

# MEMORANDUM

TO: All House Members

FR: Majority Leader Cantor, Chairman Camp, and Chairman Issa

DT: Friday, May 17, 2013

RE: Ways and Means and Oversight and Government Reform Committees' Investigation into Political Bias at the IRS

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On May 10, 2013, during an appearance at the American Bar Association, Lois Lerner, the director of the IRS division that oversees tax-exempt groups, acknowledged that the agency has been targeting conservative-leaning political organizations. While much media attention has surrounded Lerner's apology for these actions, the statement directly contradicts repeated IRS testimony and written responses to Congress during a nearly two-year investigation initiated by the Ways and Means Committee and joined by the Oversight and Government Reform Committee.

The impetus for the apology appears to have been the imminent release of an [audit report](#) by the Treasury Inspector General for Tax Administration (TIGTA) initiated after the Oversight and Government Reform Committee raised concerns with the IG. The audit, now released, finds that in early 2010 "the IRS began using inappropriate criteria to identify organizations applying for tax-exempt status to review for indications of significant political campaign intervention." Specifically, the IRS targeted 501(c)(4) applications from groups with names that included Tea Party, Patriots, and 9/12 Project as well as applications from groups with conservative positions on issues. Applications flagged by the IRS were left to languish while IRS spent two years trying to figure out what to do with them. Starting in January 2012, IRS sent follow-up letters requesting extensive information – requests that TIGTA found to be largely inappropriate.

Political bias by the tax collection and enforcement agency is antithetical to the rule of law and contrary to our system of constitutional government. Congress has a responsibility to determine not only who is responsible for this outrage, but also how it was allowed to continue despite repeated concerns and inquiries raised by Congress. In addition, answers are needed as to why senior IRS officials did not correct the record after learning of the problem.

The House investigation enters a new phase now that the allegations of political bias, denied for two years, have been revealed to be true. On Wednesday, acting IRS Commissioner Steven Miller submitted his resignation at the request of the White House and the Department of the Treasury.

Whether or not the Administration is sincere in its condemnation of these actions will quickly be revealed by its willingness to cooperate with Congress, turn over requested documents, and make officials available for interviews with congressional investigators. A failure to swiftly and fully comply with congressional requests will speak louder than any words of apology or condemnation could.

The Ways and Means Committee held a hearing today. Inspector General J. Russell George and Acting Commissioner Steven Miller testified. Next week, the Oversight and Government Reform Committee will hold a follow on hearing. The committees' investigation will continue until the American people know the full truth.

If not for the determined investigative efforts of the Ways and Means and Oversight and Government Reform Committees, these very serious and troubling revelations would not have

been brought to light. The following timeline details the major events over the past two years in the committees' investigation:

### **March 2010**

According to the audit report, the IRS begins to single out conservative and Tea Party groups for extra scrutiny in March of 2010. IRS employees start using words or phrases like "Tea Party," "Patriots," "9/12," "We the People," and "Take Back the Country" to flag tax-exempt applications for extra scrutiny.

### **May 2010**

The Cincinnati office, which was supposed to screen and evaluate applications for tax-exempt status, begins development of a spreadsheet that would become known as the "Be On the Look Out" (BOLO) listing.

### **August 2010**

IRS circulates the first BOLO to its tax-exempt screener and evaluator unit. In addition to flagging applications with the key words "Tea Party", "Patriots", and "9/12" in organization names, IRS flagged applications that contained issues including government spending, government debt or taxes; education of the public by advocacy/lobbying to "make America a better place to live;" or statements in the case file that criticized how the country is being run.

### **June 2011**

On June 3<sup>rd</sup>, Ways and Means Committee Chairman Camp sends a [letter](#) to then-IRS Commissioner Douglas Shulman inquiring about IRS targeting of taxpayers who donated money to conservative groups, as well as information regarding audits of 501(c)(4) organizations.

According to TIGTA on June 29<sup>th</sup>, IRS Exempt Organization Division Director Lois Lerner is apprised of the discriminatory practices on June 29<sup>th</sup>.

### **July 2011**

On July 1<sup>st</sup>, the IRS [responds](#) to Chairman Camp's June 3 letter by offering assurances "that the IRS's actions in this area were in no way influenced by political considerations."

According to audit report, Director Lerner orders the criteria used to flag tax-exempt applications for extra scrutiny to be changed. The criteria are changed to "organizations involved with political, lobbying, or advocacy for exemption under 501(c)(3) or 501(c)(4)."

### **October 2011**

On October 6<sup>th</sup>, Ways and Means Oversight Subcommittee Chairman Boustany sends a [letter](#) to Commissioner Shulman requesting information regarding the tax-exempt sector.

### **November 2011**

On November 18<sup>th</sup>, the IRS responds to Chairman Boustany with some requested information but includes no mention of knowledge of targeting conservative groups.

### **December 2011**

Ways and Means Oversight staff meet with IRS staff, including Director Lerner. The IRS staff does not mention that the IRS targeted conservative groups.

## January 2012

According to the audit report, the criteria used to flag tax-exempt applications for extra scrutiny are changed again in January 2012 in a way that once again singles out conservative groups. The criteria are changed to “Political action type organizations involved in limiting/expanding government, educating on the Constitution and Bill of Rights, social economic reform/movement” based on the IRS staff concerns that the July 2011 criteria were too generic.

According to the audit report, IRS begins sending follow-up letters making onerous requests for voluminous and sensitive information, such as names of all donors and amounts of all their donations, a list of all issues important to the groups and the groups’ position on these issues, and all e-mails sent to members of the groups.

