U.S. House of Representatives

Committee on Oversight and Government Reform

Darrell Issa (CA-49), Chairman

Making Sure Targeting Never Happens: Getting Politics Out of the IRS and Other Solutions

Staff Report
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Executive Summary

The Internal Revenue Service is a broken agency. Endowed by statute with vast power and tremendous responsibility, the IRS lacks basic public trust and accountability. In recent years, as the IRS has assumed an increasingly partisan policy-making role, it has sacrificed its administrative independence for political expedience. The IRS's structure and lack of effective internal oversight allowed fiefdoms – such as the Exempt Organizations Division – to grow and wrongdoing to go unexposed and unaddressed. These serious deficiencies and failures culminated in the IRS's targeting of conservative tax-exempt applicants for their political beliefs.

The Committee on Oversight and Government Reform continues to conduct a comprehensive examination of the IRS's targeting of conservative tax-exempt applicants. To date, the Committee has reviewed approximately 800,000 pages of documents produced by the IRS, the Treasury Department, the Justice Department, the Federal Election Commission, the IRS Oversight Board, the Treasury Inspector General for Tax Administration, and other custodians. The Committee has thus far conducted transcribed interviews with over 35 IRS employees – ranging from Cincinnati revenue agents to the former Commissioner of the IRS – and another 8 transcribed interviews with Treasury Department and Justice Department personnel. However, with important questions still unanswered, the Committee's fact-finding is not yet complete.

While the Committee's oversight of the IRS continues, it is apparent already that serious problems plague the agency. The IRS is no longer a neutral administrator of federal tax law. In recent years, and especially with its outsized role in the Affordable Care Act, the IRS has grown to become a partisan policy-making body and full-fledged arm of the Administration in power. The IRS has noticeably departed from its traditional and proper role of impartial tax administration. This departure can be vividly seen in how the agency viewed and treated conservative tax-exempt applicants in the wake of the Supreme Court's *Citizens United v. Federal Election Commission* decision.

Throughout 2010 in the build-up to the midterm congressional election, prominent Democratic elected officials publicly and repeatedly denounced the *Citizens United* decision and political speech by conservative groups organized under section 501(c)(4) of the tax code. As President Barack Obama and other national Democrats decried the political speech of these so-called "shadowy" groups as posing a "threat to our democracy," the IRS systematically scrutinized and delayed tax-exempt applications filed by conservative groups.[1] Around this same time, former IRS Exempt Organization Director Lois Lerner spoke about the political pressure on the IRS to "fix the problem" posed by *Citizens United*.[2] She began a "c4 project" careful that it was not seen as "*per se* political."[3] Lerner later called the conservative tax-exempt applications "very dangerous" because she felt they could be the "vehicle" to undoing IRS

[1] H. COMM. ON OVERSIGHT & GOV'T REFORM, HOW POLITICS LED THE IRS TO TARGET CONSERVATIVE TAX-EXEMPT APPLICANTS FOR THEIR POLITICAL BELIEFS (June 16, 2010).
[2] John Sexton, *Lois Lerner Discusses Political Pressure on the IRS in 2010*, BREITBART.COM, Aug. 6, 2013.
[3] E-mail from Lois Lerner, Internal Revenue Serv., to Cheryl Chasin, Laurice Ghougasian, & Judith Kindell, Internal Revenue Serv. (Sept. 15, 2010). [IRSR 191031-32]

regulation of nonprofit political speech.[4] For 27 months beginning in February 2010, the IRS did not approve a single tax-exempt application filed by a Tea Party group.[5]

The solution is obvious and ought to be noncontroversial: Congress must disentangle politics from the IRS. To regain the trust of American taxpayers, the IRS must return to its traditional role as a dispassionate administrator of the federal tax code. The IRS must not be an agency that determines what is and what is not political speech and, correspondingly, whether a social-welfare group receives a tax-exemption for making political speech. Political speech can help advance the social welfare and social-welfare groups should be allowed to advance the debate about issues important to the nation.[6] Other federal regulators exist to oversee political campaigns and elections. That duty has never belonged – and should not belong – to the IRS.

Due to structural deficiencies and ineffective internal oversight, Lois Lerner had virtual autonomy to run the Exempt Organization Division. For several reasons – chief among them, the IRS's role in the Affordable Care Act – the IRS leadership did not adequately supervise the unit's work. Then-Commissioner Doug Shulman spent a considerable amount of time working on the implementation of the Affordable Care Act, and Lerner's direct supervisor, Sarah Hall Ingram, left her permanent job to lead the IRS's Affordable Care Act office. Likewise, both the IRS Oversight Board and the Treasury Inspector General for Tax Administration failed to exercise independent oversight of the IRS and prevent the targeting.

Other operational failures within the IRS contributed to the targeting. The IRS trained its agents to identify and elevate applications that could draw media attention, even though media attention has no bearing on a group's qualification for tax-exemption. As Washington employees evaluated the applications, they evaluated whether the groups' activities were "good" nonprofit activities or merely "emotional" propaganda with "little educational value."[7] The IRS allowed these tax-exempt applications to languish for years without action. Subsequently, as it sought to work through the backlog, the agency requested inappropriate and burdensome information from groups applying for tax-exempt status.

The IRS's targeting had real consequences, and the failures of IRS leadership and its oversight bodies exacerbated the injuries. As the IRS ignored tax-exempt applications, donors stopped giving to the groups, overall interest waned, and some groups even stopped their operations.[8] The delays also resulted in the automatic revocation of some groups' exemptions by operation of law because the groups had been waiting for an answer so long that they did not file

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[4] E-mail from Lois Lerner, Internal Revenue Serv., to Michael Seto, Internal Revenue Serv. (Feb. 1, 2011). [IRSR 161810]

[5] Gregory Korte, *IRS Approved Liberal Groups while Tea Party in Limbo*, USA TODAY, May 15, 2013.

[6] The ability of social-welfare groups to advance meaningful policy discussions is as important for groups such as the American Civil Liberties Union and the National Association for the Advancement of Colored People as it is for entities like the Tea Party groups. One witness during a Committee hearing called these groups "the beating heart of civil society," "which go out there and take unpopular positions and move the national debate and make this a vibrant and functioning democracy." *"The Administration's Proposed Restrictions on Political Speech: Doubling Down on IRS Targeting": Hearing before the Subcomm. on Economic Growth, Job Creation & Regulatory Affairs of the H. Comm. on Oversight & Gov't Reform*, 113th Cong. (2014) (statement of Allen Dickerson).

[7] *See* Gregory Korte, *IRS List Reveals Concerns over Tea Party 'Propaganda,'* USA TODAY, Sept. 18, 2013.

[8] *See* Patrick O'Connor, *Groups Recount Tax Battle's Toll*, WALL ST. J., May 14, 2013.

for renewal within the statutorily proscribed period.[9] Congress should consider proposals to ensure that American taxpayers never again face these kinds of injuries due to the heavy hand of the IRS.

