TEA PARTY PATRIOTS

PURSUE YOUR AMERICAN DREAM

June 5, 2014

VIA HAND DELIVERY

Honorable Barbara Boxer, Chair
Honorable Johnny Isakson, Vice Chair
Senate Select Committee on Ethics
Hart Building, Room 220 Washington, DC 20510

Re: Request for Investigation of Senator Carl Levin

Dear Chairwoman Boxer and Vice Chairman Isakson:

Tea Party Patriots, Inc., a national grassroots citizens organization whose members are American citizens and taxpayers who are committed to personal freedom, economic freedom and a debt free future for America, respectfully requests that the Senate Select Committee on Ethics investigate whether Senator Carl Levin (D-MI) violated Senate rules by unlawfully and unethically exerting pressure on the Internal Revenue Service ("IRS") on multiple occasions to investigate and target tea party, conservative and free-market non-profit organizations such as ours, based on our exercise of guaranteed First Amendment rights and because of Senator Levin's opposition to our philosophical views and our opposition to his liberal policy views.

Joining with Tea Party Patriots in requesting this ethics investigation are Americans for Tax Reform, Susan B. Anthony List and Sixty Plus Association, all grassroots citizens organizations that Senator Levin improperly singled out for targeting by the IRS, and in so doing misused his office and taxpayer resources in his quest to silence these and other conservative groups because of their political activism in opposition to his party and his political beliefs.

Background

In the wake of the Supreme Court's landmark *Citizens United* decision, the Obama Administration has made clear its desire to curb the political speech of conservative social welfare organizations—starkly demonstrated by, for example, the IRS's now notorious "harassment" of conservative 501(c)(4) applicants for exempt status.[1] The public record

[1] *See* Letter from Representatives Darrell Issa & Jim Jordan to Hon. John Koskinen 1-11 (Feb. 4, 2014) (detailing evidence of the Administration's attempts to stifle political speech). *See* Appendix.

reveals that Senator Levin played a central role in this ongoing effort, has used his power to quash dissenting political voices, and has unlawfully and unethically used his position to pressure federal agencies to target and prosecute Tea Party and other conservative groups in an effort to silence them.

For at least the last two years, Senator Levin pressured the IRS to shut down his political opponents. On March 30, 2012, he sent a letter to then-IRS Commissioner Douglas Shulman with a laundry list of questions about the IRS's treatment of groups organized under Section 501(c)(4) of the Internal Revenue Code. He asked specifically about the IRS's efforts to obtain information about groups' political activities.[2] Senator Levin insisted that these issues were "urgen[t]" and that many of these groups appeared to be engaged in political activities "more appropriate for political organizations claiming tax-exempt status under 26 U.S.C. § 527"—even though the Internal Revenue Code and current IRS regulations allow 501(c)(4) groups to engage in political activity.[3] In response to this letter, then-Deputy Commissioner Steven Miller assured Senator Levin that IRS regulations were flexible enough to allow IRS agents to "prepare individualized questions and requests" for select 501(c)(4) organizations.[4]

As the 2012 presidential election drew closer, Senator Levin sent a series of increasingly agitated letters demanding that the IRS target conservative and free-market groups. On July 27, 2012, for example, Senator Levin asked the IRS whether 12 groups (all but one of which were conservative or free-market groups)—Crossroads Grassroots Policy Strategies, Priorities U.S.A., Americans Elect, American Action Network, Americans for Prosperity, American Future Fund, Americans for Tax Reform, 60 Plus Association, Patriot Majority USA, Club for Growth, Citizens for a Working America Inc., and Susan B. Anthony List—had applied for and received 501(c)(4) tax-exempt status from the agency and whether the IRS had "reminded" these organizations not to engage in "partisan political activity."[5] Although the IRS answered many of Senator Levin's questions, it explained that federal law (26 U.S.C. § 6103) prohibited it from disclosing certain information about individualized taxpayers.[6]

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[2] *See* Letter from Sen. Carl Levin to Comm. Douglas Shulman 1-3 (Mar. 30, 2012). *See* Appendix.

[3] *See Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities*, 78 Fed. Reg. 71,535 (proposed Nov. 29, 2013) (setting out the current regulations).

[4] *See* Letter from Deputy Comm. Steven Miller to Sen. Carl Levin 6 (June 4, 2012). *See* Appendix.

[5] *See* Letter from Sen. Levin to Comm. Shulman (July 27, 2012). *See* Appendix.

[6] *See* Letter from Deputy Comm. Steven Miller to Sen. Carl Levin 7 (Aug. 24, 2012). *See* Appendix.

Senator Carl Levin found that answer unsatisfactory. In a response letter, he stated: "I find it unacceptable that the IRS appears to be passively standing by while organizations that hold themselves out to be 'social welfare' organizations clearly ignore the tax code with no apparent consequences" and again insisted that the agency provide him with confidential taxpayer information.[7] Senator Levin sent several other similar letters to the IRS.[8]

On top of his letters, Senator Levin also criticized the IRS on the Senate floor. On September 19, 2012, he once again demanded that the IRS take on a more active role in targeting political speech he disfavored, stating, "The Internal Revenue Service (IRS)—the organization that grants these groups their tax-exempt status in the first place—should be protecting the voting public from these groups that pretend to be acting in the social welfare but are instead engaging in partisan politics."[9]

In addition, Senator Levin was clear that he intended to abuse his position as Chairman of the Permanent Subcommittee on Investigations for the Committee on Homeland Security and Governmental Affairs. In a *New York Times* interview, he explained that he planned to call out the IRS for allowing organizations engaged in political activities to maintain their 501(c)(4) status. He once again misstated the law when he asserted that "[t]ax-exempt 501(c)(4)s are not supposed to be engaged in politics," and pledged—with what the interviewer described as "relish"—that the Committee would "go after them."[10] Senator Levin tentatively planned to hold this hearing in July of 2013, but decided to delay the hearing after the Treasury Inspector General for Tax Administration concluded that the IRS had targeted conservative organizations for heightened scrutiny.[11]

Senator Levin's sustained pressure on the IRS appears to have caused the IRS to not only target conservative groups applying for exempt status, but also to propose regulations

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[7] *See* Letter from Sen. Levin to Comm. Shulman 1-2 (Aug. 31, 2012). *See* Appendix.

[8] For example, he sent another letter on September 27, 2012, again demanding information about conservative and free-market groups. See Letter from Sen. Levin to Comm. Shulman (Sept. 27, 2012). *See* Appendix.

[9] Senate Floor Statement on the Internal Revenue Service and 501(c)(4) Organizations (Sept. 19, 2012), http://www.levin.senate.gov/newsroom/speeches/speech/senate-floor-statement-on-the-internal-revenue-service-and-501c4-organizations/#sthash.B5pVqo11.dpuf.

[10] Joe Nocera, *The Senate's Muckracker*, The New York Times (Mar. 18, 2013), http://www.nytimes.com/2013/03/19/opinion/nocera-the-senates-muckraker.html?_r=0.

[11] *Levin-McCain Statement On IRS Investigation*, Press Release (May 13, 2013), http://www.levin.senate.gov/newsroom/press/release/levin-mccain-statement-on-irs-investigation.

that would have imposed unprecedented restrictions and limitations on 501(c)(4) organizations' right to engage in political activity and basic civic engagement.

Former IRS Deputy Commissioner Steve Miller confirmed that, had Senator Levin not engaged in his coercive campaign, the IRS would not have proposed the regulations. When asked by a House investigator to identify a problem with the Internal Revenue Code and applicable regulations that the proposed regulations sought to fix, Mr. Miller responded, "So I'm not sure there was a problem, right? I mean, I think we were—we had, you know, Mr. Levin complaining bitterly to us—Senator Levin complaining bitterly about our regulation . . . ."[12]

The proposed regulations were so onerous that they generated more than 150,000 comments (largely in opposition), which resulted in the IRS's recent decision to withdraw its proposal for further review.[13]

Violations

Senator Levin appears to have violated Senate rules by using his power to pressure at least one—and possibly more—federal agencies to target conservative groups. The Committee should investigate these potential violations promptly.

First, Senate Levin's sustained pressure on the IRS appears to constitute "improper conduct which may reflect upon the Senate." *Senate Ethics Manual*, Appendix E at 432. Indeed, even when the Committee has stopped short of finding that alleged conduct was "improper conduct reflecting upon the Senate," it has found that it should criticize the conduct in a public statement. *Id.* at 436; *see, e.g.*, Decision of the Committee Concerning Senator Glenn (exercised poor judgment in arranging a meeting with Congressman); Statement of the Committee Regarding Senator D'Amato (conducting the business of his office in an improper and inappropriate manner, negligent in failing to establish appropriate standards for operation of office); *see also Senate Ethics Manual*, Appendix E at 433 (the Committee will consider whether a Senator has engaged in "improper conduct which may reflect upon the Senate by reference to generally accepted standards of conduct, the letter and spirit of laws and Rules, and by reference to past cases where the Senate has disciplined its

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[12] *See* Letter from Representatives Darrell Issa & Jim Jordan to Hon. John Koskinen 9 (Feb. 4, 2014) (detailing evidence of the Administration's attempts to stifle political speech). *See* Appendix.

[13] *IRS Update On The Proposed New Regulation On 501(c)(4) Organizations*, http://www.irs.gov/uac/Newsroom/IRS-Update-on-the-Proposed-New-Regulation-on-501(c)(4)-Organizations.

Members for conduct that was deemed improper, regardless of whether it violated any law or Senate rule or regulation."). All of Senator Levin's efforts (as detailed above) appear to be motivated by an intention to silence political speech with which he does not agree. His efforts to commandeer an executive agency to pursue his political goals also plainly violate separation of powers principles. And in pressuring the IRS to reveal legally protected confidential taxpayer information, Senator Levin has disregarded his obligation to defend and follow the laws that Congress has enacted to (1) protect taxpayers from disclosure of their confidential information and (2) bolster the IRS's ability to withstand political pressure to reveal that information.

Second, Senator Levin's attacks appear to violate the Senate's prohibition against using congressional space to engage in partisan campaign activities. "The use of federal office space, including congressional office space, official government equipment and supplies paid for from federal tax dollars for purposes of soliciting campaign contributions or for other clearly political campaign activities could involve violations of other federal laws, congressional regulations and standards." *Senate Ethics Manual* 146. The evidence suggests that Senator Levin improperly used taxpayer-funded resources to further the Democrats' electoral fortunes, by seeking IRS action against specific conservative groups, targeted by him on the basis of their expenditures and activities in support of causes and candidates he opposes.

Conclusion

It is completely inappropriate for Senator Levin to use his position and his office as a United States Senator to intimidate, harm, and silence his political opponents. It is inappropriate for Senator Levin to pressure the IRS to turn its attention to specific citizens and citizens' organizations whose philosophies he opposes. Just as it is improper for a Senator to seek special favors from federal agencies for political allies, it is also wholly improper for a Senator to seek retribution by federal agencies against political opponents.

Under Senate Resolution 338, this Committee must "investigate allegations of improper conduct which may reflect upon the Senate, violations of law, violations of the Senate Code of Official Conduct, and violations of rules and regulations of the Senate, relating to the conduct of individuals in the performance of their duties as Members of the Senate . . . . " In light of the abundant evidence that Senator Levin acted unethically and unlawfully, the Committee should promptly investigate this matter and sanction Senator Levin as warranted.

We look forward to the Committee's response. *See* Rules of Procedure Select Committee on Ethics, Rule 3(g).

Respectfully,

Jenny Beth Martin,
National Co-Founder, Tea Party Patriots

Grover G. Norquist, President
Americans for Tax Reform

Amy Frederick, President
Sixty Plus Association

Marjorie Dannenfelser, President
Susan B. Anthony List

Enclosures

APPENDIX

ONE HUNDRED THIRTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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February 4, 2014

The Honorable John Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Mr. Koskinen:

The Committee on Oversight and Government Reform is conducting oversight of the Internal Revenue Service's inappropriate treatment of tax-exempt applicants. The Obama Administration recently issued a proposed regulation limiting political speech by certain nonprofit organizations. The Committee's ongoing investigation has identified several procedural and substantive concerns with the Administration's proposed regulation. We write to request that the IRS withdraw the rule from consideration and that you provide the Committee with information about the process by which this rule was crafted.

On November 29, 2013, the IRS issued a proposed regulation related to political speech by organizations exempt from tax under Internal Revenue Code ("I.R.C.") §501(c)(4). The proposed regulation is intended to clarify the tax-exemption determinations process and resolve problems identified in a Treasury Inspector General for Tax Administration (TIGTA) audit report.[1] It does not. As written, the Administration's proposed rule will stifle the speech of social welfare organizations and will codify and systematize targeting of organizations whose views are at odds with those of the Administration. In addition to these substantive concerns, we also have serious concerns about the process by which the Administration promulgated this rule. Our concerns are discussed in this letter.

I. The proposed rule codifies the Obama Administration's earlier attempts to stifle political speech

The Administration's proposal to restrict political speech by § 501(c)(4) nonprofits must be understood in context. As the Committee's investigation has shown, beginning in 2010, the

[1] 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. pt. 1) (quoting the "Charting a Path Forward at the IRS: Initial Assessment and Plan of Action" report) [hereinafter "Proposed Regulation"].

Administration "orchestrated a sustained public relations campaign seeking to delegitimize the lawful political activity of conservative tax-exempt organizations and to suppress these groups' right to assemble and speak."[2]

In the wake of the Supreme Court's *Citizens United* opinion, the President and Democratic allies in Congress loudly bemoaned the lawful political speech of nonprofit groups. During his 2010 State of the Union address, the President declared:

> With all due deference to separation of powers, last week the Supreme Court reversed a century of law that I believe will open the floodgates for special interests – including foreign corporations – to spend without limit in our elections. I don't think American elections should be bankrolled by America's most powerful interests, or worse, by foreign entities.[3]

As the 2010 midterm election neared, the President's rhetoric amplified. "[A]s an election approaches," the President proclaimed in September 2010, "it's not just a theory. We can see for ourselves how destructive to our democracy this can become. We see it in the flood of deceptive attack ads sponsored by special interests using front groups with misleading names."[4] Singling out the conservative group Americans for Prosperity by name, the President expounded in October 2010: "[Y]ou have these innocuous-sounding names, and we don't know where this money is coming from. I think that is a problem for our democracy. And it's a direct result of a Supreme Court decision that said they didn't have to disclose who their donors are."[5]

For months, the Administration denounced the rights of these groups to engage in anonymous political speech and baselessly suggested that they were funded by malevolent special interest and foreign entities. This public targeting was intended to shame these groups into disclosing their funding sources and scare potential donors from making otherwise lawful contributions. The proposed regulation represents the culmination of the President's rhetorical campaign to delegitimize social welfare organizations engaged in political speech. The proposal effectively codifies the Administration's earlier attempts to suppress political speech by nonprofit organizations.

The Committee's investigation into the IRS's targeting of conservative tax-exempt applicants demonstrates that the proposed rule is simply the final act of the Administration's history of attempts to stifle political speech by conservative § 501(c)(4) organizations.

a. The proposed rule is a continuation of Lois Lerner's efforts to curb conservative political speech

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[2] Memorandum from Majority Staff, H. Comm. on Oversight & Gov't Reform, to Members, H. Comm. on Oversight & Gov't Reform, "Interim update on the Committee's investigation of the Internal Revenue Service's inappropriate treatment of certain tax-exempt applicants" (Sept. 17, 2013).
[3] The White House, Remarks by the President in the State of the Union Address (Jan. 27, 2010).
[4] The White House, Weekly Address: President Obama Castigates GOP Leadership for Blocking Fixes for the Citizens United Decision (Sept. 18, 2010).
[5] The White House, Remarks by the President in a Youth Town Hall (Oct. 14, 2010).

The Committee's investigation uncovered evidence that Lois Lerner, the former IRS Director of Exempt Organizations, sought to crack down on political speech by certain nonprofit groups. Lerner, who previously served as the head of enforcement at the Federal Election Commission, demonstrated a keen interest in curbing nonprofit political speech. Documents and information suggest that under her leadership, the Exempt Organizations Division considered curbing political speech as early as 2010.

In Fall 2010, as the President and Democrats in Congress publicly sought to undermine the legitimacy of conservative-oriented nonprofits engaged in political speech, Lerner told an audience about the immense political pressure on the IRS to "fix the problem" of nonprofit political speech. She stated:

> What happened last year was the Supreme Court – the law kept getting chipped away, chipped away in the federal election arena. The Supreme Court dealt a huge blow, overturning a 100-year old precedent that basically corporations couldn't give directly to political campaigns. And everyone is up in arms because they don't like it. The Federal Election Commission can't do anything about it.
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> They want the IRS to fix the problem. The IRS laws are not set up to fix the problem: (c)(4)s can do straight political activity. They can go out and pay for an ad that says, "Vote for Joe Blow." That's something they can do as long as their primary activity is their (c)(4) activity, which is social welfare.
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> So everybody is screaming at us right now: 'Fix it now before the election. Can't you see how much these people are spending?' I won't know until I look at their 990s next year whether they have done more than their primary activity as political or not. So I can't do anything right now.[6]

Within the IRS, Lerner proposed a "c4 project" to examine more closely self-declared nonprofits engaged in political speech.[7] Lerner noted "there is a perception out there" that some 501(c)(4) groups are established only to engage in political activity.[8] Under her leadership, the Exempt Organizations Division launched a concerted effort to measure and assess the degree of political activity by nonprofits.

By April 2013, the Exempt Organizations Division had finished an analysis of the trends in 501(c)(4) groups with indications of political activity.[9] This document grounded the concern in *Citizens United*, stating: "Since Citizens United (2010) removed the limits on political

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[6] *See* "Lois Lerner Discusses Political Pressure on IRS in 2010," www.youtube.com (last visited Dec. 10, 2013) (transcription by Committee).

[7] *See* E-mail from Lois Lerner, Internal Revenue Serv., to Cheryl Chasin, Laurice Ghougasian, & Judith Kindell, Internal Revenue Serv. (Sept. 15, 2010). [IRSR 191031-32]

[8] E-mail from Lois Lerner, Internal Revenue Serv., to Cheryl Chasin, Laurice Ghougasian, & Judith Kindell, Internal Revenue Serv. (Sept. 15, 2010). [IRSR 191031]

[9] *See* Internal Revenue Serv., Baseline Analysis of 501(c)(4) Form 990 Filers with Schedule C *Political Campaign and Lobbying Activities* (Apr. 15, 2013). [IRSR 195642-65]

spending by corporations and unions, concern has arisen in the public sphere and on Capitol Hill about the potential misuse of 501(c)(4)s for political campaign activity due to their tax exempt status and the anonymity they can provide to donors."[10] It is unclear how Lerner intended to utilize this information, but other e-mails suggest she hoped to publicize the IRS's efforts to reign in nonprofit political speech.[11] According to one IRS employee, "The mere fact that we are doing anything at all in this area will be huge."[12]

The Administration's rule can only be properly understood in this context. As such, the proposal is merely an outgrowth of multi-year effort to "fix the problem" of nonprofit political speech. By April 2013 – a month before TIGTA released its audit report – Lois Lerner's Exempt Organizations Division already developed an analysis of political speech by tax-exempt organizations. The rule is merely the result of "everybody" – led by the President of the United States – "screaming" at the IRS to fix the perceived problem of nonprofit political speech. Accordingly, the Administration's proposed rule should be properly understood as the final act of Lois Lerner's tenure at the IRS.

b. The proposed rule improperly applies Federal Election Commission standards to tax-exempt organizations

According to the notice of proposed rulemaking (NPRM), "[i]n defining candidate-related political activity for purposes of section 501(c)(4), these proposed regulations draw key concepts from federal election campaign laws...."[13] Without explanation, the IRS co-opts the FEC's time frames for electioneering communication, a specific type of communication within federal election law, to apply to any communication referring to a candidate.[14] The proposal relies more heavily on federal election law than tax statute or IRS precedential regulatory material, without explanation.[15] Rather than focus on whether political speech advances "social welfare," as required by the governing statute, the IRS is using FEC standards to improperly expand restrictions on political speech for nonprofit groups. Thus, it appears that the IRS, in advancing the proposed rule, is simply attempting to make up for the FEC's loss of regulatory authority due to the Supreme Court's *Citizens United* decision.

c. Lois Lerner's background at the Federal Election Commission and her questionable communications with FEC employees provide further context for the proposed rule

Prior to her role as the Director of the IRS Exempt Organizations office, Ms. Lerner was an Associate General Counsel and Head of the Enforcement Office at the Federal Election

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[10] *Id.* at 3.
[11] *See* E-mail from Lois Lerner, Internal Revenue Serv., to Nancy Marks et al., Internal Revenue Serv. (Apr. 1, 2013). [IRSR 188429]
[12] E-mail from David Fish, Internal Revenue Serv., to Nancy Marks et al., Internal Revenue Serv. (Apr. 1, 2013) (emphasis added). [IRSR 188427]
[13] Proposed Regulation, *supra* note 1.
[14] Proposed Regulation, *supra* note 1.
[15] *See* Proposed Regulation, *supra* note 1.

