EXHIBIT

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January 28, 2014

Office of Management & Budget
Attn: Desk Officer for the
Department of the Treasury
Office of Information & Regulatory Affairs
Washington, DC 20503

Re: **Re: Comments on the Collection of Information under the Proposed Guidance for Tax-Exempt Social Welfare Organizations ("the NPRM")**

To Whom It May Concern:

On behalf of Tea Party Patriots, Inc. and FreedomWorks, Inc., the undersigned hereby submits these comments. As a practicing attorney in Washington, D.C., representing a multitude of non-profit citizens organizations, including the two 501(c)(4) tax exempt social welfare organizations on whose behalf these comments are submitted, these comments are reflective of the significant reporting and recordkeeping burdens that will be imposed on a substantial number of Section 501(c)(4) social welfare organizations if the NPRM is adopted as final regulations of the Internal Revenue Service ("IRS"). *See* 78 F.R. 71535; Internal Revenue Service Bulletin 2013-52, December 23, 2013.

Tea Party Patriots, Inc. is a grassroots citizens organization that applied in December, 2010 for tax exempt status as a 501(c)(4) social welfare organization and is *still* awaiting a Letter of Determination of Exempt Status from the Internal Revenue Service ("IRS"). Tea Party Patriots has an interest in the NPRM by virtue of the fact that it has functioned as a social welfare exempt organization in accordance with the published rules and guidance of the IRS for more than three (3) years and appears to have a better understanding of the applicable law and parameters governing its operations than the IRS employees and agents who have as yet been unable to make a decision regarding Tea Party Patriots' application for exempt status, despite multiple rounds of intrusive and burdensome questions and inquiries about the organization.

FreedomWorks, Inc. is a grassroots citizens organization founded in 1984 and recognized as a tax exempt social welfare organization under Section 501(c)(4) of the Internal Revenue Code for the past thirty (30) years. The NPRM will substantially disrupt the operations and activities of FreedomWorks in which the organization has engaged for more than three decades.

If issued in final form and upheld on judicial review, the NPRM would undermine the mission and existence of both of these organizations by reclassifying as 'candidate-related political activities' their core First Amendment programs of citizen involvement in government through grassroots lobbying and the organizations' commitment to holding public officials accountable to the citizenry for their public actions, voting records and decisions.

Introduction to NPRM

On November 29, 2013, the Internal Revenue Service ("IRS") and the Department of Treasury ("Treasury") issued a notice of proposed rulemaking ("NPRM") containing proposed regulations defining and restricting "candidate-related political activities" (*"CRPA"*) by social welfare organizations described under Section 501(c)(4) of the Internal Revenue Code. 78 FR 71535, *et seq*. The IRS contends its employees need a simpler and easier way to manage the definition of "political activities" and have published the proposed regulations under the guise of 'clarity', 'certainty', and a reduction in the need for 'detailed factual analysis of whether an organization is described in Section 501(c)(4)'. However, these proposed regulations do nothing of the kind; they are vague and uncertain and will create even greater confusion and less clarity than the present law, and will impose immense paperwork burdens on thousands of social welfare organizations across the country notwithstanding the statements of Treasury and the IRS to the contrary.

For purposes of the Paperwork Reduction Act ("PRA"), Regulatory Flexibility Act, and related Executive Orders, the immediate concern is that Treasury and the IRS have completely disregarded the recordkeeping, compliance and paperwork burdens that these proposed regulations would impose. In fact, the IRS and Treasury concluded that only one small section of the proposed regulations would require *any* evaluation under the PRA, to-wit, the grant-making aspects of the proposed regulations. But even that estimated paperwork burden was wholly insufficient with an estimate of 'two hours' per year. A more comprehensive discussion of that estimate follows below.

To say that the PRA assessment of the NPRM is completely inadequate is....well, completely inadequate. Treasury and the IRS consideration of and compliance with the provisions of the PRA is nonexistent.

OMB must take immediate steps to ensure that the actual paperwork burdens are assessed and revised, something that the IRS and Treasury have utterly failed to do.

The NPRM Fails to Comply with OMB Directives to Reduce Paperwork Burdens and Information Collection by Federal Agencies

Treasury and the IRS have completely ignored the April 7, 2010 and June 22, 2012 Memoranda from Cass R. Sunstein, Administrator of the Office of Information and Regulatory Affairs ("OIRA") directing the heads of Executive Departments and Agencies and Independent

Regulatory Agencies to take certain steps to ensure compliance with the President's memorandum of January 21, 2009 calling for "a system of transparency, public participation, and collaboration." The April 2010 Memorandum noted that a central goal of OMB in this Administration is to evaluate whether the collection of information by an agency is: necessary, whether it minimizes the information collection burden and maximizes the practical utility of and public benefit from information collected by or for the Federal Government. The June 2012 Memorandum, on its very first page, restated this goal: "Eliminating unjustified regulatory requirements, including unjustified reporting and paperwork burdens, is a high priority of this Administration." Continuing on the first page, the memorandum stresses that agencies should produce "significant quantifiable reductions in paperwork burdens."

Here, neither Treasury nor the IRS made even a token attempt to conduct an evaluation of the information collection burdens necessitated by the NPRM if the proposed rules are issued as final regulations.

Similarly, on June 22, 2012, OIRA issued a Memorandum directing agencies to take further steps to eliminate unjustified regulatory requirements. The NPRM is wholly inconsistent with the directives in these various edicts from the White House, OMB, and OIRA.

While it is common practice for Treasury and the IRS to claim themselves exempt in their rulemaking(s) from the Administrative Procedure Act[1] (5 U.S.C. §§551 *et seq.*) and the Regulatory Flexibility Act (44 U.S.C. §§3501 *et seq.*), those claims of exemption rest on their assertions that they are acting in furtherance of congressional directives and/or legislative actions and Treasury and the IRS have no discretion insofar as the promulgation of new regulations to implement such congressional action. While such a claim of exemption is always arguable, here, it is totally without legal basis. This NPRM arises from no intervening congressional action or statutory change. The NPRM is totally discretionary by the IRS and Treasury. As IRS and Treasury state, the purpose of the NPRM (allegedly) is to "provide greater certainty and reduce the need for detailed factual analysis in determining whether an organization is described in section 501(c)(4)." 78 FR at 71537. Accordingly, any and all claims of exemption are wholly inappropriate and wrong as a matter of law.

We also note for the record – and will be explaining this point in more detail in our forthcoming comments on the NPRM – the absurdity of the assertion by IRS and Treasury that the NPRM is not a "significant" rule under Executive Order 12866 as supplemented by Executive Order 13563 and will not have a "significant economic impact on a substantial number of small entities." 78 FR at 71540.

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[1] In the preamble to the NPRM, IRS claims as follows: "It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations." 78 FR at 71540.

There are Multiple *Different* Types of Paperwork and Compliance Burdens Ignored by Treasury and IRS in the NPRM .

It is impossible to detail all of the paperwork and compliance consequences that the NPRM would impose on every grassroots organization in America but suffice to say that the NPRM would require voluminous and complicated record-keeping by every 501(c)(4) group, as well as any other 501(c) group that may have financial interactions with a 501(c)(4) organization. New systems would necessarily have to be established and maintained by all 501(c)(4) organizations, and many other 501(c) organizations, in order to comply with these regulations. Indeed, for a 501(c)(4) organization to maintain and preserve its exempt status as a social welfare organization, the compliance and paperwork obligations are enormous.

The only 'paperwork' burden acknowledged by the IRS is for grants from a 501(c) organization to any other 501(c) organization, which means that not only will 501(c)(4) groups be forced to learn and operate under these rules, but any other 501(c) organization that expects to *receive* a grant from another organization must also learn and establish systems for complying with these new rules. Both grantors and grantees must track whether the grantee is engaged in or intends to engage in the programs and behaviors described in the NPRM. Even if the grant is for an entirely different purpose, not involving or used for 'candidate-related political activities', the grant is converted to a non-primary purpose activity if a grantee engages or 'has engaged' in 'candidate-related political activity'. The only paperwork burden acknowledged by Treasury and the IRS is for this 'special' grant-making process; yet, even those paperwork burdens are substantially underestimated by IRS and Treasury which estimate a mere 2 hours per year which, as noted herein, is preposterously low.

The analysis by Treasury and the IRS of the 'special rules for grantmaking' is a contradiction of the interpretation of the PRA contained in the Sunstein April 2010 Memorandum. The April 2010 Memorandum restated that the requirements of the PRA applies not only to "requests for information to be sent to the government, such as forms (e.g., the IRS 1040), written reports (e.g., grantee performance reports), and surveys (e.g., the Census)" but also to " recordkeeping requirements (e.g., OSHA requirements that employers maintain records of workplace accidents)." The NPRM implicates both elements – information to be sent to the IRS and required recordkeeping – but the paperwork burden analysis of the NPRM by Treasury and the IRS completely disregards both.

Because the proposed regulations are vague, misleading, and provide insufficient direction to organization officers and leaders or to legal and accounting practitioners to be able to accurately and fully advise clients as to their meaning, the actual burdens will only become fully known in time, well after the regulations are imposed.