Although the Committee's oversight work is ongoing, the investigation so far has shown the need for serious reforms to the IRS and other aspects of federal tax administration. The Committee has already taken steps on short-term reforms to improve IRS accountability.[10] It is clear, however, that systemic and structural issues within the IRS are in need of attention. The Oversight Committee is charged by the House of Representatives with proposing policy recommendations.[11] In this spirit, to more fully address these serious deficiencies, this staff report offers the following long-term solutions to reform the IRS and ensure that it never again targets Americans for their political beliefs. These ideas are designed to spark a constructive debate about how best to bring much-needed reform to the IRS. For this reason, these proposals are articulated as broad-based policy options to address what ails the IRS.

Based on the Committee's oversight work to date, this staff report proposes several reforms to improve the Internal Revenue Service, the Treasury Inspector General for Tax Administration, and the federal workforce. These proposals include ideas to remove the IRS from politics and partisan policy-making, and to remodel the IRS to improve internal controls and oversight. It also includes proposals to improve the accountability function of the IRS and to make the tax-exempt application process work better for taxpayers. Finally, the staff report articulates ideas to address some of the shortcomings in the federal bureaucracy identified during the investigation.

Because "[t]he power to tax involves the power to destroy,"[12] Americans rightly hold the IRS to a standard of performance higher than any other federal agency. American taxpayers always expect the IRS to be neutral, independent, and apolitical. The modern-day IRS, however, with its vast authority, has violated these basic tenets. Discussion of these the initial policy reforms are a first step toward restoring trust and accountability in the IRS. More clearly must be done, but a national discussion about the IRS is long overdue to ensure that tax administration works for the taxpayers.

[9] *See* Pub. L. 109-280, § 1223(b), 120 Stat. 780, 1090 (2006).
[10] Press Release, H. Comm. on Oversight & Gov't Reform, Oversight Committee Approves Bipartisan Government Accountability Legislation (July 24, 2014).
[11] Rules of the House of Representatives, R. X(4)(c)(2).
[12] McCulloch v. Maryland, 17 U.S. 316, 431 (1819).

Table of Contents

Tax administration working for the taxpayers: Suggested reforms for the IRS, TIGTA, and the federal bureaucracy

From February 2010 until May 2012, the Internal Revenue Service systematically scrutinized and delayed applications for tax-exempt status filed by conservative groups. The IRS targeting developed out of concern, voiced by prominent Democratic elected officials, about nonprofit political speech in the wake of the Supreme Court's *Citizens United v. Federal Election Commission* decision.[13] Tax-exempt applications filed by conservative groups were identified and segregated based solely on their names and political beliefs. At Lois Lerner's direction, the IRS did not process these applications until her office and the IRS Chief Counsel's office finalized and provided guidance on two "test" cases.[14] That guidance never came. A large backlog formed, resulting in substantial and unjustified delays. The IRS later posed inappropriate and burdensome questions to applicants as it sought to work through the backlog.[15] As public concerns mounted about the apparent mistreatment of conservative groups, senior IRS leadership gave false "assurances" that targeting was not occurring.[16]

The IRS's targeting of conservative tax-exempt applicants is an unfortunate and regrettable chapter in the history of federal tax administration. While some facts remain unknown, what is certain is cause for alarm. The IRS targeted American taxpayers. The most powerful domestic entity in the federal government – with the unmatched power to reach deep into Americans' lives and inalterably destroy their livelihoods – singled out and scrutinized citizen-advocacy groups based on their political beliefs. There is bipartisan concern about the targeting – which President Obama called "inexcusable"[17] – and there ought to be broad-based agreement on how to improve tax administration to prevent any future misconduct.

The Committee's investigation into the IRS's targeting of conservative-oriented tax-exempt applicants makes clear that tax administration in the United States is in need of reform. Under Rule X of the Rules of the House of Representatives, the Committee on Oversight and Government Reform may "at any time" investigate "any matter" and shall make recommendations based on the findings of its investigatory work.[18] Pursuant to this authority, the Committee has identified several areas of reform needed for the IRS, TIGTA, and the federal bureaucracy. These initial reform proposals are submitted with the aim of starting a national discussion on how best to improve the accountability and transparency of tax administration and make the federal government work better for the American people.

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[13] Citizens United v. Fed. Election Comm'n, 558 U.S. 310 (2010).
[14] E-mail from Lois Lerner, Internal Revenue Serv., to Michael Seto, Internal Revenue Serv. (Feb. 1, 2011). [IRSR 161810]
[15] TREASURY INSPECTOR GEN. FOR TAX ADMIN., INAPPROPRIATE CRITERIA WERE USED TO IDENTIFY TAX-EXEMPT APPLICATIONS FOR REVIEW (May 14, 2013) [hereinafter "TIGTA Audit Rpt."].
[16] *"Internal Revenue Service Operations and the 2012 Tax Return Filing Season": Hearing before the Subcomm. on Oversight of the H. Comm. on Ways &Means*, 112th Cong. (2012) (question and answer with Chairman Boustany).
[17] The White House, Statement by the President (May 15, 2013).
[18] Rules of the House of Representatives, R. X(4)(c)(2).

Make the IRS a multi-member, bipartisan commission

The IRS has increasingly assumed duties beyond its original role as an impartial tax collector. In recent years, and especially with its new responsibilities imposed by the Affordable Care Act, the IRS has become more of a policy-making agency. As a consequence, a single commissioner structure no longer supports the IRS's growing policy-based portfolio. For the IRS to remain a partisan policy-making agency, it must be reformed to become a multi-member, bipartisan commission.

The Committee's investigation has uncovered serious management failures of the IRS leadership in preventing and, later, responding to serious misconduct. The unitary director structure allowed these serious problems to go unnoticed and unaddressed for multiple years. This structure also emboldened Division-level leadership, such as Exempt Organizations Director Lois Lerner, to run their fiefdoms with relative impunity. As the investigation has shown, Lerner was able to successfully hide her unit's misconduct for almost a year until public complaints became too numerous.

There are empirical benefits to remolding the IRS as a multi-member, bipartisan commission. According to one academic study, a multi-member commission results in more measured policy-making, especially as the regulated policies relate to individual rights. The authors of one study wrote:

> Placing decisional responsibility with a group ensures that the group takes into account diverse policy perspectives and that it adopts moderate policies. Consensus building through compromise can also produce a broader range of public acceptance for those decisions ultimately reached. This approach has especially drawn favor where agencies serve as adjudicators, deciding licensing, rate-making, antitrust and similar cases that typically involve the resolution of issues affecting individual rights.[19]

The Committee's investigation has shown how easily the IRS can trample individuals' constitutional rights. With such vast power over every taxpayer and an increasing policy agenda, the IRS sorely needs measured policies and public acceptance of its actions.

Solution: The IRS needs internal controls – such as the checks and balances generated by a multi-member, bipartisan structure – to help thwart future transgressions and ensure timely awareness and response to any misconduct. Congress ought to consider legislation to reform the structure of the IRS from an agency led by a single commissioner to a multi-member, bipartisan commission.

