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House of Representatives

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LAWRENCE J. BRADY
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MEMORANDUM

June 9, 2013

To: Members of the Oversight and Government Reform Committee

Fr: Democratic Staff

Re: Preliminary Status Update on Committee Investigation of "Inappropriate Criteria" Used by IRS to Evaluate Applications for Tax Exempt Status

On May 14, 2013, the Treasury Inspector General for Tax Administration (IG) issued a report concluding that employees in the Cincinnati office of the Internal Revenue Service (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." Specifically, the IG reported that IRS officials used the terms "Tea Party," "Patriots," and "9/12 Project," as well as several issue-based criteria.¹

The Committee launched its own investigation and has now conducted transcribed interviews with five IRS officials. This memo provides a brief status update concerning the Committee's investigation. This information is preliminary and not comprehensive, and Committee staff plan to conduct additional interviews and review additional documents over the coming weeks. The IRS has requested that the Committee refrain from releasing the names of lower-level employees, so they are referenced by job description.

I. "CONSERVATIVE REPUBLICAN" MANAGER OF IRS SCREENERS DENIES WHITE HOUSE INVOLVEMENT OR POLITICAL CONSIDERATIONS

On June 6, 2013, Committee staff conducted a key interview with the Manager of the Screening Group in the Cincinnati Determinations Unit of the IRS. This official answered questions from Committee staff directly and candidly for more than five hours. He stated that he has worked at the IRS for 21 years as a civil servant and supervised a team of several Screening Agents in that office. When asked by Republican Committee staff about his political affiliation, he answered that he is a "conservative Republican":

¹ Treasury Inspector General for Tax Administration, *Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review* (May 14, 2013).

Q: Do you have a party affiliation?

A: Yes, I do.

Q: What's your party affiliation?

A: I am a conservative Republican.

Q: Have you ever contributed to a political organization or candidate?

A: A financial commitment?

Q: Yes.

A: No, I have not.

Q: Have you ever worked or volunteered on behalf of a political candidate?

A: No, I have not.²

Screening Group Manager Denied White House Involvement

During questioning from Committee staff, the Screening Group Manager directly contradicted Chairman Issa's allegation that the White House played a role in directing or coordinating efforts to target conservative groups for political reasons. On May 14, 2013, Chairman Issa appeared on national television and stated:

This was the targeting of the President's political enemies effectively and lies about it [sic] during the election year, so that it wasn't discovered until afterwards.³

Other House Republicans followed suit. For example, on June 3, 2013, Rep. Hal Rogers, Chairman of the House Committee on Appropriations, stated:

Of course, the enemies list out of the White House that IRS was engaged in shutting down or trying to shut down the conservative political viewpoint across the country—an enemies list that rivals that of another president some time ago.⁴

² House Committee on Oversight and Government Reform, Interview of Screening Group Manager, at 28-29 (June 6, 2013).

³ *Issa on IRS Scandal: "Deliberate" Ideological Attacks*, CBS This Morning (May 14, 2013) (online at www.cbsnews.com/video/watch/?id=50146771n).

⁴ *Chairman Hal Rogers Talks IRS Targeting and Spending*, Fox News (June 3, 2013) (online at <http://youtu.be/AzXaJF09A1c>).

During the transcribed interview with the Screening Group Manager, Committee staff read Chairman Issa's allegation and asked for a response:

Q: If you turn to page 2 and go to the bottom third of the page, the second part of the paragraph beginning, "During a May 14 appearance," there's a quote that says, "This was the targeting of the President's political enemies effectively and lies about it during the election year, so that it wasn't discovered until afterwards, Issa claimed." Do you see where I'm reading from?

A: Yes. ...

Q: In your opinion, was the decision to screen and centralize the review of Tea Party cases the targeting of the President's political enemies?

A: I do not believe that the screening of these cases had anything to do other than consistency and identifying issues that needed to have further development.⁵

The Screening Group Manager explained that he had no reason to believe that any officials from the White House were involved in any way:

Q: Do you have any reason to believe that anyone in the White House was involved in the decision to screen Tea Party cases?

A: I have no reason to believe that.