This is the opposite of the President's stated objectives on January 21, 2009 when he pledged an Administration of "transparency, public participation, and collaboration". Surely OMB will not

allow the Department of Treasury and IRS to simply hide the truth about the impact of the NPRM insofar as the compliance, paperwork and recordkeeping burdens are concerned.

This is also the opposite of the claimed purpose of the NPRM, which allegedly seek 'clarity'; these proposed regulations provide anything but clarity.

Knowing that there are many hidden burdens contained in the NPRM, there are, nonetheless, some specific paperwork and compliance burdens that immediately come to mind as known examples of paperwork and compliance burdens ignored by the IRS and Treasury and which must be addressed by OMB. The examples herein are more than sufficient reason for OMB to reject the NPRM and to return to Treasury and the IRS for an actual assessment of the true paperwork burdens to which these proposed regulations would give rise.

Examples of Compliance and Paperwork Burdens Directly Caused by the NPRM:

1. **Volunteer Time and Activity Recordkeeping.** Current IRS guidance allows an organization to monitor its 'primary purpose activities' by tracking its *program expenditures.* 2013 IRS Form 990 Instructions, *Return of Organization Exempt From Income Tax*, p. 64.[2] See Attachment A, "*2013 Instructions for Schedule C, Form 990 or 990-EZ, Political Campaign and Lobbying Activities*, Department of the Treasury." The proposed regulations in the NPRM would impose a new component *requiring* that nonprofit organizations include in their 'primary purpose' calculations 'volunteer activities'; yet, there is no further definition, guidance, means of measurement, or other directions as to how such 'volunteer activities' are to be captured, calculated or reported on the Form 990. The NPRM is totally silent on exactly *how* an organization is supposed to perform the calculations necessary for measuring the value of its 'volunteer activities', but at the very least *someone,* either organization staff or the volunteers themselves, would be required or expected to keep time records of the time spent engaged in activities related to the organization, and submit those to the organization. The organization would then have to perform some manner of valuation of the volunteers' time spent on its behalf, but not only would the organization be required to obtain / maintain the actual time records, but the records would also have to include records of the specific activities in which the volunteers were engaged. Some of the volunteer activities would count toward the organization's 'primary purpose' but others would not – and the category of activities that would NOT count toward an organization's primary purpose are

[2] The IRS has provided guidance for section 501(c)(4) social welfare organizations on its website. Life Cycle of a Social Welfare Organization, IRS.Gov, (accessed January 26, 2014), http://www.irs.gov/Charities-&-Non-Profits/Other-Non-Profits/Life-Cycle-of-a-Social-Welfare-Organization.

substantially increased under the NPRM. The recordkeeping in this area alone is monstrous and is completely disregarded by Treasury and the IRS in the NPRM.

2. **Primary Purpose Recordkeeping:** The proposed regulations would create a new definition and category of activities – *candidate-related political activities ("CRPA")* – which would NOT count toward a 501(c)(4) organization's primary purpose. Therefore, every 501(c)(4) organization will necessarily be required to establish new policies and procedures for reviewing each and every activity in which it engages in order to determine whether the activities and programs constitute *CRPA* as newly defined. Then, an organization would have to establish compliance systems to allocate the costs of its programs and activities on an ongoing basis to track which programs and expenditures qualify as primary purpose and which do not.

   One of the most egregious parts of the proposed regulations is that the definitions proposed in the NPRM would convert *non*-candidate related political activities *into* candidate related political activities (and thus, would be converted to non-primary purpose activities) merely by the passage of time.

   Example: Legislative Voting Histories. Many social welfare organizations maintain and publish voting records of members of elected bodies as a fundamental component of their mission. Organizations develop such legislative voting records and score cards and post the information on their websites or disseminate the information to their membership or the general public. This is core First Amendment activity and common for many grassroots, social welfare organizations – and under current law, such activities count as a primary purpose activity of a social welfare organization. *See Rev. Rul. 80-282, 1980 -2 C.B. 178.*

   However, under the proposed definitions of *CRPA* , legislative voting records will be converted to *CRPA* if the information remains available on the organization's website within the new 'communications close to an election' window ("the window"), and is not timely removed by the 31st day preceding a primary election or the 61st day preceding a general election.

   A multitude of questions arise just for this *one* activity:

   - How are the costs to be calculated and allocated between the development and posting of the information before the window and remaining publicly available within the window?
   - Is it the entire cost of the production of the voting record when it was first prepared and published at the time *outside* the window when it *did* qualify as a primary purpose activity? Or is the calculation to be some portion thereof?

- What methodology must be employed by the organization to be able to calculate the value of the activity which was once, but is no longer, deemed to support the organization's primary purpose?

Every organization would be required to develop a system for tracking, analyzing, allocating and reallocating costs of the publication of legislative votes if or when the information is still publicly available during the period 'close to an election'(as further described below) on the organization's website or in other materials of the organization. In sum, every c4 organization would necessarily have to maintain a constantly updated status of its expenditures – including the value of its volunteer activities – on an ongoing basis in order to make judgments about what activities it can engage in at any given moment, whether there is a primary election somewhere that might implicate the organization's communications and activities about grassroots lobbying, legislative voting records, calls for citizen action, and other activities and programs in which citizens' organizations have been engaged for decades.

Organizations will be required to constantly monitor all their activities and programs in order to know what communications must be removed from the websites, or withheld from their publications, and so forth, and to maintain sufficient records and a chart of accounts of 'primary purpose' and 'non-primary purpose' activities, expenditures – and volunteer efforts -- in order to ensure that the group's 'primary purpose' is not endangered by engaging in some activity or activities that may or will no longer count toward the group's primary purpose.

The records and compliance systems necessary to ensure that the overall program expenditures and volunteer activities fall within the primary purpose as redefined by the NPRM are enormous – and ignored altogether by the IRS and Treasury.

3. Definition of Communications 'Close in Time to an Election' Imposes Substantial Paperwork Burdens. The NPRM's definition of 'communication close in time to an election' is utterly vague and insufficiently narrow to be comprehensible. The NPRM provides that any 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 a *CRPA*. However, the definition doesn't limit the application of the new restrictions insofar as the *recipients* of the communication, *e.g.,* to persons or voters eligible to vote for the candidate that is referenced. The proposed definition only states that it is a communication within the specified time frame and that a candidate 'in the election' is referenced. The result is that an organization that makes communications about any public official who may also be a candidate for office – the same or another office – is subject to restrictions and expenditure calculations if there is a primary *anywhere* within 30 days of the communication.

An organization would be required to continually monitor the primary calendars of every state and to allocate and reallocate the costs of the group's communications – and volunteer activities – for purposes of calculating the group's primary purpose expenditures, including the value of attendant volunteer activities, to know when and whether it will or will not be able to make communications that reference elected officials who might also be 'candidates' in a primary or general election.

A communication about a candidate on the ballot in California is still a *CRPA* even if the communication is made in Illinois – such that the organization would be constantly required to monitor all primary election dates for any office anywhere – and to calculate the non-primary purpose of any activity or expenditure that is disqualified by the presence on a ballot of an official referenced in a communication.

Again, Treasury and the IRS have cobbled together an unintelligible set of regulations that will cause substantial paperwork, compliance and recordkeeping burdens on every social welfare organization in America.

4. Conflicting definitions in the regulations will require multiple accounting systems for organizations in order to comply with different provisions of the regulations. The NPRM proposes to create an entirely new set of definitions that deal with what are commonly referred to as political activities by exempt organizations, such that the regulations would now contain three different definitions in this area, which are different, incompatible and contradictory:

- 'exempt activities' for political organizations: This definition would continue to be applied to 501(c)(4) organizations for purposes of calculating the tax imposed on 501(c)(4) organizations who engage in activities that are exempt for Section 527 political organizations but taxable to 501(c)(4) organizations engaging in the same activities. Section 527(f); (e)(2).

- 'partisan campaign intervention'[3] – which is impermissible activity for a 501(c)(3) organization, but allowable to 501(c)(4) and other 501(c) groups,

[3] An organization is an "action organization" and thus disqualified from section 501(c)(3) status if "if it participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office. The term "candidate for public office" means an individual who offers himself, or is proposed by others, as a contestant for an elective public office, whether such office be national, State, or local. Activities which constitute participation or intervention in a political campaign on behalf of or in opposition to a candidate include, but are not limited to, the publication or distribution of written or printed statements or the making of oral statements on behalf of or in opposition to such a candidate." Treas. Reg. § 1.501(c)(3)-1(c)(3)(iii).

provided that expenditures for such programs do not constitute a majority of the organization's program expenditures.

- 'Candidate-related political activities' – the proposed new definitions contained in the NPRM

The paperwork, accounting and recordkeeping burdens associated with having multiple definitions of the same and/or similar activities are voluminous. The NPRM is silent on the subject of whether 'candidate-related political activities' are subject to the Section 527e tax. Preamble to Prop. Reg., 78 Fed. Reg. 71535, 71537 (Nov. 29, 2013), [REG-134417-13], Section 1,b, "Interaction with section 527."