[19] Marshall J. Breger & Gary J. Edles, *Established by Practice: The Theory and Operation of Independent Federal Agencies*, 52 ADMIN. L. REV. 1111, 1198 (2000).

Remove the IRS as a regulator of political speech for social-welfare groups

Freedom of speech and freedom of assembly, including political speech and political association, are rights enshrined in the Constitution.[20] As fundamental elements of the nation's social contract, the right to speak and assemble freely are owned by all citizens and contribute to the betterment of shared society. In that respect, activities that promote free political speech and free political assembly benefit the general welfare. Social-welfare groups, organized under section 501(c)(4) of the Internal Revenue Code, are formed to "operate[] exclusively for the promotion of social welfare,"[21] and they should be allowed to engage in political speech within the confines of existing campaign-finance laws.

The right to free speech extends to groups of citizens who assemble together for a shared purpose. As the Supreme Court stated, political speech is "indispensable to decisionmaking in a democracy, and this is no less true because the speech comes from a corporation rather than an individual."[22] Like a for-profit corporation or a labor union, a section 501(c)(4) organization engages in political speech as a group of individuals joining together for a common purpose. Federal law protects section 501(c)(4) organizations from publicly disclosing their contributors.[23] The Supreme Court recognized in the 1950s the need for anonymous political speech because, as it explained, "compelled disclosure of affiliation with groups engaged in advocacy may constitute [an] effective . . . restraint on freedom of association," particularly "where a group espouses dissident beliefs."[24]

In wake of the TIGTA audit report, the IRS repeatedly claimed that the targeting was attributable to the difficulty in measuring political activity for section 501(c)(4) groups.[25] Notwithstanding the fact that several veteran IRS employees testified that this issue was not novel in tax law,[26] the IRS simply should not be in the business of regulating political speech. Other federal regulators – namely, the Federal Election Commission – exist to regulate political campaigns and election activities. If the section 501(c)(4) applicants operate within the bounds of applicable and appropriate campaign-finance restrictions,[27] the IRS should presume to consider all types of political speech to be consistent with social-welfare conduct. By erring on the side of free speech and free association, this proposal would ease the IRS's task of evaluating a tax-exempt application and recognize the applicants' constitutional rights.

In late November 2013, the IRS and the Treasury Department issued a proposed regulation that moved in precisely the wrong direction, placing *more* restrictions on the type of

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[20] U.S. CONST. amend. I.
[21] I.R.C. § 501(c)(4).
[22] Citizens United v. Fed. Election Comm'n, 558 U.S. 310, 313 (2010) (quoting First Nat. Bank of Boston v. Belotti, 435 U.S. 765, 777 (1978)) (internal quotation marks omitted).
[23] I.R.C. § 6104.
[24] NAACP v. Alabama, 357 U.S. 449, 462 (1958).
[25] *See, e.g.*, Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities, 78 Fed. Reg. 71535 (proposed Nov. 29, 2013) (to be codified at 26 C.F.R. § 501).
[26] *See, e.g.*, Transcribed interview of Judith Kindell, Internal Revenue Serv., in Wash., D.C. (Oct. 29, 2013); Transcribed interview of Steven Miller, in Wash., D.C. (Nov. 13, 2013).
[27] This proposal does not intend to supplant campaign-finance restrictions. For example, a section 501(c)(4) group would still be barred from acting as a conduit for a campaign contribution. *See* 2 U.S.C. § 441f.

permissible political speech.[28] The proposed regulation would have created broad restrictions for political activity that promotes the social welfare through education or outreach. For example, the proposal would have categorized non-partisan voter registration drives as "political" activity, when encouraging and assisting eligible citizens to vote is part of the essence of social welfare. The proposed regulation also would have prohibited elected representatives from addressing nonprofit groups about *any topic* during specified periods. These highly restrictive proposals violate fundamental freedoms of speech and association and undermine the fabric of representative democracy. Although the IRS withdrew its proposed rule, efforts to stifle political speech by section 501(c)(4) groups continue.

There is a widespread misconception, used by some to argue for greater restrictions on political speech by section 501(c)(4) groups, that these groups spend untaxed dollars on political speech.[29] That is not the case. Unlike section 501(c)(3) charitable groups, which are allowed to receive tax-deductible contributions, donations received by section 501(c)(4) social-welfare groups are not tax-deductible.[30] The contributions received by a section 501(c)(4) group come from after-tax income of the group's donors. As Chairman Issa articulated during a Committee hearing, section 501(c)(4) groups are tax-exempt "in that the money they receive from taxpayers who have paid their taxes and then give them their after-tax income, they don't count it as profit."[31] Simply put, section 501(c)(4) organizations do not utilize untaxed income for political speech. Unlike 501(c)(3) charitable organizations that offer donors tax benefits, donations and expenditures to and by 501(c)(4) organizations, like other organizations regulated by the Federal Election Commission, have no impact on tax revenues.

The IRS's regulation concerning section 501(c)(4) groups has been in existence for over half a century.[32] For decades, the IRS has interpreted the law to mean that a §501(c)(4) group may engage in political speech activities.[33] As the debate continues on whether to limit the IRS's long-standing approach to political speech by section 501(c)(4) groups, given the importance of these issues, any changes ought to be made legislatively by the elected representatives of the Americans taxpayers and not by Administrative fiat.

Solution: Congress ought to consider legislation that removes the IRS as a regulator of the political speech by section 501(c)(4) groups by recognizing that political speech can be part of efforts to advance the social welfare. This idea would not only help to prevent politically oriented IRS misconduct from occurring in the future, but would also recognize the constitutional rights of applicants to free speech and free association.

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[28] *See* Press Release, Internal Revenue Serv., Treasury, IRS Will Issue Proposed Guidance for Tax-Exempt Social Welfare Organizations (Nov. 26, 2012).
[29] *See "IRS Obstruction: Lois Lerner's Missing Emails, Part II": Hearing before the H. Comm. on Oversight & Gov't Reform*, 113th Cong. (2014).
[30] I.R.C. § 170.
[31] *"IRS Obstruction: Lois Lerner's Missing Emails, Part II": Hearing before the H. Comm. on Oversight & Gov't Reform*, 113th Cong. (2014).
[32] Treas. Reg. § 1.501(c)(4)-1(a)(2).
[33] *See* I.R.C. § 501(c)(4); Treas. Reg. § 1.501(c)(4)-1(a)(2); ERIKA K. LUNDER & L. PAIGE WHITACKER, CONG. RESEARCH SERV., 501(C)(4)S AND CAMPAIGN ACTIVITY: ANALYSIS UNDER TAX AND CAMPAIGN FINANCE LAWS (2013).

