistleblower.”<sup>681</sup>

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<sup>674</sup> *Id.*

<sup>675</sup> Letter from Senate Finance Committee Ranking Member Charles Grassley, et. al. to Inspector General J. Russell George (Sep. 23, 2010).

<sup>676</sup> Koch Industries Statement (Sep. 25, 2010).

<sup>677</sup> *Bloomberg News*, White House Advisor Goosbee’s Comment on Koch Taxes Reviewed by Treasury (Oct. 7, 2010).

<sup>678</sup> *The National Review*, The Missing Koch Report (Aug. 20, 2013).

<sup>679</sup> Letter from Inspector General J. Russell George to Chairman Ron Wyden (May 22, 2014).

<sup>680</sup> *Human Rights Campaign Blog*, One of NOM’s Top Secret Donors Revealed: Mitt Romney (Mar. 30, 2012); *The Huffington Post*, Mitt Romney’s PAC Funded Anti-Gay Marriage Group Under the Radar (Mar. 30, 2012).

<sup>681</sup> *The Huffington Post*, Mitt Romney’s PAC Funded Anti-Gay Marriage Group Under the Radar (Mar. 30, 2012).

After the confidential donor information was published, Ranking Member Hatch wrote a letter on May 8, 2012 to IRS Commissioner Shulman asking that the IRS investigate to determine the source of the leak.<sup>682</sup>

NOM filed a lawsuit against the IRS on October 3, 2013, alleging that the IRS willfully disclosed the Schedule B Form.

In response to inquiries from Committee staff in connection with this investigation, TIGTA stated in a letter to Chairman Wyden that there was an improper disclosure of confidential taxpayer information. TIGTA determined that an IRS employee working in the Return and Income Verification Services (RAIVS) unit “printed unredacted copies of the National Organization for Marriage’s IRS Form 990 ... and the associated Schedule B Form ... and sent them outside the IRS.”<sup>683</sup>

The RAIVS unit is responsible for processing Form 4506-A (Request for Public Inspection or Copy of Exempt or Political Organization IRS Form) requests for public versions of tax-exempt organizations’ Form 990s. However, the Schedule B of the Form 990 is confidential and should not be provided in response to a Form 4506-A public record request.<sup>684</sup>

TIGTA found that the “disclosure was probably a work error by the IRS employee” and that its investigation “did not identify any link between [the IRS employee] and the organizations or individuals involved in posting or publishing the unredacted forms.” In addition, TIGTA did not find any evidence that the disclosure was motivated by political animus. TIGTA was “also unable to determine whether the IRS received a valid Form 4506-A ... for the information at issue because” TIGTA “became aware of the allegation after the IRS’s 45-day retention period for the Form 4506-A had passed.”<sup>685</sup>

On August 10, 2012, TIGTA first referred the matter to the Department of Justice Public Integrity Section but it declined prosecution on September 19, 2012. TIGTA then referred the matter to the IRS “for administrative action on October 17, 2012. On January 30, 2013, the IRS issued a ‘Closed Without Action’ letter with a cautionary statement” to the employee involved in the disclosure.<sup>686</sup>

Previous to TIGTA’s investigation, “IRS RAIVS unit employees had access to both redacted and unredacted copies of the IRS Form 990 and associated Schedule B Forms on the IRS’s Statistics of Income Exempt Organizations Return Image Network (SEIN).” As a result of the incident, “[t]he IRS has now restricted RAIVS unit employees’ access to only redacted Forms 990

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<sup>682</sup> Letter from Senator Orrin Hatch to IRS Commissioner Shulman (May 8, 2012).

<sup>683</sup> Letter from Inspector General J. Russell George to Chairman Ron Wyden (May 22, 2014).

<sup>684</sup> Instructions for Form 4506-A (Rev. Aug. 2014).

<sup>685</sup> Letter from Inspector General J. Russell George to Chairman Ron Wyden (May 22, 2014).