## February 2012

During a February 24, 2012 briefing on the onerous follow-up letters received by some conservative organizations, Oversight and Government Reform Committee staff ask Director Lerner whether the criteria for evaluating tax-exempt applications changed at any point. Lerner responds that the criteria have not changed.

Less than a week later, on February 29, 2012, the IRS issues a 60-day extension to all groups who have received the onerous follow-up letters and Director Lerner orders that no further developmental letters are to be sent.<sup>1</sup>

## March 2012

On March 1<sup>st</sup>, Chairman Boustany sends a follow-up [letter](#) to Commissioner Shulman with additional questions about reports that “the IRS has been questioning new tax-exempt applicants, including grassroots political entities such as Tea Party groups.”

On March 12<sup>th</sup>, the IRS responds with no mention of knowledge of targeting conservative groups.

On March 22<sup>nd</sup>, the Ways and Means Oversight Subcommittee holds its 2012 [hearing](#) on the tax return filing season and general IRS operations. Chairman Boustany asks then-IRS Commissioner Shulman about reports that the IRS has been targeting Tea Party groups. Shulman responds, “I can give you assurances...[t]here is absolutely no targeting.”

On March 23<sup>rd</sup>, the IRS [sends](#) a supplementary response to the Ways and Means Oversight Subcommittee containing additional information, but again, makes no mention of knowledge of targeting conservative organizations.

Following a number of [news stories](#) and additional complaints from many groups, Oversight and Government Reform Committee Chairman Issa and Subcommittee Chairman Jordan send Director Lerner a letter on March 27, 2012, asking for information related to the reports that conservative groups applying for tax-exempt status were receiving extra scrutiny from the IRS.

Oversight Committee staff meet with TIGTA staff to discuss potential problems with IRS's apparent increased scrutiny of organizations applying for tax-exempt status. In response to the concerns expressed by the Oversight and Government Reform Committee, TIGTA's Office of Audit [begins work](#) on the issue.

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<sup>1</sup> Briefing by IRS staff to Oversight and Government Reform Committee staff (May 13, 2013).

According to the audit report, then-Deputy Commissioner for Services and Enforcement Steven Miller directs the IRS to launch an internal review of the actions of the Exempt Organizations Division.

#### **April 2012**

During an April 4<sup>th</sup>, telephone briefing, Director Lerner tells Oversight and Government Reform Committee staff that the information IRS was requesting in the additional follow-up letters to groups applying for tax-exempt status was not out of the ordinary.

On April 26<sup>th</sup>, the IRS [sends](#) a second supplementary response to the Ways and Means Oversight Subcommittee but includes no information about its discriminatory practices.

Also on April 26<sup>th</sup>, Director Lerner [writes](#) in response to the March 27<sup>th</sup> letter from Chairmen Issa and Jordan that the letters to targeted organizations were “in 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.”

#### **May 2012**

On May 3<sup>rd</sup>, Chairman Camp sends a letter to Commissioner Shulman seeking all 501(c)(4) applications from 2010 and 2011 in order to conduct an investigation into whether the IRS targeted conservative groups.

On May 4<sup>th</sup> Director Lerner [responds](#) a second time to Chairmen Issa and Jordan’s March 27<sup>th</sup> letter. The Chairmen had requested the authority, rationale, and precedent for 16 pieces of information that IRS asked of conservative groups that seemed to be beyond the scope of typical IRS inquiries. Lerner provides justifications for all of the 16 areas, including asking groups applying for tax-exempt status for complete lists of donors with corresponding donation amounts.

According to TIGTA, IRS officials determine that there were seven types of information asked of conservative applicants, including donor information, that were inappropriate.<sup>2</sup>

The IRS's internal review of this matter is completed on May 3 and finds significant problems in the review process with a substantial bias against conservative groups. On the same day, then-Deputy Commissioner Miller learns of the findings from IRS’s internal review on May 3, 2012.<sup>3</sup>

#### **June 2012**

On June 15<sup>th</sup>, the IRS [responds](#) to an April 23 [letter](#) signed by Chairman Boustany and 61 other House Republicans, but includes no information about the IRS’s practices.

#### **July 2012**

On June 25<sup>th</sup>, the Ways and Means Oversight Subcommittee holds a [hearing](#) on charitable organizations. In response to questions regarding reported IRS harassment of conservative groups, then-Deputy Commissioner Miller tells the Subcommittee, “I am aware that some 200 501(c)(4) applications fell into this category [the determinations letter process]. We did group those organizations together to ensure consistency, to ensure quality.” Miller makes no reference to the IRS’s discriminatory practices.

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<sup>2</sup> Telephone conference between Committee staff and the Treasury Inspector General for Tax Administration (May 10, 2013).

<sup>3</sup> *Supra* note 1.

**Fall 2012**

The IRS makes all 2010 and 2011 501(c)(4) applications available to Ways and Means Committee staff, pursuant to Chairman Camp's May 3<sup>rd</sup> request.

On November 15<sup>th</sup>, Ways and Means Oversight staff meet with IRS staff, including Director Lerner. The IRS staff does not mention knowledge that the IRS targeted conservative groups.

**May 2013**

On May 10<sup>th</sup>, at an American Bar Association function, Director Lerner publicly apologizes for the IRS's discrimination against conservative organizations during the 2012 election.

On May 14<sup>th</sup>, TIGTA releases its audit report titled "Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review."