Revamp the IRS Oversight Board

Congress created the IRS Oversight Board in the IRS Restructuring and Reform Act of 1998,[34] and charged it "with providing the IRS with long-term guidance and direction."[35] The board consists of the Secretary of the Treasury, the Commissioner of the IRS and seven "private-life" members, who are appointed by the President and confirmed by the Senate.[36] In creating the Board, Congress gave it the specific responsibility to "ensure the proper treatment of taxpayers by the employees of the Internal Revenue Service."[37]

Despite this solemn responsibility, the Committee's investigation has shown serious deficiencies in the Board's oversight work. According to the Paul Cherecwich, the Chairman of the Board, some of the private-life members asked Commissioner Shulman during an executive session meeting in 2012 about news reports raising concerns about Tea Party applicants seeking 501(c)4 status.[38] Commissioner Shulman assured the members "that the IRS had safeguards in place and that there was no targeting going on, and this was a typical claim that arose each election cycle."[39] Aside from this one question, which the Committee only learned in a June 2013 letter, it appears there was little inquiry from the Board about the targeting. The Board's dereliction of its oversight responsibilities allowed the IRS to inappropriately treat conservative-oriented tax-exempt applicants.

Solution: The IRS Oversight Board's oversight role of IRS overlaps greatly with the responsibilities of other oversight entities. The Committee is unable to find sufficient justification for its continued existence in its present form. Congress ought to consider legislation to eliminate the IRS Oversight Board and transfer its broad functions to the multi-member commission leading the IRS.

Allow taxpayers, and not the IRS, to control access to their confidential taxpayer information

The Committee's investigation highlights the need for clarifying section 6103 of the Internal Revenue Code. This section prohibits any government employee from "disclos[ing] any return or return information obtained by him in any manner in connection with his service as such an officer or an employee."[40] While the law was intended to protect government abuse of

[34] IRS Restructuring and Reform Act of 1998, Pub. L. 105-206, I.R.C. § 7802.
[35] IRS Oversight Board, About the IRS Oversight Board, http://www.treasury.gov/irsob/.
[36] *Id.*
[37] *Id.*
[38] Letter from Paul Cherecwich, IRS Oversight Board, to Darrell Issa & Jim Jordan, H. Comm. on Oversight & Gov't Reform (June 18, 2013).
[39] *Id.*
[40] I.R.C. § 6103.

taxpayer information, its interpretation has been significantly broadened to shield misconduct within the Administration.

During the course of the Committee's oversight, the IRS used section 6103 to keep information from the Committee. Federal law prohibits the "willful misuse of the provisions of section 6103 . . . for the purpose of concealing information from a congressional inquiry."[41] In fall 2013, the Committee became aware of e-mail correspondence between IRS executive Sarah Hall Ingram and the White House about the implementation of the Affordable Care Act.[42] Portions of these emails were redacted on the basis of section 6103. When confronted by Chairman Issa with the possibility that a senior IRS official had shared confidential taxpayer information with the White House, the IRS reversed course and stated that the redacted information was not in fact protected by section 6103.[43] The IRS's shifting interpretations of section 6103 – and the Committee's inability to verify its interpretation – unnecessarily impeded the Committee's investigation.

As written currently, the tax code allows some political appointees in the IRS and the Treasury Department to access confidential taxpayer information "without written request,"[44] but it does not provide for circumstances when disclosure to the public, Members of Congress, or government watchdogs may be appropriate. Taxpayers may opt of section 6103 protections only with detailed waivers and request their confidential taxpayer information, but still may not receive all IRS material covered under the statute. Although the IRS must protect confidential taxpayer information, it must also remember that that information belongs to the taxpayer – and not the IRS. The IRS's current interpretation of section 6103 protects the agency from oversight more than it aids the taxpayer.

Solution: Congress ought to consider legislation to revise section 6103 of the Internal Revenue Code. The revision should allow the American taxpayers to control the access to their confidential taxpayer information and provide the opportunity for taxpayers to request all of their confidential taxpayer information from the agency or authorize other entities to access it. Taxpayers should also be allowed to waive, opt out, and change access to their confidential taxpayer information as they wish.

Establish a public and transparent investigation process for leaked confidential taxpayer information

In recent years, public statements and disclosures have indicated that confidential taxpayer information about conservative figures and conservative-leaning groups has been illegally disclosed. In August 2010, White House advisor Austan Goolsbee publicly commented

[41] I.R.C. § 7804 note.
[42] *See, e.g.*, E-mail from David Fish, Internal Revenue Serv., to Jeanne Lambrew & Ellen Montz, Exec. Office of the Pres. (July 20, 2013).
[43] *See* Letter from Daniel Werfel, Internal Revenue Serv., to Darrell E. Issa, H. Comm. on Oversight & Gov't Reform (Oct. 11, 2013).
[44] I.R.C. § 6103(h)(1).

that a prominent conservative organization did not pay corporate income tax.[45] In July 2012, Senate Majority Leader Harry Reid publicly disclosed that Republican presidential candidate Mitt Romney had not paid taxes for ten years.[46] In December 2012, ProPublica also obtained confidential tax information from a number of conservative applicants.[47] However, because of the interpretation of federal tax law, the public was left in the dark about where and how this confidential tax information was obtained.

Section 6103 of the Internal Revenue Code prohibits any government employee from "disclos[ing] any return or return information obtained by him in any manner in connection with his service as such an officer or an employee."[48] The IRS Restructuring and Reform Act of 1998 created TIGTA to provide independent oversight of IRS activities.[49] TIGTA has authority to investigate waste, fraud, and abuse within the IRS. As the IRS's watchdog, it has the sole responsibility for enforcing section 6103's prohibitions relating to the disclosure of confidential taxpayer information.[50] TIGTA interprets the law to prevent the IRS's watchdog from publishing the results of these investigations. Even with a section 6103 waiver, TIGTA refuses to provide information about its investigations into unauthorized disclosures of confidential taxpayer information. TIGTA's interpretation of the law only serves to protect the wrongdoer.

For example, in 2012, confidential taxpayer information belonging to the National Organization for Marriage (NOM) was publicly released by the Human Rights Campaign.[51] The documents showed that then-Republican Presidential candidate Mitt Romney contributed a sizeable donation to the group in 2008.[52] Although NOM ascertained the identity of the third-party individual, Matthew Meisel, who turned the confidential taxpayer information over to the Human Rights Campaign, section 6103 prevented the group from learning the identity of the IRS employee who leaked the information to Meisel.[53] The statute's interpretation protected the unidentified leaker rather than the victim.