Commission.[16] During her tenure at the FEC, she engaged in questionable tactics to target conservative groups, often subjecting those who wanted to expand their influence in politics to heightened scrutiny.[17] Not only was her political ideology evident to her FEC colleagues, she brazenly subjected conservative groups to meticulous investigations. Similar liberal groups did not receive the same scrutiny.[18]

Documents produced to the Committee demonstrate coordination between Lerner and the FEC. Employees from the FEC communicated with Lerner about tax-exempt groups engaged in political speech. For instance, William Powers, an FEC official in the Office of the General Counsel, e-mailed Lerner, on February 3, 2009, seeking information about the conservative nonprofit groups American Issues Project and the American Future Fund.[19] Powers asked about the status of these groups' applications for tax-exempt status and the IRS review process.[20] In the course of the e-mail, Powers referenced prior conversations with Lerner from July of 2008 concerning the American Future Fund.[21]

The propriety of this relationship raises serious concerns. In her discussions with Mr. Powers, it appears that Ms. Lerner disclosed information protected by 26 U.S. Code § 6103 by revealing confidential information about specific taxpayers.[22] Furthermore, Donald McGahn, former FEC vice chairman, characterized any FEC "dealing" with Lois Lerner as "probably out of the ordinary."[23] McGahn went on to say: "The FEC has not had a good track record with calling balls and strikes. They've been criticized for not playing fair."[24] Lerner's background at the FEC, combined with her recent communications with current FEC officials, provide further context for the IRS's effort that culminated in the promulgation of this proposed rule.

d. The IRS's efforts to develop new restrictions on political speech for non-profit groups, led by Lois Lerner and the IRS chief counsel's office, began long before the TIGTA audit was released

The Administration put forth the rule under the guise that it is responsive to TIGTA's recommendations concerning the evaluation of applications for tax exempt status. The

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[16] Eliana Johnson, *Lois Lerner at the FEC*, NAT'L REVIEW (May 23, 2013), *available at* http://www.nationalreview.com/article/349181/lois-lerner-fec-eliana-johnson (last accessed Jan. 14, 2014) [hereinafter *Lois Lerner at the FEC*].
[17] *Id.*
[18] *Id.*; Rebekah Metzler, *Lois Lerner: Career Gov't Employee Under Fire*, U.S. NEWS & WORLD REP. (May 30, 2013), *available at* http://www.usnews.com/news/articles/2013/05/30/lois-lerner-career-government-employee-under-fire (last accessed Jan. 14, 2014).
[19] E-mail from Mr. William Powers, Office of the General Counsel, Federal Election Commission, to Ms. Lois Lerner, Director of Exempt Organizations, Internal Revenue Service, February 3, 2009.
[20] *Id.*
[21] *Id.*
[22] *See e.g.* Eliana Johnson, "E-mails Suggest Collusion Between FEC, IRS to Target Conservative Groups," *National Review*(July 31, 2013) available at < http://www.nationalreview.com/corner/354801/e-mails-suggest-collusion-between-fec-irs-target-conservative-groups-eliana-johnson>.
[23] Dana Bash and Alan Silverleib, "Republican says e-mails could mean FEC-IRS collusion," CNN (Aug. 6, 2013) available at <http://www.cnn.com/2013/08/05/politics/irs-fec-controversy>.
[24] *Id.*

Committee's investigation has uncovered evidence that the Administration considered regulating § 501(c)(4) organizations well before the publication of the TIGTA audit. Indeed, according to IRS attorney Don Spellman, the Administration had quietly considered guidance on § 501(c)(4) organizations for several years. He testified:

> A [C]ertainly guidance under 501(c)(4) has been under discussion for a great deal of time, including this period.
>
> Q When you say a great deal of time, . . . how much time are you talking about?
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> A Well, as I said there was a guidance project back in 1969 about whether to address exclusively under 501(c)(4), and it's been on and off since then. But that was a formal guidance project that was open and closed. And then just since I have been there, you know, the topic will just come up periodically. But it's been a very active topic for the last certainly 5 years.
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> ***
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> Q And you also said that the (c)(4) primarily standard has been an active topic on and off in the IRS but especially in the last 5 years.
>
> A Yes.
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> Q What has occurred in the last 5 years to make it an active topic during that timeframe?
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> A Litigation.
>
> Q And who has been actively talking about it within the IRS?
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> A We certainly actively discussed it within Counsel.
>
> Q And would those discussions be driven by the IRS Chief Counsel?
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> A Yes.
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> ***
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> Q And were there discussions about issuing a new General Counsel memorandum in regard to the (c)(3) – (c)(4) primarily standard in the meeting that you had [with Lerner's direct reports in the Exempt Organizations Division] in April, May 2011?

A There was a discussion and there was even a draft prepared of a legal memo from Counsel to Exempt Organizations on the exemption standard under 501(c)(4), and those discussions started somewhere in 2009, 2010. I don't remember the exact date.[25]

Mr. Spellman also explained that a legal memo on the exemption standard under 501(c)(4) was approved by the IRS chief counsel's office sometime before 2012, but was not made public.[26]

Similarly, former IRS Acting Commissioner Steve Miller testified that the IRS and the Treasury Department had considered regulations on § 501(c)(4) organizations well before May 2013. He testified:

Q Why did you want to discuss this article [entitled "The IRS's 'Feeble' Grip on Big Political Cash"] with Ms. [Nikole] Flax and Ms. [Catherine] Barre?

A So, I was interested in thinking about what we might be able to do into the future in the area.

Q What do you mean by "the area"?

A The area of what constitutes political activity for a 501(c)(4) organization. That's my recollection, anyway.

Q And what kind of ideas did you have in mind?

A So, there were issues around the regulation and the definition of "exclusively" as "primarily" in the regulation. And there were other things gone on. I don't even know what else. It actually was a brainstorming session, is my suspicion.

Q Okay. But refining the regulation was one idea that you were brainstorming?

A That had been on – that had been thought about. But I'm not sure we were brainstorming specifically on that.

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Q What were the other ideas that you brainstormed, to your recollection?

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[25] Transcribed interview of Don Spellmann, Internal Revenue Serv., in Wash., D.C. (July 12, 2013).
[26] *Id.*

A I think what could be done in terms of, if anything, in terms of a legislative disclosure rule. That's a recollection. I may be wrong on that, but that's the only other one that I can remember right now.

Q And, sir, what do you mean by "legislative disclosure rule"?

A So, under the rules – and, you know, this is a long piece. But under the rules, 501(c)(4) donors are not disclosed to the public. And there is an argument made here and elsewhere that that's a reason why money is flowing into those organizations for political purposes – for purposes of spending on politics. I'm sorry. I'll be more precise.

Q And so you wanted to implement a disclosure rule that would take away that advantage for (c)(4)s?

A Did I want to do that? No. But in terms of brainstorming things that would level the playing field between 527 organizations and 501(c)(4) organizations, that was one thing that was talked about.

Q Did you have discussions with anyone at Treasury about these ideas?

A Probably would have had them with Mark Mazur, the tax policy person. And I think I did have a discussion with him on the concept of, is there a thought about changing the disclosure rules? And we did talk about "exclusively"/"primarily" and whether it made sense to do that or not.

Q And that discussion was in this October 2012 timeframe?

A. I don't know. It would have been – it would have been probably a little later than that. It probably would have been, you know, when I was acting [commissioner]. But I'm not – again, that would have been the timeframe.[27]

Documents obtained by the Committee confirm that the Treasury Department has 501(c)(4) regulations "on [its] radar" well before the release of the TIGTA report.[28] One e-mail from 2010 clearly articulated the Department's concern as being rooted in the FEC's regulatory failure:

> Before Citizens United, corporations (including c4s) were limited by the FEC rules re: campaign spending and disclosure and subject to immediate FEC enforcement action. Fear of FEC enforcement in real time may have served to limit the political activities of aggressive c4s more than fear of IRS TEGE

[27] Transcribed interview of Steven Miller, in Wash., D.C. (Nov. 13, 2013).
[28] E-mail from Ruth Madrigal, Dep't of the Treasury, to Victoria Judson, Internal Revenue Serv. (June 14, 2012). [IRSR 305906]

> enforcement action . . . . Now that the FEC cannot prohibit corporations (including c4s) from making such expenditures . . . , there is some concern that aggressive c4s will be bolder and multiply, intervening in campaigns with relative impunity.[29]

Moreover, former Acting Commissioner Miller attributed the discussions about further regulating § 501(c)(4) organizations to pressure placed on the IRS by congressional Democrats. He testified:

> Q And, sir, what did you see as the problem that needed to be addressed through either a regulatory change or a legislative change?
>
> A So I'm not sure there was a problem, right? I mean, I think we were – we had, you know, Mr. Levin complaining bitterly to us about – Senator Levin complaining bitterly about our regulation that was older than me, where we had read "exclusively" to mean "primarily" in the 501(c)(4) context. And, you know, we were being asked to take a look at that. And so we were thinking about what things could be done.[30]

e. The proposed rule is a continuation of the IRS's malfeasance, and not a true response to TIGTA's audit recommendations

The rule is purported to be a direct response to TIGTA's audit of the IRS's targeting of conservative tax-exempt applicants,[31] but the reality is that the Administration has used the controversy surrounding the IRS targeting as pretext to wrongly justify the need for this regulation. The notice of proposed rulemaking (NPRM) asserts that "both the public and the IRS would benefit from clearer definitions" and cites the IRS's 30-day progress report that responds to the TIGTA audit.[32] The Treasury Assistant Secretary for Tax Policy, Mark Mazur confirmed that the rule was intended to be responsive to a recommendation in the TIGTA report.[33]

Contrary to the Administration's assertion, TIGTA did not recommend that the IRS issue regulations narrowing the type of permissible political speech by § 501(c)(4) organizations. The report offered nine recommendations, but not one recommended a change in the term political campaign intervention.[34] On December 13, 2013, Russell George, the Treasury Inspector General for Tax Administration, told the Committee that the proposed rule was not responsive to any recommendation of his office's audit.[35]

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[29] E-mail from Ruth Madrigal, Dep't of the Treasury, to Jeffrey Van Hove, Dep't of the Treasury (Aug. 23, 2010). [OGR 11-7-13 2260]
[30] *Id.*
[31] Proposed Regulation, *supra* note 1.
[32] Proposed Regulation, *supra* note 1.
[33] Transcribed interview of Mark J. Mazur, Internal Revenue Serv., in Wash., D.C. (January 10, 2014).
[34] *See* Treasury Inspector Gen. for Tax Admin., Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review (May 14, 2013).
[35] Meeting with J. Russell George, TIGTA, and House Committee on Oversight and Government Reform, December 13, 2013.

Given these circumstances, we are concerned about the stated purposes and justification for the Administration's proposed regulation. Especially in light of the close White House coordination with the IRS concerning ObamaCare, including the potential sharing of confidential taxpayer information,[36] we have serious reservations about the integrity and transparency of the rulemaking process. The rule appears to be a continuation of a troubling pattern, wherein the IRS, rather than enforcing laws, carries water for the Administration's political agenda.

The rule was developed by those complicit in the targeting of the President's enemies and conceived with the intention of stifling political speech under false pretenses. The unexplainable reliance and deference to FEC definitions of political activity made applicable to social welfare organizations further calls into question the underlying motivations of the proposal. Given the facts revealed through the course of the Committee's investigation, allowing the rule to go forward can only be properly explained as the codification of the Administration's desire to stifle the activities of non-profits with which it disagrees.

II. The Administration purposefully concealed its efforts that culminated in the promulgation of the proposed rule

The Committee's investigation uncovered evidence indicating the Administration hid its efforts to curb political speech by nonprofits. Repeatedly, the Administration has failed to live up to President Obama's promise that his would be "the most transparent administration in history."[37] The proposed rule is yet another example of deliberate regulatory and legal subterfuge, designed to conceal unpopular and unconstitutional public policy actions. Released before the conclusion of several investigations into the multi-year political targeting campaign of conservative leaning social welfare nonprofit organizations, the proposed regulation is designed to alter a 50-year-old regulation in a manner that lacks transparency.

In June 2012, Ruth Madrigal of the Treasury Department's Office of Tax Policy wrote to several IRS leaders about potential § 501(c)(4) regulations. She wrote: **"Don't know who in your organization is keeping tabs on c4s, but since we mentioned potentially addressing them (off-plan) in 2013, I've got my radar up and this seemed interesting."**[38] [emphasis added] Madrigal forwarded a short article about a court decision with "potentially major ramifications for politically active section 501(c)(4) organizations."[39] In her transcribed interview with Committee staff, IRS attorney Janine Cook explained how the Administration works a regulation "off-plan." She testified:

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[36] *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).

[37] Jonathan Easley, "Obama says his is 'most transparent administration' ever," The Hill (Feb. 14, 2013) available at http://thehill.com/blogs/blog-briefing-room/news/283335-obama-this-is-the-most-transparent-administration-in-history.

[38] E-mail from Ruth Madrigal, Dep't of the Treasury, to Victoria Judson, Internal Revenue Serv. (June 14, 2012). [IRSR 305906]

[39] *Id.*

> [T]o understand the term, when it says off plan, it means working it. Working on it, but not listing it on the plan. . . . The term – I mean it's a loose term, obviously, it's a coined term, the term means the idea of spending some resources on working it, getting legal issues together, things like that, but not listing it on the published plan as an item we are working. That's what the term off plan means.[40]

Not only did the IRS and Treasury develop the rule "off-plan", but they also did not include their work on the proposed rule on the Administration's Unified Agenda until the fall of 2013, concurrently with the release of the proposed regulation.[41] The Unified Agenda is the federal government-wide report on current and future regulatory action under consideration by agencies.[42] In summary, it is clear that the IRS and Treasury went to great lengths to prevent the public from learning about their ongoing work that culminated in the proposed rule.

III. The proposed rule is a radical deviation from any precedential guidance and completely lacks statutory authority

Nonprofit organizations "operated exclusively for the promotion of social welfare" and for which "no part of the net earnings... inures to the benefit of any private shareholder or individual" are entitled to tax exemption under I.R.C. §501(c)(4).[43] Treasury regulations promulgated in 1959 interpreted the statutory language to define "the promotion of social welfare activity."[44] The regulations state: 1) "An organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare"[45] and 2) "The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate."[46]

The Administration's current proposal significantly broadens the exclusion of political activity well beyond any reasonable interpretation of §501(c)(4)'s statutory text. The proposed definition replaces the phrase "participation or intervention in political campaigns . . . for public office" with the much broader phrase "candidate related political activity" and a far-reaching eight point test.[47] As the NPRM states, the proposed regulation "is intended to help organizations and the IRS more readily identify activities that . . . do not promote social welfare."[48] Paradoxically, the proposed regulation shifts the burden of proof from the presence

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[40] Transcribed interview of Janine Cook, Internal Revenue Serv., in Wash., D.C. (Aug. 23, 2013).
[41] Leland E. Beck, Fall *2013 Unified Agenda Published: Something New, Something Old*, Federal Regulations Advisor (Nov. 27, 2013) available at: http://www.fedregsadvisor.com/2013/11/27/fall-2013-unified-agenda-published-something-new-something-old/.
[42] *How to Read the Unified Agenda*, Center for Effective Government (last visited Jan. 13, 2013) available at: http://www.foreffectivegov.org/node/4062.
[43] I.R.C. §501(c)(4) (2013).
[44] Treas. Reg. §1.501(c)(4)-1 (as amended in 1990).
[45] *Id.*
[46] *Id.*
[47] Proposed Regulation, *supra* note 1.
[48] Proposed Regulation, *supra* note 1.

of social welfare activities to the absence of political activities. Whereas, by its plain language, the statute recognizes exemption for an organization that promotes the social welfare, the proposed regulation precludes recognition for an organization engaged in activities arbitrarily deemed to be political. The "candidate related political activity" definition focuses on types of activities that may be political, rather than types of activities that promote social welfare.

As discussed above, the Committee's investigation uncovered a hidden agenda within the IRS – conceived "off-plan" and before the issuance of the TIGTA report – to neuter the ability of non-profits to participate in the political process and thereby engage in activities that promote their respective views of social welfare. The rule's departure from the statutory text is the work of an overzealous and unchecked agency and must not go forward.

IV. The Proposed Rule suffers from deficient regulatory review and analysis

The proposed regulation did not undergo the standard regulatory analysis that most agency rulemakings require. Generally for significant regulatory action, like this proposed regulation, agencies must include a comprehensive cost-benefit analysis and the Office of Information and Regulatory Affairs (OIRA) engages in a thorough review of the proposed regulation before it is offered to the public for comment.[49] However, the IRS did not provide any cost-benefit analysis and the proposed regulation was never sent to OIRA for review.[50] This gap in the IRS's regulatory process allows faulty rules like this one to reach the public without adequate analysis.

V. The Proposed Regulation will needlessly harm social welfare organizations

The result of this inadequate regulatory review is a proposed regulation that will exclude nonprofit organizations from a tax exempt status based on arbitrary and statutorily unfounded restrictions on political speech. The new definitions of "political activity" are overly broad, create an unnecessarily harsh standard for §501(c)(4) organizations, and stifle socially beneficial activities that I.R.C. §501(c) was designed to cover. Even the left-leaning Alliance of Justice, a "broad array of groups committed to progressive values,"[51] believes that the Administration's rule will chill political speech by nonprofits. It stated:

> If implemented, there would be no such thing as a nonpartisan election activity conducted by a 501(c)(4); it would all be considered "political." By expanding the definition of what activities are political, the rules would drastically reduce the ability of (c)(4)s to engage in nonpartisan get-out-the-vote drives, candidate questionnaires, and voter registration drives. These activities have been critical to

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[49] Exec. Order No. 12866 (1993).
[50] *See* Proposed Regulation, *supra* note 1.
[51] Alliance for Justice, About AFJ, http://www.afj.org/about-afj (last visited Jan. 30, 2014).

the ability of nonprofits to influence the public policy debate on a wealth of issues.[52]

a. The new definition of political activity will stifle constitutionally protected political speech

"Speech is an essential mechanism of democracy,"[53] but the proposed regulation redefines social welfare to exclude constitutionally protected political speech. In recognition of the "fundamental importance of the free flow of ideas and opinions on matters of public interest and concern," the First Amendment protects the freedom of speech and freedom of association.[54] In particular, political speech is "central to the meaning and purpose of the First Amendment" and "must prevail against laws that would suppress it, whether by design or inadvertence."[55] Through the proposed rule, the IRS is rejecting America's "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open"[56] in favor of "more definitive rules" to "reduce the need for detailed factual analysis."[57]

Traditionally, social welfare organizations were permitted to engage in unlimited issue based advocacy and comment on the selection of executive branch officials and judicial nominees, as part of the promotion of the common good and general welfare. As examples, environmental advocacy groups have been able to comment and advocate for the removal of a conservative EPA Administrator[58] and gun rights advocacy groups have been able to speak against the nomination of anti-Second Amendment judicial appointees.[59] In a radical deviation from the "historical application" of express advocacy, the proposed rule chills speech by restricting advocacy for appointed administrators that will hold incredible power over the social and public policy issues that are fundamental to the missions of social welfare organizations.[60]

The proposed rule creates a profound disincentive to engage in any constitutionally protected political speech because the mere mention of a candidate may affect the tax status of a social welfare group. Under the rule, "[a]ny public communication... within 30 days of a primary election or 60 days of a general election that refers to one or more clearly identified candidates in that election" is political activity."[61] Organizations might reference the election in

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[52] Press Release, Alliance for Justice, AFJ: Treasury, IRS proposal endangers citizen participation in democracy (Nov. 27, 2013) available at http://www.afj.org/press-room/press-releases/afj-treasury-irs-proposal-endangers-citizen-participation-in-democracy.
[53] Citizens United v. Fed. Election Comm'n, 558 U.S. 310 (2010).
[54] Hustler Magazine v. Falwell, 485 U.S. 46 (1988).
[55] Citizens United v. Fed. Election Comm'n, 558 U.S. 310 (2010).
[56] New York Times Co. v. Sullivan, 376 U.S. 254 (1964).
[57] Proposed Regulation, *supra* note 1.
[58] *See* "Environmentalists Protest Selection of Utah Gov. Michael Leavitt at EPA Head," Democracy Now (Aug. 12, 2003) available at http://www.democracynow.org/2003/8/12/environmentalists_protest_selection_of_utah_gov.
[59] *See* Declan McCullagh, "Gun Rights Groups are Wary of Sotomoayor," CBS News (May 27, 2009) available at http://www.cbsnews.com/news/gun-rights-groups-are-wary-of-sotomayor/.
[60] Proposed Regulation, *supra* note 1.
[61] Proposed Regulation, *supra* note 1.

a newsletter, write a blog post about the election linking to the candidates' web pages, or simply mention the activities of the incumbent elected official in a non-election related communication, but the new rule will flatly declare that these activities do not promote social welfare, thus jeopardizing the tax status of the group engaged in political speech.

b. The proposed definition will limit the public's ability to petition government officials and learn about public policy

Under the proposed rule, invitations to incumbent elected officials might turn an otherwise nonpartisan event into political activity for up to 90 days out of any election year. Members of Congress are regularly invited to speak at policy forums, community events, and many other occasions, even while serving as candidates. For example, many nonprofit groups host Tax Day events every year on April 15 and often invite Members of Congress to speak on matters of tax and fiscal policy. This rule will chill these expressive demonstrations, the purpose of which is to educate the public on the nation's fiscal state.

c. The proposed definition will curb important voter education activities

Ensuring that eligible citizens are legally able to vote on Election Day is important to our democracy. Voter registration and get-out-the-vote drives promote social welfare by encouraging citizens to participate in electing their representatives. Several IRS guidance materials have expressly permitted voter registration drives, recognizing the value to social welfare,[62] but the proposed rule classifies voter registration drives or "get-out-the-vote" drives as political activity. The rule would thus discourage this type of behavior and have a negative effect on democracy.

In addition, voter education activities are essential to the promotion of social welfare. Many organizations that engage in voter education activity distribute information about the candidates in the form of voter guides. According to Revenue Ruling 78-248, exempt organizations may permissibly distribute voter guides,[63] but this new rule declares that the "[p]reparation or distribution of a voter guide that refers to one or more clearly identified candidates" is political activity.[64]

Moreover, under the rule, "[h]osting or conducting an event within 30 days of a primary election or 60 days of a general election at which one or more candidates in such election appear as part of the program" does not promote social welfare.[65] The rule declares that all candidate forums, all debates, and all opportunities to hear from candidates provided by any nonprofit tax exempt organization are political activity. It discourages nonprofit social welfare organizations to host important voter education events, which will be deleterious to democracy.

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[62] *See* Elizabeth Kingsley & John Pomeranz, *A Crash at the Crossroads: Tax and Campaign Finance Laws Collide in Regulation of Political Activities of Tax-Exempt Organization*, 31 Wm. Mitchell L. Rev. 55 (2004) and *see* Rev. Rul. 2007-41 (Jun.18, 2007).
[63] Rev. Rul. 78-248, 1978-1 C.B. 154.
[64] Proposed Regulation, *supra* note 1.
[65] Proposed Regulation, *supra* note 1.

Confusingly, the new definitions run counter to IRS precedence and guidance. Standards for what constitutes a permissibly apolitical voter guide have been in place for decades and are well understood.[66] Candidate forums have long been permissible and many nonprofit tax-exempt host events with candidates and elected officials to educate voters prior to an election.[67] The deviations from long standing understandings of permissible and impermissible activities are illogical and without explanation.

VI. Conclusion

The Committee is conducting a comprehensive investigation into the IRS's targeting of conservative tax-exempt applicants. Over the course of the last nine months, the Committee reviewed over 400,000 pages of documents and conducted dozens of transcribed interviews with Administration employees. Information received in the course of this investigation shows that the proposed regulation is little more than a veiled attempt to stifle the exercise of constitutionally protected speech afforded to non-profit organizations by law. Accordingly, we request that you rescind the Administration's misguided regulation.

Because of the serious concerns outlined above, the Committee has questions about the process by which the Administration developed the proposed regulation. To assist the Committee's oversight obligations, we request the IRS produce the following information, in electronic format, for the time period January 1, 2012, to the present:

1. All communications between the current or former IRS employees, including but not limited to Lois Lerner, and the Executive Office of the President including but not limited to the White House Office and the Office of Management and Budget, referring or relating to the development of the proposed regulation and any suggested amendment to Treas. Reg. §1.501(c)(4)-1.

2. All communications between the IRS and the Department of Treasury referring or relating to the development of the proposed regulation and any suggested amendment to Treas. Reg. §1.501(c)(4)-1.