Thus, a 501(c)(4) organization would continue to be required to keep track of its 527 exempt activities for purposes of calculating and reporting the taxable political expenditures on its 1120-POL return. The organization would have to maintain a second accounting system for its 'candidate-related political activities' for purposes of calculating its primary purpose expenditures – and while there may be some overlap, the definitions are not identical and the issue of taxation of *CRPA* is not addressed in the NPRM.

Further, if an organization has a companion 501(c)(3) educational and charitable affiliate –which many 501(c)(4) organizations do – the irony is that the 501(c)(3) organization would still be able to conduct nonpartisan voter registration, candidate forums, candidate debates and voter guides – all of which are permissible for 501(c)(3) organizations and do not count as 'partisan campaign intervention' – but which must now be tracked and counted as NON-primary purpose activities for a 501(c)(4) organization. Thus, organizations will necessarily have to maintain multiple accounting systems to capture and report the costs of the same activities in multiple ways and for different purposes, pursuant to different sections of the Internal Revenue Code.

The recordkeeping and mathematical analyses triggered by these proposed regulations is enormous. Yet, the IRS and the Treasury Department blithely disregard any and all paperwork burdens their handiwork would impose.

5. Public Communications By Third Parties "Attributable" to a 501(c)(4) Organization. One of the most insidious parts of the NPRM is that not only would communications by the organization over which it has control constitute *CRPA*, but also communications that could be 'attributable' to the organization when published by others (such as a news article or media interview) could also be deemed to be *CRPA* . For instance, if an officer *or a volunteer* makes a reference to a 'candidate' at an event sponsored by the organization and is quoted in the newspaper referencing the candidate, that becomes a 'candidate-related political activity' that must be measured, calculated and is disallowed as a

primary purpose activity / expenditure of the organization. The NPRM specially notes that such a communication or statement need not be made in the context of a 'previously scheduled' event; presumably, then, an interview by a news outlet with a representative of the organization can result in a 'candidate-related political activity' when published by the news outlet.

The proposed regulations would, accordingly, force organizations to create vast monitoring systems to track the quotes and references to the organization, its officers, employees *and volunteers* in order to then record and evaluate whether a 'candidate-related political activity' communication has occurred and, if so, undertake the requisite calculations and recordkeeping obligations attendant to such communications.

As with the rest of the NPRM, Treasury and IRS have disregarded altogether the paperwork burdens associated with this section.

Further, in the same section, the NPRM states:

> The "...proposed regulations also provide that an organization's Web site is an official publication of the organization, so that material posted by the organization on its Web site may constitute candidate-related political activity. The proposed regulations do not specifically address material posted by third parties on an organization's Web site. The Treasury Department and the IRS request comments on whether, and under what circumstances, material posted by a third party on an interactive part of the organization's Web site should be attributed to the organization for purposes of this rule. In addition, the Treasury Department and the IRS have stated in guidance under section 501(c)(3) regarding political campaign intervention that when a charitable organization chooses to establish a link to another Web site, the organization is responsible for the consequences of establishing and maintaining that link, even if it does not have control over the content of the linked site. See Rev. Rul. 2007-41. The Treasury Department and the IRS request comments on whether the consequences of establishing and maintaining a link to another Web site should be the same or different for purposes of the proposed definition of candidate-related political activity." (emphasis added)

It is a relatively simple matter under existing regulations for a 501(c)(3) organization to know and understand that it should not link to a third party website that does (or may) engage in partisan campaign activity.

It is another matter entirely to extrapolate from and extend such a rule to 501(c)(4) organizations and their posting(s) and links to other websites for purposes of this very broad and impossibly vague and ill-defined purpose. If the IRS and Treasury conclude in final

regulations to adopt this approach, it will require every 501(c)(4) to either stop linking to any third party website or else establish at substantial cost and effort a constant monitoring system of any websites to which the organization may link. Even linking to a media website could trigger a 'cost' for purposes of primary purpose calculations if a media website contains references to candidates within the window restricting such references.

Conclusion

It is difficult to estimate the entire compliance and paperwork burden caused by the NPRM. The organizations making this comment estimate that the development, installation, and education required to create a record-keeping system adequate to meet the requirements set forth above in the first example (volunteer time and activity record) alone will require at least 100 hours annually of staff and compliance professional time. This is a conservative estimate; the true burden may well be multiples of that number. In addition, these organizations conservatively estimate that the collection, calculation, and valuation of volunteer time and activities for purposes will require an additional 100 hours of work annually. Again, this is a conservative estimate and the true burden may also be multiples of that number. Further, there are other latent record-keeping burdens in the NPRM that cannot be estimated.

In drafting the NPRM, Treasury and the IRS have completely ignored the purposes of the PRA, as set forth by Congress: "The purposes of this chapter [the PRA] are to— (1) minimize the paperwork burden for individuals, small businesses, educational and nonprofit institutions..." The organizations making this comment are nonprofit organizations and instead of minimizing the paperwork burden of these and similar organizations, the NPRM seeks to dramatically increase the size of the paperwork burden.

OMB should reject the proposed regulations and return the entire NPRM to the Department of Treasury and the IRS for proper analysis pursuant to the Paperwork Reduction Act and Regulatory Flexibility Act.

Further, a public hearing should be conducted by OMB and/or OIRA on the subject of the paperwork and regulatory burdens the NPRM will impose on organizations exempt under Section 501(c) of the Code. The undersigned would be pleased to testify at such a hearing.

Please contact me at (202) 295-4081 should you have any questions regarding these comments.

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FOLEY & LARDNER LLP

Sincerely,

Cleta Mitchell

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Tea Party Patriots, Inc., and
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Attachments

ATTACHMENT TO COMMENTS

2013

Department of the Treasury
Internal Revenue Service

Instructions for Schedule C (Form 990 or 990-EZ)

Political Campaign and Lobbying Activities

Section references are to the Internal Revenue Code unless otherwise noted.

Future Developments

For the latest information about developments related to Schedule C (Form 990 or 990-EZ) and its instructions, such as legislation enacted after they were published, go to www.irs.gov/form990.

General Instructions

Note. Terms in **bold** are defined in the *Glossary* of the instructions for Form 990.

Purpose of Schedule

Schedule C (Form 990 or 990-EZ) is used by:

- Section 501(c) organizations, and
- Section 527 organizations.

These organizations must use Schedule C (Form 990 or 990-EZ) to furnish additional information on **political campaign activities** or **lobbying activities**, as those terms are defined below for the various parts of this schedule.

Who Must File

An organization that answered "Yes" on Form 990, Part IV, *Checklist of Required Schedules*, line 3, 4, or 5, must complete the appropriate parts of Schedule C (Form 990 or 990-EZ) and attach Schedule C to Form 990. An organization that answered "Yes" on Form 990-EZ, Part V, line 46 or Part VI, line 47, must complete the appropriate parts of Schedule C (Form 990 or 990-EZ) and attach Schedule C to Form 990-EZ. An organization that answered "Yes" to Form 990-EZ, Part V, line 35c, because it is subject to the section 6033(e) notice and reporting requirements and proxy tax, must complete Part III of Schedule C (Form 990 or 990-EZ) and attach Schedule C to Form 990-EZ.

If an organization has an ownership interest in a **joint venture** that conducts **political campaign activities** or **lobbying activities**, the organization must report its share of such activity occurring in its **tax year** on Schedule C (Form 990 or 990-EZ). See Instructions for Form 990, Appendix F. *Disregarded Entities and Joint Ventures—Inclusion of Activities and Items*.

Part I. Political campaign activities. Part I is completed by section 501(c) organizations and section 527 organizations that file the Form 990 (and Form 990-EZ). If the organization answered "Yes" to Form 990, Part IV, line 3, or Form 990-EZ, Part V, line 46, then complete the specific parts as follows.

- A section 501(c)(3) organization must complete Parts I-A and I-B. Do not complete Part I-C.
- A section 501(c) organization other than section 501(c)(3) must complete Parts I-A and I-C. Do not complete Part I-B.
- A section 527 organization that files the Form 990 or Form 990-EZ must complete Part I-A. Do not complete Parts I-B and I-C.

Part II. Lobbying activities. Part II is completed only by section 501(c)(3) organizations. If the organization answered "Yes" to Form 990, Part IV, line 4, or Form 990-EZ, Part VI, line 47, then complete the specific parts as follows.

- A section 501(c)(3) organization that elected to be subject to the lobbying expenditure limitations of section 501(h) by filing Form 5768 and for which the election was valid and in effect for its **tax year** beginning in the year 2013, must complete Part II-A. Do not complete Part II-B.
- A section 501(c)(3) organization that has not elected to be subject to the lobbying expenditure limitations of section 501(h) (or has revoked such election by filing Form 5768 for which the revocation was valid and in effect for its **tax year** beginning in the year 2013) must complete Part II-B. Do not complete Part II-A.