During this investigation, the Committee has learned that senior IRS officials – up to and including the IRS Chief Counsel – receive summary reports on the findings of TIGTA investigations into leaked confidential taxpayer information.[54] Under the law's current interpretation, the public never receives similar information about an investigation into a leak of confidential taxpayer information. Section 6103 exists to protect taxpayers and not tax leakers. While confidential taxpayer information must be protected, there is no reason that TIGTA cannot provide basic investigatory information. Greater transparency around investigations into unauthorized disclosures of confidential taxpayer would improve taxpayer confidence in TIGTA

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[45] Ryan J. Donmoyer, *White House Advisor Goolsbee's Comment on Koch Taxes Reviewed by Treasury*, BLOOMBERG, Oct. 7, 2010.
[46] Ed O'Keefe, *Harry Reid: Mitt Romney Didn't Pay Taxes for 10 Years*, WASH. POST, July 31, 2012.
[47] *See* Kim Barker & Justin Elliott, *IRS Office That Targeted Tea Party Also Disclosed Confidential Docs From Conservative Groups*, PROPUBLICA, May 13, 2013.
[48] I.R.C. § 6103(a).
[49] *See* Treasury Inspector Gen. for Tax Admin., http://www.treasury.gov/tigta/.
[50] *See* Treas. Order 115-01 (Feb. 14, 2013).
[51] Press Release, Human Rights Campaign, Mitt Romney Fuels NOM's Divisive Racial Tactics (Mar. 2012).
[52] *Id.*
[53] Eliana Johnson, *Investigation IDs IRS Leaker*, NAT'L REVIEW ONLINE (Oct. 30, 2013).
[54] Transcribed interview of William Wilkins, Internal Revenue Serv., in Wash., D.C. (Nov. 6, 2013).

and discourage future intentional leaks. By providing basic information about the leak of confidential taxpayer information, the status of the investigation, and other appropriate details, TIGTA could improve a vital aspect of federal tax administration.

Solution: Due to the current interpretation of section 6103 of the Internal Revenue Code, there is virtually no public information about investigation of unauthorized disclosures of taxpayer information. Because this aspect of section 6103 results in a perverse distortion of justice, Congress should consider legislative reforms to protect confidential tax information while allowing potential victims and the public to know basic facts about unauthorized disclosures of confidential taxpayer information.

Create a private right of action for victims of willful and injurious IRS leaks of confidential taxpayer information

Under current law, the victim of a breach in IRS confidentiality requirements has little recourse to redress his or her lost privacy. The investigation is left to TIGTA, and the victim has no right to information uncovered in the course of that investigation. Often times, the victim of an IRS confidentiality breach is left in the dark, not knowing who breached his or her tax information or even why.

Congress has created an express private right of action in federal law for violations of the Constitution's guarantee of "rights, privileges, or immunities";[55] and other private rights of action in commodities trading.[56] A new private right of action in the Internal Revenue Code may be needed to better ensure that all IRS employees act as better stewards of confidential taxpayer information. This report suggests a proposal to create a private right of action allowing a victim of IRS confidentiality breaches to bring action against an IRS employee for any harm caused by a willful and injurious breach. A private right of action would not only allow the victim the opportunity to vindicate the harm, but it would provide a strong incentive for IRS employees to better protect confidential taxpayer information. To effectively address individual accountability, the private right of action should be limited to circumstance where the breach was deliberate and caused damage – not to inadvertent disclosure of confidential taxpayer information.

Solution: Current law severely limits the tools of redress available to taxpayers harmed by the unauthorized release of their confidential taxpayer information. Congress ought to consider legislation creating a private right of action for victims of IRS confidentiality breaches to bring suit against an IRS employee for harm caused by a willful and injurious breach.

[55] *See* 42 U.S.C. § 1983.
[56] *See, e.g.*, 7 U.S.C. § 25(b).

Modify the term of the Inspector General

Like other inspectors general (IGs) throughout the federal government, the Treasury Inspector General for Tax Administration is appointed by the President and confirmed by the Senate. IGs are appointed for life and may be removed only by the President.[57] While this structure is optimal for the majority of the IG community, TIGTA is unique given the IRS's abuses of the public trust and TIGTA's responsibility for safeguarding confidential taxpayer information. As evident from TIGTA's failure to immediately inform Congress of the targeting when it became aware in May 2012, a lifetime appointment does not guarantee the most effective vigilance of an office as important as TIGTA.

The investigation also highlights the shortcomings in TIGTA's audit of the IRS's treatment of tax-exempt applicants. First, and most importantly, TIGTA failed to disclose its findings to the Committee until *after* Lois Lerner had leaked the IRS targeting on May 10, 2013. For several months, the Committee repeatedly sought information from TIGTA about its work.[58] Each time, TIGTA responded that it was not able to provide any update.[59] While TIGTA was withholding information from the Committee, it had already briefed senior IRS officials about the audit's early findings. In particular, on May 30, 2012, Inspector General J. Russell George briefed IRS Commissioner Shulman on TIGTA's finding that the IRS had used the term "Tea Party" to screen tax-exempt applicants.[60]

Under section 5(d) of the Inspector General Act, an inspector general must report particularly flagrant problems to Congress via the agency head within seven days via what has become known as a "seven-day letter."[61] As recently as August 2012, Chairman Issa wrote to Mr. George reminding him of his responsibility under section 5(d).[62] When Mr. George briefed Commissioner Shulman that the IRS had used the term "Tea Party" to screen applicants – an IRS misdeed – Mr. George should have simultaneously notified Congress pursuant to section 5(d). Because Mr. George did not, the Committee and the American people were kept in the dark about the IRS targeting until Lerner's public apology on May 10, 2013.

Second, the manner in which TIGTA conducted its audit needlessly compromised the independence and integrity of the process. TIGTA allowed IRS executive Holly Paz to sit in on nearly every TIGTA interview with IRS line-level employees.[63] Paz therefore had access to the information TIGTA gathered during these interviews and shared this material with her superiors.[64] In addition, TIGTA shared multiple drafts of its audit report with Paz, Lerner, and other senior IRS executives in late 2012 and early 2013.

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[57] 5 U.S.C. app. § 3.
[58] *"The IRS Targeting Americans for their Political Beliefs": Hearing before the H. Comm. on Oversight & Gov't Reform*, 113th Cong. (2013).
[59] *Id.*
[60] Transcribed interview of Doug Shulman, in Wash., D.C. (Dec. 4, 2013).
[61] 5 U.S.C. app. §5(d).
[62] Letter from Darrell Issa, H. Comm. on Oversight & Gov't Reform, to J. Russell George, Treasury Inspector Gen. for Tax Admin. (Aug. 3, 2012).
[63] *See* Transcribed interview of Holly Paz, Internal Revenue Serv., in Wash., D.C. (May 21, 2013).
[64] *Id.*

TIGTA must work aggressively to ensure that the IRS works on behalf of the American people. The watchdog must have an incentive to work quickly and to report grievous abuses in a timely manner. Because tax administration calls for robust oversight, a lifetime appointment for the inspector general creates an overly cozy relationship between the overseer and an agency filled with very senior career officials that transcend administrations. A shorter, fixed term may produce greater zeal on the part of TIGTA in overseeing the work of the IRS.

Solution: The IRS's targeting of conservative tax-exempt applicants demonstrates the need for a vigilant and effective IRS watchdog. TIGTA may be better equipped to carry out its mission if Congress reformed the appointment conditions for the IG. Congress ought to consider whether to change the appointment of the Treasury Inspector General for Tax Administration to a fixed five-year term.

