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Congress of the United States
House of Representatives

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July 30, 2013

The Honorable Daniel Werfel
Principal Deputy Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Mr. Werfel:

The Committee on Oversight and Government Reform continues to investigate the Internal Revenue Service's inappropriate treatment of certain applicants for tax-exempt status. Given the importance of this inquiry to restoring public trust in the IRS, we are extremely disappointed that the IRS has not fully cooperated with the Committee's investigation. Despite your public promises of unfettered cooperation with Congressional inquiries, in many instances the IRS has done just the opposite. As the Committee continues its investigation, we ask that you cease this obstruction and assist the Committee with its constitutional oversight obligations.

On May 15, 2013, in the immediate aftermath of the audit released by the Treasury Inspector General for Tax Administration, President Obama publicly expressed his outrage at the inappropriate conduct of the IRS.[1] Calling the conduct "inexcusable," the President proclaimed that he would "not tolerate this kind of behavior in any agency, but especially in the IRS, given the power that it has and the reach that it has into all of our lives."[2] President Obama further promised that his Administration will work "hand in hand" with Congress as "it performs its oversight role."[3]

The next day, President Obama appointed you as the new Acting Commissioner of the IRS to help the agency "restore public trust and administer[] the tax code with fairness and integrity."[4] On June 3, 2013, during your first congressional hearing as the Acting IRS Commissioner, Appropriations Subcommittee Chairman Ander Crenshaw asked for your full cooperation with ongoing congressional investigations into the IRS's inappropriate conduct. You replied: "Absolutely. You have my commitment for full cooperation."[5] You similarly

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[1] The White House, Statement by the President (May 15, 2013).
[2] *Id.*
[3] *Id.*
[4] The White House, President Obama Appoints Daniel Werfel as Acting Commissioner of Internal Revenue (May 16, 2013).
[5] *"IRS Oversight Hearing": Hearing before the Subcomm. on Financial Servs. and General Gov't of the H. Comm. on Appropriations*, 113th Cong. (2013).

testified before this Committee on June 6, 2013: "I am confident that together with Congress and other external stakeholders we will address the current challenges and move forward with the indispensible work of this agency."[6]

Despite your promise to cooperate fully with congressional investigations, the actions of the IRS under your leadership have made clear to the Committee that the agency has no intention of complying completely or promptly with the Committee's oversight efforts. Over two months since the Committee's first request for documents,[7] the IRS has produced only a small fraction of responsive documents. Indeed, although the IRS initially identified over 64 million pages of documents as responsive to congressional oversight requests,[8] the agency has produced to the Committee only a total of about 12,000 pages, or a mere 0.019 percent of what was initially identified as responsive documents. This incredibly slow pace of production has been an unnecessary attempt to frustrate the Committee's oversight efforts.

Of the limited documents that have been produced to the Committee, many contain excessive redactions that go well beyond those necessary to protect confidential taxpayer information. These documents include entire pages of redactions, which make the material completely unintelligible and useless for the Committee's oversight purposes. These documents also include thousands of pages of duplicate material as well as hundreds of pages of printed spreadsheets without column or row headers. The manner in which the IRS has produced this material appears to be an attempt to stall the Committee's investigation by providing information that is unhelpful and counterproductive to the Committee's needs.

Also of significant concern, the IRS affirmatively prevented Exempt Organizations Determinations Manager Cindy Thomas from providing the Committee with documents in her possession. On June 11, 2013, Ms. Thomas's attorneys asked the IRS Chief Counsel's office for permission to provide documents to the Committee in advance of Ms. Thomas's transcribed interview with Committee staff scheduled for June 28.[9] The IRS Chief Counsel's office refused.[10] In an attempt to facilitate the production of these documents, the Committee reluctantly agreed to allow the IRS to review the documents for confidential tax information. Accordingly, Ms. Thomas's attorneys sent these documents to the IRS Chief Counsel's office for review on June 17, 2013.[11] After the IRS asserted there was a technical difficulty with the first transmission, her attorneys again sent the documents to the Chief Counsel's office on June 24, 2013.[12] Despite Ms. Thomas's best efforts, the IRS did not produce a single document that Ms. Thomas attempted to produce to the Committee before the transcribed interview on June 28.

