

Oral Statement – Committee on Oversight and Government
Reform
July 18, 2013

Chairman Issa, Ranking Member Cummings, and Members of the Committee, thank you for the opportunity to address specific issues that have been raised related to our report published May 14th, 2013 on inappropriate criteria used by the Internal Revenue Service to identify tax-exempt applications for review.

Our report included three key findings: first, that the IRS used inappropriate criteria that identified for review organizations applying for tax-exempt status based upon their names or policy positions, rather than on tax exempt law and Treasury Regulations; second that the cases that the IRS referred for review as potential political cases experienced delays; and third, the IRS made unnecessary and burdensome requests for information.

On May 10th, 2013, at an American Bar Association conference held in Washington D.C., Lois Lerner, the Director of Exempt Organizations for the IRS at that time, stated, quote:

“Instead of referring to the cases as advocacy cases, they actually used case names on this list. They [Determinations Unit in Cincinnati, Ohio] used names like ‘Tea Party’ or ‘Patriots’ and they selected cases simply because the applications had those names in the title. That was wrong, that was absolutely incorrect, insensitive, and inappropriate.”

End of quote.

She also stated that some cases were delayed and unnecessary questions were asked, confirming the three key findings of our report. The story line based on Ms. Lerner’s presentation was that the IRS had apologized for inappropriately targeting conservative organizations.

Ms. Lerner made her statements on May 10th, 2013 before our audit report was completed and issued on May 14th, 2013.

It has been asserted that TIGTA concluded that the IRS inappropriately targeted conservative organizations; however, that narrative is based upon Ms. Lerner's statements, not on TIGTA's conclusions. It is imperative for me to emphasize that our audit report never labeled groups as "conservative" or "liberal."

TIGTA reviewed the process used by the IRS from May 2010 through May 2012 to screen cases for potential political campaign intervention; in other words, advocating for or against a candidate running for political office. As of the end of May 2012, the IRS provided TIGTA a list of 298 organizations that it—the IRS—had selected for further scrutiny. The reason the report focuses on the terms quote "Tea Party," "Patriots", and "9/12" unquote is that the IRS provided us a document at the beginning of our audit that shows these were the terms they used to select the potential political cases.

I submit for the record a document that the IRS provided to my organization on May 17th, 2012 while we were still in the planning phase of our audit. This document is purported to be the language used in the Be On the Look Out, otherwise known as BOLO, listing over time to describe potential political cases. We focused our audit on the BOLO entries shown in this document precisely because the IRS represented that these were the criteria relevant to potential political cases. Furthermore, the IRS provided us additional names and policy positions that were used to select cases including “Patriots” and “9/12.”

The scope of our audit included the process the IRS used to review applications for tax exemption from groups potentially involved in political campaign intervention. During the audit, our understanding was that the other BOLO entries were not used to select cases for this type of specialized review.

As new information emerges, we are continuing to review whether that is accurate.

In interviews, e-mails, and documents we found repeated discussion of the use of “Tea Party” and other related criteria described in our report. New documents from July 2010 listing the term quote “Progressive” unquote but noting that “Progressive are not considered Tea Parties” were provided to TIGTA last week, on July 9th, 2013. They were not provided during our audit, even though similar documents that list quote “Tea Party” unquote but not “Progressive” were. I am disturbed that these documents were not provided to our auditors at the outset, and we are currently reviewing this issue.

To follow up on the information that other terms like quote “Progressive and Occupy” unquote, appeared in various sections of the BOLO list, we conducted additional analyses to provide you, Members of Congress, with the data that we have, due to the interest in this issue.

However, we do not have full audit findings on the use of these other criteria.

With respect to the 298 cases that the IRS selected for political review as of the end of May 2012, three have the word “Progressive” in the organization’s name. Another four used quote “Progress” Unquote. None of the 298 cases selected by the IRS as of May 2012 used the name “Occupy.”

I know you have questions and so do we on the other Be On the Look Out listings, but from the date of the May 17th, 2012 document until we issued our report one year later, IRS staff at multiple levels concurred with our analysis citing “Tea Party,” “Patriot,” and “9/12” and certain policy positions as the criteria the IRS used to select potential political cases.

Although our audit was focused on the processing of potential political cases, we were concerned about the appropriateness of other criteria appearing in BOLO listings. We took prompt action after our report was issued to follow up on those concerns and

communicated them to Congress, consistent with legal restrictions on the release of confidential taxpayer information.

The names of the 298 groups and the majority of the information on the BOLO listings are return information as defined under Title 26 U.S.C. Section 6103 and thus TIGTA is prohibited by law from disclosing this information to members of this Committee and to the public.

However, we did provide this information to the Acting Commissioner, Daniel Werfel, on May 28th, 2013 and recommended that he review whether BOLO listings were still in use and whether they were appropriate.

He has announced that he has taken action on this suggestion and restricted the use of Be On the Look Out listings.

We also provided this information and briefed staff from the committees authorized by statute to receive tax information – the

House Committee on Ways and Means and the Senate Committee on Finance – in early June 2013. Our Office of Audit also referred the IRS’s use of other BOLO listings to TIGTA’s Office of Investigations for further review.

The letter from Ranking Member Cummings to the Chairman dated July 12th, 2013 states that I failed to disclose to Congress that we found no evidence of political motivation. With all due respect Mr. Chairman, I believe the record shows otherwise.

When I testified before this Committee on May 22nd, 2013, Representative Cartwright inquired as to whether TIGTA saw any evidence that IRS employees were politically motivated in their creation or use of the inappropriate screening criteria. I stated unequivocally, quote “[W]e received no evidence during the course of our audit to that effect” Unquote.

In addition, when I testified before the House Committee on Ways and Means on May 17th, 2013, Ranking Member Levin inquired, “Did [TIGTA] find any evidence of political motivation in the selection of the tax exemption applications?” I responded, quote “We did not, sir” unquote.

The letter from Ranking Member Cummings also states that I may have improperly prevented disclosure of relevant information. That is not correct. Career TIGTA and IRS attorneys independently determined that certain taxpayer information should be redacted. Following that decision, the IRS told us that it had changed its mind about one BOLO entry.

This was an interpretation that we requested additional information about, and our lawyers continue to have a dialogue regarding it.

It is important that I be clear on this point: none of this information has been withheld from Congress. TIGTA provided it in an unredacted form to the tax committees entitled to receive this information weeks ago.

Since the issuance of our report on May 14th, 2013, Congress, the Department of Justice, the IRS, and TIGTA have been reviewing the issues surrounding the IRS's processing of tax-exempt applications. As such, we understand that additional questions may be raised and additional issues may need to be reviewed.

Permit me to conclude by saying that when Ms. Lerner revealed information on our unissued report on May 10th, 2013, her statements confirmed the findings in our report.

In fact, as previously noted, we provided IRS officials with several opportunities to comment on our findings and they consistently agreed that quote "Tea Party" unquote and related criteria described in our report were the criteria that the IRS used to select cases for review of potential political campaign intervention during the 2010 to 2012 time frame that we reviewed.

Chairman Issa, Ranking Member Cummings, and Members
of the Committee, this concludes my testimony.