Establish transparent and objective criteria for scrutiny of applicants

The IRS's inappropriate treatment of the Tea Party applications began when a screener in the Cincinnati office identified and elevated a 501(c)(4) application because "media attention" indicated that it could be a "high profile" case.[65] As the application continued to rise through the IRS chain of command, its potential for media attention motivated the requests for additional scrutiny.[66] In fact, when Washington IRS official Holly Paz decided to work the application in Washington, she couched her reason in the likelihood of press attention. She wrote: "I think sending [the application] up here is a good idea given the potential for media interest."[67]

The IRS claims to evaluate tax-exempt applicants on the facts and circumstances of each particular case. Several IRS employees interviewed by the Committee reiterated the IRS's fact-intensive approach.[68] However, for the Tea Party applications, the IRS did not evaluate the individual merits of the applications but instead systematically subjected them to additional scrutiny. EO Determination Manager Cindy Thomas confirmed this fact during her transcribed interview. She testified:

> Q And what was unique about this case that caused the agent to shoot it up the chain?
>
> A It was sent up the chain because it was considered a high profile case because it had – Tea Party organizations had been in the media a lot.
>
> Q Do you know in what context they were in the media?

[65] E-mail from John Koester, Internal Revenue Serv., to John Shafer, Internal Revenue Serv. (Feb. 25, 2010). [Muthert 4]
[66] E-mail from Cindy Thomas, Internal Revenue Serv., to Holly Paz, Internal Revenue Serv. (Feb. 25, 2010). [Muthert 2-3]
[67] E-mail from Holly Paz, Internal Revenue Serv., to Cindy Thomas, Internal Revenue Serv. (Feb. 26, 2010). [Muthert 2]
[68] *See, e.g.*, Transcribed interview of Justin Lowe, Internal Revenue Serv., in Wash., D.C. (July 23, 2013).

A I don't know.

Q Okay. So the reason it was sent up is because it was a media issue? Is that right?

A That's correct.

Q There was nothing novel or difficult about the case?

A To my knowledge, it was because it was media attention.

***

Q Ma'am, other than the media attention, was there any other reason to – to send this case to Washington?

A No.[69]

The fact that "media attention" qualified the Tea Party applications for additional scrutiny runs contrary to idea that applications are judged on their merits. Because an application's potential for media attention has no bearing on the applicant's qualification for tax-exemption, the IRS's use of media attention as a criterion for additional scrutiny should be inappropriate. Rather than relying on *ad hoc* criteria, policymakers should consider delineating appropriate criteria, excluding the potential for media attention, for the IRS to use when selecting applications for additional scrutiny.

Solution: The investigation shows how concern for "media attention" led some in the IRS to elevate and delay certain tax-exempt applications. Congress ought to consider legislative proposals to establish transparent and objective criteria for applying additional scrutiny to tax-exempt applicants. These criteria should include only those factors that bear directly on the applicant's qualifications for tax-exemption, and not irrelevant factors such as the likelihood for media attention.

Limit the time for IRS review of a tax-exempt application

The Committee's investigation has found that Tea Party tax-exempt applicants experienced significant delays in the IRS's determination process. According to several IRS employees, applications filed as early as 2010 waited several years for a decision by the IRS.[70] TIGTA's audit report also documents these delays.[71] These excessive delays deny applicants

[69] Transcribed interview of Lucinda Thomas, Internal Revenue Serv., in Wash., D.C. (June 28, 2013).
[70] *See* Transcribed interview of David Marshall, Internal Revenue Serv., in Wash., D.C. (July 26, 2013); Transcribed interview of Carter Hull, Internal Revenue Serv., in Wash., D.C. (June 14, 2013).
[71] TIGTA Audit Rpt., *supra* note 15.

any resolution, cause supporters to get wary, and deter outside funding and other support. Often times, it can mean the difference between a group's survival and its failure.

The need for a more streamlined approach for processing tax-exempt applications is evident. The IRS requires an applicant to respond to extensive information-request letters within a definite period. When an applicant fails to respond to questions by the deadline, the IRS may close the application. The IRS does not afford the taxpayer much leeway. The agency ought to be subject to its own rule. It should not be allowed to excessively delay the determination of a tax-exempt application. The IRS evaluation should be subject to a time limit, at the expiration of which the application is automatically granted if the IRS has failed to make a determination.

Solution: The IRS should not be able allowed to review a tax-exempt application indefinitely. Congress ought to consider legislative proposals to implement an appropriate limit – for example, 60 days – for the IRS internal evaluation of applications for tax-exemption, after which the applicant automatically receives exemption if the IRS has not made a determination.

Establish clear and transparent rules for information-collecting purposes

The IRS has established guidelines detailing its requirements and standards for recognizing tax-exempt status.[72] These guidelines include a rule allowing the agency to "request additional information before issuing a determination letter or ruling" even if the tax-exempt application is "substantially complete."[73] However, the IRS's manual does not offer much guidance on the substance of information requests, stating merely: "Information requests should be professional in tone, grammatically correct, free of spelling errors, formatted properly, complete, and material to the determination requested."[74] The IRS does not have any clear rules about what type of, or how much, information the agency may collect when seeking material from the applicant.[75]

The Committee's investigation has shown that the IRS requested unnecessary and inappropriate information from groups applying for tax-exempt status. Revenue agents requested unnecessary material from these groups, including intrusive information about the identities of donors, views of issues important to their organizations, and political affiliation of officers.[76] The IRS and TIGTA both found these information requests to be inappropriate.[77] The Committee agrees.

[72] *See* Rev. Proc. 2013-9, 2013-2 I.R.B. 255.
[73] *Id.* § 4.06.
[74] I.R.M. 7.20.2.4.1, *Requesting Additional Information*.
[75] *See* Letter from Joseph H. Grant, Internal Revenue Serv., to Charles Boustany, H. Comm. on Ways & Means (Mar. 23, 2012).
[76] *See* E-mail from Judith Kindell, Internal Revenue Serv., to Holly Paz & Sharon Light, Internal Revenue Serv. (Apr. 25, 2012). [IRSR 13868]
[77] *See id.*; TIGTA Audit Rpt., *supra* note 15.

Solution: The IRS misconduct is partially attributable to the IRS's lack of clear guidelines on what information may be sought in course of developing a tax-exempt application. Congress should consider developing and implementing clear and transparent rules on the amount and type of information that agents may collect when examining an application for tax-exempt status.

Prohibit political and policy communications between the IRS and Executive Office of the President

The Committee's investigation has uncovered evidence that political figures in the White House have sought to use the IRS for policy and political guidance.[78] Jeanne Lambrew, the Deputy Assistant to the President for Health Policy, sought counsel from the IRS about the scope and contours of the Administration's religious exemption to the Affordable Care Act's contraception mandate.[79] This type of partisan policy discussion between the White House and the IRS violates the sanctified trust that the American people place in the IRS to "enforce the law with integrity and fairness to all."[80]

Close coordination between the White House and a subordinate federal entity generally should not be of concern. Such a close coordination is of great concern, however, when the entity is the IRS – an independent agency charged with powerful and far-reaching tax administration obligations. The Committee's investigation has shown the IRS's outsized role in the implementation of the Affordable Care Act has helped to contribute to the overall politicization of the IRS.