Q: Do you have any reason to believe that anyone in the White House was involved in the decision to centralize the review of Tea Party cases?

A: I have no reason to believe that.⁶

In fact, no witnesses interviewed by the Committee to date have stated that the White House played any role whatsoever in this matter.⁷

⁵ Screening Group Manager, at 139-140.

⁶ *Id.* at 141.

⁷ *See, e.g.*, House Committee on Oversight and Government Reform, Interview of Acting Director of Rulings and Agreements, at 139 (May 21, 2013); House Committee on Oversight and Government Reform, Interview of Screening Agent, at 150 (May 30, 2013); House Committee on Oversight and Government Reform, Interview of Determinations Specialist, Former Group Manager, Exempt Organizations Determinations Unit, at 19 (June 4, 2013).

Screening Group Manager Denied Political Considerations

In addition to contradicting Chairman Issa's claim about White House involvement, the Screening Group Manager stated that political considerations did not impact his work or the work of his team:

Q: Are you aware of any political bias by employees in the Cincinnati office against conservative views?

A: I'm not aware of that.

Q: Are you aware of any political motivations behind the screening, centralizing, and development of Tea Party cases?

A: I'm not aware of that.

Q: Are you aware of any political motivations to benefit one political party in the Cincinnati office?

A: I am not aware of that.⁸

None of the four other IRS employees interviewed by Committee staff to date stated that they were aware of political bias or motivation playing any role in the development or screening of cases.⁹

Screening Group Manager Agreed with Flagging First "Tea Party" Case

In February 2010, when one of the Screening Group Manager's screening agents identified the first Tea Party case at issue in this investigation, the Screening Group Manager agreed that the case should be forwarded up the chain to technical officials in the Exempt Organizations office in Washington (EO Technical), and he did so. The Screening Group Manager informed Committee staff that he did not do this for political reasons, but rather because it was a high profile case that should be treated carefully:

The reason that the case was elevated to EO Technical was based upon, you know, the high-profile issue. The agent appropriately identified the issue as not being fully developed, and that it should be gone into the inventory and assigned for that purpose. It wasn't the purpose of the difficulty of those issues that was the—you know, the reason that I elevated it to my manager. It was more the high-profile part of the case.¹⁰

⁸ Screening Group Manager, at 135-136.

⁹ See, e.g., House Oversight and Government Reform, Interview of Determinations Specialist, at 155 (May 31, 2013); Acting Director of Rulings and Agreements, at 143-144; Determinations Specialist, Former Group Manager, Exempt Organizations Determinations Unit, at 128; Screening Agent, at 86; 149.

¹⁰ Screening Group Manager, at 148.

The Screening Group Manager denied that he or his staff elevated this case because of political considerations:

Q: Did you decide to elevate the case to your direct supervisor [REDACTED] because you disagreed with the political views of the Tea Party organization identified in the application?

A: No, I did not.¹¹

According to the Screening Group Manager, elevating high profile cases in this manner was standard procedure:

Q: Did you ever have concerns—is there anything inappropriate, in your view, about sending up to your supervisor high-profile cases?

A: Not that I would be aware of.

Q: And that was in the normal course of your duties you would send up high-profile cases?

A: If identified, that's what I would do.¹²

The Screening Group Manager explained that high profile cases are elevated in part to ensure consistent review:

But, you know, with this additional concern for high profile, and I think I alluded to that previously, is that, you know, we may want to really look at things for precedent setting, we may want to look at things for consistency setting. I mean, we were really stressing, at least I was stressing customer service, making sure that, you know, that we do this correctly.¹³

The Screening Group Manager explained that the original case had been identified based on its specific facts and circumstances. Because it had “Tea Party” in the name and identified an intention to conduct political activity, the Screening Group Manager agreed with his Screening Agent that the case should be evaluated and reviewed further through a process called “full development.”¹⁴ The Screening Group Manager explained:

We would need to know how frequently or—of the total activities, 100 percent of the activities, what portion of those total activities would you be dedicating to political activities. And in this particular case, it wasn't addressed, it was just mentioned, and, to

¹¹ *Id.* at 62.