3. All communications between the IRS and the FEC referring or relating to the development of the proposed regulation and any suggested amendment to Treas. Reg. §1.501(c)(4)-1.

4. All documents and communications referring or relating to the decision not to send the proposed regulation to OIRA for review.

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[66] *See e.g.* Rev. Rul. 78-248, 1978-1 C.B. 154 and *see* Elizabeth Kingsley & John Pomeranz, *A Crash at the Crossroads: Tax and Campaign Finance Laws Collide in Regulation of Political Activities of Tax-Exempt Organization*, 31 Wm. Mitchell L. Rev. 55 (2004).

[67] *See* Rev. Rul. 2007-41, 2007-25. I.R.B. and Rev. Rul. 86-95, 1986-2 C.B. 73.

5. All documents and communications referring or relating to the decision to exclude this regulation from the Spring 2013 Unified Agenda and the Fall 2012 Unified Agenda.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X. An attachment to this letter provides additional information about responding to the Committee's request.

We request that you provide the requested documents and information as soon as possible, but no later than 5:00 p.m. on February 18, 2014. 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.

If you have any questions about this request, please contact Katy Rother or Tyler Grimm of the Committee Staff at 202-225-5074. Thank you for your attention to this matter.

Sincerely,

Darrell Issa
Chairman

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

Enclosure

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

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

DARRELL E. ISSA, CALIFORNIA
CHAIRMAN

ELIJAH E. CUMMINGS, MARYLAND
RANKING MINORITY MEMBER

ONE HUNDRED THIRTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6143

Majority (202) 225-5074
Minority (202) 225-5051

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.

Schedule 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.

United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

September 27, 2012

VIA U.S. MAIL & EMAIL (Catherine.M.Barre@irs.gov)

The Honorable Douglas H. Shulman
Commissioner
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Dear Commissioner Shulman:

I appreciate the September 14, 2012 response by Steven T. Miller, Deputy Commissioner for Services and Enforcement, to my letter of August 31, 2012.

As a follow-up to that letter, please provide me with the following:

1. Question #15 on the IRS Application for Recognition of Exemption Under Section 501(a) states:

   "Has the organization spent or does it plan to spend any money attempting to influence the selection, nomination, election or appointment of any person to any Federal, state, or local public office to an office in a political organization? If "Yes," explain in detail and list the amounts spent or to be spent in each case."

   a. For the following organizations please forward copies of the responses to Question #15:

      1) Crossroads Grassroots Policy Strategies
      2) Priorities U.S.A.
      3) Americans for Prosperity
      4) Patriot Majority USA

   b. Please provide with each answer the explanatory "detail" and the lists of the "amounts spent or to be spent in each case" referred to in Question #15.

2. In the IRS response of August 24, 2012, Mr. Miller stated that an address would be needed in order for the IRS to tell us whether or not an organization has been recognized by the IRS as tax-exempt. I have provided address information on several organizations below, as well as verbatim statements from these organizations' websites regarding their 501(c)(4) status.

For each organization, please let me know if the IRS has recognized it as tax-exempt.

Organization Name:	**Organization Address:**	**Organization Website Address:**	**Organization's statement on 501(c)(4) status:**
Crossroads Grassroots Policy Strategies	P.O. Box 34413 Washington, DC 20043	http://www.crossroadsgps.org/	"Crossroads GPS is organized as a nonprofit organization under section 501(c)(4) of the Internal Revenue Code."
Priorities U.S.A.	1718 M Street NW #264 Washington, DC 20036-4504	http://www.prioritiesusa.org/	"Priorities USA is a 501(c)(4) organization dedicated to mobilizing Americans to preserve, protect and promote the middle class, and to ensure opportunity and freedom for the next generation."
Americans for Prosperity	2111 Wilson Blvd. Suite 350 Arlington, VA 22202	http://americansforprosperity.org/	"Americans for Prosperity is a 501 (c) (4) entity under the IRS code. Contributions or gifts to Americans for Prosperity are not tax deductible."
Patriot Majority USA	1717 Rhode Island Avenue, NW Washington, DC 20036	http://patriotmajority.org/	"Patriot Majority USA is a 501(c)(4) with the primary purpose of encouraging a discussion of economic issues in the United States."

For your information, I am enclosing a copy my recent *Congressional Record* statement regarding the Internal Revenue Service and its treatment of 501(c)(4) organizations. If you have any questions, please contact me, or have your staff contact Kaye Meier of my staff at kaye_meier@levin.senate.gov or 202/224-9110. Please provide this information by October 9, 2012.

Thank you.

Sincerely,

Carl Levin
Chairman
Permanent Subcommittee on Investigations

Enclosure

cc: Dr. Tom Coburn
Ranking Member
Permanent Subcommittee on Investigations

Mr. Steven T. Miller
Deputy Commissioner for Services and Enforcement
Internal Revenue Service

While I support the motive behind this legislation and believe ensuring the safety of state and local courthouses is a noble goal, I believe the responsibility to address this issue lies with the state and local governments. I do not believe the federal government has the authority under the Constitution to provide training for local and state law enforcement or to provide security equipment to state and local courthouses at the federal government's expense. Further, I believe the training program this bill authorizes duplicates existing federal training programs.

First, S. 2076 authorizes the Director of the State Justice Institute (SJI) to carry out "a training and technical assistance program designed to teach employees of State, local, and tribal law enforcement agencies how to anticipate and respond to violent encounters during the course of their duties, including duties relating to security at State, county, and trial courthouses." The purpose of SJI is to further the development and adoption of improved judicial administration in state courts in the United States, which is not a federal responsibility under the Constitution. States are responsible for the administration of their courts. Adding an additional allowable purpose to SJI merely broadens the unconstitutional reach of this agency. Further, even though S. 2076 does not provide any additional funding for SJI the agency could use the authorization of additional responsibilities as a basis for requesting future appropriations from Congress.

Second, the SJI training program authorized in this bill potentially duplicates existing federal training programs available to state and local law enforcement. The following programs already exist:

1. U.S. Marshal Service's National Center for Judicial Security, Office of Protective Intelligence; Shares threat information with state and local law enforcement agencies and provides training to state and local law enforcement officers who provide courthouse security. Also, provides guidance and support to district offices and Judicial Security Inspectors (JSIs) conducting high threat proceedings and protective responses.

2. U.S. Marshal Service's National Center for Judicial Security Fellowship Program; Provides a three-month training program for state, local, and international "court security managers."

3. FBI's Uniform Crime Reporting (UCR) division and Law Enforcement Officers Killed and Assaulted (LEOKA) programs; UCR and LEOKA collect data on law enforcement officers who have been killed or assaulted in the line of duty. The FBI then conducts LEOKA training programs for state and local law enforcement personnel based on this data.

4. FBI's Law Enforcement Training for Safety and Survival (LETSS) program; Trains FBI, police officers, and international law enforcement personnel in survival techniques.

5. FBI Field Police Training program; Includes firearm training for state and local partners.

6. FBI's Law Enforcement Executive Development Association program; Trains heads of state and local law enforcement agencies with between 50 and 500 personnel.

7. Advanced Law Enforcement Rapid Response Training (ALERRT) program; Trains officers in dealing with violent situations, including those they face outside of buildings and in urban settings. Includes core classes such as "Basic Active Shooter Level I and II," "Terrorism Response Tactics—Advanced Pistol," "Combat Rifle," "Combat Pistol," "Advanced Rifle Marksmanship," and "DOD Sniped Course."

8. Community Oriented Policing Services programs (COPS);

9. Department of Homeland Security's Federal Law Enforcement Training Center (FLETC) programs; and The Survival Shooting Training Program (SSTP) under FLETC is an eight and a half day training program that teaches law enforcement officers (LEOs) "how to employ several types of weapon systems found in most police arsenals (the service handgun, shotgun, submachine gun and rifle). The LEOs will develop marksmanship skills as well as all pertinent gun handling skills (drawing from the holster, reloads, immediate action, movement and more) at a rapid yet controlled pace. Ultimately, the SSTP prepares the LEOs to survive a deadly force confrontation through competent decision making and confident gun handling skills." The Reactive Shooting Instructor Training Program (RSITP) under FLETC trains law enforcement instructors in handling their firearms to survive high-stress situations.

10. Bureau of Alcohol, Tobacco, and Firearms' National Firearms Examiner Academy programs. The training program includes training that enables state and local law enforcement officers to identify armed gunmen and increase their "margin of safety."

Finally, this bill gives state and local courthouses priority in obtaining excess federal security equipment for free from the Government Services Administration after a short request period is given to federal agencies. The courthouse would only pay the costs of transporting the equipment. Equipment purchased by the federal government—and thereby the American taxpayer—should be utilized by the federal government if at all possible. If not, federal agencies may have to purchase equipment they otherwise could have obtained for free but for the state and local governments taking it. Also, giving states and localities the ability to obtain this equipment for free may lead to situations where they acquire the equipment simply because it is free, not because they truly need it.

Article I, Section 8 of the Constitution enumerates the limited powers of Congress, and nowhere are we tasked with funding or becoming involved with state and local court security. I firmly believe this issue is the responsibility of the states and not the federal government. However, if Congress does act in this area, we should evaluate current programs, determine any needs that may exist, and prioritize those needs for funding by cutting from the federal budget programs fraught with waste, fraud, abuse, and duplication.

Congress must start making tough decisions rather than continuing to kick the can down the road, leaving our children and grandchildren to clean up the mess. It is irresponsible for Congress to jeopardize the future standard of living of our children by borrowing from future generations. The U.S. national debt is now over $16 trillion. That means over $50,000 in debt for each man, woman and child in the United States. A year ago, the national debt was $14.3 trillion. Despite pledges to control spending, Washington adds billions to the national debt every single day. In just one year, our national debt has grown by $1.7 trillion or 11.8%. We cannot continue to support federal funding for programs and initiatives that are not federal responsibilities as dictated by our Constitution. Otherwise, we will never get our fiscal house in order.

Sincerely,

TOM A. COBURN, M.D.,
U.S. Senator.

INTERNAL REVENUE SERVICE AND 501(c)(4) ORGANIZATIONS

Mr. LEVIN. Mr. President, our representative form of government is based on the premise that citizens who vote in our elections are informed about who is seeking to influence elections. Sadly, we continue to see that information obscured by organizations who are misusing our tax code for political gain.

As we have discussed on this floor many times, the Supreme Court opened our campaign finance system to a torrent of unlimited and secret special-interest money in Citizens United. But even the Supreme Court acknowledged in Citizens United that disclosure is important:

"[P]rompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters. Shareholders can determine whether their corporation's political speech advances the corporation's interest in making profits, and citizens can see whether elected officials are in the pocket of so-called moneyed interests." Citizens United v. FEC, 130 S. Ct. 876, 916 (2010).

Yet, according to the Center for Responsive Politics, as of September 13, spending on political advertising by groups that either do not disclose, or only partially disclose their donors, has increased four-fold, from $32 million in the 2008 election to more than $135 million at the same point in the current election.

These groups are exploiting our tax code by organizing as tax-exempt "social welfare" groups and then spending tens of millions of undisclosed dollars on political campaigns.

The Internal Revenue Service (IRS)—the organization that grants these groups their tax-exempt status in the first place—should be protecting the voting public from these groups that pretend to be acting in the social welfare but are instead engaging in partisan politics.

The law in this area is clear. 26 U.S.C. §501(c)(4) states that "Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes" are exempt from taxation. The word "exclusively" is in the tax code for a reason. Congress didn't say "partially," or "primarily." We said that these groups had to be operated "exclusively" for the promotion of social welfare. The IRS, in writing the implementing regulations to the statute, said that, "An organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare." [emphasis added] By substituting the word "primarily" in the regulation with the word "exclusively" in the statute, the IRS essentially redefined what Congress required a social welfare organization to be.

Mr. President, I asked the IRS for an explanation as to why they have not

responded to the increasing growth of groups that parade as social welfare groups but are obviously organized for politically partisan purposes. In my letters, I asked the IRS how they interpret the explicit language in the tax code which says that entities must operate "exclusively" for the promotion of social welfare, to allow any tax exempt partisan political activity by 501(c)(4) organizations. Their response? That the regulation has been in place for over 50 years. That is not an excuse if new abuses require a review of an IRS regulation.

I also asked the IRS if they are fulfilling their enforcement function by notifying these groups that are obviously engaged primarily in political activity that they are violation of the law. Again, the IRS response was inadequate. During the past 6 months, according to the IRS letter, no notices of proposed or final revocation have been issued to section 501(c)(4) organizations. None. So even under the "primarily" test the IRS is not enforcing the law in the face of the avalanche of evidence that our laws are being flouted.

The law is clear. Even the watered-down IRS regulation is clear. It is time that the IRS enforces the law, or at least its own regulation.

I ask unanimous consent that the correspondence with the IRS be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE, COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS,
Washington, DC, July 27, 2012.

Hon. DOUGLAS H. SHULMAN,
Commissioner, Internal Revenue Service, Washington, DC.

DEAR COMMISSIONER SHULMAN: I am writing to express my concern about how the IRS interprets the law regarding the extent to which 501(c)(4) "social welfare" organizations can engage in partisan political activity. The July 13, 2012 response by Lois G. Lerner, Director of Exempt Organizations, to my June 13, 2012 letter was unsatisfactory.

In the response, Ms. Lerner stated that "The IRS takes steps to continually inform organizations of their responsibilities as social welfare organization to help them avoid jeopardizing their tax-exempt status," and "*actively educates* section 501(c)(4) organizations at multiple states in their development about their responsibilities under the tax law." [Emphasis added.]

Her discussion does not describe an IRS initiative to "continually inform" or "actively educate." Rather, it shows the IRS is passively making some information available once a 501(c)(4) entity is already in existence. Further, her discussion of the explanatory materials available to the public, and the materials themselves, are confusing. This leads to a predictable result: organizations are using Internal Revenue Code Section 501(c)(4) to gain tax exempt status while engaging in partisan political campaigns. There is an absurd tangle of vague and contradictory materials that the IRS provides. Making the problem worse is that the IRS knows there is a problem because of the public nature of the activity, but has failed to address it.

First, the law.

26 U.S.C. §501(c)(4) states that "Civic leagues or organizations not organized for profit but operated *exclusively for the promotion of social welfare*, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes" are exempt from taxation. [Emphasis added.] Merriam-Webster defines "exclusively" as "single, sole; whole; undivided." Therefore, it would appear that the law prevents entities that organize under Section 501(c)(4)from any activity that is not operated exclusively for the promotion of social welfare or an association of employees.

Consistent with the law is a 1997 letter from the IRS denying tax-exempt status to a group called the National Policy Forum. The letter indicates that the IRS based its denial on the fact that the organization was engaged in partisan political activity, stating that "partisan political activity does not promote social welfare as defined in section 501(c)(4)," and that the applicant "benefit[s] select individuals or groups, instead of the community as a whole.

One part of Internal Revenue Service Publication 557 in its guidance states, consistent with the law, that:

"If your organization is not organized for profit and will be operated *only* to promote social welfare to benefit the community, you should file Form 1024 to apply for recognition of exemption from federal income tax under section 501(c)(4)." [Emphasis added]

Another part of Internal Revenue Service Publication 557 starts off by agreeing with the law and states, "Promoting social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office." The IRS is accurately and clearly stating, in some places at least, that "social welfare" advocacy does not include campaigning for or against a candidate or candidates.

So far, so good—until that same Publication 557 states: "However, if you submit proof that your organization is organized exclusively to promote social welfare, it can obtain an exemption [from taxes] even if it participates legally in some political activity on behalf of or in opposition to candidates for public office."

That language seems inconsistent with the other referenced parts of Publication 557 (as well as being inconsistent with law and precedent), unless it means that the exemption isn't available for the political activity portion funded by 501(c)(4) receipts.

Further, an IRS regulation that interprets Section 501(c)(4) states that, "An organization is operated exclusively for the promotion of social welfare if it is *primarily engaged* in promoting in some way the common good and general welfare of the people of the community." [Emphasis added.]

So the IRS regulation says the law's requirement of "exclusively" really means "primarily," something very different from "exclusively."

The IRS webpage cites an internal training article which states:

"'[S]ocial welfare' is inherently an abstruse concept that continues to defy precise definition. Careful *case-by-case analyses* and close judgments are still required." [Emphasis added.]

Fair enough.

In its Compliance Guide for Tax-Exempt Organizations, the IRS gives direction regarding how to make a case-by-case evaluation whether a communication is political. That Guide says that the following factors indicate that an advocacy communication is political campaign activity:

The communication identifies a candidate for public office;

The timing of the communication coincides with an electoral campaign;

The communication targets voters in a particular election;

The communication identifies the candidate's position on the public policy issue that is the subject of the communication;

The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications; and

The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue.

The guide further lays out the factors that indicate when an advocacy communication is not political campaign activity:

The absence of anyone or more of the factors listed above;

The communication identifies specific legislation, or a specific event outside the control of the organization, that the organization hopes to influence;

The timing of the communication coincides with a specific event outside the control of the organization that the organization hopes to influence, such as a legislative vote or other major legislative action (for example, a hearing before a legislative committee on the issue that is the subject of the communication);

The communication identifies the candidate solely as a government official who is in a position to act on the public policy issue in connection with the specific event (such as a legislator who is eligible to vote on the legislation); and

The communication identifies the candidate solely in the list of key or principal sponsors of the legislation that is the subject of the communication.

It is clear from the application of those factors that what is going on in the U.S. with certain 501(c)(4) organizations in their television advertisements are political campaign activities.

Below are two transcripts of advertisements that were put on television by 501(c)(4) organizations. As you can see, the subject of Advertisement #1 is a Democratic Senator, and the subject of Advertisement #2 is a Republican Senator. This is not a partisan issue.

Television Advertisement #1:

"It's time to play: Who is the biggest supporter of the Obama agenda in Ohio. It's Sherrod Brown. Brown backed Obama's agenda a whopping 95 percent of the time. He voted for budget busting ObamaCare that adds $700 billion to the deficit. For Obama's $453 billion tax increase. And even supported cap-and-trade which could have cost Ohio over 100,000 jobs. Tell Sherrod Brown, for real job growth, stop spending and cut the debt. Support the new majority agenda at newmajorityagenda.org."

Television Advertisement #2:

"Before Wall Street gave him $208,000 in campaign cash. . . . Before he voted to let bank CEOs take millions in taxpayer funded bonuses. . . . Dean Heller was a stockbroker. No wonder he voted against Wall Street reform; against holding the big banks accountable. Heller even voted to risk your Social Security here, in the stock market. Dean Heller: he votes like he still works for Wall Street, and that's bad for you."

Those ads, and so many like them, clearly fit the factors the IRS has laid out in its guide for what constitutes a political campaign activity. The advertisements make no pretense at nonpartisanship; they are blatantly and aggressively partisan communications.

Entities that file under Section 501(c)(4) of the Internal Revenue Code and take advantage of its tax exemption benefits should have to make a choice: either lose their exempt status (and pay taxes) or eliminate the partisan political activity.

The IRS needs to immediately review the activities of 501(c)(4) entities engaging in running partisan political ads or giving funds to Section 527 organizations that run such ads. The IRS needs to advise 501(c)(4) entities of the law in this area and the factors it will look at in reviewing 501(c)(4) status and tax exemption issues.

Please provide me with the following information no later than August 10, 2012:

1. How can the IRS interpret the explicit language in 26 U.S.C. 501(c)(4), which provides that ??5107?(c)(4) entities must operate "exclusively" for the promotion of social welfare, to allow any tax exempt partisan political activity by 501(c)(4) organizations?

2. Since partisan political activity does not meet the IRS definition of "promoting social welfare," how can an organization that participates in any partisan political activity be"organized exclusively to promote social welfare?"

3. The Exempt Organizations 2011 Annual Report and 2012 Work Plan states: "As in any election year, EO will continue its work to enforce the rules relating to political campaigns and campaign expenditures. In FY 2012, EO will combine what it has learned from past projects on political activities with new information gleaned from the redesigned Form 990 to focus its examination resources on serious allegations of impermissible political intervention."

a. Typically, how long after a complaint to the IRS does a compliance review begin?

b. What approximate time does it take to review the complaint?

c. How many persons are involved in the enforcement of the 501(c)(4) rules?

4. The Exempt Organizations 2011 Annual Report and 2012 Work Plan states that 501 (c)(4) organizations "can declare themselves tax-exempt without seeking a determination from the IRS. EO will review organizations to ensure that thel have classified themselvss correctly and that they are complying with applicable rules."

a. Why does the IRS allow 501(c)(4) organizations to self-declare?

b. When an organization "self declares" as a 501(c)(4) organization, how does the IRS get notice and how long does it take the IRS to conduct the review to ensure that that organization has classified itself correctly?

5. The IRS Compliance Guide for Tax-Exempt Organizations states:

"When a 501(c)(4), (5) or (6) organization's communication explicitly advocates the election or defeat of an individual to public office, the communication is considered political campaign activity. A tax-exempt organization that makes expenditures for political campaign activities shall be subject to tax in an amount equal to its net investment income for the year or the aggreate amount expended on political campaign activities during the year, whichever is less."

a. How does the IRS keep track of these explicit communications and ensure that the organization pays this tax?

b. What is the reason for the requirement that the tax will be based on "whichever is less" between its net investment income for the year or the aggregate amount expended on political campaign activities?

c. What tax would an organization have to pay if it spends all of its income on political advertising (therefore it has NO net investment income)?

6. Ms. Lerner's letter quotes the IRS webpage on Social Welfare Organizations:

"The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office. However, a section 501(c)(4) social welfare organization may engage in *some* political activities, so long as that is not its primary activity. However, any expenditure it makes for political activities may be subject to tax under section 527(f)?" [Emphasis added]

a. What is the statutory basis of the language that allowe 501(c)(4) organizations to engage in *some* political activities?

b. How does the IRS keep track of these political activities and ensure that the organization pays the tax under section 527(f)?

7. In her July 13 letter, Ms. Lerner states that the IRS also addresses the issue of political activities in the Forms 990 and 990-EZ.

Are Forms 990 and 990-EZ made public? If so, where can they be accessed?

8. Internal Revenue Service Publication 557 states that, if a 501(o)(4) entity can "submit proof that [the] organization is organized exclusively to promote social welfare, it can obtain an exemption even if it participatee legally in some political activity on behalf of or in opposition to candidates for public office."

Have the following 501(c)(4) organizations a) applied for; and if so, b) received the described exemption for political activity from the IRS?

a. Crossroads Grassroots Policy Strategies
b. Priorities U.S.A.
c. Americans Elect
d. American Action Network
e. Americans for Prosperity
f. American Future Fund
g. Americans for Tax Reform
h. 60 Plus Association
i. Patriot Majority USA
j. Club for Growth
k. Citizens for a Working America Inc.
l. Susan B. Anthony List

9. Have you reminded 501(c)(4)s which publicly seem to be operating in the partisan political arena as to the factors you will consider in determining whether they are engaging in partisan political activity? If not, why not?