The IRS ought to be an impartial administrator of tax law. Even the appearance of partiality is a detriment to the mission of the IRS. Accordingly, steps must be taken to prevent the IRS from engaging with the Executive Office of the President on overtly policy or political matters. However, the IRS could maintain relationship with the Treasury Department's Office of Tax Policy, which is the proper conduit for policy discussions between the IRS and the Administration.

Solution: The investigation demonstrates how the IRS has become increasingly close with the Executive Office of the President. Although there is a role for coordination with the Office of Tax Policy in the Treasury Department, Congress ought to consider legislative steps to prevent IRS employees from engaging in political or policy discussions directly with the White House.

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[78] *See, e.g.*, E-mail from David Fish, Internal Revenue Serv., to Jeanne Lambrew & Ellen Montz, Exec. Office of the Pres. (July 20, 2013).
[79] *See* Letter from Darrell Issa & Jim Jordan, H. Comm. on Oversight & Gov't Reform, to J. Russell George, Treasury Inspector Gen. for Tax Admin. (Oct. 21, 2013).
[80] Internal Revenue Service, *The Agency, its Mission and Statutory Authority*, http://www.irs.gov/uac/The-Agency,-its-Mission-and-Statutory-Authority (last visited Jan. 7, 2014).

Remove the IRS from implementation of the Affordable Care Act

The IRS should be a non-partisan, neutral administrator of federal tax law. For this very reason, the Department of the Treasury contains an Office of Tax Policy to serve as the Administration's partisan policy-making entity with respect to tax policy. The Committee's investigation, however, highlights how the IRS has become an agency responsive to political rhetoric and the Administration's policy overtures. A large cause of this problem lies in the IRS's outsized role in the implementation and administration of the Affordable Care Act.

The Affordable Care Act endowed the IRS with responsibility for implementing at least 47 new provisions, including 18 new taxes that would increase cumulative tax burden by $1 trillion over the next decade.[81] Among these new tasks, the law charged the IRS with monitoring the health-insurance choices of the public, penalizing citizens who opt not to obtain government-approved coverage, and penalizing employers who do not provide government-approved coverage.[82] The Affordable Care Act also placed the IRS in the position of sharing confidential taxpayer information with other federal agencies.[83]

Testimony provided to the Committee shows that the implementation of the Affordable Care Act has politicized the IRS and affected the agency's first-order responsibility of impartial tax administration. Commissioner Shulman testified:

> Q And, sir, when you were IRS Commissioner, how much of your time was taken up with ObamaCare-related matters?
>
> A I don't have a percentage, but, you know, a couple of big pieces of legislation passed during my tenure. One was the Recovery Act, which had major tax components, and the second was, you know, the Affordable Care Act, which had a lot of tax components. And so, you know, I spent a fair amount of time on both of those.
>
> Q Would you say you spent a significant amount of time on ObamaCare-related issues?
>
> A I'd have a hard time characterizing it. You know, sure. You know, I definitely spent, you know, time on making sure, you know, a major piece of tax legislation that had been passed was going to get implemented correctly.[84]

Shulman attended regular meetings with White House officials about the broad implementation of the Affordable Care Act.[85] Likewise, Sarah Hall Ingram, the head of the IRS's Affordable

[81] *See* Letter from Douglas W. Elmendorf, Cong. Budget Office, to John Boehner, Speaker of the House of Representatives (July 24, 2012).
[82] I.R.C. § 5000A.
[83] *Your Next IRS Political Audit*, WALL ST. J., May 14, 2013.
[84] Transcribed interview of Doug Shulman, in Wash., D.C. (Dec. 4, 2013).
[85] *Id.*

Care Act office and former Tax Exempt and Government Entities Commissioner, told the Committee that she also regularly attended meetings with the White House.[86] Ingram also provided guidance to Jeanne Lambrew, the President's Deputy Assistant for Health Policy, about tax provisions within the Affordable Care Act.[87] During the same exchange, IRS officials may have disclosed confidential taxpayer information to the White House.[88]

These concerns about the IRS's outsized role in the Affordable Care Act implementation are not new. In her *Annual Report to Congress* in 2010, the National Taxpayer Advocate warned that the Affordable Care Act will present the IRS with "a number of decisions and guidance projects unrelated to its employees' traditional expertise and skill set."[89] In testimony to the Committee in 2012, former Commissioner Mark Everson lamented the IRS's shrinking independence. He testified:

> For important and well-understood reasons, the IRS operates with a great deal of independence from other agencies. **I worry that such direct participation of the Service in a major non-tax Administration initiative has the potential to erode the historic independence of the Service.**[90]

For these reasons, impartial tax administration would be well-served by removing the IRS from implementing and administering the Affordable Car Act.[91] These changes are necessary to return the IRS to its traditional and proper role as a non-partisan, neutral administrator of tax law.

Solution: The Affordable Care Act endowed the IRS with a tremendous responsibility over a highly partisan law. This responsibility has resulted in a close relationship between the IRS and political elements of the Administration. To return the IRS to its traditional role as an impartial administrator of the tax code, Congress ought to consider legislation to remove the IRS from the implementation and administration of the Affordable Care Act.

Establish personnel reforms for dismissed federal workers

A "public office is a public trust."[92] The misconduct identified by the Committee provides ample justification for reforming federal civil service policies. The case of Lois Lerner is a prime example. After apologizing for the targeting and later refusing to answer questions

[86] Transcribed interview of Sarah Hall Ingram, Internal Revenue Serv., in Wash., D.C. (Sept. 23, 2013).
[87] *See* E-mail from Sarah Hall Ingram, Internal Revenue Serv., to Jeanne Lambrew & Ellen Montz, Exec. Office of the Pres. (July 19, 2012). [IRSR 182160]
[88] E-mail from David Fish, Internal Revenue Serv., to Jeanne Lambrew & Ellen Montz, Exec. Office of the Pres. (July 20, 2012). [IRSR 189777]
[89] NATIONAL TAXPAYER ADVOCATE, 2010 ANNUAL REPORT TO CONGRESS 20 (Dec. 31, 2010).
[90] *"IRS: Enforcing ObamaCare's New Rules and Taxes": Hearing before the H. Comm. on Oversight & Gov't Reform*, 112th Cong. (2012) (statement of Mark W. Everson) (emphasis added).
[91] *See, e.g.*, H.R. 2009, 113th Cong. (introduced 2013).
[92] Grover Cleveland, *reprinted in* MICHAEL C. THOMSETT & JEAN FREESTONE THOMSETT, POLITICAL QUOTATIONS (1994).

about her conduct, the IRS placed Lerner on administrative leave. There, from May 2013 through September 2013, she collected her full pay and benefits. Only when the Accountability Review Board prepared to recommend that she be removed from her position did Lerner step aside, retiring from the IRS with her full pension.[93] Reportedly, Lerner's retirement could cost the taxpayers between $60,000 to over $100,000 annually.[94]

Federal administrative leave is a long-standing problem. An Office of Personnel Management regulation allows management to place an employee on paid but non-duty status during the time it takes to effectuate a disciplinary action, referred to as administrative leave.[95] Once placed on administrative leave for allegations of misconduct, often federal employees remain in a paid status for months or years.[96] While on leave, federal employees continue to accrue time in service towards pay increases, benefits, and pensions.