Part III. Section 6033(e) notice and reporting requirements and proxy tax. Part III is completed by section 501(c)(4), section 501(c)(5), and section 501(c)(6) organizations that received membership dues, assessments, or similar amounts as defined in Rev. Proc. 98-19, section 5.01, 1998-7 I.R.B. 30 as adjusted by Rev. Proc. 2012-41; section 3.22; 2012-45 I.R.B. 539 and that answered "Yes" to Form 990, Part IV, line 5 or "Yes" to Form 990-EZ, line 35c, regarding the proxy tax.

If an organization is not required to file Form 990 or Form 990-EZ but chooses to do so, it must file a complete return and provide all of the information requested, including the required schedules.

Definitions

Definitions in this section are applicable throughout this schedule, except where noted. The following terms are defined in the *Glossary*.

- **Joint venture.**
- **Legislation.**
- **Lobbying activities.**
- **Political campaign activities.**
- **Tax year.**

TIP *See Revenue Ruling 2007-41, 2007-25 I.R.B. 1421, for guidelines on the scope of the tax law prohibition of campaign activities by section 501(c)(3) organizations.*

Section 527 exempt function activities. Section 527 exempt function activities include all functions that influence or attempt to influence the selection, nomination, election, or appointment of any individual to any federal, state, or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors, whether or not such individual or electors are selected, nominated, elected, or appointed.

Political expenditures. Any expenditures made for **political campaign activities** are political expenditures. An expenditure includes a payment, distribution, loan, advance, deposit, or gift of money, or anything of value. It also includes a contract, promise, or agreement to make an expenditure, whether or not legally enforceable.

Specific legislation. Specific **legislation** includes (1) legislation that has already been introduced in a legislative body and (2) specific legislative proposals that an organization either supports or opposes.

Definitions (Part II-A)

Definitions in this section are applicable only to Part II-A.

Expenditure test. Under the expenditure test, there are limits both upon the amount of the organization's grassroots lobbying expenditures and upon the total amount of its direct lobbying and grassroots lobbying expenditures. If

the electing public charity does not meet this expenditure test, it will owe a section 4911 excise tax on its excess lobbying expenditures. Moreover, if over a 4-year averaging period the organization's average annual total lobbying or grassroots lobbying expenditures are more than 150% of its dollar limits, the organization will lose its exempt status.

Exempt purpose expenditures. In general, an exempt purpose expenditure is paid or incurred by an electing public charity to accomplish the organization's exempt purpose.

Exempt purpose expenditures include:

1. The total amount paid or incurred for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, or to foster national or international amateur sports competition (not including providing athletic facilities or equipment, other than by qualified amateur sports organizations described in section 501(j)(2));

2. The allocable portion of administrative expenses paid or incurred for the above purposes;

3. Amounts paid or incurred to try to influence legislation, whether or not for the purposes described in 1 above;

4. Allowance for depreciation or amortization; and

5. Fundraising expenditures, except that exempt purpose expenditures do not include amounts paid to or incurred for either the organization's separate fundraising unit or other organizations, if the amounts are primarily for fundraising.

See Regulations section 56.4911-4(c) for a discussion of excluded expenditures.

Lobbying expenditures. Lobbying expenditures are expenditures (including allocable overhead and administrative costs) paid or incurred for the purpose of attempting to influence legislation:

- Through communication with any member or employee of a legislative or similar body, or with any government official or employee who may participate in the formulation of the legislation, and
- By attempting to affect the opinions of the general public.

To determine if an organization has spent excessive amounts on lobbying, the organization must know which expenditures are lobbying expenditures and which are not lobbying expenditures. An electing public charity's lobbying expenditures for a year are the sum of its expenditures during that year for direct lobbying communications (direct lobbying expenditures) plus grassroots lobbying communications (grassroots lobbying expenditures).

Direct lobbying communications (direct lobbying expenditures). A direct lobbying communication is any attempt to influence any legislation through communication with:

- A member or employee of a legislative or similar body;
- A government official or employee (other than a member or employee of a legislative body) who may participate in the formulation of the legislation, but only if the principal purpose of the communication is to influence legislation; or
- The public in a referendum, initiative, constitutional amendment, or similar procedure.

A communication with a legislator or government official will be treated as a direct lobbying communication if, but only if, the communication:

- Refers to specific legislation, and
- Reflects a view on such legislation.

Grassroots lobbying communications (grassroots lobbying expenditures). A grassroots lobbying communication is any attempt to influence any legislation through an attempt to affect the opinions of the general public or any part of the general public.

A communication is generally not a grassroots lobbying communication unless (in addition to referring to specific legislation and reflecting a view on that legislation) it encourages recipients to take action about the specific legislation.

A communication encourages a recipient to take action when it:

1. States that the recipient should contact legislators;

2. States a legislator's address, phone number, or similar information;

3. Provides a petition, tear-off postcard, or similar material for the recipient to send to a legislator; or

4. Specifically identifies one or more legislators who:

a. Will vote on legislation;

b. Opposes the communication's view on the legislation;

c. Is undecided about the legislation;

d. Is the recipient's representative in the legislature; or

e. Is a member of the legislative committee that will consider the legislation.

A communication described in item 4 above generally is grassroots lobbying only if, in addition to referring to and reflecting a view on specific legislation, it is a communication that cannot meet the full and fair exposition test as nonpartisan analysis, study, or research.

Exceptions to lobbying. In general, engaging in nonpartisan analysis, study, or research and making its results available to the general public or segment of members thereof, or to governmental bodies, officials, or employees is not considered either a direct lobbying communication or a grassroots lobbying communication. Nonpartisan analysis, study, or research may advocate a particular position or viewpoint as long as there is a sufficiently full and fair exposition of the pertinent facts to enable the public or an individual to form an independent opinion or conclusion.

A communication that responds to a governmental body's or committee's written request for technical advice is not a direct lobbying communication.

A communication is not a direct lobbying communication if the communication is an appearance before, or communication with, any legislative body concerning action by that body that might affect the organization's existence, its powers and duties, its tax-exempt status, or the deductibility of contributions to the organization, as opposed to affecting merely the scope of the organization's future activities.

Communication with members. For purposes of section 4911, expenditures for certain communications between an organization and its members are treated more leniently than are communications to nonmembers. Expenditures for a communication that refers to, and reflects a view on, specific legislation are not lobbying expenditures if the communication satisfies the following requirements.

1. The communication is directed only to members of the organization.

2. The specific legislation the communication refers to, and reflects a view on, is of direct interest to the organization and its members.

3. The communication does not directly encourage the member to engage in direct lobbying (whether individually or through the organization).

4. The communication does not directly encourage the member to engage in grassroots lobbying (whether individually or through the organization).

Expenditures for a communication directed only to members that refers to, and reflects a view on, specific legislation and that satisfies the requirements of items (1), (2), and (4), above (under ***Grassroots lobbying communications***), but does not satisfy the requirements of item (3), are treated as expenditures for direct lobbying.

Expenditures for a communication directed only to members that refers to,

and reflects a view on, specific legislation and satisfies the requirements of items (1) and (2) above, but does not satisfy the requirements of item (4), are treated as grassroots expenditures, whether or not the communication satisfies the requirements of item (3). See Regulations section 56.4911-5 for details.

There are special rules regarding certain paid mass media advertisements about highly publicized legislation; allocation of mixed purpose expenditures; certain transfers treated as lobbying expenditures; and special rules regarding lobbying on referenda, ballot initiatives, and similar procedures. See Regulations sections 56.4911-2 and 56.4911-3.

Affiliated groups. Members of an affiliated group are treated as a single organization to measure lobbying expenditures. Two organizations are affiliated if one is bound by the other organization's decisions on legislative issues (control) or if enough representatives of one belong to the other organization's governing board to cause or prevent action on legislative issues (interlocking directorate). If the organization is not sure whether its group is affiliated, it may ask the IRS for a ruling letter. There is a fee for this ruling. For information on requesting rulings, see Rev. Proc. 2013-4, 2013-1 I.R.B. 126 (or latest annual update).

Members of an affiliated group measure both lobbying expenditures and permitted lobbying expenditures on the basis of the affiliated group's tax year. If all members of the affiliated group have the same tax year, that year is the tax year of the affiliated group. However, if the affiliated group's members have different tax years, the tax year of the affiliated group is the calendar year, unless all the members of the group elect otherwise. See Regulations section 56.4911-7(e)(3).

Limited control. Two organizations that are affiliated because their governing instruments provide that the decisions of one will control the other only on national legislation are subject to the following provisions.

- The controlling organization is charged with its own lobbying expenditures and the national legislation expenditures of the affiliated organizations,
- The controlling organization is not charged with other lobbying expenditures (or other exempt-purpose expenditures) of the affiliated organizations, and
- Each local organization is treated as though it were not a member of an affiliated group. For example, the local organization should account for its own expenditures only and not for any of the national legislation expenditures deemed as incurred by the controlling organization.

Definitions (Part III)

Definitions in this section are applicable only to Part III.