<sup>686</sup> *Id.*

maintained on the SEIN. In addition, the IRS's retention period for IRS Forms 4506-A was extended from 45 days to three years from the last day of the calendar year in which they are received."<sup>687</sup>

### 3. Disclosure of Tax-Exempt Applications to *ProPublica*

In November 2012, *ProPublica* submitted a Freedom of Information Act (FOIA) request to the IRS requesting tax-exempt applications from 67 non-profit organizations.<sup>688</sup> In response, the IRS sent *ProPublica* records relating to 31 of the groups. However, nine of these groups' tax-exempt applications were still pending with the IRS, and were therefore still confidential.<sup>689</sup> On December 14, 2012, *ProPublica* published the confidential application of Crossroads GPS on its website. *ProPublica* reported:

The IRS sent Crossroads' application to *ProPublica* in response to a public-records request. The document sent to *ProPublica* didn't include an official IRS recognition letter, which is typically attached to applications of nonprofits that have been recognized. The IRS is only required to give out applications of groups recognized as tax-exempt.<sup>690</sup>

An IRS spokeswoman told *ProPublica*, "It has come to our attention that you are in receipt of application materials of organizations that have not been recognized by the IRS as tax-exempt." Further she told the news organization that "publishing unauthorized returns or return information was a felony punishable by a fine of up to \$5,000 and imprisonment of up to five years, or both."<sup>691</sup>

*ProPublica* disagreed with the IRS interpretation of the statute penalizing publication of the application, citing the First Amendment. Nonetheless, prior to publishing the document, *ProPublica* "redacted parts of the application to omit Crossroads' financial information."<sup>692</sup> On the same day *ProPublica* published the confidential tax-exempt application, the IRS requested that TIGTA investigate the matter.<sup>693</sup>

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<sup>687</sup> *Id.*

<sup>688</sup> *ProPublica*, IRS Office That Targeted Tea Party Also Disclosed Confidential Docs From Conservative Groups (May 13, 2013).

<sup>689</sup> *Id.*

<sup>690</sup> *ProPublica*, Karl Rove's Dark Money Group Promised IRS It Would Spend "Limited" Money on Elections (Dec. 14, 2012).

<sup>691</sup> *Id.*

<sup>692</sup> *Id.*

<sup>693</sup> Email chain between Beth Tucker, Timothy Camus, Nikole Flax and others (Dec. 14, 2012 - Jan. 4, 2013) IRS0000562277-78.

On January 2, 2013, *ProPublica* published details about five other pending tax-exempt applications in an article citing confidential application materials it had received from the IRS.<sup>694</sup>

On May 16, 2013, the Republican members of the Senate Finance Committee asked TIGTA to investigate “the IRS’s improper, and likely illegal, disclosure of nine organizations’ applications for tax-exempt status” to *ProPublica*.<sup>695</sup>

In response to inquiries from Committee staff in connection with this investigation, TIGTA stated in a letter to Chairman Wyden that there was an improper disclosure of confidential taxpayer information. TIGTA determined that an IRS employee improperly disclosed the tax-exempt applications of nine organizations that were awaiting a determination from the IRS. The organizations affected were Crossroads GPS, Rightchange.com, Freedompath, Citizen Awareness Project, Americans for Responsible Leadership, A Better America Now, America is Not Stupid, YG Network, and Secure America Now. The improper disclosure was made in response to a November 15, 2012 FOIA request from *ProPublica*, an online media organization.<sup>696</sup>

TIGTA did not find any evidence that the improper disclosure was motivated by political animus, and referred the matter to the IRS “for administrative action on January 30, 2013.”<sup>697</sup> TIGTA reported that “[o]n March 7, 2013, the IRS issued a ‘Letter of Admonishment’ to the employee responsible for the disclosure.”<sup>698</sup> Cindy Thomas explained that the letter from *ProPublica* had requested over 67 applications “and the clerical employee in the correspondence unit was trying to go through these very quickly.” Thomas told the Committee that the IRS employee responsible was a “good employee, and it was the first time that she had made a mistake.”<sup>699</sup>

As a result of this improper disclosure, the IRS now requires that the release of tax-exempt entity documents under FOIA be approved at the IRS headquarters level.<sup>700</sup>

#### **4. Republican Governors Public Policy Committee**

On April 4, 2013, the Center for Public Integrity reported that it “obtained a copy of the [Republican Governors Association Public Policy Committee’s] Form 990 from a website that

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<sup>694</sup> *ProPublica*, Controversial Dark Money Group Among Five that Told IRS They Would Stay Out of Politics, Then Didn’t (Jan. 2, 2013).