The current personnel practices are unfair to American taxpayers and do little to deter misconduct by federal employees. The federal government must implement better policies relating to administrative leave. Adjudication of misconduct cases must be timelier. If resolution is adverse to an employee, any pay received during the period of administrative leave must be rescinded. Federal workers who acknowledge misconduct must not be afforded full pay and full benefits. Finally, under particularly egregious circumstances, like the targeting of taxpayers for their political beliefs, an adverse ruling must result in the loss of pension benefits.

Solution: The federal workforce should work better for the American taxpayers. Congress should consider proposals to improve accountability in the federal workforce and make the government work better for the American taxpayers. Among these proposals, Congress should examine changes to civil serve protections and pay for federal workers removed for misconduct.

Increase political activity restrictions for certain IRS employees

Because a public office is a public trust, the Hatch Act limits certain political activities conducted by employees of the Executive Branch.[97] The Act prohibits employees from engaging in partisan political activity while on federal duty at a federal workplace.[98] Certain employees are further restricted by the Hatch Act from engaging in partisan political campaigns or

[93] John D. McKinnon, *Lois Lerner, at Center of IRS Investigation, Retires*, WALL ST. J., Sept. 23, 2013; Lauren French, *Lois Lerner Still Hill's Favorite Piñata*, POLITICO, Sept. 23, 2013.
[94] *See* Nat'l Taxpayers Union, Learning the Cost Lois Lerner's Pension, Sept. 30, 2013, available at http://www.ntu.org/governmentbytes/9-30-13-lerner-taxpayer-pension-cost.html.
[95] *See* 5 C.F.R. § 9701.609.
[96] *See, e.g.*, Lisa Rein, *Civil servants put on paid administrative leave can get stuck in an ill-defined limbo*, WASH. POST, Dec 30, 2012.
[97] 5 U.S.C. §§ 7321-26.
[98] *Id.* § 7324.

management.[99] This further restriction already applies at the IRS to employees of the Office of Criminal Investigation.[100]

The Committee's investigation has shown the degree to which the IRS has become a partisan agency with political bias evident in its conduct. Because of the great potential for the IRS Exempt Organizations Division to misuse its power, it is worth examining whether to increase Hatch Act restrictions for these employees. In particular, the Committee recommends the Congress designate employees of the IRS Exempt Organizations as further restricted employees under the Hatch Act. This change would help to restore the IRS's credibility as a nonpartisan tax collector.

Solution: The Committee's investigation has shown that the IRS has become an increasingly politicized agency. Congress should consider proposals to increase political activity restrictions for IRS Exempt Organizations Division personnel. Congress could consider including IRS Exempt Organizations employees as "further restricted" under the Hatch Act.

Implement rigorous training on the use of personal e-mail and penalties for misuse

The Committee is extremely troubled by the persistent use of non-official e-mail accounts by federal employees to conduct official government business in circumvention of existing records-keeping laws. It not only potentially violates the Federal Records Act and impedes the Administration's ability to respond to its Freedom of Information Act obligations, but it also frustrates Congressional oversight.

In recent years, the Committee has seen examples of non-official e-mail accounts used for official government business throughout the Obama Administration. The Committee has documented how Labor Secretary Thomas Perez used his personal e-mail account almost 1,200 times to conduct official business during his time at the Department of Justice.[101] The Committee has also highlighted how former Energy Department official Jonathan Silver sent and received thousands of messages from his personal e-mail account related to official business.[102]

The Committee's investigation into this matter has uncovered multiple IRS employees – including Lois Lerner – who used their personal e-mail accounts to conduct official IRS business.[103] Documents produced to the Committee even show that in some instances these employees exchanged confidential taxpayer information over non-official, and therefore non-secure, e-mail accounts. Because federal law places heightened sensitivity on confidential

[99] *See* U.S. Office of Special Counsel, About the Hatch Act, http://www.osc.gov/haFederalFurtherRestricted.htm.
[100] *Id*.
[101] *See* Letter from Darrell Issa, H. Comm. on Oversight & Gov't Reform, to Thomas E. Perez, U.S. Dep't of Justice (Apr. 18, 2013).
[102] *See "Preventing Violations of Federal Transparency Laws": Hearing before the H. Comm. on Oversight & Gov't Reform*, 113th Cong. (2013).
[103] *See, e.g.*, E-mail from Judith Kindell to Lois Lerner (Aug. 23, 2011); E-mail from Nikole Flax to Lois Lerner (Feb. 11, 2010).

taxpayer information,[104] the use of non-official e-mail accounts in this setting is particularly troubling.

Solution: Given the apparent frequency of federal employees using non-official e-mail accounts to conduct official business, the IRS and other federal agencies ought to develop and implement more rigorous training on the appropriate use of non-official e-mail accounts and the protection of sensitive records. In addition, Congress should consider legislation to implement penalties for federal employees who misuse non-official e-mail accounts for official government business.

Conclusion

The Internal Revenue Service needs repair to how it administers federal tax law and to recommit itself to being an impartial federal agency. From February 2010 until May 2012, the IRS targeted conservative-oriented applicants for tax-exempt status. These applicants were identified and separated based on their names and political activities. They were subjected to excessive delays and received inappropriate and burdensome information requests. Although senior IRS leadership knew of the targeting, no public disclosure was made until Lois Lerner answered a planted question at an obscure tax-law event in May 2013.

The IRS targeting did not occur in a vacuum. Reforms to ensure that similar misconduct never reoccurs must take into account the causes and circumstances that led to the targeting. The IRS must be disentangled from politics and returned to its traditional role as a dispassionate tax administrator. Structural changes are needed to promote accountability and enhanced internal oversight. Tax administration must be altered to tip the balance in favor of the taxpayer rather than the IRS. Federal workforce changes are vital to holding wrongdoers accountable and guaranteeing that the IRS works for the taxpayers, and not the other way around.

The Committee's investigation of the IRS targeting is by no means complete. However, as fact-finding continues, the initial reforms proposed in this staff report are a first step toward addressing the serious deficiencies at the IRS. The Committee articulates these proposals to bring accountability and transparency back to federal tax administration. These reforms are not the exclusive means, or an exhaustive list, of proposals to fix the IRS and improve tax administration. The Committee's proposals are presented in the spirit of sparking a national discussion on steps to restore confidence in the IRS. As this oversight work progresses, the Committee will continue with its stated mission of holding government accountable to taxpayers and bringing genuine reform to the federal bureaucracy.

[104] *See* I.R.C. § 6103.