Lobbying and political expenditures. For purposes of this section only, lobbying and political expenditures do not include direct lobbying expenditures made to influence local legislation. Nor does it include any political campaign expenditures for which the tax under section 527(f) was paid (see Part I-C). They do include any expenditures for communications with a covered executive branch official in an attempt to influence the official actions or positions of that official.

Covered executive branch official. Covered executive branch officials include the President, Vice-President, officers and employees of the Executive Office of the President, the two senior level officers of each of the other agencies in the Executive Office, individuals in level I positions of the Executive Schedule and their immediate deputies, and individuals designated as having Cabinet level status and their immediate deputies.

Direct contact lobbying. This means a:

1. Meeting,
2. Telephone conversation,
3. Letter, or
4. Similar means of communication that is with a:

a. Legislator (other than a local legislator), or

b. Covered executive branch official and that is an attempt to influence the official actions or positions of that official.

In-house expenditures include:

1. Salaries, and
2. Other expenses of the organization's officials and staff (including amounts paid or incurred for the planning of legislative activities).

In-house expenditures do not include: Any payments to other taxpayers engaged in lobbying or political activities as a trade or business or any dues paid to another organization that are allocable to lobbying or political activities.

Specific Instructions

Part I-A. Political Activity of Exempt Organizations

Note. Section 501(c) organizations other than those exempt under section 501(c)(3) may establish section 527(f)(3) separate segregated funds to engage in political activity. Separate segregated funds are subject to their own filing requirements. A section 501(c) organization that engages a separate segregated fund to conduct political activity should report transfers to the fund in Parts I-A and I-C. The separate segregated fund should report specific activities on its own Form 990 if the fund is required to file.

Line 1. Section 501(c) organizations should provide a detailed description of their direct and indirect **political campaign activities** in Part IV. If the section 501(c) organization collects political contributions or member dues earmarked for a separate segregated fund, and promptly and directly transfers them to that fund as prescribed in Regulations section 1.527-6(e), do not report them here. Such amounts should be reported in Part I-C, line 5e.

Section 527 organizations should provide a detailed description of their exempt function activities in Part IV.

Line 2. Enter the total amount that the filing organization has spent conducting the activities described on line 1.

Line 3. If the organization used volunteer labor for its **political campaign activities** or section 527 exempt function activities, provide the total number of hours. Any reasonable method may be used to estimate this amount.

Part I-B. Section 501(c)(3) Organizations—Disclosure of Excise Taxes Imposed Under Section 4955

Section 501(c)(3) organizations must disclose any excise tax incurred during the year under section 4955 (political expenditures), unless abated. See sections 4962 and 6033(b).

Line 1. Enter the amount of taxes incurred by the organization itself under section 4955, unless abated. If no tax was incurred, enter -0-.

Line 2. Enter the amount of taxes incurred by the organization managers under section 4955, unless abated. If no tax was incurred, enter -0-.

Line 3. If the filing organization reported a section 4955 tax on a Form 4720, Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code, for the tax year, answer "Yes."

Line 4. Describe in Part IV the steps taken by the organization to correct the activity that subjected it to the section 4955 tax. Correction of a political expenditure means recovering the expenditure to the extent possible and establishing safeguards to prevent future political expenditures. Recovery of the expenditure means recovering part or all

of the expenditure to the extent possible, and, where full recovery cannot be accomplished, by any additional corrective action that is necessary. (The organization that made the political expenditure is not under any obligation to attempt to recover the expenditure by legal action if the action would in all probability not result in the satisfaction of execution on a judgment.)

Part I-C. Section 527 Exempt Function Activity of Section 501(c) Organizations Other Than Section 501(c)(3)

Note. Section 501(c) organizations that collect political contributions or member dues earmarked for a separate segregated fund, and promptly and directly transfer them to that fund as prescribed in Regulations section 1.527-6(e), do not report them on lines 1 or 2. Such amounts are reported on line 5e.

Line 1. Enter the amount of the organization's funds that it expended for section 527 exempt function activities. See Regulations section 1.527-6(b).

Line 2. Enter the amount of the organization's funds that it transferred to other organizations, including a separate segregated section 527(f)(3) fund created by the organization, for section 527 exempt function activity.

Line 3. Total exempt function expenditures. Add lines 1 and 2 and enter on line 3 and on Form 1120-POL, line 17b.

Line 4. If the filing organization reported taxable political expenditures on Form 1120-POL for this year, answer "Yes."

Line 5. In columns (a), (b), and (c), enter the name, address and employer identification number (**EIN**) of each section 527 political organization to which payments were made. In column (d), enter the amount paid from the filing organization's funds. In column (e), enter the amount of political contributions received and promptly and directly delivered to a separate political organization, such as a separate segregated fund or a political action committee (PAC). If additional space is needed, enter information in Part IV.

Part II-A. Lobbying Activity

Only section 501(c)(3) organizations that have filed Form 5768 (election under section 501(h)) complete this section.

Part II-A provides a reporting format for any section 501(c)(3) organization for which the 501(h) lobbying expenditure election was valid and in effect during the 2013 **tax year**, whether or not the organization engaged in **lobbying activities** during that tax year. A **public charity** that makes a valid section 501(h) election may spend up to a certain percentage of its exempt purpose expenditures to influence **legislation** without incurring tax or losing its tax exempt status.

Affiliated groups. If the filing organization belongs to an affiliated group, check Part II-A, box A and complete lines 1a through 1i.

- Complete column (a) for the electing member of the group.
- Complete column (b) for the affiliated group as a whole.

If the filing organization checked box A and the limited control provisions apply to the organizations in the affiliated group, each member of the affiliated group should check box B and complete column (a) only.

If the filing organization does not check box A, do not check box B.

Affiliated group list. Provide in Part IV a list showing each affiliated group member's name, address, **EIN**, and expenses. Show which members made the election under section 501(h) and which did not.

Include each electing member's share of the excess lobbying expenditures on the list.

Nonelecting members do not owe tax, but remain subject to the general rule, which provides that no substantial part of their activities may consist of carrying on propaganda or otherwise trying to influence **legislation**.

Lines 1a through 1i. Complete lines 1a through 1i in column (a) for any organization required to complete Part II-A, but complete column (b) only for affiliated groups.

Lines 1a through 1i are used to determine whether any of the organization's current year lobbying expenditures are subject to tax under section 4911. File Form 4720 if the organization needs to report and pay the excise tax.

Line 1a. Enter the amount the organization expended for grassroots lobbying communications.

Line 1b. Enter the amount the organization expended for direct lobbying communications.

Line 1c. Add lines 1a and 1b.

Line 1d. Enter all other amounts (excluding lobbying) the organization expended to accomplish its exempt purpose.

Line 1e. Add lines 1c and 1d. This is the organization's total exempt purpose expenditures.

Lines 1h and 1i. If there are no excess lobbying expenditures on either line 1h or 1i of column (b), treat each electing member of the affiliated group as having no excess lobbying expenditures. However, if there are excess lobbying expenditures on either line 1h or 1i of column (b), treat each electing member as having excess lobbying expenditures. In such case, each electing member must file Form 4720, and must pay the tax on its proportionate share of the affiliated group's excess lobbying expenditures. Enter the proportionate share in column (a) on line 1h or line 1i, or on both lines. In Part IV, provide the *affiliated group list* described above. Show what amounts apply to each group member. To find a member's proportionate share, see Regulations section 56.4911-8(d).

Line 1j. If the filing organization reported section 4911 tax on Form 4720 for this year, answer "Yes."

Line 2. Line 2 is used to determine if the organization exceeded lobbying expenditure limits during the 4-year averaging period.

Any organization for which a lobbying expenditure election under section 501(h) was in effect for its **tax year** beginning in 2013 must complete columns (a) through (e) of lines 2a through 2f except in the following situations.

1. An organization first treated as a section 501(c)(3) organization in its tax year beginning in 2013 does not have to complete any part of lines 2a through 2f.

2. An organization does not have to complete lines 2a through 2f for any period before it is first treated as a section 501(c)(3) organization.

3. If 2013 is the first year for which an organization's section 501(h) election is effective, that organization must complete line 2a, columns (d) and (e). The organization must then complete all of column (e) to determine whether the amount on line 2c, column (e), is equal to or less than the lobbying ceiling amount calculated on line 2b and whether the amount on line 2f is equal to or less than the grassroots ceiling amount calculated on line 2e. The organization does not satisfy both tests if either its total lobbying expenditures or grassroots lobbying expenditures exceed the applicable ceiling amounts. When this occurs, all five columns must be completed and a re-computation made unless exception 1 or 2 above applies.

4. If 2013 is the second or third tax year for which the organization's first section 501(h) election is in effect, that

organization is required to complete only the columns for the years in which the election has been in effect, entering the totals for those years in column (e). The organization must determine, for those 2 or 3 years, whether the amount entered in column (e), line 2c, is equal to or less than the lobbying ceiling amount reported on line 2b, and whether the amount entered in column (e), line 2f, is equal to or less than the grassroots ceiling amount calculated on line 2e. The organization does not satisfy both tests if either its total lobbying expenditures or grassroots lobbying expenditures exceed applicable ceiling amounts. When that occurs, all five columns must be completed and a re-computation made, unless exception 1 or 2 above applies. If the organization is not required to complete all five columns, provide a statement explaining why in Part IV. In the statement, show the ending date of the tax year in which the organization made its first section 501(h) election and state whether or not that first election was revoked before the start of the organization's tax year that began in 2013.

