

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

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<http://oversight.house.gov>

May 15, 2015

The Honorable John Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Avenue NW
Washington, D.C. 20224

Dear Commissioner Koskinen:

On November 29, 2013, the IRS proposed a rule to regulate political speech by organizations exempt from tax under Internal Revenue Code § 501(c)(4).¹ The new regulation is intended to provide “more definitive rules with respect to political activities related to candidates.”² On May 22, 2014, the IRS announced that it would “make some changes to the proposed regulation” in response to “the most comments ever received by Treasury and IRS on a proposed tax regulation.”³ At the time, the IRS had received more than 150,000 written, overwhelmingly negative, comments.⁴ To date, there have been nearly 170,000.⁵ Both ends of the political spectrum have expressed grave concerns about the proposed rule.⁶

On March 18, 2015, you testified before the House Appropriations Committee that even in the absence of a statutory requirement to pursue this regulation, the IRS is actively working to move it forward and that you would “like to get it out.”⁷ You further indicated that you may even broaden the rule to other types of tax-exempt groups, such as political parties and political

¹ 78 Fed. Reg. 71535 (Nov. 29, 2013).

² *Id.* at 71536.

³ IRS Update on the Proposed New Regulation on 501(c)(4) Organizations (May 22, 2014), *available at* <http://www.irs.gov/uac/Newsroom/IRS-Update-on-the-Proposed-New-Regulation-on-501%28c%29%284%29-Organizations> (last accessed Mar. 19, 2015).

⁴ *Id.*

⁵ Proposed Regulation, *available at* <http://www.regulations.gov/#!docketDetail;D=IRS-2013-0038> (last accessed Mar. 19, 2015).

⁶ See Matea Gold, *IRS plan to curb politically active groups is threatened by opposition from both sides*, WASH. POST (Feb. 12, 2014). See also Holly Yeager, *Unions, trade associations worried about possible IRS rule changes*, (Feb. 9, 2014); Phil Kerpen, *Harry Reid Slams the ACLU, NAACP, and Sierra Club*, AMERICAN COMMITMENT, *available at* <http://www.americancommitment.org/content/will-democrats-let-irs-muzzle-their-own-liberal-grassroots> (last accessed Jan. 28, 2015).

⁷ Testimony of Hon. John Koskinen, Commissioner, Internal Revenue Serv., before the H. Subcomm. on Financial Services and General Gov't (Mar. 18, 2015).

action committees, stating that definitions “need to apply across the board.”⁸ You also stated that the new version of the rule will not be motivated by politics and will undergo a 90-day public comment period.⁹

On April 30, 2015, you met with Subcommittee Chairman Jordan and informed him that no rule had yet been put on paper. In addition, you assured him that any new version of the rule would not go into effect until after the presidential election in 2016, and 501(c)(4) organizations would continue to be able to engage in political activities according to existing practice. You also said that get-out-the-vote and volunteer activities will not be classified as “political activity” for purposes of the rule. We are encouraged by your statement that you would like to take the Agency out of the business of policing campaigns.

In a letter dated February 21, 2014, you wrote that you “do not control the rulemaking process, but will do [your] best to ensure that any final regulation is fair, clear, and easy to administer.”¹⁰ As you know, the proposed rule was developed “off-plan,” not on the public schedule.¹¹ In light of the historically large volume of comments about the rule, and the fact that the initial version of the rule was developed without public input, it is important for the IRS to address the public comments and serious bipartisan concerns in a transparent way.

So the Committee can better understand the IRS’s rulemaking process, please produce the following documents and information for the time period of January 1, 2012, to present:

1. All communications between and among current or former IRS employees, employees of the White House, and employees of the Office of Management and Budget, referring or relating to:
 - a. The development of the proposed regulation;
 - b. Any related changes to Department of Treasury regulations affecting 501(c)(4) organizations as a result of or relating to the proposed regulation;
 - c. The decision not to send the proposed regulation to the Office of Information and Regulatory Affairs (OIRA) for review; and,
 - d. The decision to exclude the proposed regulation from the Spring 2013 Unified Agenda and the Fall 2012 Unified Agenda.
2. All communications between and among IRS employees and Department of Treasury employees referring or relating to the development of the proposed regulation and any related changes to Department of Treasury regulations affecting 501(c)(4) organizations.

⁸ Hillary Flynn and Rachael Bade, *IRS may broaden rule to police political nonprofits*, POLITICO (Mar. 18, 2015).

⁹ *Id.* note 7.

¹⁰ Letter from Hon. John Koskinen, Commissioner, Internal Revenue Serv., to Hon. Jim Jordan, Chairman, H. Subcomm. on Economic Growth, Job Creation, and Regulatory Affairs (Feb. 21, 2014).

¹¹ Email from Ruth Madrigal to Victoria Judson, Lois Lerner, and Nancy Marks (June 14, 2012), *available at* <http://waysandmeans.house.gov/uploadedfiles/offplan.pdf> (last accessed Feb. 11, 2015).

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3. All communications between and among IRS employees and Department of Treasury employees referring or relating to the development of the proposed regulation and any related changes to Department of Treasury regulations affecting 501(c)(4) organizations.
4. All communications between and among IRS employees and Department of Justice employees referring or relating to the development of the proposed regulation and any related changes to Department of Treasury regulations affecting 501(c)(4) organizations.
5. The names and grade level of all IRS employees and contractors involved in the development of the proposed regulation.

We also ask that you keep this Committee informed of the status of your development of this rule, and share a draft of the proposed rule as soon as it is available.

We request that you provide the requested documents and information as soon as possible, but no later than May 29, 2015. When producing documents to the Committee, please deliver production sets to the Majority staff in Room 2157 of the Rayburn House Office Building and the Minority staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format. An attachment to this letter provides additional information about responding to the Committee's request.

The Committee on Oversight and Government Reform is the principal investigative committee in the U.S. House of Representatives. Pursuant to House Rule X, the committee has authority to investigate "any matter" at "any time."

If you have any questions about this request, please contact Christina Aizcorbe or Sean Hayes of the Committee Staff at (202) 225-5074. Thank you for your attention to this matter.

Sincerely,



Jason Chaffetz
Chairman



Jim Jordan
Chairman
Subcommittee on Health Care,
Benefits and Administrative Rules

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Member

The Honorable Matt Cartwright, Ranking Member
Subcommittee on Health Care, Benefits and Administrative Rules

Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document;

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH,
PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE,
SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM,
CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE,
DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,
INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,
BEGATTACH.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.

7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.

19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.
3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.

5. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term "employee" means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.