¹² *Id.* at 137.

¹³ *Id.* at 49.

¹⁴ *Id.* at 144-146, 148-149.

me, that says it needs to have further development, and it could be good, you know. Once the information is all received, it could be fine.¹⁵

On February 25, 2010, the Screening Group Manager sent an email to his supervisor to raise this initial case up his chain, and he specifically noted the political activity highlighted in the application:

[REDACTED], this case will be sent to inventory for further development. Political campaigns on behalf of or [sic] in opposition to any political candidate do not promote social welfare, but an exempt 501(c)(4) may intervene in political campaigns as long as its primary purpose is the promotion of social welfare and would be subject to the tax imposed by IRC 527. I will hold this case for a decision concerning this type of organization may be considered a "High Profile Case".¹⁶

The next day, on February 26, 2013, one of the Screening Group Manager's supervisors in Cincinnati wrote an email responding:

EO Technical would like the case. Please thank [REDACTED] for identifying the issue and elevating it. Thanks.¹⁷

The Screening Group Manager made clear that when he elevated the first Tea Party case to his superiors, he was following what he believed to be standard procedure to ensure consistency:

Q: So when you're elevating high profile cases, are you in part doing it to ensure consistency amongst all high profile cases?

A: Correct.

Q: Is it standard procedure to elevate high profile cases?

A: Correct.¹⁸

Screening Group Manager Ordered Identification of More Cases Based on Similar Facts

The Screening Group Manager informed Committee staff that after he decided to elevate the first Tea Party case, he instructed his Screening Agents to identify additional cases that were

¹⁵ *Id.* at 146.

¹⁶ Email from Screening Group Manager to Area Manager (Feb. 25, 2010).

¹⁷ Email from Determinations Unit Program Manager to Screening Group Manager (Feb. 26, 2013).

¹⁸ Screening Group Manager, at 57.

similar based on their facts and circumstances. He did not recall the details of his instructions, but he explained generally:

What happened was that when this case was determined that EO Technical wanted to see it, I, as a course of doing business, called my three senior agents, which included [REDACTED], [REDACTED], [REDACTED] making them, you know, apprising them of situations within the group, this case being one. And I did this on a regular basis, especially with my senior people because I depended on what they were doing. From that, you know, we discussed that this case was something that EO Technical wanted to see.¹⁹

He added:

The one case that we had. So, you know, it would be then something we need to be aware of, and we need to hold those cases until we have further direction. And so this was—this was communicated not only to these three senior people but to the group. So, anyone who would be looking at cases and if they had these same particular issues presented to them, that we needed to not let them maybe go into the general inventory as we were looking for consistency.²⁰

When asked whether anyone directed him to instruct his screeners to identify additional cases, the Screening Group Manager stated: “There was no—there was no—no one said to make a search.”²¹

The Screening Group Manager explained that he had authority to approve Tea Party cases immediately if their applications merited approval, but he could not recall if he had done so:

Q: I believe you testified earlier that you could have approved Tea Party applications if they met a certain criteria. Is that correct?

A: What—what I indicated is that each case stands on its own, and the specificity within a case was not out of the realm, that if all information was provided that met the criteria of a case, that there’s a possibility that it could be approved.

Q: So you had the authority to approve those cases?

A: Sure did.

Q: And did you, in fact, approve any Tea Party cases?

¹⁹ Screening Group Manager, at 63.

²⁰ *Id.*

²¹ *Id.*

A: I can't address that. I don't know.

Q: You don't recall?

A: I don't.²²

The Screening Group Manager told Committee staff repeatedly that he and his Screening Agents based their work on the facts and circumstances of each individual case. For example, he stated at various points during his interview:

- “I think each case again rests on its own merits. The facts and circumstances in the case will determine if we are going to approve it.”²³
- “Each case is again reviewed and the determination is made on the facts and circumstances within that case.”²⁴
- “Again we looked at these cases from a standpoint of the facts and circumstances that were in each case.”²⁵
- “I know I sound like a broken record, but I firmly believe that, that the facts and circumstances that are presented in a case, you know, are—they are on their own. And so, you know, that's the way an agent processes a case.”²⁶