Note. If the organization belongs to an affiliated group, enter the appropriate affiliated group totals from column (b), lines 1a through 1i, when completing lines 2a, 2c, 2d, and 2f.

Line 2a. For 2010, 2011, 2012, and 2013, enter the amount from Schedule C (Form 990 or 990-EZ), Part II-A, line 1f, filed for each year.

Line 2c. For 2010, 2011, 2012, and 2013, enter the amount from Schedule C (Form 990 or 990-EZ), Part II-A, line 1c, for each year.

Line 2d. For 2010, 2011, 2012, and 2013, enter the amount from Schedule C (Form 990 or 990-EZ), Part II-A, line 1g, for each year.

Line 2f. For 2010, 2011, 2012, and 2013, enter the amount from Schedule C (Form 990 or 990-EZ), Part II-A, line 1a, for each year.

Enter the total for each line in column (e).

Part II-B. Lobbying Activity

Only section 501(c)(3) organizations that have not filed Form 5768 (election under section 501(h)) or have revoked a previous election can complete this section.

Part II-B provides a reporting format for any section 501(c)(3) organization that engaged in **lobbying activities** during the 2013 **tax year** but did not make a section 501(h) lobbying expenditure election for that year by filing Form 5768. The distinction in Part II-A between direct and grassroots lobbying activities by organizations that made the section 501(h) election does not apply to organizations that complete Part II-B.

Nonelecting section 501(c)(3) organizations must complete Part II-B, columns (a) and (b), to show lobbying expenditures paid or incurred.

Note. A nonelecting organization will generally be regarded as engaging in lobbying activity if the organization either contacts, or urges the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation or the government's budget process; or advocates the adoption or rejection of **legislation**.

Organizations should answer "Yes" or "No" in column (a) to questions 1a through 1i and provide in Part IV a detailed description of any activities the organization engaged in (through its **employees** or **volunteers**) to influence legislation. The description should include all lobbying activities, whether expenses were incurred or not. Examples of such lobbying activities include:

- Sending letters or publications to government officials or legislators,
- Meeting with or calling government officials or legislators,
- Sending or distributing letters or publications (including newsletters, brochures, etc.) to members or to the general public, or
- Using direct mail, placing advertisements, issuing press releases, holding news conferences, or holding rallies or demonstrations.

For lines 1c through 1i, enter in column (b) the lobbying expenditures paid or incurred. Enter total expenditures on column (b), line 1j.

Line 1f. Grants to other organizations are amounts from the organization's funds given to another organization for the purpose of assisting the other organization conducting **lobbying activities**.

Line 1g. Direct contact is a personal telephone call or visit with legislators, their staffs, or government officials.

Line 1h. Rallies, demonstrations, seminars, conventions, speeches, and lectures are examples of public forums conducted directly by the organization or paid for out of the organization's funds.

Line 1i. Answer "Yes" if the organization engaged in any other activities to influence legislation.

Line 2a. Answer "Yes" if a section 501(c)(3) organization ceased to be described as a section 501(c)(3) organization because the amount on line 1j was substantial.

Line 2b. Enter the amount of taxes, if any, imposed on the organization itself under section 4912, unless abated.

Line 2c. Enter the amount of taxes, if any, imposed on the organization managers under section 4912, unless abated.

Line 2d. If the filing organization reported a section 4912 tax on a Form 4720 for this year, answer "Yes."

Part III. Section 6033(e) Notice and Reporting Requirements and Proxy Tax

Only certain organizations that are tax-exempt under:

- Section 501(c)(4) (social welfare organizations),
- Section 501(c)(5) (agricultural and horticultural organizations), or
- Section 501(c)(6) (business leagues),

are subject to the section 6033(e) notice and reporting requirements, and to a potential proxy tax. These organizations must report their total lobbying expenses, political expenses, and membership dues, or similar amounts.

Section 6033(e) requires certain section 501(c)(4), (5), and (6) organizations to tell their members what portion of their membership dues were allocable to the political or **lobbying activities** of the organization. If an organization does not give its members this information, then the organization is subject to a proxy tax. This tax is reported on Form 990-T.

Part III-A

Line 1. Answer "Yes" if any of the following exemptions from the reporting and notice requirements apply. By doing so, the organization is declaring that substantially all of its membership dues were nondeductible.

1. Local associations of employees' and veterans' organizations described in section 501(c)(4), but not section 501(c)(4) social welfare organizations.

2. Labor unions and other labor organizations described in section 501(c)(5), but not section 501(c)(5) agricultural and horticultural organizations.

3. Section 501(c)(4), section 501(c)(5), and section 501(c)(6) organizations that receive more than 90% of their dues from:

a. Organizations exempt from tax under section 501(a), other than section 501(c)(4), section 501(c)(5), and section 501(c)(6) organizations,

b. State or local governments,

c. Entities whose income is excluded from gross income under section 115, or

d. Organizations described in 1 or 2, above.

4. Section 501(c)(4) and section 501(c)(5) organizations that receive more than 90% of their annual dues from:

a. Persons,

b. Families, or

c. Entities,

who each paid annual dues of $108 or less in 2013 (adjusted annually for inflation). See Rev. Proc. 2012-41, section 3.22.

5. Any organization that receives a private letter ruling from the IRS stating that the organization satisfies the section 6033(e)(3) exception.

6. Any organization that keeps records to substantiate that 90% or more of its members cannot deduct their dues (or similar amounts) as business expenses whether or not any part of their dues are used for lobbying purposes.

7. Any organization that is not a membership organization.

CAUTION *Special rules treat affiliated social welfare organizations, agricultural and horticultural organizations, and business leagues as parts of a single organization for purposes of meeting the nondeductible dues exception. See Rev. Proc. 98-19, section 5.03, 1998-1 C.B. 547.*

Line 2. Answer "Yes" for line 2 if the organization satisfies the following criteria of the $2,000 in-house lobbying exception.

1. The organization did not make any political expenditures or foreign lobbying expenditures during the 2013 reporting year.

2. The organization made lobbying expenditures during the 2013 reporting year consisting only of in-house direct lobbying expenditures totaling $2,000 or less, but excluding:

a. Any allocable overhead expenses, and

b. All direct lobbying expenses of any local council regarding legislation of direct interest to the organization or its members.

If the organization's in-house direct lobbying expenditures during the 2013 reporting year were $2,000 or less, but the organization also paid or incurred other lobbying or political expenditures during the 2013 reporting year, it should answer "No" to question 2. If the organization is required to complete Part III-B, the $2,000 or less of in-house direct lobbying expenditures should not be included in the total of Part III-B, line 2a.

Line 3. Answer "Yes" for line 3 if the organization on its prior year report agreed to carryover an amount to be included in the current year's reasonable estimate of lobbying and political expenses.

Complete Part III-B only if the organization answered "No" to **both** line 1 and line 2 or if the organization answered "Yes" to line 3.

Part III-B. Dues Notices, Reporting Requirements, and Proxy Tax

Dues notices. An organization that checked "No" for both Part III-A, lines 1 and 2, and is thus responsible for completing Part III-B, must send dues notices to its members at the time of assessment or payment of dues, unless the organization chooses to pay the proxy tax instead of informing its members of the nondeductible portion of its dues. These dues notices must reasonably estimate the dues allocable to the nondeductible lobbying and political expenditures reported in Part III-B, line 2a. An organization that checked "Yes" for Part III-A, line 3, and thus is required to complete Part III-B, must send dues notices to its members at the time of assessment or payment of dues and include the amount it agreed to carryover in its reasonable estimate of the dues allocable to the nondeductible lobbying and political expenditures reported in Part III-B, line 2a.

Dues, Lobbying, and Political Expenses

IF ...	THEN ...
The organization's lobbying and political expenses are more than its membership dues for the year,	The organization must: (a) Allocate all membership dues to its lobbying and political activities, and (b) Carry forward any excess lobbying and political expenses to the next tax year.
The organization: (a) Had only *de minimis* in-house expenses ($2,000 or less) and no other nondeductible lobbying or political expenses (including any amount it agreed to carryover); or (b) Paid a proxy tax, instead of notifying its members on the allocation of dues to lobbying and political expenses; or (c) Established that substantially all of its membership dues, etc., are not deductible by members.	The organization need not disclose to its membership the allocation of dues, etc., to its lobbying and political activities.

Members of the organization cannot take a trade or business expense deduction on their tax returns for the portion of their dues, etc., allocable to the organization's lobbying and political activities.