I have enclosed a copy of Ms. Lerner's letter. If you have any questions, plaase contact me, or have your staff contact Kaye Meier of my staff at kaye_meier@levin.senate.gov or 202/224-9110. Again, it is urgent that I receive your answers by August 10, 2012.

Sincerely,

CARL LEVIN,
Chairman, Permanent Subcommittee on Investigations.

DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
Washington, DC., August 24, 2012.

Hon. CARL LEVIN,
Chairman, Permanent Subcommittee on Investigations, U.S. Senate, Washington, DC.

DEAR SENATOR LEVIN: I am responding to your letter to Commissioner Shulman dated July 27, 2012, requesting additional information about section 501(c)(4) organizations. This response supplements the previous responses dated June 4, 2012 and July 13, 2012, and addresses the additional questions raised in your recent letter.

Question 1. How can the IRS interpret the explicit language in 26 U.S.C. §501(c)(4), which provides that 510(c)(4) entities must operate "exclusively" for the promotion of social welfare, to allow any tax exempt partisan political activity by 501(c)(4) organizations?

We note that the current regulation has been in place for over 50 years. Moreover, unlike Internal Revenue Code section 501(c)(3), which specifically provides that organizations may "not participate in, or intervene in . . . any political campaign on behalf of (or in opposition to) any candidate for public office."), section 501(c)(4) does not contain a specific rule or limitation on political campaign intervention by social welfare organizations.

Question 2. Since partisan political activity does not meet the IRS definition of "promoting social welfare," how can an organization that participates in any partisan political activity be "organized exclusively to promote social welfare?"

As stated above, longstanding Treasury Regulations have interpreted "exclusively" as used in section 501(c)(4) to mean primarily. Treasury Regulation §1.501(c)(4)-1(a)(2)(i), promulgated in 1959, provides: "An organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting the common good and general welfare of the people of the community." Applying this Treasury Regulation, Revenue Ruling 81-95, 1981-1 C.B. 332, concluded that "an organization may carry on lawful political activities and remain exempt under section 501(c)(4) as long as it is primarily engaged in activities that promote social welfare."

Question 3. The Exempt Organizations 2011 Annual Report and 2012 Work Plan states: "As in any election year, EO will continue its work to enforce the rules relating to political campaigns and campaign expenditures. In FY 2012, EO will combine what it has learned from past projects on political activities with new information gleaned from the redesigned Form 990 to focus its examination resources on serious allegations of impermissible political intervention."

a. Typically, how long after a complaint to the IRS does a compliance review begin?

b. What approximate time does it take to review the complaint?

The IRS routinely receives examination referrals from a variety of sources including the public, media, Members of Congress or their staff, and has a longstanding process for handling referrals so that they receive an impartial, independent review from career employees. When the IRS receives a referral about a particular organization, it is promptly forwarded to the Classification unit of the Exempt Organizations (EO) Examination office in Dallas, Texas. Pursuant to IRM 4.75.5.4(1), within 30 days of receiving the referral, the Classification staff begins evaluating whether the referral has examination potential, should be considered in a future year, needs additional information to make a decision, or falls within the categories of matters that are referred for EO Referral Committee review. Although IRM 4.75.5.4(1) sets a goal of 90 days to complete reviews of referrals, the time it takes to fully review a particular referral varies, depending on such factors as the issues involved and the availability of relevant information (i.e. organization's Forms 990, external sources such as media reports, internet searches, etc.).

In those cases in which the IRS needs additional information about the subject of a referral that is not readily available, such as its Form 990 that has not been filed yet for the tax year at issue, Classification may suspend classifying the referral and places it in the follow-up category until the additional information is available. Once the additional information is received, reviewed, and supports the referral being classified as having examination potential, the referral is sent to unassigned inventory, until a revenue agent with the appropriate level of experience for the issues involved in the matter is available to conduct an examination.

Once in inventory, there are numerous factors that can affect how long it takes to

complete the examination process. While it is difficult to predict how long any single examination will take, for cases closed in FY 2011, the average time it took to close a case was 210 days.

c. How many persons are involved in the enforcement of the 501(c)(4) rules?

The Exempt Organizations (EO) function is responsible for the enforcement of section 501(c)(4) statutory rules and regulations as well as those applicable to all other types of tax-exempt organizations.

For FY 2011, the total number of EO staff was 889. Other than the 14 employees in the Director's office, the three EO offices are staffed as follows:

Rulings and Agreements (R&A), which includes EO Determinations and EO Technical, ensures organizations meet legal requirements during the application or private letter ruling process, and through guidance. In FY 2011, R&A had 332 employees.

EO Examinations (Exam) is comprised of various units, including the Classification unit, the EO Compliance Unit, and the Review of Operations unit. Exam develops processes to identify areas of noncompliance, develops corrective strategies, and coordinates with other EO functions to ensure compliance, so that organizations maintain their exempt status. In FY 2011, Exam had 531 employees.

EO Customer Education and Outreach (CE&O) coordinates, assists and supports the development of educational materials and outreach efforts for organizations to understand their responsibilities under the tax law. In FY 2011, CE&O had a staff of 12 employees.

The employees in these functions are responsible for the regulation of all types of tax-exempt organizations, including section 501(c)(4) organizations.

Question 4. The Exempt Organizations 2011 Annual Report and 2012 Work Plan states that 501(c)(4) organizations "can declare themselves tax-exempt without seeking a determination from the IRS. EO will review organizations to ensure that they have classified themselves correctly and that they are complying with applicable rules."

a. Why does the IRS allow 501(c)(4) organizations to self-declare?

The Internal Revenue Code expressly provides that certain tax-exempt organizations must give notice to the IRS, by filing an application for exemption, in order to claim tax-exempt status. The Internal Revenue Code does not require an organization to provide notice to the IRS to be treated as described in section 501(c)(4). By contrast, for example, Section 508 generally requires an organization to provide notice to the IRS before it will be treated as described in section 501(c)(3).

b. When an organization "self declares" as a 501(c)(4) organization, how does the IRS get notice and how long does it take the IRS to conduct the review to ensure that the organization has classified itself correctly?

As with other tax exempt organizations, organizations claiming to be tax-exempt under section 501(c)(4) generally are required to file a Form 990 on an annual basis.

The Exempt Organizations office of the IRS is responsible for the compliance of over one million organizations with diverse goals and purposes. In order to ensure the highest degree of compliance with tax law while working with limited resources, EO maintains a robust and multi-faceted post-filing compliance program that conducts reviews of exempt organizations in various ways, such as:

Review of Operations (ROO) reviews: Because a ROO review is not an audit, the ROO carries out its post-filing compliance work without contacting taxpayers. Instead, the ROO looks at an organization's Form 990, website, and other publicly available information to see what it is doing and whether it continues to be organized and operated for tax-exempt purposes. If it appears from a ROO review that an organization may not be compliant, the organization is referred for examination.

Compliance checks: In a compliance check, IRS contacts taxpayers by letter when we discover an apparent error on a taxpayer's return or wish to obtain further information or clarification. A compliance check is an efficient and effective way to maintain a compliance presence without an examination. We also use compliance check questionnaires to study specific parts of the tax-exempt community or specific cross-sector practices.

Examinations: Examinations, also known as audits, are authorized under Section 7602 of the Code. For exempt organizations, an examination determines an organization's continued qualification for tax-exempt status. We conduct two different types of examinations: correspondence and field.

Because the IRS cannot review every existing organization in every tax year, we use the review techniques described above to maximize our coverage of the tax exempt sector in both our general program work and our project work. The project work, which results from our strategic planning process, is designed to focus on specific areas affecting the EO sector and to direct more effective use of our resources in the effort to strengthen compliance and improve tax administration. Described in the EO 2012 Work Plan, the sections 501(c)(4), (5) and (6) Self-Declarers is one such project. This project focuses on organizations that hold themselves out as being tax-exempt rather than seeking IRS recognition of their exempt status.

Question 5. The IRS Compliance Guide for Tax-Exempt Organizations states:

"When a 501(c)(4), (5) or (6) organization's communication explicitly advocates the election or defeat of an individual to public office, the communication is considered political campaign activity. A tax-exempt organization that makes expenditures for political campaign activities shall be subject to tax in an amount equal to its net investment income for the year or the aggregate amount expended on political campaign activities during the year, whichever is less."

a. How does the IRS keep track of these explicit communications and ensure that the organization pays this tax?

Tax-exempt organizations filing Forms 990 or 990-EZ are required to report political activities. Organizations that engage in direct or indirect political campaign activities are also required to complete Schedule C of Form 990 or 990-EZ. Organizations subject to tax under section 527(f) are required to comply with the statutory reporting and payment rules. The IRS also receives referrals regarding such activities from a variety of sources that are handled through an impartial, independent review. See the response to question 3 for the description on the IRS referral process.

b. What is the reason for the requirement that the tax will be based on "whichever is less" between its net investment income for the year or the aggregate amount expended on political campaign activities?

The statute under section 527(f) explicitly states that a 501(c) organization is subject to its tax based on "an amount equal to the lesser of—(A) the net investment income of such organization for the taxable year, or (B) the aggregate amount expended during the taxable year for such an exempt function."

c. What tax would an organization have to pay if it spends all its income on political advertising (therefore it has NO net investment income)?

Under the statute cited above, an organization that otherwise meets the requirements of section 501(c)(4) social welfare tax-exempt status, which spends all its income on political advertising and has no net investment income would not owe any tax under section 527(f). It may however, through such spending (and depending on the otherwise applicable facts of the case), no longer qualify as an organization that is tax-exempt under section 501(c)(4).

Question 6. Ms. Lerner's letter quotes the IRS webpage on Social Welfare Organizations:

"The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office. However, a section 501(c)(4) social welfare organization may engage in *some* political activities, so long as that is not its primary activity. However, any expenditure it makes for political activities may be subject to tax under section 527(f). [Emphasis added.]

a. What is the statutory basis of the language that allows 501(c)(4) organizations to engage in some political activities?

Please see responses to questions 1 and 2, above.

b. How does the IRS keep track of these political activities and ensure that the organization pays the tax under section 527(f)?

Section 501(c)(4) organizations filing Forms 990 or 990-EZ are required to report political activities. Organizations that engage in direct or indirect political campaign activities are also required to complete Schedule C of Form 990 or 990-EZ. Organizations subject to tax under section 527(f) are required to comply with the statutory reporting and payment rules. The IRS also receives referrals regarding such activities from a variety of sources that are handled through an impartial, independent review. See the response to question 3 for the description on the IRS referral process.

Question 7. In her July 13 letter, Ms. Lerner states that the IRS also addresses the issue of political activities in the Forms 990 and 990-EZ.

Are Forms 990 and 990-EZ made public? If so, where can they be accessed?

Yes, Forms 990 and 990-EZ are made public. Tax-exempt organizations are required to make their returns widely available for public inspection. Organizations are required to allow the public to inspect the Forms 990, 990-EZ, 990-N, and 990-PF they have filed with the IRS for their three most recent tax years. Exempt organizations also are required to provide copies of these information returns when requested, or make them available on the Internet. The annual information returns also are available from the IRS, as well as from third-party sources that post them on their websites.

Question 8. Internal Revenue Services Publication 557 states that, if a 501(c)(4) entity can "submit proof that [the] organization is organized exclusively to promote social welfare, it can obtain an exemption even if it participates legally in some political activity on behalf of or in opposition to candidates for public office."

Have the following 501(c)(4) organizations a) applied for; and if so, b) received the described exemption for political activity from the IRS?

a. Crossroads Grassroots Policy Strategies
b. Priorities U.S.A.
c. Americans Elect
d. American Action Network
e. Americans for Prosperity
f. American Future Fund
g. Americans for Tax Reform
h. 60 Plus Association
i. Patriot Majority USA

j. Club for Growth
k. Citizens for a Working America Inc.
l. Susan B. Anthony List

Initially, to clarify, section 501(c)(4) organizations do not receive "exemption for political activity." Rather, organizations are recognized under section 501 (c)(4) as tax-exempt when they demonstrate that they plan to be primarily engaged in activities that promote social welfare. If they meet that standard, the fact that they engage in other activities that do not promote social welfare, such as political campaign intervention, will not preclude recognition of their tax-exempt status. Whether an organization meets the statutory and regulatory requirements of section 501 (c)(4) depends upon all of the facts and circumstances, and no one factor is determinative.

As discussed in our response to you dated June 4, 2012, section 6103 of the Internal Revenue Code prohibits the disclosure of information about specific taxpayers unless the disclosure is authorized by some provision in the Internal Revenue Code. The IRS cannot legally disclose whether the organizations on your list have applied for tax exemption (unless and until such application is approved). Section 61 04(a) of the Code permits public disclosure of an application for recognition of tax exempt status only after the organization has been recognized as exempt.

Searching the names exactly as provided, our records show that the following organizations have been recognized by the IRS as tax exempt under section 501(c)(4).

Americans For Prosperity
American Future Fund
60 Plus Association
Patriot Majority USA
Citizens for a Working America Inc.

With respect to the other organizations for which you inquired, we will be able to determine if they have been recognized by the IRS as tax-exempt with additional information, such as an address or EIN, that specifically identifies the organization. Organizations often have similar names or maintain multiple chapters with variations of the same name. With respect to many of the other organizations you identified, numerous organizations in our records have very similar names. IRS staff can work with your staff in identifying the specific organizations for which you are interested. IRS staff is also available to assist your staff to navigate searchable databases on the IRS public website. As previously discussed, information on organizations with applications currently pending legally cannot be provided unless and until the application is approved. Please note that organizations that hold themselves out as tax-exempt without IRS recognition and organizations that have pending applications for recognition are required to file annual returns/notices.

Question 9. Have you reminded 501(c)(4)s which publicly seem to be operating in the partisan political arena as to the factors you will consider in determining whether they are engaging in partisan political activity? If not, why not?

As described in the July 13, 2012 response, the IRS takes several steps to continually educate organizations of the requirements under the tax law and inform them of their responsibilities to avoid jeopardizing their tax-exempt status. We believe these steps ensure the IRS administers the nation's tax laws in a fair and impartial manner.

I hope this information is helpful. If you have questions, please contact me or have your staff contact Catherine Barre at (202) 622-3720.

Sincerely,

STEVEN T. MILLER,
Deputy Commissioner for Services and Enforcement.

U.S. SENATE, COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS,
Washington, DC, August 31, 2012.

Hon. DOUGLAS H. SHULMAN,
Commissioner, Internal Revenue Service, Washington, DC.

DEAR COMMISSIONER SHULMAN: Thank you for the August 24, 2012 response by Steven T. Miller, Deputy Commissioner for Services and Enforcement, to my July 27, 2012 letter.

I find it unacceptable that the IRS appears to be passively standing by while organizations that hold themselves out to be "social welfare" organizations clearly ignore the tax code with no apparent consequences.

Frankly, the response that "long standing Treasury Regulations have interpreted 'exclusively'" as used in section 501(c)(4) to mean "primarily" and the argument that "section 501(c)(4) does not contain a specific rule or limitation on political campaign intervention by social welfare organizations" are not persuasive. The word "exclusively" as written in the statute is clear and speaks for itself. Its clarity is not diminished because the section does not mimic words in another section, which words are also clear.

As a follow-up to your letter, I would like to know the following:

1. If the IRS determines that an organization that has been given 501(c)(4) status has not engaged primarily in social welfare activities, but instead was primarily engaged in activity within the scope of section 527, what are the consequences for the organization? What are the consequences for such an organization having not filed timely Forms 8871 and 8872? Must they file such forms after the fact? What taxes would be due? Will contributions that already have been made to that organization be taxable to that organization?

2. How many 501(c)(4) organizations which appear to be primarily engaged in political activity have been notified by the IRS within the last 6 months that they may be in violation of the law?

It is urgent that I receive your answers promptly, and no later than September 10, please.

Sincerely,

CARL LEVIN,
Chairman, Permanent Subcommittee on Investigations.

DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
Washington, D.C., September 14, 2012.

Hon. CARL LEVIN,
Chairman, Permanent Subcommittee on Investigations, U.S. Senate, Washington, D.C.

DEAR SENATOR LEVIN: I am responding to your letter to Commissionsr Shulman dated August 31,2012, requesting additional information about section 501(C)(4) organizations. This response supplements the previous responses dated June 4, 2012, July 13, 2012 and August 24, 2012, and addresses the additional questions raised in your recent letter.

Question 1. If the IRS determines that an organization that has been given 501(c)(4) status has not engaged primarily in social welfare activities, but instead was primarily engaged in activity within the scope of section 527, what are the consequences for the organization? What are the consequences for such an organization having not filed timely Forms 8871 and 8872? Must they file such forms after the fact? What taxes will be due? Will contributions that already have been made to that organization be taxable to that organization?

If an IRS audit or examination concludes that a section 501(c)(4) organization does not engage primarily in social welfare activities, the IRS may revoke the tax-exempt status of that organization. If the tax-exempt status is revoked, the organization is a taxable entity effective, in general, as of the first day of the tax year under examination. The organization is required to file Federal income tax returns, generally a Form 1120, U.S. Corporation Income Tax. The tax treatment of the organization's contributions and other income is determined under normal rules of Subtitle A.

Whether an organization no longer qualifies to be tax-exempt under section 501(c)(4) does not determine whether it is a political organization under section 527. Section 527(e)(1) defines a political organization as a party, committee, or other organization that is organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures for an exempt function (as defined in 527(e)(2)). If an organization meets this definition, then its tax status is determined under section 527.

Subject to certain exceptions, to be tax-exempt under section 527, a political organization is required to give notice electronically to the Service. The required notice form is Form 8871, Political Organization Notice of Section 527 Status. To be tax-exempt, the political organization must file Form 8871 within 24 hours after the date on which it was established. If the organization has a material change in any of the information reported on Form 8871, it must file an amended Form 8871 within 30 days of the material change to maintain its tax-exempt status. When the organization terminates its existence, it must file a final Form 8871 within 30 days of termination.

An organization that is required to file Form 8871, but fails to file on a timely basis, will not be treated as a tax-exempt political organization for any period before the date Form 8871 is filed. The taxable income of the organization for any period in which it failed to file Form 8871 (or, in the case of a material change, the period beginning with the date of the material change and ending on the date it satisfies the notice requirement) is subject to tax and must be reported on the annual income tax return Form 1120-POL. The tax is computed by multiplying the organization's taxable income by the highest federal corporate tax rate, currently 35 percent. For purposes of computing its taxable income for any period, the organization includes its exempt function income (including contributions received, membership dues, and political fundraising receipts), minus any deductions directly connected with the production of that income, but may not deduct its exempt function expenditures for the period.

Generally, tax-exempt political organizations that have, or expect to have, contributions or expenditures exceeding $25,000 during a calendar year are required to file Form 8872, Political Organization Report of Contributions and Expenditures, beginning with the first month or quarter during the calendar year in which they accept contributions or make expenditures. A tax-exempt political organization subject to the periodic reporting requirement may choose to file Form 8872 on a monthly basis or on a quarterly/semiannual basis, but it must file on the same basis for the entire calendar year. In addition, tax-exempt political organizations that make contributions or expenditures with respect to an election for federal office as defined in 527(j)(6) may be required to file pre-election reports for that election.

A tax-exempt political organization that does not timely file the required Form 8872, or that fails to include the information required on the Form 8872, must pay an amount calculated by multiplying the amount of contributions and expenditures that are not disclosed by the highest federal corporate tax rate, currently 35 percent.

Question 2. How many 501(c)(4) organizations which appear to be primarily engaged in political activity have been notified by the IRS within the last 6 months that they may be in violation of the law?

When the IRS examines a section 501(c)(4) organization, the objective of the audit is to determine whether that organization qualifies for tax-exempt-status as a social welfare organization. As discussed in our June 4, 2012 response to your March 30, 2012 letter, that determination looks to whether the organization is primarily engaged in activities that promote social welfare, not organized or operated for profit, and the net earnings of which do not inure to the benefit of any private shareholder or individual. The examination looks at the activities engaged in during the complete taxable year at issue. Although the promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office, a section 501(c)(4) social welfare organization can engage in political activities as long as it is primarily engaged in activities that promote social welfare.

If the IRS believes that an organization does not meet the requirements under section 501(c)(4), the IRS notifies the organization of its intention to revoke the organization's exempt status, explaining the law and reasons for the proposed revocation. The organization has 30 days from the date of that letter to protest or appeal the determination before a final revocation letter is issued to the organization.

During the past six months, no notices of proposed or final revocation were issued to section 501(c)(4) organizations. Note that the IRS currently has more than 70 ongoing examinations of section 501(c)(4) organizations (this includes examinations for a variety of issues, some of which include whether the organization is primarily engaged in activities that promote social welfare). It is also important to note that the Service also maintains a determination process to review the operations of an organization to determine whether it should be recognized as tax exempt. In this area, we also review compliance with the legal requirements, including whether an organization is primary engaged in activities that promote social welfare. There are currently more than 1,600 organizations in the determination process seeking recognition as a section 501(c)(4) organization. The level of political activity is an issue in a number of these determination cases.

I hope this information is helpful. If you have questions, please contact me or have your staff contact Catherine Barre.

Sincerely,

STEVEN T. MILLER,
Deputy Commissioner for Services and Enforcement.

TRIBUTE TO JUDGE BRUCE D. BLACK

Mr. BINGAMAN. Mr. President, I want to recognize the distinguished service of my friend Bruce Black, the Chief Judge for the U.S. District Court for the District of New Mexico.

Bruce has chosen to leave the Federal bench at the end of this month. His decision to retire is a loss for our State and for the Nation. But he has served our Nation with great distinction and ability.

Bruce was appointed to be a district court judge by President Clinton in 1995. During the 17 years of his service in that position he has exemplified the integrity and high standards of fairness and impartiality which we strive for in our Federal judiciary.

Throughout his years as a Federal judge he has never lost sight of the real-life effects of the court's decisions on the lives of those who come before the court.

Bruce and his wife Mary have exciting plans for the next chapter of their lives. They are close friends to my wife Anne, and me. We wish them the very best in future years.

TRIBUTE TO JONA OLSSON

Mr. BINGAMAN. Mr. President, today I wish to recognize Jona Olsson, fire chief of the Latir Volunteer Fire Department located near Questa, NM. Olsson was recently honored as the 2012 Volunteer Fire Chief of the Year by Fire Chief for her tireless work at the Latir Volunteer Fire Department and her efforts to increase diversity in the local fire service. She was honored on August 3, 2012, during the opening session of the International Association of Fire Chiefs' Fire-Rescue International Conference and Exhibition in Denver, CO.

After moving to New Mexico in 1999, Olsson was recruited to join the Latir Volunteer Fire Department. She quickly became integrated in the fire department, rising through the ranks, serving as a training officer, deputy chief, and eventually fire and EMS chief for the department in 2006. Olsson has facilitated training to individual departments and fire conferences across North America, as well as the United Kingdom.