II. IRS SCREENERS IN CINCINNATI DEVELOPED SEARCH TERMS IDENTIFIED BY IG AS “INAPPROPRIATE”

On May 30, 2013, Committee staff conducted a transcribed interview with an IRS Screening Agent who worked for the self-identified “conservative Republican” Screening Group Manager in Cincinnati. This employee acknowledged that he developed search terms in 2010 that were identified by the IG last month as “inappropriate.” The Screening Group Manager informed Committee staff that he did not become aware that his Screening Agent used these and other terms until more than a year later, in June 2011. At that time, those criteria were raised to the attention of Lois Lerner, who “immediately” ordered a halt to their use, according to the IG.

²² *Id.* at 167.

²³ *Id.* at 73.

²⁴ *Id.* at 79.

²⁵ *Id.* at 99.

²⁶ *Id.* at 148.

Screening Agent Identified Additional Tea Party Cases

During his interview, the Screening Agent informed Committee staff that the Screening Group Manager instructed him to identify additional cases that were similar to the first Tea Party case that was elevated to EO Technical:

Q: Now, was there a point around this time period when [SCREENING GROUP MANAGER] asked you to do a search for similar applications?

A: Yes.

Q: To the best of your recollection, when was this request made?

A: Sometime in early March of 2010.

Q: And what did [SCREENING GROUP MANAGER] tell you to do exactly?

A: He told me he wanted me to find out how many Tea Parties were actually in TEDS, and then how many was on another system called EDS. We wanted to know how many cases were actually open that needed to be processed, and how many that has already been processed. And I said, I'll get back to you.²⁷

On March 16, 2010, the Screening Group Manager sent an email informing the head of the Cincinnati Determinations Unit that his team had identified ten additional cases:

We have identified a total of 10 Tea Party cases. Three cases have been approved, two 501(c)(4) and one 501(c)(3). I have collected the other cases and will forward them to EO Technical.²⁸

The next day, on March 17, 2010, the Screening Group Manager received an email from his superior stating:

EOT does not want all of the tea party cases. They only want 2 of them and want us to hold the remainder.²⁹

²⁷ Screening Agent, at 31.

²⁸ Email from Screening Group Manager to Determinations Unit Program Manager (Mar. 16, 2010).

²⁹ Email from Determinations Unit Program Manager to Screening Group Manager (Mar. 17, 2010).

Screening Agents Developed Their Own Search Terms

During his interview with Committee staff, the Screening Agent stated that he came up with the idea of searching for additional cases by using the terms “patriot” and “912”—search terms subsequently identified by the IG as inappropriate:

A: “Tea Party” was just a term. But Tea Parties by another name may have been something else. So there’s other terms I used.

Q: What other terms did you use?

A: When I looked at the initial Tea Parties that were in house, the applications when they come in, I would see that they had Web sites. So I would look at the Web sites. Then I would see other names, and I know there’s—there wasn’t 5 or 10 Tea Parties. I noticed that there were hundreds of these things. I went back and told [REDACTED]. I said, [REDACTED], there’s hundreds of these things, maybe thousands. And I saw some other names. So some of those names I used, some of those terms, to find the Tea Parties. Tea Party went by other names.

Q: So when you say there are hundreds of these things, you are referring to the group—

A: Chapters, groups.

Q —but not the applications; is that right?

A: Right.

Q: Can you give us examples of these other words or phrases that you used as criteria in these other searches?

A: Well, one was “patriots,” and the “912 projects.” If you looked at one Web site, you would see these.

Q: Uh-huh.

A: And I used “patriots,” because some of the Tea Parties wouldn’t—they would shorten their name to TP Patriots. I thought, okay, I will use “patriot.” And I would see TP Patriots. So even though you think there is two entities, it’s really just one. And the 912, whenever you looked at the Web sites, you would see the—these other organizations. So I said, okay, I will use these to find the Tea Parties. At one point I used the word “tea,” but T-E-A doesn’t get you very far because TEDS might have 5,000 entities in there. Teachers. So I had to watch my queries and zero in on what I wanted.³⁰

³⁰ Screening Agent, at 41.