Proxy Tax

IF ...	THEN ...
The organization's actual lobbying and political expenses are more than it estimated in its dues notices,	The organization is liable for a proxy tax on the excess.
The organization: (a) Elects to pay the proxy tax, and (b) Chooses not to give its members a notice allocating dues to lobbying and political campaign activities,	All the members' dues remain eligible for a section 162 trade or business expense deduction.
The organization: (a) Makes a reasonable estimate of dues allocable to nondeductible lobbying and political activities, and (b) Agrees to adjust its estimate in the following year*.	The IRS may permit a waiver of the proxy tax.
*A facts and circumstances test determines whether or not a reasonable estimate was made in good faith.	

Allocation of costs to lobbying activities and influencing legislation. An organization that is subject to the lobbying disclosure rules of section 6033(e) must use a reasonable allocation method to determine total costs of its direct lobbying activities; that is, costs to influence:

- **Legislation**, and
- The actions of a covered executive branch official through direct communication (for example, President, Vice-President, or cabinet-level officials, and their immediate deputies) (section 162(e)(1)(A) and section 162(e)(1)(D)).

Reasonable methods of allocating costs to direct lobbying activities include, but are not limited to:

- The ratio method,
- The gross-up and alternative gross-up methods, and
- A method applying the principles of section 263A.

For more information, see Regulations sections 1.162-28 and 1.162-29. The special rules and definitions for these allocation methods are discussed under *Special Rules*, later.

An organization that is subject to the lobbying disclosure rules of section 6033(e) must also determine its total costs of:

- *De minimis* in-house lobbying,

- Grassroots lobbying, and
- **Political campaign activities**.

There are no special rules related to determining these costs.

All methods. For all the allocation methods, include labor hours and costs of personnel whose activities involve significant judgment about lobbying activities.

Special Rules

Ratio and gross-up methods. These methods:

- May be used even if volunteers conduct activities, and
- May disregard labor hours and costs of clerical or support personnel (other than lobbying personnel) under the ratio method.

Alternative gross-up method. This method may disregard:

- Labor hours, and
- Costs of clerical or support personnel (other than lobbying personnel).

Third-party costs. These are:

- Payments to outside parties for conducting lobbying activities,
- Dues paid to another membership organization that were declared to be nondeductible lobbying expenses, and
- Travel and entertainment costs for lobbying activity.

Direct contact lobbying. Treat all hours spent by a person in connection with direct contact lobbying as labor hours allocable to lobbying activities.

Do not treat as direct contact lobbying the hours spent by a person who engages in research and other background activities related to direct contact lobbying, but who makes no direct contact with a legislator, or covered executive branch official.

***De minimis* rule.** If less than 5% of a person's time is spent on lobbying activities, and there is no direct contact lobbying, an organization may treat that person's time spent on lobbying activities as zero.

Purpose for engaging in an activity. The purpose for engaging in an activity is based on all the facts and circumstances. If an organization's lobbying communication was for both a lobbying and a non-lobbying purpose, the organization must make a reasonable allocation of cost to influence **legislation**.

Correction of prior year lobbying costs. If in a prior year, an organization treated costs incurred for a future lobbying communication as a lobbying cost to influence legislation, but after the organization filed a timely return, it appears the lobbying communication will not be made under any foreseeable circumstance, the organization may apply these costs to reduce its current year's lobbying costs, but not below zero. The organization may carry forward any amount of the costs not used to reduce its current year's lobbying costs to subsequent years.

Example 1. Ratio method.
X Organization incurred:

1. 6,000 labor hours for all activities,
2. 3,000 labor hours for lobbying activities (3 employees),
3. $300,000 for operational costs, and
4. No third-party lobbying costs.

X Organization allocated its lobbying costs as follows:

Lobbying labor hrs.		Total costs of operations		Allocable third-party costs		Costs allocable to lobbying activities
3,000 / 6,000 (Total labor hrs.)	×	$300,000	+	$ -0-	=	$150,000

Example 2. Gross-up method and alternative gross-up method.
A and B are employees of Y Organization.

1. A's activities involve significant judgment about lobbying activities.
2. A's basic lobbying labor costs (excluding employee benefits) are $50,000.
3. B performs clerical and support activities for A.
4. B's labor costs (excluding employee benefits) in support of A's activities are $15,000.
5. Allocable third-party costs are $100,000.

If Y Organization uses the gross-up method to allocate its lobbying costs, it multiplies 175% times its basic labor costs (excluding employee benefits) for all of the lobbying of its personnel and adds its allocable third-party lobbying costs as follows:

Basic lobbying labor costs of A + B		Allocable third-party costs		Costs allocable to lobbying activities
(175% × $65,000)	+	$100,000	=	$213,750

If Y Organization uses the alternative gross-up method to allocate its lobbying costs, it multiplies 225% times its basic labor costs (excluding employee benefits) for all of the lobbying hours of its lobbying personnel and adds its third-party lobbying costs as follows:

Basic lobbying labor costs of A		Allocable third-party costs		Costs allocable to lobbying activities
(225% × $50,000)	+	$100,000	=	$212,500

Section 263A cost allocation method. The examples that demonstrate this method are found in Regulations section 1.162-28(f).

Part III-B, Line 1. Enter the total dues, assessments, and similar amounts allocable to the 2013 reporting year. Dues are the amounts the organization requires a member to pay in order to be recognized as a member.

Payments that are similar to dues include:

1. Members' voluntary payments,
2. Assessments to cover basic operating costs, and
3. Special assessments to conduct lobbying and political activities.

Line 2. Include on line 2a the total amount of expenses paid or incurred during the 2013 reporting year in connection with:

1. Influencing **legislation**;
2. Participating or intervening in any political campaign on behalf of (or in opposition to) any candidate for any public office;
3. Attempting to influence any segment of the general public with respect to elections, legislative matters, or referendums; and
4. Communicating directly with a covered executive branch official in an attempt to influence the official actions or positions of such official.

Do not include:

1. Any direct lobbying of any local council or similar governing body with respect to legislation of direct interest to the organization or its members;
2. In-house direct lobbying expenditures, if the total of such expenditures is $2,000 or less (excluding allocable overhead); or
3. Political expenditures for which the section 527(f) tax has been paid (on Form 1120-POL).

Reduce the current year's lobbying expenditures, but not below zero, by costs previously allocated in a prior year to **lobbying activities** that were cancelled after a return reporting those costs was filed.

Carryforward any amounts not used as a reduction to subsequent years.

Include the following on line 2b.

1. Lobbying and political expenditures carried over from the preceding tax year.

2. An amount equal to the taxable lobbying and political expenditures reported on Part III-B, line 5 for the preceding tax year, if the organization received a waiver of the proxy tax imposed on that amount.

Line 3. Enter the total amount of dues, assessments, and similar amounts received, for which members were timely notified of the nondeductibility under section 162(e) that were allocable to the 2013 reporting year.

Example.

- Membership dues: $100,000 for the 2013 reporting year,
- Organization's timely notices to members: 25% of membership dues nondeductible, and
- Line 3 entry: $25,000.

Line 4. If the amount on line 2c exceeds the amount on line 3 and the organization sent dues notices to its members at the time of assessment or payment of dues, include the amount on line 4 that the organization agrees to carryover to the reasonable estimate of nondeductible lobbying and political expenditure next year and include the amount on the 2013 Schedule C (Form 990 or 990-EZ), in Part III-B, line 2b (carryover lobbying and political expenses), or its equivalent.

If the organization did not send notices to its members, enter "-0-" on line 4.

Line 5. The taxable amount reportable on line 5 is the amount of dues, assessments, and similar amounts received:

1. Allocable to the 2013 reporting year, and

2. Attributable to lobbying and political expenditures that the organization did not timely notify its members were nondeductible.

Report the tax on Form 990-T.

If the amount on line 1 (dues, assessments, and similar amounts) is *greater* than the amount on line 2c (total lobbying and political expenditures), then subtract the nondeductible dues shown in notices (line 3) and the carryover amount (line 4) from the total lobbying and political expenditures (line 2c) to determine the taxable amount of lobbying and political expenditures (line 5).

If the amount on line 1 (dues, assessments, and similar amounts) is *less* than the amount on line 2c (total lobbying and political expenditures), then subtract the nondeductible dues shown in notices (line 3) and the carryover amount (line 4) from dues, assessments, and similar amounts (line 1) to determine the taxable lobbying and political expenditures (line 5).

Subtract dues, assessments, and similar amounts (line 1) from lobbying and political expenditures (line 2c) to determine the excess amount to be carried over to the following tax year and reported on Part III-B, line 2b (carryover lobbying and political expenditures), or its equivalent, on the next year Schedule C (Form 990 or 990-EZ) along with the amounts the organization agreed to carryover on line 4.

Underreporting of lobbying expenses. An organization is subject to the proxy tax for the 2013 reporting year for underreported lobbying and political expenses only to the extent that these expenses (if actually reported) would have resulted in a proxy tax liability for that year. A waiver of proxy tax for the tax year only applies to reported expenditures.

An organization that underreports its lobbying and political expenses is also subject to the section 6652(c) daily penalty for filing an incomplete or inaccurate return. See Instructions for Form 990 *General Instructions H. Failure-to-File Penalties*, and Instructions for Form 990-EZ *General Instructions G. Failure-to-File Penalties*.