During tough economic times, Olsson and other volunteers have continued to expand the fire department, increasing training hours and the number of qualified volunteers. All 18 of Latir's volunteer firefighters are structure trained, 13 are qualified with wildland Red Cards, and nine have EMS licenses. The Latir Volunteer Fire Department also has an active junior firefighter program. In addition, the fire department recently built a new addition to the fire station and purchased another fire engine.

I ask that my colleagues join me in honoring Jona Olsson and the excellent work of the Latir Volunteer Fire Department. The dedication of Olsson and the community volunteers helps ensure the delivery of vital services to New Mexico residents.

HONORING OUR ARMED FORCES

Mr. LAUTENBERG. Mr. President, over 2 years have passed since I last included the names of our troops who have lost their lives serving in support of operations in Iraq and Afghanistan. I wish to honor their service and sacrifice by including their names in the CONGRESSIONAL RECORD.

Since I last included the names of our fallen troops on July 13, 2010, the Pentagon announced the deaths of 1,020 troops in Iraq and in Operation Enduring Freedom, which includes Afghanistan. They will not be forgotten, and today I ask unanimous consent that their names be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CW2 Jose L. Montenegro Jr., of Houston, TX; CW2 Thalia S. Ramirez, of San Antonio, TX; PFC Shane W. Cantu, of Corunna, MI; LCpl Alec R. Terwiske, of Dubois, IN; SSG Jeremie S. Border, of Mesquite, TX; SSG Jonathan P. Schmidt, of Petersburg, VA; SPC Kyle R. Rookey, of Oswego, NY; SSG Jessica M. Wing, of Alexandria, VA; SGT Christopher J. Birdwell, of Windsor, CO; SPC Mabry J. Anders, of Baker City, OR; PFC Patricia L. Horne, of Greenwood, MS; SGT Louis R. Torres, of Oberlin, OH; SGT David V. Williams, of Frederick, MD; SFC Coater B. Debose, of State Line, MS; SGT Richard A. Essex, of Kelseyville, CA; SGT Luis A. Oliver Galbreath, of San Juan, PR; SO2 David J. Warsen, of Kentwood, MI; SO1 Patrick D. Feeks, of Edgewater, MD; PO1 Sean P. Carson, of Des Moines, WA; CW2 Suresh N. A. Krause, of Cathedral City, CA.

CW3 Brian D. Hornsby, of Melbourne, FL; PO1 Darrel L. Enos, of Colorado Springs, CO; SSgt Gregory T. Copes, of Lynch Station, VA; SPC James A. Justice, of Grover, NC; PFC Michael R. Demarsico II, of North Adams, MA; SSG Eric S. Holman, of Evans City, PA; PFC Andrew J. Keller, of Tigard, OR; SSgt Scott E. Dickinson, of San Diego, CA; Cpl Richard A. Rivera Jr., of Ventura, CA; LCpl Gregory T. Buckley, of Oceanside, NY; SSgt Sky R. Mote, of El Dorado, CA; GySgt Ryan Jeschke, of Herndon, VA; Capt Matthew P. Mancukian, of Los Altos Hills, CA; MSgt Gregory R. Trent, of Norton, MA; MAJ Thomas E. Kennedy, of West Point, NY; CSM Kevin J. Griffin, of Laramie, WY; SPC Ethan J. Martin, of Lewiston, ID; Maj Walter D. Gray, of Conyers, GA; PO3 Clayton R. Beauchamp, of Weatherford, TX; Cpl Daniel L. Linnabary II, of Hubert, NC.

1SG Russell R. Bell, of Tyler, TX; SSG Matthew S. Sitton, of Largo, FL; 1LT Todd W. Lambka, of Fraser, MI; PFC Jesus J. Lopez, of San Bernardino, CA; SPC Kyle B. McClain, of Rochester Hills, MI; LCpl Curtis J. Duarte, of Covina, CA; GySgt Jonathan W. Gifford, of Palm Bay, FL; GySgt Daniel J. Price, of Holland, MI; 1LT Sean R. Jacobs, of Redding, CA; SGT John E. Hansen, of Austin, TX; SPC Benjamin C. Pleitez, of Turlock, CA; SFC Bobby L. Estle, of Lebanon, OH; PFC Jose Oscar Belmontes, of La Verne, CA; PFC Theodore M. Glende, of Rochester, NY; Sgt Justin M. Hansen, of Traverse City, MI; SPC Justin L. Horsley, of Palm Bay, FL; PFC Brenden N. Salazar, of Chuluota, FL; PFC Adam C. Ross, of Lyman, SC; SGT Eric E. Williams, of Murrieta, CA; PFC Julian L. Colvin, of Birmingham, AL.

SSG Richard L. Berry, of Scottsdale, AZ; PO2 Michael J. Brodsky, of Tamarac, FL; SSG Brandon R. Pepper, of York, PA; SPC Darrion T. Hicks, of Raleigh, NC; PFC Jeffrey L. Rice, of Troy, OH; PO2 Joseph P. Fitzmorris, of Ruston, LA; CPO Sean P. Sullivan, of St. Louis, MO; SPC Krystal M. Fitts, of Houston, TX; Cpl Joshua R. Ashley, of Rancho Cucamonga, CA; SGT Daniel A. Rodriguez, of Baltimore, MD; SGT Jose J. Reyes, of San Lorenzo, PR; SPC Sergio E. Perez Jr., of Crown Point, IN; SPC Nicholas A. Taylor, of Berne, IN; SGT Erik N. May, of Independence, KS; SSG Carl E. Hammar, of Lake Havasu City, AZ; SGT Michael E. Ristau, of Rockford, IL; SPC Sterling W. Wyatt, of Columbia, MO; PFC Cameron J. Stambaugh, of Spring Grove, PA; PFC

United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510–6250

August 31, 2012

The Honorable Douglas H. Shulman
Commissioner
Internal Revenue Service
10th Street and Pennsylvania Avenue, NW
Washington, D.C. 20004

Dear Commissioner Shulman:

Thank you for the August 24, 2012 response by Steven T. Miller, Deputy Commissioner for Services and Enforcement, to my July 27, 2012 letter.

I find it unacceptable that the IRS appears to be passively standing by while organizations that hold themselves out to be "social welfare" organizations clearly ignore the tax code with no apparent consequences.

Frankly, the response that "long standing Treasury Regulations have interpreted 'exclusively'" as used in section 501(c)(4) to mean "primarily" and the argument that "section 501(c)(4) does not contain a specific rule or limitation on political campaign intervention by social welfare organizations" are not persuasive. The word "exclusively" as written in the statute is clear and speaks for itself. Its clarity is not diminished because the section does not mimic words in another section, which words are also clear.

As a follow-up to your letter, I would like to know the following:

1. If the IRS determines that an organization that has been given 501(c)(4) status has not engaged primarily in social welfare activities, but instead was primarily engaged in activity within the scope of section 527, what are the consequences for the organization? What are the consequences for such an organization having not filed timely Forms 8871 and 8872? Must they file such forms after the fact? What taxes would be due? Will contributions that already have been made to that organization be taxable to that organization?

2. How many 501(c)(4) organizations which appear to be primarily engaged in political activity have been notified by the IRA within the last 6 months that they may be in violation of the law?

It is urgent that I receive your answers promptly, and no later than September 10, please.

Sincerely,

Carl Levin
Chairman
Permanent Subcommittee on Investigations

cc: Dr. Tom Coburn
Mr. Steven T. Miller

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

DEPUTY COMMISSIONER

August 24, 2012

The Honorable Carl Levin
Chairman
Permanent Subcommittee on Investigations
Senate Committee on Homeland Security
and Government Affairs
United States Senate
Washington, D.C. 20515

Dear Senator Levin:

I am responding to your letter to Commissioner Shulman dated July 27, 2012, requesting additional information about section 501(c)(4) organizations. This response supplements the previous responses dated June 4, 2012 and July 13, 2012, and addresses the additional questions raised in your recent letter.

Question 1. How can the IRS interpret the explicit language in 26 U.S.C. §501(c)(4), which provides that 510(c)(4) entities must operate "exclusively" for the promotion of social welfare, to allow any tax exempt partisan political activity by 501(c)(4) organizations?

We note that the current regulation has been in place for over 50 years. Moreover, unlike Internal Revenue Code section 501(c)(3), which specifically provides that organizations may "not participate in, or intervene in . . . any political campaign on behalf of (or in opposition to) any candidate for public office."), section 501(c)(4) does not contain a specific rule or limitation on political campaign intervention by social welfare organizations.

Question 2. Since partisan political activity does not meet the IRS definition of "promoting social welfare," how can an organization that participates in any partisan political activity be "organized exclusively to promote social welfare?"

As stated above, long standing Treasury Regulations have interpreted "exclusively" as used in section 501(c)(4) to mean primarily. Treasury Regulation § 1.501(c)(4)-1(a)(2)(i), promulgated in 1959, provides: "An organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting the common good and general welfare of the people of the community." Applying this Treasury Regulation, Revenue Ruling 81-95, 1981-1 C.B. 332, concluded that "an organization may carry on lawful political activities and remain exempt under section 501(c)(4) as long as it is primarily engaged in activities that promote social welfare."

Question 3. The Exempt Organizations 2011 Annual Report and 2012 Work Plan states: "As in any election year, EO will continue its work to enforce the rules relating to political campaigns and campaign expenditures. In FY 2012, EO will combine what it has learned from past projects on political activities with new information gleaned from the redesigned Form 990 to focus its examination resources on serious allegations of impermissible political intervention."

a. Typically, how long after a complaint to the IRS does a compliance review begin?

b. What approximate time does it take to review the complaint?

The IRS routinely receives examination referrals from a variety of sources including the public, media, Members of Congress or their staff, and has a long standing process for handling referrals so that they receive an impartial, independent review from career employees. When the IRS receives a referral about a particular organization, it is promptly forwarded to the Classification unit of the Exempt Organizations (EO) Examination office in Dallas, Texas. Pursuant to IRM 4.75.5.4(1), within 30 days of receiving the referral, the Classification staff begins evaluating whether the referral has examination potential, should be considered in a future year, needs additional information to make a decision, or falls within the categories of matters that are referred for EO Referral Committee review.[1] Although IRM 4.75.5.4(1) sets a goal of 90 days to complete reviews of referrals, the time it takes to fully review a particular referral varies, depending on such factors as the issues involved and the availability of relevant information (i.e. organization's Forms 990, external sources such as media reports, internet searches, etc.).

In those cases in which the IRS needs additional information about the subject of a referral that is not readily available, such as its Form 990 that has not been filed yet for the tax year at issue, Classification may suspend classifying the referral and places it in the follow-up category until the additional information is available. Once the additional information is received, reviewed, and supports the referral being classified as having examination potential, the referral is sent to unassigned inventory, until a revenue agent with the appropriate level of experience for the issues involved in the matter is available to conduct an examination.

Once in inventory, there are numerous factors that can affect how long it takes to complete the examination process. While it is difficult to predict how long any single examination will take, for cases closed in FY 2011, the average time it took to close a case was 210 days.

c. How many persons are involved in the enforcement of the 501(c)(4) rules?

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[1] Pursuant IRM 4.75.5(4), cases forwarded for Committee review include those: containing evidence or allegations of political or lobbying activities; involving sensitive information submitted by an elected official or a Member of Congress (or Congressional staff); or involving other factors indicating that review by the EO Referral Committee would be desirable for reasons of fairness or integrity.

The Exempt Organizations (EO) function is responsible for the enforcement of section 501(c)(4) statutory rules and regulations as well as those applicable to all other types of tax-exempt organizations.

For FY 2011, the total number of EO staff was 889. Other than the 14 employees in the Director's office, the three EO offices are staffed as follows:

- Rulings and Agreements (R &A), which includes EO Determinations and EO Technical, ensures organizations meet legal requirements during the application or private letter ruling process, and through guidance. In FY 2011, R&A had 332 employees.

- EO Examinations (Exam) is comprised of various units, including the Classification unit, the EO Compliance Unit, and the Review of Operations unit. Exam develops processes to identify areas of noncompliance, develops corrective strategies, and coordinates with other EO functions to ensure compliance, so that organizations maintain their exempt status. In FY 2011, Exam had 531 employees.

- EO Customer Education and Outreach (CE&O) coordinates, assists and supports the development of educational materials and outreach efforts for organizations to understand their responsibilities under the tax law. In FY 2011, CE&O had a staff of 12 employees.

The employees in these functions are responsible for the regulation of all types of tax-exempt organizations, including section 501(c)(4) organizations.

Question 4. The Exempt Organizations 2011 Annual Report and 2012 Work Plan states that 501(c)(4) organizations "can declare themselves tax-exempt without seeking a determination from the IRS. EO will review organizations to ensure that they have classified themselves correctly and that they are complying with applicable rules."

a. Why does the IRS allow 501(c)(4) organizations to self-declare?

The Internal Revenue Code expressly provides that certain tax-exempt organizations must give notice to the IRS, by filing an application for exemption, in order to claim tax-exempt status. The Internal Revenue Code does not require an organization to provide notice to the IRS to be treated as described in section 501(c)(4). By contrast, for example, Section 508 generally requires an organization to provide notice to the IRS before it will be treated as described in section 501(c)(3).

b. When an organization "self declares" as a 501(c)(4) organization, how does the IRS get notice and how long does it take the IRS to conduct the review to ensure that the organization has classified itself correctly?

As with other tax exempt organizations, organizations claiming to be tax-exempt

under section 501(c)(4) generally are required to file a Form 990[2] on an annual basis.[3]

The Exempt Organizations office of the IRS is responsible for the compliance of over one million organizations with diverse goals and purposes. In order to ensure the highest degree of compliance with tax law while working with limited resources, EO maintains a robust and multi-faceted post-filing compliance program that conducts reviews of exempt organizations in various ways, such as:

- Review of Operations (ROO) reviews: Because a ROO review is not an audit, the ROO carries out its post-filing compliance work without contacting taxpayers. Instead, the ROO looks at an organization's Form 990, website, and other publicly available information to see what it is doing and whether it continues to be organized and operated for tax-exempt purposes. If it appears from a ROO review that an organization may not be compliant, the organization is referred for examination.

- Compliance checks: In a compliance check, IRS contacts taxpayers by letter when we discover an apparent error on a taxpayer's return or wish to obtain further information or clarification. A compliance check is an efficient and effective way to maintain a compliance presence without an examination. We also use compliance check questionnaires to study specific parts of the tax-exempt community or specific cross-sector practices.

- Examinations: Examinations, also known as audits, are authorized under Section 7602 of the Code. For exempt organizations, an examination determines an organization's continued qualification for tax-exempt status. We conduct two different types of examinations: correspondence and field.

Because the IRS cannot review every existing organization in every tax year, we use the review techniques described above to maximize our coverage of the tax exempt sector in both our general program work and our project work. The project work, which results from our strategic planning process, is designed to focus on specific areas affecting the EO sector and to direct more effective use of our resources in the effort to strengthen compliance and improve tax administration. Described in the EO 2012 Work Plan, the sections 501(c)(4), (5) and (6) Self-Declarers is one such project. This project focuses on organizations that hold themselves out as being tax-exempt rather than seeking IRS recognition of their exempt status.

Question 5. The IRS Compliance Guide for Tax-Exempt Organizations states:

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[2] Reference to the Form 990 includes the entire applicable Form 990-series annual information returns, such as Forms 990, 990-EZ, 990-PF, and 990-N e-postcard.
[3] Treas. Reg. § 1.6033-1(a)(1).

"When a 501(c)(4), (5) or (6) organization's communication explicitly advocates the election or defeat of an individual to public office, the communication is considered political campaign activity. A tax-exempt organization that makes expenditures for political campaign activities shall be subject to tax in an amount equal to its net investment income for the year or the aggregate amount expended on political campaign activities during the year, whichever is less."

a. How does the IRS keep track of these explicit communications and ensure that the organization pays this tax?

Tax-exempt organizations filing Forms 990 or 990-EZ are required to report political activities. Organizations that engage in direct or indirect political campaign activities are also required to complete Schedule C of Form 990 or 990-EZ. Organizations subject to tax under section 527(f) are required to comply with the statutory reporting and payment rules. The IRS also receives referrals regarding such activities from a variety of sources that are handled through an impartial, independent review. See the response to question 3 for the description on the IRS referral process.

b. What is the reason for the requirement that the tax will be based on "whichever is less" between its net investment income for the year or the aggregate amount expended on political campaign activities?

The statute under section 527(f) explicitly states that a 501(c) organization is subject to its tax based on "an amount equal to the lesser of – (A) the net investment income of such organization for the taxable year, or (B) the aggregate amount expended during the taxable year for such an exempt function."

c. What tax would an organization have to pay if it spends *all* its income on political advertising (therefore it has NO net investment income)?

Under the statute cited above, an organization that otherwise meets the requirements of section 501(c)(4) social welfare tax-exempt status, which spends all its income on political advertising and has no net investment income would not owe any tax under section 527(f). It may however, through such spending (and depending on the otherwise applicable facts of the case), no longer qualify as an organization that is tax-exempt under section 501(c)(4) .

Question 6. Ms. Lerner's letter quotes the IRS webpage on Social Welfare Organizations:

"The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office. However, a section 501(c)(4) social welfare organization may engage in some political activities, so long as that is not its primary activity. However, any expenditure it makes for political activities may be subject to tax under section 527(f). [*Emphasis added.*]

a. What is the statutory basis of the language that allows 501(c)(4) organizations to engage in *some* political activities?

Please see responses to questions 1 and 2, above.

b. How does the IRS keep track of these political activities and ensure that the organization pays the tax under section 527(f)?

Section 501(c)(4) organizations filing Forms 990 or 990-EZ are required to report political activities. Organizations that engage in direct or indirect political campaign activities are also required to complete Schedule C of Form 990 or 990-EZ. Organizations subject to tax under section 527(f) are required to comply with the statutory reporting and payment rules. The IRS also receives referrals regarding such activities from a variety of sources that are handled through an impartial, independent review. See the response to question 3 for the description on the IRS referral process.

Question 7. In her July 13 letter, Ms. Lerner states that the IRS also addresses the issue of political activities in the Forms 990 and 990-EZ.

Are Forms 990 and 990-EZ made public? If so, where can they be accessed?

Yes, Forms 990 and 990-EZ are made public. Tax-exempt organizations are required to make their returns widely available for public inspection.[4] Organizations are required to allow the public to inspect the Forms 990, 990-EZ, 990-N, and 990-PF they have filed with the IRS for their three most recent tax years.[5] Exempt organizations also are required to provide copies of these information returns when requested, or make them available on the Internet.[6] The annual information returns also are available from the IRS,[7] as well as from third-party sources that post them on their websites.

Question 8. Internal Revenue Services Publication 557 states that, if a 501(c)(4) entity can "submit proof that [the] organization is organized exclusively to promote social welfare, it can obtain an exemption even if it participates legally in some political activity on behalf of or in opposition to candidates for public office."

Have the following 501(c)(4) organizations a) applied for; and if so, b) received the described exemption for political activity from the IRS?

a. Crossroads Grassroots Policy Strategies
b. Priorities U.S.A.

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[4] IRC § 6104(d); Treas. Reg. §§ 301.6104(d)-1 and -2.
[5] IRC § 6104(d)(2); Treas. Reg. § 301.6104(d)-1(a).
[6] IRC § 6104(d)(1); Treas. Reg. § 301.6104(d)-2.
[7] IRC § 6104(b); Treas. Reg. § 301.6104(b)-1. Due to disclosure laws, an organization must submit Form 4506-A, *Request for Public Inspection or Copy of Exempt or Political Organization IRS Form*, to the IRS office indicated on the form or accompanying instructions.

c. **Americans Elect**
d. **American Action Network**
e. **Americans for Prosperity**
f. **American Future Fund**
g. **Americans for Tax Reform**
h. **60 Plus Association**
i. **Patriot Majority USA**
j. **Club for Growth**
k. **Citizens for a Working America Inc.**
l. **Susan B. Anthony List**

Initially, to clarify, section 501(c)(4) organizations do not receive "exemption for political activity." Rather, organizations are recognized under section 501(c)(4) as tax-exempt when they demonstrate that they plan to be primarily engaged in activities that promote social welfare. If they meet that standard, the fact that they engage in other activities that do not promote social welfare, such as political campaign intervention, will not preclude recognition of their tax-exempt status. Whether an organization meets the statutory and regulatory requirements of section 501(c)(4) depends upon all of the facts and circumstances, and no one factor is determinative.

As discussed in our response to you dated June 4, 2012, section 6103 of the Internal Revenue Code prohibits the disclosure of information about specific taxpayers unless the disclosure is authorized by some provision in the Internal Revenue Code. The IRS cannot legally disclose whether the organizations on your list have applied for tax exemption (unless and until such application is approved). Section 6104(a) of the Code permits public disclosure of an application for recognition of tax exempt status only after the organization has been recognized as exempt.

Searching the names exactly as provided, our records show that the following organizations have been recognized by the IRS as tax exempt under section 501(c)(4).

Americans For Prosperity
American Future Fund
60 Plus Association
Patriot Majority USA
Citizens for a Working America Inc.

With respect to the other organizations for which you inquired, we will be able to determine if they have been recognized by the IRS as tax-exempt with additional information, such as an address or EIN, that specifically identifies the organization. Organizations often have similar names or maintain multiple chapters with variations of the same name. With respect to many of the other organizations you identified, numerous organizations in our records have very similar names. IRS staff can work with your staff in identifying the specific

organizations for which you are interested. IRS staff is also available to assist your staff to navigate searchable databases on the IRS public website. As previously discussed, information on organizations with applications currently pending legally cannot be provided unless and until the application is approved. Please note that organizations that hold themselves out as tax-exempt without IRS recognition and organizations that have pending applications for recognition are required to file annual returns/notices.

Question 9. Have you reminded 501(c)(4)s which publicly seem to be operating in the partisan political arena as to the factors you will consider in determining whether they are engaging in partisan political activity? If not, why not?

As described in the July 13, 2012 response, the IRS takes several steps to continually educate organizations of the requirements under the tax law and inform them of their responsibilities to avoid jeopardizing their tax-exempt status. We believe these steps ensure the IRS administers the nation's tax laws in a fair and impartial manner.

I hope this information is helpful. If you have questions, please contact me or have your staff contact Catherine Barre at (202) 622-3720.

Sincerely,

Steven T. Miller
Deputy Commissioner
for Services and Enforcement

United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

July 27, 2012

VIA U.S. MAIL & EMAIL (Catherine.M.Barre@irs.gov)

The Honorable Douglas H. Shulman
Commissioner
Internal Revenue Service
10th Street and Pennsylvania Avenue, NW
Washington, D.C. 20004

Dear Commissioner Shulman:

I am writing to express my concern about how the IRS interprets the law regarding the extent to which 501(c)(4) "social welfare" organizations can engage in partisan political activity. The July 13, 2012 response by Lois G. Lerner, Director of Exempt Organizations, to my June 13, 2012 letter was unsatisfactory.