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[6] *"Collected and Wasted: The IRS Spending Culture and Conference Abuses": Hearing before the H. Comm. on Oversight & Gov't Reform*, 113ht Cong. (2013).
[7] *See* Letter from Darrell Issa & Jim Jordan, H. Comm. on Oversight & Gov't Reform, to Lois G. Lerner, Internal Revenue Serv. (May 14, 2013).
[8] *See* Douglas Ernst, *IRS Digging through 64 Million Pages Relevant to Tea Party Targeting*, Wash. Times (June 7, 2013).
[9] Email from Ben Dusing to Thomas Kane, Internal Revenue Serv. (June 11, 2013, 12:35 a.m.).
[10] Email from Thomas Kane, Internal Revenue Serv., to Ben Dusing (June 11, 2013, 3:35 a.m.).
[11] Email from Angela Hayden to Committee Staff (June 14, 2013, 3:04 p.m.).
[12] Email from Angela Hayden to Committee Staff (June 21, 2013, 5:00 p.m.).

During the transcribed interview, Ms. Thomas's attorney explained how the IRS obstructed his efforts to provide the documents to the Committee. He stated:

> I do think it prudent to state for the record that Ms. Thomas through counsel has endeavored to provide to the Committee in advance of today all relevant documentation as was requested. . . . [T]he guidance from Oversight was to provide those emails, correspondence, that sort of thing directly to [the IRS] to address [26 U.S.C. §] 6103 concerns. They would redact as necessary and get those documents to the Committee. . . . We requested the IRS as late as yesterday to get a last minute kind of [§] 6103 scrubbing of certain limited, select email correspondence that we thought would be helpful to the committee here today. That request, too, was denied.
>
> So generally the point that we did want to make for the record was we really have endeavored to get the documentation to the Committee. It is with the IRS, and it's regrettable that to the extent it has not – it has not found its way to you before today, that that's not – that was not our intention.[13]

The IRS's willful delay in reviewing and producing this material to the Committee directly affected the scope and substance of the Committee's interview of Ms. Thomas. We are deeply disturbed that the IRS would use the pretext of protecting confidential taxpayer information to delay, in bad faith, the Committee's receipt of material relevant to this important inquiry.

When the IRS eventually produced Ms. Thomas's material to the Committee almost a month after her attorneys first attempted to provide it, the IRS produced only a limited portion of the material. Of the 288,000 pages of documents that Ms. Thomas provided to the IRS for review,[14] the IRS produced only about 2,600 pages to the Committee, or less than 1 percent of the total material that Ms. Thomas desired to provide.[15] The IRS arbitrarily chose to produce only a subset of documents dated prior to May 10, 2013, and claimed that documents after that date "could be subject to privileges that would be normally available to the IRS."[16] Regardless of the fact that such common-law privileges do not apply to the Committee's right to obtain these documents, it is contrary to your promise of "full cooperation" that the IRS would even consider limiting the Committee's access to material relevant to its investigation. As of today, the IRS is still withholding over 280,000 pages of documents that Ms. Thomas desired to produce to the Committee.

We are also dismayed by the manner in which the IRS released a report on its thirty-day review on June 24, 2013. Your attempt to carefully orchestrate the public release of that information before providing it to the Committee echoes the attempt by Lois Lerner to preempt the public release of the TIGTA audit in May 2013. Before the IRS provided a copy of the

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[13] Transcribed Interview of Lucinda Thomas, Internal Revenue Serv., in Wash., D.C., at tr. 7-8 (June 28, 2013).
[14] Email from Angela Hayden to Committee Staff (June 24, 2013, 11:21 a.m.).
[15] *See* Letter from Leonard Oursler, Internal Revenue Serv., to Darrell Edward Issa, H. Comm. on Oversight & Gov't Reform (July 10, 2013).
[16] *Id.*

thirty-day review to the Committee, you held a conference call with members of the media. When Committee staff asked your staff for a copy of the report in advance of your press call, your staff refused. Later the same day, after you had briefed the press, when Committee staff came upon you and members of your staff carrying hard copies of the report in the Capitol complex, you and your staff again refused to provide the report to the Committee at that time. The IRS finally produced the report to the Committee hours after you had already provided copies of the report to members of the media.[17]