<sup>695</sup> Letter from Senate Finance Committee Republicans to Inspector General J. Russell George (May 16, 2013).

<sup>696</sup> Letter from Inspector General J. Russell George to Chairman Ron Wyden (May 22, 2014).

<sup>697</sup> *Id.*

<sup>698</sup> *Id.*

<sup>699</sup> SFC Interview of Cindy Thomas (July 25, 2013) p. 120.

<sup>700</sup> Letter from Inspector General J. Russell George to Chairman Ron Wyden (May 22, 2014).

displays tax returns online. The return included one page of the ‘Schedule B’ list of donors which the IRS does not require to be made public.”<sup>701</sup>

The RGA spokesman told the Center for Public Integrity that “donor information is confidential, and its partial disclosure by the IRS was erroneous and unauthorized. In fact it is a felony to disclose the information.”<sup>702</sup>

TIGTA investigated the circumstances behind the disclosure. They found that the Schedule B information was sent to the website by an employee in the Ogden, Utah IRS office. TIGTA concluded that the disclosure was a workplace error and found no indication this information was intentionally disclosed. The IRS employee was subsequently disciplined by the IRS.<sup>703</sup>

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<sup>701</sup> Center for Public Integrity, IRS “Outs” Handful of Donors to Republican Group (Apr. 4, 2013).

<sup>702</sup> *Id.*

<sup>703</sup> TIGTA Briefing for SFC Staff (July 10, 2015).

## **X. CONCLUSION**

This bipartisan report of the Committee concludes that between 2010 and 2013, the IRS failed to fulfill its obligation to administer the tax law with “integrity and fairness to all.”<sup>704</sup> The IRS functioned in a politicized atmosphere following the 2010 *Citizens United* Supreme Court decision, which put pressure on the IRS to monitor political spending. Employees in the TE/GE Division, including Lois Lerner, were aware that the IRS had received an increasing number of applications from organizations that planned to engage in some level of political advocacy. Yet senior IRS executives, including Lerner, failed to properly manage political advocacy cases with the sensitivity and promptness that the applicants deserved. Other employees in the IRS failed to handle the cases with a proper level of urgency, which was symptomatic of the overall culture within the IRS where customer service was not prioritized.

As a result of these failings, a number of Tea Party and other political advocacy groups waited as long as five years to receive a decision from the IRS. These delays negatively affected applicants in many ways, including:

- Inability to gain tax-exempt status within their state until the IRS issued a determination letter;<sup>705</sup>
- Significant time and financial cost to respond to lengthy and burdensome IRS questions;
- Ineligibility for grants and other financial support that require IRS documentation of tax-exempt status;
- Decreased donations; and
- Financial uncertainty about whether the organization will owe a tax liability if the IRS determines that it does not meet the criteria for tax-exemption.<sup>706</sup>

After experiencing these problems, numerous organizations withdrew their applications for tax-exempt status and some organizations ceased to exist altogether.

The consequences of the IRS’s actions in singling out organizations based on their name and subjecting them to heightened scrutiny, substantial delays, and to burdensome and sometimes intrusive questions are far reaching and troubling. Undoubtedly, these events will erode public confidence and sow doubt about the impartiality of the IRS. The lack of candor by IRS management about the circumstances surrounding Lois Lerner’s missing emails may only serve to reinforce those doubts.

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<sup>704</sup> IRS, The Agency, Its Mission and Statutory Authority.

<sup>705</sup> Some states require applicants to submit an IRS Determination letter before the state will confer tax-exempt status. See, e.g., Georgia Department of Revenue, Tax-Exempt Organizations Frequently Asked Questions.

<sup>706</sup> For a discussion of these and other adverse effects of the IRS’ delayed rulings, see *Politico*, From IRS: “Death by Delay” (Feb. 26, 2015).



The IRS exercises an important and powerful role in the lives of every citizen in the country, and it is charged with the responsibility to exercise that power in a fair and impartial way. Sadly, this investigation has uncovered serious shortcomings in how the IRS exercised that authority when it processed applications for tax-exemption from organizations that were engaged in political advocacy – shortcomings that raise public doubt about whether the IRS is a neutral administrator of the tax laws. Immediate and meaningful changes, including increased accountability to Congress and strengthened internal controls, are necessary if diminished public confidence in the IRS is to be restored.