In the response, Ms. Lerner stated that "The IRS takes steps to **continually inform** organizations of their responsibilities as social welfare organization to help them avoid jeopardizing their tax-exempt status," and "**actively educates** section 501(c)(4) organizations at multiple states in their development about their responsibilities under the tax law." [*Emphasis added.*]

Her discussion does not describe an IRS initiative to "continually inform" or "actively educate." Rather, it shows the IRS is passively making some information available once a 501(c)(4) entity is already in existence. Further, her discussion of the explanatory materials available to the public, and the materials themselves, are confusing. This leads to a predictable result: organizations are using Internal Revenue Code Section 501(c)(4) to gain tax exempt status while engaging in partisan political campaigns. There is an absurd tangle of vague and contradictory materials that the IRS provides. Making the problem worse is that the IRS knows there is a problem because of the public nature of the activity, but has failed to address it.

First, the law.

26 U.S.C. §501(c)(4) states that "Civic leagues or organizations not organized for profit but operated **exclusively for the promotion of social welfare,** or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes" are exempt from taxation.[1] [*Emphasis added.*] *Merriam-Webster* defines "exclusively" as "single, sole; whole; undivided." Therefore, it would appear that the law prevents entities that organize under Section 501(c)(4) from ***any*** activity that is not operated exclusively for the promotion of social welfare or an association of employees.

[1] 26 U.S.C. §501(c)(4).

Consistent with the law is a 1997 letter from the IRS denying tax-exempt status to a group called the National Policy Forum. The letter indicates that the IRS based its denial on the fact that the organization was engaged in partisan political activity, stating that "partisan political activity does not promote social welfare as defined in section 501(c)(4)," and that the applicant "benefit[s] select individuals or groups, instead of the community as a whole.[2]

One part of Internal Revenue Service Publication 557 in its guidance states, consistent with the law, that:

"If your organization is not organized for profit and will be operated **only** to promote social welfare to benefit the community, you should file Form 1024 to apply for recognition of exemption from federal income tax under section 501(c)(4)."[3] [*Emphasis added.*]

Another part of Internal Revenue Service Publication 557 starts off by agreeing with the law and states, "Promoting social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office."[4] The IRS is accurately and clearly stating, in some places at least, that "social welfare" advocacy does **not** include campaigning for or against a candidate or candidates.

So far, so good - - until that same Publication 557 states: "However, if you submit proof that your organization is organized exclusively to promote social welfare, it can obtain an exemption [from taxes] even if it participates legally in some political activity on behalf of or in opposition to candidates for public office."[5]

That language seems inconsistent with the other referenced parts of Publication 557 (as well as being inconsistent with law and precedent), unless it means that the exemption isn't available for the political activity portion funded by 501(c)(4) receipts.

Further, an IRS regulation that interprets Section 501(c)(4) states that, "An organization is operated exclusively for the promotion of social welfare if it is **primarily engaged** in promoting in some way the common good and general welfare of the people of the community."[6] [*Emphasis added.*]

So the IRS regulation says the law's requirement of "exclusively" really means "primarily," something very different from "exclusively."

The IRS webpage cites an internal training article which states:

> "'[S]ocial welfare' is inherently an abstruse concept that continues to defy precise definition. Careful **case-by-case analyses** and close judgments are still required."[7] [*Emphasis added.*]

Fair enough.

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[2] Internal Revenue Service letter to the National Policy Forum, February 21, 1997.
[3] Publication 557 (Rev. October 2011), pg. 51.
[4] *Id.*
[5] *Id.*
[6] Treasury Regulations, Subchapter A, Sec. 1.501(c)(4)-1.
[7] http://www.irs.gov/charities/nonprofits/article/0,,id=156372,00.html.

In its Compliance Guide for Tax-Exempt Organizations, the IRS gives direction regarding how to make a case-by-case evaluation whether a communication is political.[8] That Guide says that the following factors indicate that an advocacy communication **is** political campaign activity:

- The communication identifies a candidate for public office;
- The timing of the communication coincides with an electoral campaign;
- The communication targets voters in a particular election;
- The communication identifies the candidate's position on the public policy issue that is the subject of the communication;
- The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications; and
- The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue.

The guide further lays out the factors that indicate when an advocacy communication **is not** political campaign activity:

- The absence of any one or more of the factors listed above;
- The communication identifies specific legislation, or a specific event outside the control of the organization, that the organization hopes to influence;
- The timing of the communication coincides with a specific event outside the control of the organization that the organization hopes to influence, such as a legislative vote or other major legislative action (for example, a hearing before a legislative committee on the issue that is the subject of the communication);
- The communication identifies the candidate solely as a government official who is in a position to act on the public policy issue in connection with the specific event (such as a legislator who is eligible to vote on the legislation); and
- The communication identifies the candidate solely in the list of key or principal sponsors of the legislation that is the subject of the communication.

It is clear from the application of those factors that what is going on in the U.S. with certain 501(c)(4) organizations in their television advertisements are political campaign activities.

Below are two transcripts of advertisements that were put on television by 501(c)(4) organizations. As you can see, the subject of Advertisement #1 is a Democratic Senator, and the subject of Advertisement #2 is a Republican Senator. This is not a partisan issue.

Television Advertisement #1:

"It's time to play: Who is the biggest supporter of the Obama agenda in Ohio. It's Sherrod Brown. Brown backed Obama's agenda a whopping 95 percent of the time. He voted for budget busting ObamaCare that adds $700 billion to the deficit. For Obama's $453 billion tax increase. And even supported cap-and-trade which could have cost Ohio over 100,000 jobs. Tell Sherrod Brown, for real job growth, stop spending and cut the debt. Support the new majority agenda at newmajorityagenda.org."

[8] Compliance Guide for Tax-Exempt Organizations, pgs. 4-5.

Television Advertisement #2:

"Before Wall Street gave him $200,000 in campaign cash. ... Before he voted to let bank CEOs take millions in taxpayer funded bonuses. ... Dean Heller was a stockbroker. No wonder he voted against Wall Street reform; against holding the big banks accountable. Heller even voted to risk your Social Security here, in the stock market. Dean Heller: he votes like he still works for Wall Street, and that's bad for you."

Those ads, and so many like them, clearly fit the factors the IRS has laid out in its guide for what constitutes a political campaign activity. The advertisements make no pretense at nonpartisanship; they are blatantly and aggressively partisan communications.

Entities that file under Section 501(c)(4) of the Internal Revenue Code and take advantage of its tax exemption benefits should have to make a choice: either lose their exempt status (and pay taxes) or eliminate the partisan political activity.

The IRS needs to immediately review the activities of 501(c)(4) entities engaging in running partisan political ads or giving funds to Section 527 organizations that run such ads. The IRS needs to advise 501(c)(4) entities of the law in this area and the factors it will look at in reviewing 501(c)(4) status and tax exemption issues.

Please provide me with the following information no later than August 10, 2012:

1. How can the IRS interpret the explicit language in 26 U.S.C. §501(c)(4), which provides that 510(c)(4) entities must operate "exclusively" for the promotion of social welfare, to allow any tax exempt partisan political activity by 501(c)(4) organizations?

2. Since partisan political activity does not meet the IRS definition of "promoting social welfare," how can an organization that participates in any partisan political activity be "organized exclusively to promote social welfare?"

3. The Exempt Organizations 2011 Annual Report and 2012 Work Plan states: "As in any election year, EO will continue its work to enforce the rules relating to political campaigns and campaign expenditures. In FY 2012, EO will combine what it has learned from past projects on political activities with new information gleaned from the redesigned Form 990 to focus its examination resources on serious allegations of impermissible political intervention."[9]

   a. Typically, how long after a complaint to the IRS does a compliance review begin?
   b. What approximate time does it take to review the complaint?
   c. How many persons are involved in the enforcement of the 501(c)(4) rules?

4. The Exempt Organizations 2011 Annual Report and 2012 Work Plan states that 501(c)(4) organizations "can declare themselves tax-exempt without seeking a determination from the

[9] Exempt Organizations 2011 Annual Report and 2012 Work Plan, pg. 8.

IRS. EO will review organizations to ensure that they have classified themselves correctly and that they are complying with applicable rules."[10]

a. Why does the IRS allow 501(c)(4) organizations to self-declare?
b. When an organization "self declares" as a 501(c)(4) organization, how does the IRS get notice and how long does it take the IRS to conduct the review to ensure that that organization has classified itself correctly?

5. The IRS Compliance Guide for Tax-Exempt Organizations states:

"When a 501(c)(4), (5) or (6) organization's communication explicitly advocates the election or defeat of an individual to public office, the communication is considered political campaign activity. A tax-exempt organization that makes expenditures for political campaign activities shall be subject to tax in an amount equal to it its net investment income for the year or the aggregate amount expended on political campaign activities during the year, whichever is less."[11]

a. How does the IRS keep track of these explicit communications and ensure that the organization pays this tax?
b. What is the reason for the requirement that the tax will be based on "whichever is less" between its net investment income for the year or the aggregate amount expended on political campaign activities?
c. What tax would an organization have to pay if it spends *all* of its income on political advertising (therefore it has NO net investment income)?

6. Ms. Lerner's letter quotes the IRS webpage on Social Welfare Organizations:

"The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office. However, a section 501(c)(4) social welfare organization may engage in **some** political activities, so long as that is not its primary activity. However, any expenditure it makes for political activities may be subject to tax under section 527(f)." [*Emphasis added.*]

a. What is the statutory basis of the language that allows 501(c)(4) organizations to engage in *some* political activities?
b. How does the IRS keep track of these political activities and ensure that the organization pays the tax under section 527(f)?

7. In her July 13 letter, Ms. Lerner states that the IRS also addresses the issue of political activities in the Forms 990 and 990-EZ.

Are Forms 990 and 990-EZ made public? If so, where can they be accessed?

8. Internal Revenue Service Publication 557 states that, if a 501(c)(4) entity can "submit proof that [the] organization is organized exclusively to promote social welfare, it can obtain an

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10 *Id.*

11 Compliance Guide for Tax-Exempt Organizations, pgs. 3-4.

exemption even if it participates legally in some political activity on behalf of or in opposition to candidates for public office."[12]

Have the following 501(c)(4) organizations a) applied for; and if so, b) received the described exemption for political activity from the IRS?

a. Crossroads Grassroots Policy Strategies
b. Priorities U.S.A.
c. Americans Elect
d. American Action Network
e. Americans for Prosperity
f. American Future Fund
g. Americans for Tax Reform
h. 60 Plus Association
i. Patriot Majority USA
j. Club for Growth
k. Citizens for a Working America Inc.
l. Susan B. Anthony List

9. Have you reminded 501(c)(4)s which publicly seem to be operating in the partisan political arena as to the factors you will consider in determining whether they are engaging in partisan political activity? If not, why not?

I have enclosed a copy of Ms. Lerner's letter. If you have any questions, please contact me, or have your staff contact Kaye Meier of my staff at kaye_meier@levin.senate.gov or 202/224-9110. Again, it is urgent that I receive your answers by August 10, 2012.

Sincerely,

Carl Levin
Chairman
Permanent Subcommittee on Investigations

cc: Dr. Tom Coburn
Ms. Lois G. Lerner

[12] Publication 557 (Rev. October 2011), pg. 51.

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

DEPUTY COMMISSIONER

June 4, 2012

The Honorable Carl Levin
Chairman
Permanent Subcommittee on Investigations
Senate Committee on Homeland Security
and Government Affairs
United States Senate
Washington, D.C. 20515

Dear Senator Levin:

I am responding to your letter to Commissioner Shulman dated March 30, 2012, requesting information about the tax-exempt sector. We appreciate your interest and support of the IRS efforts in the administration of the tax law as it applies to tax-exempt organizations. This response follows the telephone conversation held with your staff on May 4, 2012.

Question 1. Are entities seeking tax-exempt status under Section 501(c)(4) required to submit an application to the IRS for review and approval, or can they hold themselves out as having tax-exempt status without filing an application or undergoing IRS review?

The law allows section 501(c)(4) organizations to hold themselves out as tax-exempt. Organizations also can apply for IRS recognition as tax-exempt. Whether an organization is self-declared under section 501(c)(4) or has been determined by the IRS to meet the requirements of section 501(c)(4), the organization must file Form 990 annual information returns.

Question 2.

To assist in responding to your specific sub-questions, we are providing background information about our system for processing applications for tax-exempt status, as well as the statutory disclosure rules that govern public inspection of IRS documents relating to tax-exempt organizations.

Application Process

All applications for tax-exempt status, including applications for status under section 501(c)(4), are filed with a centralized IRS Submission Processing Center, which enters the applications into the EP/EO Determination System and processes the attached user fees. The application is then sent to the Exempt Organizations ("EO") Determinations office in Cincinnati, Ohio for initial technical screening.

This technical screening is conducted by experienced revenue agents who review the applications and, based on that review, separate the applications into the following four categories:

- Applications that can be approved immediately based on the completeness of the application and the information submitted;
- Applications that need only minor additional required information in the file in order to approve the application;
- Applications that do not contain the information needed to be considered substantially complete; and
- Applications that require further development by an agent in order to determine whether the application meets the requirements for tax-exempt status.

Organizations whose applications fall into the fourth category are sent letters informing them that more development of their application is needed, and that they will be contacted once their application has been assigned to a revenue agent. The applications are sent to unassigned inventory, where they are held until a revenue agent with the appropriate level of experience for the issues involved in the matter is available to further develop the case.[1]

Once the case is assigned, the revenue agent notifies the organization and reviews the application. Based upon established precedent and the facts and circumstances set forth in the application, the revenue agent requests additional information and documentation to complete the file pertaining to the exempt status application materials[2] (the so-called "administrative record") and makes a determination. Where an application for exemption presents issues that require further development to complete the application record, the revenue agent engages in a back and forth dialogue with the organization in order to obtain the needed information. This back and forth dialogue helps applicants better understand the requirements for exemption and what is needed to meet them, and allows the IRS to obtain all the information relevant to the determination.

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[1] Enclosure A describes the criteria used to determine the appropriate level of experience.

[2] The application for recognition of tax exempt status, any papers submitted in support of the application, and any letter or other document issued by the IRS with respect to the application. See IRC § 6104(a), (d)(5).

Tools are available to promote consistent handling of full development cases. For example, in situations where there are a number of cases involving similar issues (such as credit counseling organizations, down payment assistance organizations, organizations that were automatically revoked and are seeking retroactive reinstatement, and most recently, advocacy organizations), the IRS will assign cases to designated employees to promote consistency. Additionally, in these cases, EO Technical (an office of higher graded specialists in Exempt Organizations), in consultation with the IRS Office of Chief Counsel, may develop educational materials to assist the revenue agents in issue spotting and crafting questions to develop cases consistently.

It is important to develop a complete administrative record for the application. Because the administrative record must either support exemption or denial, it is important for the record to be complete. If the application is approved, not only is the administrative record made publicly available (with certain limited exceptions outlined below), but organizations that act as described in the administrative record have reliance on the IRS determination. If the application is denied, the organization may seek review from the Office of Appeals. The Appeals Office, which is independent of Exempt Organizations, reviews the complete administrative record and makes its own independent determination of whether the organization meets the requirements for tax-exempt status. It is to the organization's benefit to have all of its materials in the file in the event EO Determinations denies exemption and the organization seeks Appeals review. If, based on the information in the administrative record, the Appeals Office decides the organization meets the requirements for tax-exempt status, the application will be approved. If the Appeals Office agrees that the application should be denied, the organization may challenge its non-exempt status by paying any tax owed as a taxable entity, and seeking a refund in federal court.

In those cases where the application raises issues for which there is no established published precedent or for which non-uniformity may exist, EO Determinations may refer the application to EO Technical. In EO Technical, the applications are reviewed by tax law specialists whose job is to interpret and provide guidance on the law and who work closely with IRS Chief Counsel attorneys on the issues.

Similar to the process in EO Determinations, EO Technical tax law specialists develop cases based on the facts and circumstances of the issues in the specific application. EO Technical staff engages in a back and forth dialogue with the organization in order to obtain the information needed to complete the administrative record. If, upon review of all of the information submitted, it appears that an organization does not meet the requirements for tax-exempt status, a proposed denial explaining the reasons the organization does not meet the requirements is issued. The organization is then entitled to a "conference of right" where it may provide additional information. Following the conference of right, a final determination is issued. If the application is approved, the administrative record is made publicly available, and if the organization acts as described in the application record, it has reliance on the IRS determination. If the application is denied, the applicant may challenge its non-exempt status by paying any tax owed as a taxable entity, and seeking a refund in federal court.

Statutory Disclosure Rules

Public disclosure regarding tax exempt organization filings is principally governed by sections 6103, 6104 and 6110 of the Internal Revenue Code. Generally, section 6103 of the Code prohibits the disclosure of information about specific taxpayers unless the disclosure is authorized by a provision of the Code. Section 6104 of the Code requires the IRS to make certain materials available for public inspection, including an organization's approved application for recognition of tax exemption and Form 990 annual information returns.[3] If the IRS approves an organization's application for tax-exempt status, section 6104(a) requires that the application and supporting materials be made available for public inspection. The only exception to that requirement is found in section 6104(a)(1)(D), which exempts from disclosure information that the IRS determines relates to any "trade secret, patent, process, style of work, or apparatus of the organization" that would adversely affect the organization or information that could adversely affect national defense.

The long-standing statutory requirements regarding exemption applications, including Form 1024, are separate from those requiring public availability of Form 990 annual information returns, which are contained in section 6104(b). Under section 6104(b), Form 990 annual information returns are also subject to public inspection, with the sole exception of donor information contained in Schedule B of the Form 990. The withholding of names and addresses of donors from public disclosure applies only to Form 990; this exception does not extend to information obtained from Form 1024 and supporting materials.[4]

In light of the statutory requirement to make approved applications public, organizations are notified that information they provide will be available for public inspection on page two of the Form 1024 instructions. This notice is reiterated in any development letters sent to the organizations. The administrative record of approved applications, including the application, supporting documents and correspondence between the applicant and the IRS are available upon request.

Under section 6110 of the Code, if the IRS ultimately denies the application for recognition of tax-exempt status, the denial letter and background information will be open to public inspection, with certain identifying and other information redacted.

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[3] The disclosure rules have been in place since 1958, and the legislative history provided the following rationale for public disclosure of exemption applications: "[the] committee believes that making these applications available to the public will provide substantial additional aid to the Internal Revenue Service in determining whether organizations are actually operating in the manner in which they have stated in their applications for exemption." H.R. Rep. No. 85-262, at 41-42 (1957). In 1987, Congress added what is now section 6104(d) to the Code, that requires organizations to make their returns available to the public, and in 1996 extended this rule to application materials.

[4] The withholding exception does not apply to donor information for organizations that file Form 990-PF or to those section 527 organizations that are required to file Form 990 or 990-EZ.

For entities that submit an application for tax-exempt status under Section 501(c)(4), please indicate:

(a) the approximate average number of days between the date on which an entity submits an application for 501(c)(4) tax-exempt status and the date on which the application is approved or denied;

The average case processing time for determination cases closed in FY2011 was 104 days. However, it is difficult to predict how long it will take to fully process any specific application. Case processing time can vary greatly depending on a number of factors, including whether the case can be closed through technical screening or requires full development, the availability of an agent with the appropriate experience level to fully develop the application, the particular issues and individualized facts and circumstances presented in the application, the back and forth dialogue between the revenue agent and the applicant to fully develop the application, and whether a case is transferred to EO Technical.

(b) if it is not provided on a routine basis, approximately what percentage of such applicants receive an IRS questionnaire seeking information about any political activities, and how the IRS determines whether and when to send that questionnaire; and

We understand that the reference in your letter to "questionnaire" is intended to relate to development letters the IRS sends to organizations 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. There is no standard questionnaire used in the determinations process seeking information about political activities.

The IRS contacts the organization and solicits additional information when the organization does not provide sufficient information in response to the questions on the Form 1024 to make a determination or if issues are raised by the application. When an application needs further development, the case is assigned to a revenue agent with the appropriate level of experience for the issues involved in the application.

The general procedures for requesting additional information to develop an application are included in section 7.20.2 of the Internal Revenue Manual. Although there is a template letter that describes the general information on the case development process, the letter does not, and could not, specify the information to be requested from any particular organization because of the broad range of possible facts. Enclosure B is a copy of the template letter.

The amount and nature of development necessary to process an application to ensure that the legal requirements of tax-exemption are satisfied depends on several factors, which include the comprehensiveness of the information provided in the application and the issues raised by the application. Consequently, revenue agents prepare individualized questions and requests for documents relevant to the application, which are attached to the above described general template letter. With certain types of applications where the issues are similar or more complex, EO Technical, in coordination with Chief Counsel, may develop educational materials to assist the revenue agents in issue spotting and crafting questions to develop those cases consistently.

The revenue agent uses sound reasoning based on tax law training and his or her experience to review the application and identify the additional information needed to make a proper determination regarding the organization's exempt status. The revenue agent prepares individualized questions and requests for documents based on the facts and circumstances set forth in the particular application.

The below chart provides the total number of applications closed for FY 2008-2011,[5] as well as preliminary information for part of 2012.[6] The below chart provides the percentage of all exemption applications closed each year through the technical screening process (i.e., no development letters sent).

	Fiscal Year				
	2008	2009	2010	2011	2012
Total number of applications closed	84,220	77,305	65,590	61,004	28,570
Percentage of applications closed through technical screening	59%	57%	56%	60%	70%

Although we are able to produce the number of cases closed during this time period that received development letters, our systems do not track the specific types of questions asked in the development letters for these cases. Therefore, manual review of each file would be necessary to determine the particular organization and the development letters sent.

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[5] Reports of the IRS data requested are created and published by Statistics of Income (SOI) Division. The IRS Data Book provides information on IRS activities conducted during a fiscal year period (October 1 through September 30). Data Book information is updated annually. This SOI data is from IRS Data Book, Table 24, Closures of Applications for Tax-Exempt Status, by Organization Type and Internal Revenue Code Section, Fiscal Year 2008 (and subsequent fiscal years 2009-2011) at http://www.irs.gov/taxstats/index.html. This data reflects all case closures for the Exempt Organizations Determinations function. These include not only initial applications for tax-exempt status, but also other determinations, such as public charity and private foundation status determinations, advance approval of scholarship grant procedures, and group determinations of tax-exempt status.

[6] The data for FY 2012 reflects the preliminary information available through the second quarter from October 1, 2011 through March 30, 2012. SOI Data Book information is updated annually, with the complete FY 2012 information expected in March 2013.