During his interview with Committee staff, the Screening Group Manager stated that he believed it was appropriate to handle these cases in the same way to ensure consistency:

Now, is it prudent for us to then make sure, for consistency purposes, that these cases are worked by the same folks or the same group? The determination was yes, it is.³¹

He explained further:

I mean, the case that stands on its own merits, the facts and circumstances within the case, the issues within the case, that warrants a case that could have possible additional scrutiny, and the fact that this was a high profile case because of media attention is what brought that position to us. Now, if someone was identifying cases that had “Tea Party” in them, I think I explained that we needed to look further and to see you know, if the facts and circumstances within that case were enough to, you know, not—and in my group it was a proven, okay.³²

Screening Group Manager Did Not Discover Use of Search Terms Until More Than a Year Later

The Screening Group Manager informed Committee staff that he did not instruct the Screening Agent to use these search terms:

Q: I’m guessing that you did not instruct [SCREENING AGENT] to use these terms in the March 2010 time period?

A: I did not.

Q: And I’m guessing you also did not instruct anyone other than [SCREENING AGENT] to search for Tea Party cases in spring 2010 using those type—those criteria?

A: I did not.³³

The Screening Group Manager informed Committee staff that he did not discover the use of these terms until June 2, 2011, when the head of the Cincinnati IRS office asked him for the criteria his screeners were using to identify Tea Party cases. On that date, the Screening Group Manager sent an email to three of his Screening Agents asking for information on issues that could indicate that a case could to be considered a potential “Tea Party” case and sent for additional screening.³⁴ The three Screening Agents each responded separately, and the

³¹ Screening Group Manager, at 78.

³² *Id.*

³³ *Id.* at 83-84.

³⁴ *Id.* at 100.

Screening Group Manager compiled these responses into one email for the head of the Cincinnati office:

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 the how the country is being run.³⁵

When the head of the Cincinnati office received this email, she forwarded it to the Acting Director of Rulings and Agreements in Washington. When Committee staff interviewed this official on May 21, 2013, she stated that, until she received this detailed explanation, her understanding was that the Cincinnati office was collecting a variety of cases involving political advocacy and that the term “Tea Party cases” was being used only as a form of shorthand:

I believe that that was just sort of her shorthand reference to this group of cases with political campaign intervention issues. Since the first case that came up to Washington happened to have that name, it appeared to me that that’s why they were calling it that as a shorthand, because the first case had been that.³⁶

This official informed Committee staff that, after receiving the information collected by the Screening Group Manager explaining precisely how Screening Agents in Cincinnati were identifying Tea Party cases, she became concerned about the terms and raised them to the attention of her supervisor, Lois Lerner, the Director of Exempt Organizations, at a briefing on July 5, 2011.³⁷

³⁵ Email from Screening Group Manager to Determinations Unit Program Manager (June 2, 2011).

³⁶ Acting Director of Rulings and Agreements, at 63.

³⁷ *Id.* at 77-78.

III. ALTHOUGH LOIS LERNER HALTED THESE ACTIVITIES IN 2011, SHE AND THE IRS COMMISSIONER FAILED TO INFORM CONGRESS

Lerner Directed a Halt to the Activities in 2011

The IG report found that after Ms. Lerner learned of the use of inappropriate criteria for identifying Tea Party cases, she “immediately” directed that the criteria be changed.³⁸ Specifically, a document called a “Be on The Lookout”. (BOLO), which informed staff in Cincinnati how to screen and refer applications, previously directed employees to identify “various local organizations in the Tea Party movement ... applying for exemption under 501(c)(3) or 501(c)(4).” It instructed employees to send these cases to a specific group within the Cincinnati office that was coordinating with EO Technical.³⁹

After Ms. Lerner issued her directive, however, the BOLO was changed in July 2011 to apply to: “Organizations involved with political, lobbying, or advocacy for exemption under 501(c)(3) or 501(c)(4).”⁴⁰

The IG found that despite Ms. Lerner’s directive, by January 2012, the Cincinnati IRS staff, without management approval, changed the screening criteria again to focus on applicants’ policy positions using phrases such as “limiting/expanding government” and “social economic reform/movement” rather than a more policy neutral test. The IG determined that the Cincinnati team made this change “because they believed the July 2011 criteria were too broad.”⁴¹