Finally, the IRS's most recent letter to the Committee, dated July 26, 2013, raises concerns that the IRS unilaterally decided not to produce certain responsive documents to the Committee. The July 26, 2013, letter states that the IRS refined various searches, including a recent search for 2010 election information that identified approximately 660,000 potentially responsive documents, "by eliminating any documents that [IRS] reviewers had *previously identified as* . . . private in nature."[18] (emphasis added). Moreover, searches performed on Chief Counsel William Wilkins' documents were also limited to exclude materials that had already "been marked as private."[19] It is unknown what IRS reviewers consider "private," but more importantly, there is no valid basis to deny the Committee access to "private" documents - regardless of what such an amorphous term may mean in the eyes of an IRS reviewer. It is also unclear why searches of Mr. Wilkins' documents were limited to the time period of February 2010 through May 10, 2013, when the Committee requested documents through the present. Likewise, for unknown reasons, the IRS arbitrarily limited searches of domain names to exclude, among others, White House domain names.[20] These revelations add to the Committee's growing list of concerns that the IRS is attempting to obstruct the Committee's investigation.

Obstructing a congressional investigation is a crime.[21] Additionally, denying or interfering with employees' rights to furnish information to Congress is against the law.[22] Taxpayer dollars may not be used to pay the salaries of federal officials who deny or interfere with employees' rights to furnish information to Congress.[23] The systematic manner in which

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[17] Email from Committee Staff to Catherine Barre, Internal Revenue Serv. (June 24, 2013, 2:54 p.m.).
[18] Letter from Leonard Oursler, Internal Revenue Serv., to Darrell Edward Issa, H. Comm. on Oversight & Gov't Reform (July 26, 2013).
[19] *Id.*
[20] *Id.*
[21] 18 U.S.C. § 1505 states, in pertinent part:

> Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress
> Shall be fined under this title, imprisoned not more than 5 years. . . .

[22] 5 U.S.C. § 7211 states:

> The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.

[23] P.L. 111-117 § 714 states:

the IRS has attempted to delay, frustrate, impede, and obstruct the Committee's investigation raises serious concerns about your commitment to full and unfettered congressional oversight. At a time of great uncertainty and public distrust in the agency, the IRS leadership must do more to rebuild the faith of the American people.

We ask that you immediately cease these obstructionist tactics and comply fully and expeditiously with the Committee's investigation. Please produce all requested documents and communications, including the entirety of the material provided to the IRS by Ms. Thomas, as well as all responsive documents the IRS has identified as "private," as promptly as possible. If the IRS continues to hinder the Committee's investigation in any manner, the Committee will be forced to consider use of compulsory process. Thank you for your attention to this matter.

Sincerely,

Darrell Issa
Chairman

Jim Jordan
Chairman
Subcommittee on Economic Growth,
Job Creation and Regulatory Affairs

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

The Honorable Matthew A. Cartwright, Ranking Minority Member
Subcommittee on Economic Growth, Job Creation and Regulatory Affairs

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No part of any appropriation contained in this or any other Act shall be available for the payment of the salary of any officer or employee of the Federal Government, who –

(1) prohibits or prevents, or attempts or threatens to prohibit or prevent, any other officer or employee of the Federal Government from having any direct oral or written communication or contact with any Member, committee, or subcommittee of the Congress in connection with any matter pertaining to the employment of such other officer or employee or pertaining to the department or agency of such other officer or employee in any way, irrespective of whether such communication or contact is at the initiative of such other officer or employee or in response to the request or inquiry of such Member, committee, or subcommittee; or

(2) removes, suspends from duty without pay, demotes, reduces in rank, seniority, states, pay, or performance of efficiency rating, denies promotion to, relocates, reassigns, transfers, disciplines, or discriminates in regard to any employment right, entitlement, or benefit, or any term or condition of employment of, any other officer or employee of the Federal Government, or attempts or threatens to commit any of the foregoing actions with respect to such other officer or employee, by reason of any communication or contact of such other officer or employee with any Member, committee, or subcommittee of the Congress as described in paragraph (1).