(c) approximately how many days after an application is filed that questionnaire is typically sent.

As mentioned above, organizations whose applications fall into the fourth category are sent letters informing them that more development of their application is needed, and that they will be contacted once their application has been assigned to a revenue agent. The applications are sent to unassigned inventory, where they are held until a revenue agent with the appropriate level of experience for the issues involved in the matter is available to further develop the case. Once the case is assigned, the revenue agent notifies the organization and reviews the application.

Based upon the established precedent and the facts and circumstances set forth in the application, the revenue agent will request additional information and documentation to complete the file. If applicable, the revenue agent will coordinate with EO Technical and Chief Counsel to develop requests for information to be issued to the organization. For all of these reasons, it is difficult to predict the time frame between the filing of an application for tax-exemption and the issuance of a development letter.

Question 3. A 1997 letter from the IRS denying tax-exempt status to the National Policy Forum, copy attached, made public in connection with a Senate investigation into federal election campaigns, indicates that the IRS based its denial on the fact that the organization was engaged in partisan political activity, stating that "partisan political activity does not promote social welfare as defined in section 501(c)(4)," and "benefit[s] select individuals or groups, instead of the community as a whole." Is it still the position of the IRS that a 501(c)(4) organization cannot engage in any partisan political activity, even as a secondary activity?

As noted above, section 6103 of the Internal Revenue Code prohibits the disclosure of information about specific taxpayers unless the disclosure is authorized by some provision in the Internal Revenue Code. Section 6104(a) of the Code permits public disclosure of an application for recognition of tax exempt status and supporting materials only after the organization has been recognized as exempt. Under section 6110 of the Code, if the IRS ultimately denies the application for recognition of tax-exempt status, the denial letter is subject to public inspection, with identifying and other information redacted, to assist the public in understanding the IRS' reasoning while also protecting the identity of the organization. Although you reference what appears to be a proposed denial letter that may have been made available publicly by sources other than the IRS, IRS Disclosure Counsel has advised that section 6103 continues to apply and we are legally prohibited from discussing taxpayer information.[7] However, we are able to respond to your question generally.

To qualify for exemption as a social welfare organization described in section 501(c)(4),

[7] Section 6103(f) of the Code sets forth the means by which congressional committees may obtain access to return and return information (that is not otherwise made publicly available under sections 6104 and 6110). We are available to discuss these rules in more detail with your staff.

the organization must be primarily engaged in the promotion of social welfare, not organized or operated for profit, and the net earnings of which do not inure to the benefit of any private shareholder or individual.[8] The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office.[9] Nevertheless, a section 501(c)(4) social welfare organization can engage in political activities as long as it is primarily engaged in activities that promote social welfare.[10] The regulations do not impose a complete ban on political activity by section 501(c)(4) organizations.[11] Whether an organization meets the requirements of section 501(c)(4) depends upon all of the facts and circumstances of the particular applicant, and no one factor is determinative.

A revenue agent must first determine whether activities undertaken by the organization primarily further an exempt purpose. If the organization is engaged in some activities that do not promote social welfare, then the agent must review the scope of the activities to determine whether, based on all the facts and circumstances, the organization's exempt activities are the primary activities. If the application is unclear or not sufficiently detailed as to whether the primary activity conducted by the organization is exempt social welfare activity, the revenue agent will need to follow-up on this issue in a development letter.

It is also important to note that section 6110(k)(3) provides that determination letters (including both proposed and final letters) may not be used or cited as precedent. Determination letters are based on the specific facts and circumstances of the applicant.

Question 4. Is it the position of the IRS that an entity claiming tax-exempt status under section 501(c)(4) can engage in nonpartisan political activity as a secondary activity, and that political activity can consume up to 49% of the entity's expenditures and resources.

To determine whether an organization operates primarily for the promotion of social welfare, the courts and the IRS consider all the facts and circumstances, including but not limited to the organization's stated purposes, expenditures, principal source of revenue, number of employees and volunteers, and time and effort.[12] The IRS has taken no position on a fixed percentage or any one factor in precedential guidance.

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[8] IRC § 501(c)(4); Treas. Reg. § 1.501(c)(4)-1.
[9] Treas. Reg. § 1.501(c)(4)-1(a)(2)(ii).
[10] Rev. Rul. 81-95, 1981-1 C.B. 332.
[11] Rev. Rul. 81-95, 1981-1 C.B. 332.
[12] Treas. Reg. § 1.501(c)(4)-1(a)(2) (No percentage test established). Rev. Rul. 68-45, 1968-1 C.B. 259 (Principal source of income does not determine an organization's primary activity under § 501(c)(4); all the facts and circumstances are considered). *See, generally Haswell v. United States,* 500 F.2d 1133, 1142, 1147 (Cl. Ct. 1974) ("A percentage test . . . is not appropriate. Such a test obscures the complexity of balancing the organization's activities in relation to its objectives and circumstances in the context of the totality of the organization."). *See, Contracting Plumbers v. United States*, 488 F.2d 684, 686 (2d Cir. 1973) (multiple factors relevant in applying this standard, including formative history, stated purposes, and actual operations). *See generally Seasongood v. Commissioner*, 227 F.2d 907, 909, 912 (6th Cir. 1955) (expenditures, employees, and organization's time and effort considered).

Question 5. A Treasury regulation applicable to 501(c)(4) organizations states: "The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office." Treas. Reg. § 1.501(c)(4)-1(a)(2)(ii). Would the IRS generally view it as a violation of that regulation if a 501(c)(4) organization:

(a) Made a cash contribution to a political organization which is tax-exempt under Section 527 and functions as a campaign committee to elect a particular candidate to public office?

(b) Made a cash contribution to a political action committee which was established under the Federal Election Campaign Act (FEC Act) and which routinely makes cash contributions to campaign committees, each of which was established to elect a particular candidate to public office?

(c) Made a cash contribution to a political action committee or Section 527 political organization which makes independent expenditures on behalf of or in opposition to one or more candidates for public office?

(d) Made a cash contribution to a national political party which engages in partisan political campaigns to elect multiple candidates from the same political party to public office?

(e) Made a cash contribution to a political action committee or Section 527 political organization which is engaged in partisan political activity, but does not campaign on behalf of or in opposition to any particular candidate for public office?

(f) Made a cash contribution to a political action committee or Section 527 political organization which is engaged in nonpartisan political activity and does not campaign on behalf of or in opposition to any particular candidate for public office?

As noted previously, a section 501(c)(4) organization may directly or indirectly participate or intervene in a political campaign as long as it is primarily engaged in activities that promote social welfare. Treasury regulations provide that promotion of social welfare does not include certain activities, including political campaign intervention.[13] This regulation does not prohibit a section 501(c)(4) organization from engaging in such activity. Rather, the political campaign intervention activity does not count towards the organization's exempt activities that promote social welfare. Therefore, if the organization engages in such activity, it has "violated" no rule under the regulations. As discussed, all facts and circumstances are relevant in determining whether the requirements for tax exemption are ultimately satisfied.

The same legal requirements apply in each of the facts patterns articulated in your questions. With respect to each of the fact patterns that you specify, while depending

[13] Treas. Reg. § 1.501(c)(4)-1(a)(2)(ii).

on the facts and circumstances, political activity would not be for a social welfare purpose, the organization does not violate any Internal Review Code rule applicable to section 501(c)(4) organizations if it engages in such activity. All the facts and circumstances need to be considered to determine whether this activity affects the section 501(c)(4) organization's tax-exempt status.[14]

Question 6. Would the IRS generally view it as a violation of Treasury Regulation § 1.501(c)(4)-1(a)(2)(ii), if a 501(c)(4) organization were to coordinate its political activities with a campaign committee, political action committee, or national political party? Please explain.

As stated, section 501(c)(4) organizations may engage in some political campaign activity provided that such intervention, along with other activity that does not promote social welfare, does not constitute the organization's primary activities. The tax law does not explicitly prohibit a section 501(c)(4) organization from coordinating political activity.

However, such coordination could raise issues of primary activity, inurement or private benefit. Thus, for example, if an organization's activities are conducted primarily for the benefit of a political party or any other private group of individuals, rather than the community as a whole, the organization is not operated primarily to promote social welfare. Accordingly, conferring a sufficient amount of private benefit on select individuals will preclude exemption under section 501(c)(4) if that private benefit is the primary activity of the organization.[15]

Question 7. I understand that some persons have petitioned the Treasury Department to clarify or revise Treasury Regulation § 1.501(c)(4)-1(a)(2)(ii). Please indicate whether the IRS plans to engage in such a rulemaking, whether it would first solicit comments on what should be included in that rulemaking, and whether or when any such rulemaking effort has been scheduled to begin.

The IRS, in collaboration with the Treasury Department's Office of Tax Policy ("Treasury"), annually develops a list of the guidance that Treasury and the IRS intend to work on during the upcoming guidance plan year. Certain types of guidance are issued in proposed form to allow an opportunity for public comment.

The IRS is aware of the current public interest in this issue and will seriously consider any proposed changes. Treasury and the IRS have not yet established the list of the

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[14] Rev. Rul. 68-45, 1968-1 C.B. 259. *See also, e.g. Contracting Plumbers Coop. Restoration Corp. v. U.S.*, 488 F.2d 684 (2d Cir. 1973) (There are multiple factors relevant in applying this standard, including formative history, stated purposes, and actual operations). Note that tax may apply in certain cases under Internal Revenue Code section 527(f).

[15] IRC § 501(c)(4); Treas. Reg. § 1.501(c)(4)-1. See *Contracting Plumbers Coop. Restoration Corp. v. U.S.*, 488 F.2d 684, 687 (2d Cir. 1973) (Organization was not primarily devoted to the common good when it provided substantial and different benefits to both the public and its private members). *American Campaign Academy v. Commissioner*, 92 T.C. 1053, 1078 (1989), a section 501(c)(3) case, held that an organization was not operated exclusively for exempt purposes when it conferred substantial private benefits on a political party and its candidates.

guidance that Treasury and the IRS intend to work on from July 1, 2012, through June 30, 2013. The selection of items for the 2012-2013 Guidance Priority List will be made in collaboration with Treasury after review and evaluation of comments received.

Question 8. If the IRS were to deny an entity's request to be treated as tax-exempt under Section 501(c)(4), would the IRS automatically apply corporate income taxes to that entity or would it allow the entity to apply for tax-exempt status on other grounds?

When a section 501(c)(4) organization receives a final determination letter denying its application for tax-exempt status, the letter advises the organization that it must file Federal income tax returns for the years listed in the letter within 30 days of the issuance of the denial letter, unless the organization requests an extension of time to file. Enclosure C is a copy of this standard final denial letter.

If the revenue agent assigned to the case believes that the organization may not meet the requirements of a section 501(c)(4) organization, but may meet the requirements of another tax-exempt provision, the issue of whether the organization wants to be considered for exemption under that other provision could be discussed with the organization through development letters prior to the final resolution of the application. If the organization indicates that it does not want to proceed under the other provision and continues to pursue section 501(c)(4) exemption, the IRS would deny the application and the organization would be treated as a taxable entity.

Please note that some organizations withdraw their application for exemption when they learn that a denial is forthcoming. Others do not formally withdraw, but do not respond to requests for information necessary to develop their applications. After additional failed attempts to get the information from the applicant, those applications are closed as "failure to establish."

Question 9. If the IRS were to determine that an entity was impermissibly participating in partisan political activity, does the IRS have unilateral authority to reclassify it as a Section 527 political organization instead of a Section 501(c)(4) social welfare organization?

Whether an organization fails to qualify under section 501(c)(4) does not determine whether it is a political organization under section 527. Section 527 applies to a party, committee, or other organization that is organized and operated primarily for the purpose of accepting contributions or making expenditures for an exempt function (as defined in section 527(e)(2)). Subject to certain exceptions, to be tax-exempt under section 527, a political organization is required to give notice electronically to the Service.[16]

[16] Section 527(i)(1); Rev. Rul. 2003-49, 2003-1 C.B. 903. Section 527 also provides for the taxation of certain organizations that do not provide notice to the IRS. IRC § 527(f), (i)(4).

As noted above, If the revenue agent assigned to the case believes that the organization may not meet the requirements of a section 501(c)(4) organization, but may meet the requirements of another tax-exempt provision, the issue of whether the organization wants to be considered for exemption under that other provision could be discussed with the organization through development letters prior to the final resolution of the application. If the organization indicates that it does not want to proceed under the other provision and continues to pursue section 501(c)(4) exemption, the IRS would deny the application and the organization would be treated as a taxable entity.

Question 10. If an entity were denied tax-exempt status by the IRS under Section 501(c)(4), how would past contributions and income earned on those funds generally be treated under the tax code?

If an organization is denied tax-exempt status, the organization is a taxable entity as of the date the organization originated. The final adverse determination letter states that the organization is required to file Federal income tax returns, generally a Form 1120, U.S. Corporation Income Tax. The tax treatment of the organization's contributions and other income is determined under normal rules of Subtitle A.

Question 11. What considerations does the IRS use to determine when an entity that is denied tax-exempt status under Section 501(c)(4) should be subject to a penalty? What penalties are available and how are they calculated?

There is no penalty specifically applicable to an organization as a result of a denial of tax-exempt status. An organization that is denied tax-exempt status is advised in the final denial letter that it has 30 days from the final denial letter to either file its income tax returns or request additional time to file the taxable returns. If the organization timely filed Form 990 annual returns during the period of time that the application for tax-exempt status was pending and timely files its taxable returns once tax-exemption is denied, the organization will not be subject to penalties. If the organization does not timely file taxable returns, the organization may be subject to failure to file or failure to pay penalties under section 6651 of the Code.

The failure to file penalty under section 6651(a)(1) of the Code, is calculated at a rate of 5 percent of the amount required to be shown as tax on the return if the failure to file is for not more than 1 month, with an additional 5 percent for each additional month or fraction thereof that the failure to file continues, not to exceed 25 percent in the aggregate.

The failure to pay tax penalty under section 6651(a)(2) of the Code, is calculated at a rate of 0.5 percent of the amount of the tax shown on the return if the failure to pay is for not more than 1 month, with an additional 0.5 percent for each additional month or fraction thereof that the failure to pay continues, not to exceed 25 percent in the aggregate.

Penalties assessed may be abated if the organization can show that the failure to file or failure to pay was due to reasonable cause and not due to willful neglect.[17]

Question 12. Please provide a copy of the standard questionnaire that the IRS sends to entities claiming tax-exempt status under Section 501(c)(4) to obtain information about their political activities. In addition, please provide any written guidance provided to IRS agents regarding the issue of political activity in connection with Section 501(c)(4).

There is no standard questionnaire used to obtain information about political activities. Although there is a template development letter that describes the general information on the case development process, the letter does not specify the information to be requested from any particular organization. Enclosure B is a copy of the template letter. The amount and type of development necessary to process a section 501(c)(4) application to ensure that the legal requirements of tax-exemption are satisfied depends on several factors, which include the comprehensiveness of the information provided in the application and the issues raised by the application. Consequently, revenue agents prepare individualized questions and requests for documents relevant to the application, which are then attached to the above described general template letter.

In connection with recent cases, EO Technical prepared a draft educational guide sheet on the issue of political activity for section 501(c)(4) applications that was shared for comment with some employees in EO Determinations. That guide sheet was neither mandated nor finalized.

Question 13. Please indicate how many letter rulings have been issued by the IRS since January 1, 2007, to deny or revoke the tax-exempt status of an organization under Section 501(c)(4) due to involvement with partisan or nonpartisan political activity. If the IRS has issued 10 or less such letter rulings, please provide copies of all such letters. If the IRS has issued more than 10 such letter rulings, please provide a sample containing discussions of the widest variety of issues related to the denial of tax-exempt status under Section 501(c)(4) due to partisan or nonpartisan political activity.

Preliminarily, as previously stated, section 6103 of the Internal Revenue Code prohibits the disclosure of information about specific taxpayers unless the disclosure is authorized by some provision of the Internal Revenue Code. Section 6104(a) of the Code permits public disclosure of an application for recognition of tax-exempt status and supporting materials only after the organization has been recognized as exempt. Under section 6110 of the Code, if the IRS ultimately denies the application for recognition of tax-exempt status, the denial letter and background information is subject to public inspection, with identifying and other information redacted, to assist the public understand the IRS reasoning while also protecting the identity of the organization.

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[17] IRC § 6651(a).

The application process for tax-exempt status does not involve the revocation of tax-exemption; rather, it only concerns the denial of applications. IRS data on the denial of applications is kept in reports published by the IRS Statistics of Income (SOI) Division. The Data Book provides information on IRS activities conducted during a fiscal year period (October 1 through September 30). We have attached these reports as Enclosures D-1 through D-5. For your convenience, however, we are replicating the total number of determination denials for section 501(c)(4) organizations for FY 2007-2012 in the chart below.

Note that the number of denials does not reflect a full picture of applications not approved. Some organizations withdraw their application for exemption when they learn that a denial is forthcoming. Others do not formally withdraw, but do not respond to requests for information necessary to develop their applications. After additional failed attempts to get the information, those applications are closed as "failure to establish."

Fiscal Year	The Number of Social Welfare Organization Applications that were Denied
2007	8
2008	*
2009	3
2010	3
2011	6
2012[18]	6

* Fewer than 3

Please note that although IRS automated systems track the numbers of applications closed as denied, they do not track the names of the applicant organizations or the reasons for the denials. Absent manual review of the files, we are unable to state whether any of these denials were issued due to involvement with partisan or nonpartisan political activity.

[18] The data for FY 2012 reflects the preliminary information available for October 1, 2011 through April 11, 2012. SOI Data Book information is updated annually, with the complete FY 2012 information expected in March 2013.

I hope this information is helpful. If you have questions, please contact me or have your staff contact Catherine Barre at (202) 622-3720.

Sincerely,

Steven T. Miller
Deputy Commissioner for Services and Enforcement

Enclosures

EXEMPT ORGANIZATION DETERMINATIONS CASE ASSIGNMENT GUIDE
CASE GRADING CRITERIA

CASE COMPLEXITY FACTORS	GRADE LEVEL DISTINCTIONS		
	GS-11	GS-12	GS-13
Analysis of Application	Application is basic; facts regarding nature and purpose are easily discernible. Private benefit/inurement issues unlikely but possible.	Application is complex and facts must be determined through analysis and questioning of applicant. Private benefit/inurement issues possible.	Application is extremely complex (e.g., involves inurement, private benefit, related entities) and significant additional documentation is required of applicant.
Factual Complexity of Issues	Issues are of average complexity and sensitivity. Established case development methods and procedures are usually adequate.	Issues may be sensitive or involve controversy. Case development methods and procedures must be adapted to case.	Case development methods and procedures must be adapted to unique situations. Issues are novel and unusual and involve the largest and most complex EO's.
Application of Tax Law	Tax laws are in most cases applicable but occasionally involve unusual interpretation and application.	Tax laws are not always directly applicable. Research and analysis are required to establish proper interpretation and use of precedents.	Tax laws or other legal issues involve points of law without precedent or with conflicting precedents. Research and analysis are necessary to establish significant similarities with related issues.
Interpersonal Skills	Contacts are with representatives of applicants, organization members and contributors. Tact and diplomacy are required to resolve and elicit information and resolve questions and problems.	Contacts are with a variety of EO representatives and officers of considerable prominence in the community including accountants and legal representatives. Considerable tact and skillful negotiations are necessary since issues discussed are sometimes controversial and sensitive.	Contacts are with officials of very large or prominent organizations and persons with national reputations in business, legal and accounting circles and others of outstanding political, social or economic influence. Considerable tact and discretion are required for resolution of issues.
Impact of Work	Determination decision may impact other organizations; applicant's sole source of income may be from donations; and, the likelihood of media attention is limited.	Determination decision may affect larger organizations of regional or national stature; applicant's income is from a variety of sources; and media attention is likely.	Determination decision may impact other organizations nationwide; applicant has significant resources and determination decision may have significant social and economic implications with recurring effects in prior or subsequent tax years; and, widespread media attention is probable.

Revised November 25, 2002

Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Department of the Treasury

Date: *

Employer Identification Number:
XX-XXXXXXX

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*
*
*

Person to Contact – Group #:
Specialist Name - XXXX
ID# XXXXXXX

Contact Telephone Numbers:
XXX-XXX-XXXX Phone
XXX-XXX-XXXX Fax (859-669-3783 for TEDS)

Cases)

Response Due Date:
*

Dear Sir or Madam:

We need more information before we can complete our consideration of your application for exemption. Please provide the information requested on the enclosed Information Request by the response due date shown above. Your response must be signed by an authorized person or an officer whose name is listed on your application. Also, the information you submit should be accompanied by the following declaration:

> *Under penalties of perjury, I declare that I have examined this information, including accompanying documents, and, to the best of my knowledge and belief, the information contains all the relevant facts relating to the request for the information, and such facts are true, correct, and complete.*

If we approve your application for exemption, we will be required by law to make the application and the information that you submit in response to this letter available for public inspection. Please ensure that your response doesn't include unnecessary personal identifying information, such as bank account numbers or Social Security numbers, that could result in identity theft or other adverse consequences if publicly disclosed. If you have any questions about the public inspection of your application or other documents, please call the person whose name and telephone number are shown above.

To facilitate processing of your application, please attach a copy of this letter and the enclosed Application Identification Sheet to your response and all correspondence related to your application. This will enable us to quickly and accurately associate the additional documents with your case file. Also, please note the following important response submission information:

- Please don't fax and mail your response. Faxing and mailing your response will result in unnecessary delays in processing your application. Each piece of correspondence submitted (whether fax or mail) must be processed, assigned, and reviewed by an EO Determinations specialist.

- Please don't fax your response multiple times. Faxing your response multiple times will delay the processing of your application for the reasons noted above.

Name
EIN

- Please don't call to verify receipt of your response without allowing for adequate processing time. It takes a minimum of three workdays to process your faxed or mailed response from the day it is received.

If we don't hear from you by the response due date shown above, we will assume you no longer want us to consider your application for exemption and will close your case. As a result, the Internal Revenue Service will treat you as a taxable entity. If we receive the information after the response due date, we may ask you to send us a new application.

**********DELETE IF NOT A 501(c)(3) APPLICATION**********

In addition, if you don't respond to the information request by the due date, we will conclude that you have not taken all reasonable steps to complete your application for exemption. Under Internal Revenue Code section 7428(b)(2), you must show that you have taken all the reasonable steps to obtain your exemption letter under IRS procedures in a timely manner and exhausted your administrative remedies before you can pursue a declaratory judgment. Accordingly, if you fail to timely provide the information we need to enable us to act on your application, you may lose your rights to a declaratory judgment under Code section 7428.

**********DELETE IF NO POWER OF ATTORNEY**********

We have sent a copy of this letter to your representative as indicated in Form 2848, Power of Attorney and Declaration of Representative.