According to the IG report, in May 2012 the Director of Rulings and Agreements in Cincinnati became aware that the team had changed the criteria without her approval, after which she fixed the criteria again and removed the authority of her subordinates to change the criteria without executive-level approval. For these reasons, the IG report concluded that “the Determinations Unit developed and implemented inappropriate criteria in part due to insufficient oversight provided by management.”⁴²

Lerner and Shulman Failed to Inform Congress

Despite the fact that Ms. Lerner learned about the identification of Tea Party cases and the use of specific criteria by Screening Agents in 2011, and although she took steps to correct these problems, she did not inform Congress about these actions in multiple letters she sent after they occurred.

³⁸ Treasury Inspector General For Tax Administration, *Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review* (May 14, 2013).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

For example, in a letter on April 26, 2012, responding to concerns raised previously by Chairman Issa, Ms. Lerner did not mention the briefing she received in 2011 or the corrective actions she ordered at that time. Instead, she referred to follow-up questions to Tea Party applicants as part of “the ordinary course of the application process to obtain the information as the IRS deems necessary to make a determination whether the organization meets the legal requirements for tax-exempt status.”⁴³

In addition, former Commissioner Douglas Shulman failed to correct the public record after he learned that his previous testimony before Congress was in question. On March 22, 2012, then Commissioner Shulman testified before the House Committee on Ways and Means. During the hearing, Oversight Subcommittee Chairman Charles Boustany asked him:

We have seen some recent press allegations that the IRS is targeting certain Tea Party groups across the country requesting what have been described as onerous document requests, delaying approval for tax exempt status, and that kind of thing. Can you elaborate on what is going on with that? Can you give us assurances that the IRS is not targeting particular groups based on political leanings?

In response to this question, Commissioner Shulman stated unequivocally: “There is absolutely no targeting.”⁴⁴

Even if Commissioner Shulman had no information about these actions at the time of his testimony, he acknowledged later that he learned about some of these activities and failed to inform Congress. For example, in response to questions from Ranking Member Cummings at the Oversight Committee hearing on May 22, 2013, Mr. Shulman testified that he learned of these activities after his testimony before the Ways and Means Committee in March 2012:

I learned about the list after that testimony. And when I learned about the list, I learned two other things. You know first I—I learned that the activities were stopped. So by the time it got to me, the list was no longer being used within appropriate criteria, and I also learned that the matter was in the hands of the IG. And my standard procedure as head of the IRS, is when I knew something that sounded of concern, as the chairman called, smoke, that—and I didn’t have all the facts, I didn’t know what was on the list, exactly how it was used. Were there liberal groups as well as conservative groups? I didn’t have the facts. Then—and it was in the hands of the I.G., that the I.G. would do a thorough review of the matter, and when he had all of the facts, would report that to the IRS, to the

⁴³ Letter from Lois Lerner, Internal Revenue Service, to Chairman Darrell E. Issa, House Committee on Oversight and Government Reform (Apr. 26, 2012).

⁴⁴ House Committee on Ways and Means, Subcommittee on Oversight, Testimony of The Honorable Douglas Shulman, Commissioner, Internal Revenue Service, *Hearing on The Internal Revenue Service Operations and the 2012 Tax Return Filing Season*, 112th Cong. (Mar. 22, 2012).

Treasury, and to Congress. And so at that point, I didn't have anything concrete. I didn't have a full set of facts to come back to Congress, or the committee with.⁴⁵

When Ranking Member Cummings pointed out that Mr. Shulman should have alerted Congress to the facts he learned in 2012 that called into question his previous testimony, he responded: "I told you before, I think I took the proper course."⁴⁶

⁴⁵ House Committee on Oversight and Government Reform, Testimony of Douglas Shulman, Former Commissioner, Internal Revenue Service, *Hearing on The Internal Revenue Service: Targeting Americans for Their Political Beliefs*, 113th Cong. (May 22, 2013).

⁴⁶ *Id.*