****

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

Specialist Name
Exempt Organizations Specialist

Enclosure: Information Request
Application Identification Sheet

Letter 1312 (Rev. 05-2011)

Additional Information Requested:

Name
EIN

PLEASE DIRECT ALL CORRESPONDENCE REGARDING YOUR CASE TO:

Selective:

(EDS Cases)

US Mail:

Internal Revenue Service
Exempt Organizations
P. O. Box 2508
Cincinnati, OH 45201
ATT: Specialist Name
Room XXXX
Group XXXX

Street Address for Delivery Service:

Internal Revenue Service
Exempt Organizations
550 Main St, Federal Bldg.
Cincinnati, OH 45202
ATT: Specialist Name
Room XXXX
Group XXXX

(TEDS Cases)

US Mail:

Internal Revenue Service
Exempt Organizations
P. O. Box 12192
Covington, KY 41012-0192

Street Address for Delivery Service:

Internal Revenue Service
Exempt Organizations
201 Rivercenter Blvd
ATTN: Extracting Stop 312
Covington, KY 41011

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date:

Contact Person: (Specialist Name)

Identification Number: (Specialist ID #)

Contact Number: (Specialist Phone #)

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Third Party Communication
Date:
Category:

Comment [81]: Delete this section if you do not have a Third Party Communication.

Dear Applicant:

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)( ). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose,* and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at

1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Lois G. Lerner
Director, Exempt Organizations
Rulings & Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter

Table 24. Tax-Exempt Organization and Other Entity Applications or Disposals, by Type of Organization and Internal Revenue Code Section, Fiscal Year 2007

Type of organization, Internal Revenue Code section	Total applications or disposals	Approved	Disapproved	Other [1]
	(1)	(2)	(3)	(4)
Tax-exempt organizations and other entities, total	**91,742**	**72,869**	**1,628**	**17,245**
Section 501 (c) by subsection, total [2]	**91,689**	**72,856**	**1,628**	**17,205**
(1) Corporations organized under act of Congress	d	0	d	d
(2) Title-holding corporations	158	111	d	d
(3) Religious, charitable, and similar organizations [3]	85,771	68,278	1,607	15,886
(4) Social welfare organizations	1,867	1,394	8	465
(5) Labor and agriculture organizations	233	188	0	45
(6) Business leagues	1,615	1,370	6	239
(7) Social and recreation clubs	1,036	711	d	d
(8) Fraternal beneficiary societies	25	16	0	9
(9) Voluntary employees' beneficiary associations	356	286	3	67
(10) Domestic fraternal beneficiary societies	44	21	0	23
(12) Benevolent life insurance associations	116	94	0	22
(13) Cemetery companies	174	156	0	18
(14) State-chartered credit unions	10	7	0	3
(15) Mutual insurance companies	d	21	d	d
(17) Supplemental unemployment benefit trusts	6	3	0	3
(19) War veterans' organizations	131	99	0	32
(25) Holding companies for pensions and other entities	106	101	0	5
Section 501 (d) Religious and apostolic associations	**5**	**5**	**0**	**0**
Section 521 Farmers' cooperatives	**28**	**8**	**0**	**20**
Nonexempt charitable trusts	**20**	**0**	**0**	**20**

d—Not shown to avoid disclosure about specific taxpayers. However, data are included in the appropriate totals.

[1] Includes applications withdrawn by the organization; applications which failed to provide the required information; incomplete applications; IRS refusals to rule on applications; applications forwarded to other than the IRS National Office; IRS correction disposals; and others.

[2] No applications were filed for teachers' retirement funds [section 501(c)(11)]; corporations to finance crop operations [section 501(c)(16)]; employee-funded pension trusts [section 501(c)(18)]; black lung trusts [section 501(c)(21)]; multiemployer pension plans [section 501(c)(22)]; veterans' associations founded prior to 1880 [section 501(c)(23)]; trusts described in section 4049 of the Employee Security Act of 1974 (ERISA) [section 501(c)(24)]; State-sponsored high-risk health insurance organizations [section 501(c)(26)]; and State-sponsored workers' compensation reinsurance organizations [section 501(c)(27)].

[3] Includes private foundations. Not all Internal Revenue Code section 501(c)(3) organizations are required to apply for recognition of tax exemption, including churches, integrated auxiliaries, subordinate units, and conventions or associations of churches.

SOURCE: Tax Exempt and Government Entities, Exempt Organizations, Rulings and Agreements, Determinations SE:T:EO:RA:D

Table 24. Closures of Applications for Tax-Exempt Status, by Organization Type and Internal Revenue Code Section, Fiscal Year 2008 (Revised March 2011)

Type of organization, Internal Revenue Code section	Applications for tax-exempt status [1]			
	Total	Approved	Disapproved	Other [2]
	(1)	(2)	(3)	(4)
Tax-exempt organizations and other entities, total [3]	**84,220**	**69,957**	**1,242**	**13,021**
Section 501 (c) by subsection, total	**84,180**	**69,943**	**1,240**	**12,997**
(2) Title-holding corporations	114	93	0	21
(3) Religious, charitable, and similar organizations [4]	79,107	65,761	1,221	12,125
(4) Social welfare organizations	1,492	1,202	d	d
(5) Labor and agriculture organizations	269	235	0	34
(6) Business leagues	1,477	1,296	6	175
(7) Social and recreation clubs	894	691	d	d
(8) Fraternal beneficiary societies	20	11	d	d
(9) Voluntary employees' beneficiary associations	249	197	4	48
(10) Domestic fraternal beneficiary societies	40	18	d	d
(12) Benevolent life insurance associations	91	66	0	25
(13) Cemetery companies	155	148	d	d
(14) State-chartered credit unions	8	5	0	3
(15) Mutual insurance companies	26	15	d	d
(17) Supplemental unemployment benefit trusts	4	4	0	0
(19) War veterans' organizations	128	101	0	27
(25) Holding companies for pensions and other entities	106	100	0	6
Section 521 Farmers' cooperatives	**26**	**d**	**d**	**d**
Nonexempt charitable trusts	**14**	**d**	**0**	**d**

d—Not shown to avoid disclosure of specific taxpayer data. However, data are included in the appropriate totals.

[1] Reflects all case closures for the Exempt Organizations Determinations function. These include not only initial applications for tax-exempt status, but also other determinations, such as public charity and private foundation status determinations, advance approval of scholarship grant procedures, and group determinations of tax-exempt status.

[2] Includes applications withdrawn by the organization; applications that did not provide the required information; incomplete applications; IRS refusals to rule on applications; applications forwarded to other than the Washington, DC office; IRS correction disposals; and others.

[3] No applications were filed for corporations organized under an act of Congress (section 501(c)(1)); teachers' retirement funds (section 501(c)(11)); corporations to finance crop operations (section 501(c)(16)); employee-funded pension trusts (section 501(c)(18)); black lung trusts (section 501(c)(21)); multiemployer pension plans (section 501(c)(22)); veterans' associations founded prior to 1880 (section 501(c)(23)); trusts described in section 4049 of the Employee Security Act of 1974 (ERISA) (section 501(c)(24)); State-sponsored high-risk health insurance organizations (section 501(c)(26)); State-sponsored workers' compensation reinsurance organizations (section 501(c)(27)); and religious and apostolic associations (section 501(d)). Tax-exempt status for legal services organizations (section 501(c)(20)) was revoked effective June 20, 1992.

[4] Includes private foundations. Not all Internal Revenue Code section 501(c)(3) organizations are required to apply for recognition of tax exemption, including churches, integrated auxiliaries, subordinate units, and conventions or associations of churches.

NOTE: Revised March 2011 to correct errors attributed to a transition in reporting systems.

SOURCE: Tax Exempt and Government Entities, Exempt Organizations.

Table 24. Closures of Applications for Tax-Exempt Status, by Organization Type and Internal Revenue Code Section, Fiscal Year 2009 (Revised March 2011)

Type of organization, Internal Revenue Code section	Applications for tax-exempt status [1]			
	Total	Approved	Disapproved	Other [2]
	(1)	(2)	(3)	(4)
Tax-exempt organizations and other entities, total [3]	**77,305**	**62,459**	**480**	**14,366**
Section 501 (c) by subsection, total	**77,221**	**62,392**	**480**	**14,349**
(1) Corporations organized under an act of Congress	6	0	0	6
(2) Title-holding corporations	137	112	0	25
(3) Religious, charitable, and similar organizations [4]	70,624	56,943	472	13,209
(4) Social welfare organizations	1,922	1,507	3	412
(5) Labor and agriculture organizations	601	543	0	58
(6) Business leagues	1,960	1,742	d	d
(7) Social and recreation clubs	1,115	848	d	d
(8) Fraternal beneficiary societies	16	5	0	11
(9) Voluntary employees' beneficiary associations	257	210	d	d
(10) Domestic fraternal beneficiary societies	45	25	0	20
(12) Benevolent life insurance associations	76	56	0	20
(13) Cemetery companies	209	194	0	15
(14) State-chartered credit unions	d	d	0	0
(15) Mutual insurance companies	6	3	d	d
(17) Supplemental unemployment benefit trusts	6	d	0	d
(19) War veterans' organizations	175	142	0	33
(25) Holding companies for pensions and other entities	62	57	0	5
(27) State-sponsored workers' compensation reinsurance organizations	d	0	0	d
501 (d) Religious and apostolic associations	**59**	**55**	**0**	**4**
Section 521 Farmers' cooperatives	**13**	**7**	**0**	**6**
Nonexempt charitable trusts	**12**	**5**	**0**	**7**

d—Not shown to avoid disclosure of specific taxpayer data. However, data are included in the appropriate totals when possible.

[1] Reflects all case closures for the Exempt Organizations Determinations function. These include not only initial applications for tax-exempt status, but also other determinations, such as public charity and private foundation status determinations, advance approval of scholarship grant procedures, and group determinations of tax-exempt status.

[2] Includes applications withdrawn by the organization; applications that did not provide the required information; incomplete applications; IRS refusals to rule on applications; applications forwarded to other than the Washington, DC office; IRS correction disposals; and others.

[3] No applications were filed for teachers' retirement funds (section 501(c)(11)); corporations to finance crop operations (section 501(c)(16)); employee-funded pension trusts (section 501(c)(18)); black lung trusts (section 501(c)(21)); multiemployer pension plans (section 501(c)(22)); veterans' associations founded prior to 1880 (section 501(c)(23)); trusts described in section 4049 of the Employee Security Act of 1974 (ERISA) (section 501(c)(24)); and State-sponsored high-risk health insurance organizations (section 501(c)(26)). Tax-exempt status for legal service organizations (section501(c)(20)) was revoked effective June 20, 1992.

[4] Includes private foundations. Not all Internal Revenue Code section 501(c)(3) organizations are required to apply for recognition of tax exemption, including churches, integrated auxiliaries, subordinate units, and conventions or associations of churches.

NOTE: Revised March 2011 to correct errors attributed to a transition in reporting systems.

SOURCE: Tax Exempt and Government Entities, Exempt Organizations.

Table 24. Closures of Applications for Tax-Exempt Status, by Organization Type and Internal Revenue Code Section, Fiscal Year 2010

Type of organization, Internal Revenue Code section	Applications for tax-exempt status [1]			
	Total	Approved	Disapproved	Other [2]
	(1)	(2)	(3)	(4)
Tax-exempt organizations and other entities, total [3]	**65,590**	**53,693**	**517**	**11,380**
Section 501 (c) by subsection, total	**65,548**	**53,668**	**517**	**11,363**
(1) Corporations organized under an act of Congress	6	d	0	d
(2) Title-holding corporations	155	117	0	38
(3) Religious, charitable, and similar organizations [4]	59,945	48,934	500	10,511
(4) Social welfare organizations	1,741	1,447	3	291
(5) Labor and agriculture organizations	310	273	0	37
(6) Business leagues	1,695	1,509	6	180
(7) Social and recreation clubs	884	710	d	d
(8) Fraternal beneficiary societies	16	11	0	5
(9) Voluntary employees' beneficiary associations	162	133	d	d
(10) Domestic fraternal beneficiary societies	37	18	d	d
(12) Benevolent life insurance associations	77	66	0	11
(13) Cemetery companies	155	148	0	7
(14) State-chartered credit unions	d	d	0	0
(15) Mutual insurance companies	16	8	4	4
(17) Supplemental unemployment benefit trusts	5	d	0	d
(19) War veterans' organizations	164	135	0	29
(25) Holding companies for pensions and other entities	177	151	0	26
(26) State-sponsored high risk health insurance organizations	d	0	0	d
Section 501 (d) Religious and apostolic associations	**14**	**d**	**0**	**d**
Section 521 Farmers' cooperatives	**23**	**d**	**0**	**d**
Nonexempt charitable trusts	**5**	**0**	**0**	**5**

d—Not shown to avoid disclosure of specific taxpayer data. However, data are included in the appropriate totals, when possible.

[1] Reflects all case closures for the Exempt Organizations Determinations function. These include not only initial applications for tax-exempt status, but also other determinations, such as public charity and private foundation status determinations, advance approval of scholarship grant procedures, and group determinations of tax-exempt status.

[2] Includes applications withdrawn by the organization; applications that did not provide the required information; incomplete applications; IRS refusals to rule on applications; applications forwarded to other than the Washington, DC office; IRS correction disposals; and others.

[3] No applications were filed for teachers' retirement funds (section 501(c)(11)); corporations to finance crop operations (section 501(c)(16)); employee-funded pension trusts (section 501(c)(18)); black lung trusts (section 501(c)(21)); multiemployer pension plans (section 501(c)(22)); veterans' associations founded prior to 1880 (section 501(c)(23)); trusts described in section 4049 of the Employee Retirement Income Security Act of 1974 (ERISA) (section 501(c)(24)); State-sponsored workers' compensation reinsurance organizations (section 501(c)(27)); and the National Railroad Retirement Investment Trust (section 501 (c)(28)). Tax-exempt status for legal services organizations (section 501(c)(20)) was revoked effective June 20, 1992.

[4] Includes private foundations. Not all Internal Revenue Code section 501(c)(3) organizations are required to apply for recognition of tax exemption, including churches, integrated auxiliaries, subordinate units, and conventions or associations of churches.

SOURCE: Tax Exempt and Government Entities, Exempt Organizations.

Table 24. Closures of Applications for Tax-Exempt Status, by Organization Type and Internal Revenue Code Section, Fiscal Year 2011

Type of organization, Internal Revenue Code section	Closures of applications for tax-exempt status [1]			
	Total	Approved [2]	Disapproved	Other [2, 3]
	(1)	(2)	(3)	(4)
Tax-exempt organizations and other entities, total [4]	**61,004**	**54,713**	**217**	**6,074**
Section 501(c) by subsection, total	**60,980**	**54,701**	**217**	**6,062**
(1) Corporations organized under an act of Congress	d	d	0	0
(2) Title-holding corporations	92	81	0	11
(3) Religious, charitable, and similar organizations [5]	55,319	49,677	205	5,437
(4) Social welfare organizations	1,777	1,559	6	212
(5) Labor and agriculture organizations	294	268	0	26
(6) Business leagues	1,655	1,542	4	109
(7) Social and recreation clubs	1,012	855	0	157
(8) Fraternal beneficiary societies	39	32	0	7
(9) Voluntary employees' beneficiary associations	153	123	0	30
(10) Domestic fraternal beneficiary societies	49	41	0	8
(12) Benevolent life insurance associations	91	81	0	10
(13) Cemetery companies	282	267	0	15
(14) State-chartered credit unions	5	d	0	d
(15) Mutual insurance companies	13	d	d	d
(17) Supplemental unemployment benefit trusts	d	d	0	0
(19) War veterans' organizations	177	153	0	24
(25) Holding companies for pensions and other entities	17	14	d	d
(27) State-sponsored workers' compensation reinsurance organizations	d	0	0	d
Section 501(d) Religious and apostolic associations	**13**	**6**	**0**	**7**
Section 521 Farmers' cooperatives	**5**	**d**	**0**	**d**
Nonexempt charitable trusts	**6**	**d**	**0**	**d**

d—Not shown to avoid disclosure of specific taxpayer data. However, data are included in the appropriate totals, when possible.

[1] Reflects all case closures for the Exempt Organizations Determinations function. These include not only initial applications for tax-exempt status, but also other determinations, such as public charity and private foundation status determinations, advance approval of scholarship grant procedures, and group determinations of tax-exempt status.

[2] Beginning with Fiscal Year 2010, IRS initiated a revised application procedure that allows additional time for application closures. Therefore, fewer applications are reported in the "Other" category and more applications are reported in the "Approved" category.

[3] Includes applications withdrawn by the organization; applications that did not provide the required information; incomplete applications; IRS refusals to rule on applications; applications forwarded to other than the Washington, DC, office; IRS correction disposals; and others.

[4] No applications were filed for teachers' retirement funds (section 501(c)(11)); corporations to finance crop operations (section 501(c)(16)); employee-funded pension trusts (section 501(c)(18)); black lung trusts (section 501(c)(21)); multiemployer pension plans (section 501(c)(22)); veterans' associations founded prior to 1880 (section 501(c)(23)); trusts described in section 4049 of the Employee Retirement Income Security Act of 1974 (ERISA) (section 501(c)(24)); State-sponsored high-risk health insurance organizations (section 501(c)(26)); and the National Railroad Retirement Investment Trust (section 501(c)(28)). Tax-exempt status for legal services organizations (section 501(c)(20)) was revoked effective June 20, 1992.

[5] Includes private foundations. Not all Internal Revenue Code section 501(c)(3) organizations are required to apply for recognition of tax exemption, including churches, integrated auxiliaries, subordinate units, and conventions or associations of churches.

SOURCE: Tax Exempt and Government Entities, Exempt Organizations.

United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510–6250

March 30, 2012

VIA U.S. MAIL & EMAIL (Floyd.Williams@IRS.gov)

The Honorable Douglas H. Shulman
Commissioner
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Dear Commissioner Shulman:

Some entities claiming tax-exempt status as social welfare organizations under 26 U.S.C. §501(c)(4) appear to be engaged in political activities more appropriate for political organizations claiming tax-exempt status under 26 U.S.C. §527. Because of the urgency of the issues involved in this matter, please provide the following information by April 20, 2012.

(1) Are entities seeking tax-exempt status under Section 501(c)(4) required to submit an application to the IRS for review and approval, or can they hold themselves out as having that tax-exempt status without filing an application or undergoing IRS review?

(2) For entities that submit an application for tax-exempt status under Section 501(c)(4), please indicate:

   (a) the approximate average number of days between the date on which an entity submits an application for 501(c)(4) tax-exempt status and the date on which that application is approved or denied;

   (b) if it is not provided on a routine basis, approximately what percentage of such applicants receive an IRS questionnaire seeking information about any political activities, and how the IRS determines whether and when to send that questionnaire; and

   (c) approximately how many days after an application is filed that questionnaire is typically sent.

(3) A 1997 letter from the IRS denying tax-exempt status to the National Policy Forum, copy attached, made public in connection with a Senate investigation into federal election campaigns, indicates that the IRS based its denial on the fact that the organization was engaged in partisan political activity, stating that "partisan political activity does not promote social welfare as defined in section 501(c)(4)," and "benefit[s] select individuals or groups, instead of the community as a whole."

Is it still the position of the IRS that a 501(c)(4) organization cannot engage in any partisan political activity, even as a secondary activity?

(4) Is it the position of the IRS that an entity claiming tax-exempt status under Section 501(c)(4) can engage in nonpartisan political activity as a secondary activity, and that political activity can consume up to 49% of the entity's expenditures and resources?

(5) A Treasury regulation applicable to 501(c)(4) organizations states: "The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office." Treas.Reg. §1.501(c)(4)-1(a)(2)(ii). Would the IRS generally view it as a violation of that regulation if a 501(c)(4) organization:

(a) made a cash contribution to a political organization which is tax-exempt under Section 527 and functions as a campaign committee to elect a particular candidate to public office?

(b) made a cash contribution to a political action committee which was established under the Federal Election Campaign Act (FEC Act) and which routinely makes cash contributions to campaign committees, each of which was established to elect a particular candidate to public office?

(c) made a cash contribution to a political action committee or Section 527 political organization which makes independent expenditures on behalf of or in opposition to one or more candidates for public office?

(d) made a cash contribution to a national political party which engages in partisan political campaigns to elect multiple candidates from the same political party to public office?

(e) made a cash contribution to a political action committee or Section 527 political organization which is engaged in partisan political activity, but does not campaign on behalf of or in opposition to any particular candidate for public office?

(f) made a cash contribution to a political action committee or Section 527 political organization which is engaged in nonpartisan political activity and does not campaign on behalf of or in opposition to any particular candidate for public office?

(6) Would the IRS generally view it as a violation of Treasury Regulation §1.501(c)(4)-1(a)(2)(ii), if a 501(c)(4) organization were to coordinate its political activities with a campaign committee, political action committee, or national political party? Please explain.

(7) I understand that some persons have petitioned the Treasury Department to clarify or revise Treasury Regulation §1.501(c)(4)-1(a)(2)(ii). Please indicate whether the IRS plans to engage in such a rulemaking, whether it would first solicit comments on what should be included in that rulemaking, and whether or when any such rulemaking effort has been scheduled to begin.

(8) If the IRS were to deny an entity's request to be treated as tax exempt under Section 501(c)(4), would the IRS automatically apply corporate income taxes to that entity or would it allow the entity to apply for tax-exempt status on other grounds?

(9) If the IRS were to determine that an entity was impermissibly participating in partisan political activity, does the IRS have unilateral authority to reclassify it as a Section 527 political organization instead of a Section 501(c)(4) social welfare organization?

(10) If an entity were denied tax-exempt status by the IRS under Section 501(c)(4), how would past contributions and income earned on those funds generally be treated under the tax code?

(11) What considerations does the IRS use to determine when an entity that is denied tax-exempt status under Section 501(c)(4) should be subject to a penalty? What penalties are available and how are they calculated?

(12) Please provide a copy of the standard questionnaire that the IRS sends to entities claiming tax-exempt status under Section 501(c)(4) to obtain information about their political activities. In addition, please provide any written guidance provided to IRS agents regarding the issue of political activity in connection with Section 501(c)(4).

(13) Please indicate how many letter rulings have been issued by the IRS since January 1, 2007, to deny or revoke the tax-exempt status of an organization under Section 501(c)(4) due to involvement with partisan or nonpartisan political activity. If the IRS has issued 10 or less such letter rulings, please provide copies of all such letters. If the IRS has issued more than 10 such letter rulings, please provide a sample containing discussions of the widest variety of issues related to the denial of tax-exempt status under Section 501(c)(4) due to partisan or nonpartisan political activity.

Thank you for your assistance on this matter. If you have any questions, please contact me, or have your staff contact Kaye Meier of my staff at kaye_meier@levin.senate.gov or 202/224-9110.

Sincerely,

Carl Levin
Chairman
Permanent Subcommittee on Investigations