Examples. Organizations A, B, and C:

1. Reported on the calendar year basis,

2. Incurred only grassroots lobbying expenses (did not qualify for the under $2,000 in-house lobbying exception (*de minimis* rule)), and

3. Allocated dues to the tax year in which they were received.

Organization A. Dues, assessments, and similar amounts received in 2013 were greater than its lobbying expenses for 2013.

Workpapers (for 2013 Form 990) — Organization A

1.	Total dues, assessments, etc., received	$800	
2.	Lobbying expenses paid or incurred		$600
3.	Less: Total nondeductible amount of dues notices	100	100
4.	Subtract line 3 from both lines 1 and 2	$700	$500
5.	Taxable amount of lobbying expenses (smaller of the two amounts on line 4)		$500

TIP *The amounts on lines 1, 2, 3, and 5 of the workpapers were entered on the 2013 Schedule C (Form 990 or 990-EZ), Part III-B, lines 1, 2c, 3, and 5.*

Because dues, assessments, and similar amounts received were greater than lobbying expenses, there is no carryovers of excess lobbying expenses to the 2014 Schedule C (Form 990 or 990-EZ), Part III-B, line 2b.

See the instructions for Part III-B, line 5, for the treatment of the $500.

Organization B. Dues, assessments, and similar amounts received in 2013 were less than lobbying expenses for 2013.

Workpapers (for 2013 Form 990) — Organization B

1.	Total dues, assessments, etc., received	$400	
2.	Lobbying expenses paid or incurred		$600
3.	Less: Total nondeductible amount of dues notices	100	100
4.	Subtract line 3 from both lines 1 and 2	$300	$500
5.	Taxable amount of lobbying expenses (smaller of the two amounts on line 4)		$300

TIP *The amounts on lines 1, 2, 3, and 5 of the workpapers were entered on the 2013 Schedule C (Form 990 or 990-EZ), Part III-B, lines 1, 2c, 3, and 5.*

Because dues, assessments, and similar amounts received were less than lobbying expenses, excess lobbying expenses of $200 must be carried forward to the 2014 Schedule C (Form 990 or 990-EZ) Part III-B, line 2b (excess of $600 of lobbying expenses over $400 dues, etc., received). The $200 will be included along with the other lobbying and political expenses paid or incurred in the 2014 reporting year.

See the instructions for Part III-B, line 5, for the treatment of the $300.

Organization C. Dues, assessments, and similar amounts received in 2013 were greater than lobbying expenses for 2013 and the organization agreed to carryover a portion of its excess lobbying and political expenses to the next year.

Workpapers (for 2013 Form 990) — Organization C

1.	Total dues, assessments, etc., received	$800	
2.	Lobbying expenses paid or incurred		$600
3.	Less: Total nondeductible amount of dues notices	100	100
4.	Less: Amount agreed to carryover	100	100
5.	Subtract line 3 and 4 from both lines 1 and 2	$600	$400
6.	Taxable amount of lobbying expenses (smaller of the two amounts on line 5)		$400

The amounts on lines 1, 2, 3, 4, and 6 of the workpapers were entered on the 2013 Schedule C (Form 990 or 990-EZ), Part III-B, lines 1, 2c, 3, 4, and 5.

See the instructions for Part III-B, line 5, for the treatment of the $400.

Part IV. Supplemental Information

Use Part IV to enter narrative information required in Part I-A, line 1, Part I-B, line 4, Part I-C, line 5, Part II-A, line 1 (affiliated group list), Part II-A, line 2, and Part II-B, line 1. Also use Part IV to enter other narrative explanations and descriptions. Identify the specific part and line number that the response supports, in the order in which they appear on Schedule C (Form 990 or 990-EZ). Part IV can be duplicated if more space is needed.

EXHIBIT

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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.
>
> 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.
>
> 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?
>
> 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.
>
> ***
>
> 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.
>
> Q What has occurred in the last 5 years to make it an active topic during that timeframe?
>
> A Litigation.
>
> Q And who has been actively talking about it within the IRS?
>
> A We certainly actively discussed it within Counsel.
>
> Q And would those discussions be driven by the IRS Chief Counsel?
>
> A Yes.
>
> ***
>
> 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

[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

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.

EXHIBIT

3

From: Ruth.Madrigal@treasury.gov
Sent: Thursday, June 14, 2012 3:10 PM
To: Judson Victoria A; Cook Janine; Lerner Lois G; Marks Nancy J
Subject: 501(c)(4)s - From the Nonprofit Law Prof Blog

Don't know who in your organizations 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…

Bad News for Political 501(c)(4)s: 4th Circuit Upholds "Major Purpose" Test for Political Committees
In a case with potentially major ramifications for politically active section 501(c)(4) organizations, the U.S. Court of Appeals for the Fourth Circuit has upheld the Federal Election Commission's "major purpose" test for determining whether an organization is a political committee or PAC and so subject to extensive disclosure requirements. As described in the opinion, under the major purpose test "the Commission first considers a group's political activities, such as spending on a particular electoral or issue-advocacy campaign, and then it evaluates an organization's 'major purpose,' as revealed by that group's public statements, fundraising appeals, government filings, and organizational documents" (citations omitted). The FEC's summary of the litigation details the challenge made in this case:

A group or association that crosses the $1,000 contribution or expenditure threshold will only be deemed a political committee if its "major purpose" is to engage in federal campaign activity. [The plaintiff] claims that the FEC set forth an enforcement policy regarding PAC status in a policy statement and that this enforcement policy is "based on an ad hoc, case-by-case, analysis of vague and impermissible factors applied to undefined facts derived through broad-ranging, intrusive, and burdensome investigations . . . that, in themselves, can often shut down an organization, without adequate bright lines to protect issue advocacy in this core First Amendment area." [The plaintiff] asks the court to find this "enforcement policy" unconstitutionally vague and overbroad and in excess of the FEC's statutory authority.

In a unanimous opinion, the court concluded that the FEC's current major purpose test is "a sensible approach to determining whether an organization qualifies for PAC status. And more importantly the Commission's multi-factor major-purpose test is consistent with Supreme Court precedent and does not unlawfully deter protected speech." In doing so, the court chose to apply the less stringent "exacting scrutiny" standard instead of the "strict scrutiny" standard because, in the wake of Citizens United, political committee status only imposes disclosure and organizational requirements but no other restrictions. While the plaintiff here (The Real Truth About Abortion, Inc., formerly known as The Real Truth About Obama, Inc.) is a section 527 organization for federal tax purposes, the same test would apply to other types of politically active organizations, including section 501(c)(4) entities.

Hat Tip: Election Law Blog

LHM

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U.S. Department of the Treasury
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EXHIBIT

4

News Essentials

- What's Hot
- News Releases
- IRS - The Basics
- IRS Guidance
- Media Contacts
- Facts & Figures
- Problem Alerts
- Around the Nation
- e-News Subscriptions

The Newsroom Topics

- Multimedia Center
- Noticias en Español
- Radio PSAs
- Tax Scams
- The Tax Gap
- Fact Sheets
- IRS Tax Tips
- Armed Forces
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Treasury, IRS Will Issue Proposed Guidance for Tax-Exempt Social Welfare Organizations

Initial Proposed Guidance Clarifies Qualification Requirements and Seeks Public Input

IR-2013-92, Nov. 26, 2013

WASHINGTON — The U.S. Department of the Treasury and the Internal Revenue Service today will issue initial guidance regarding qualification requirements for tax-exemption as a social welfare organization under section 501(c)(4) of the Internal Revenue Code. This proposed guidance defines the term "candidate-related political activity," and would amend current regulations by indicating that the promotion of social welfare does not include this type of activity. The proposed guidance also seeks initial comments on other aspects of the qualification requirements, including what proportion of a 501(c)(4) organization's activities must promote social welfare.

The proposed guidance is expected to be posted on the Federal Register later today.

There are a number of steps in the regulatory process that must be taken before any final guidance can be issued. Given the significant public interest in these and related issues, Treasury and the IRS expect to receive a large number of comments. Treasury and the IRS are committed to carefully and comprehensively considering all of the comments received before issuing additional proposed guidance or final rules.

"This is part of ongoing efforts within the IRS that are improving our work in the tax-exempt area," said IRS Acting Commissioner Danny Werfel. "Once final, this proposed guidance will continue moving us forward and provide clarity for this important segment of exempt organizations."

"This proposed guidance is a first critical step toward creating clear-cut definitions of political activity by tax-exempt social welfare organizations," said Treasury Assistant Secretary for Tax Policy Mark J. Mazur. "We are committed to getting this right before issuing final guidance that may affect a broad group of organizations. It will take time to work through the regulatory process and carefully consider all public feedback as we strive to ensure that the standards for tax-exemption are clear and can be applied consistently."

Organizations may apply for tax-exempt status under section 501(c)(4) of the tax code if they operate to promote social welfare. The IRS currently applies a "facts and circumstances" test to determine whether an organization is engaged in political campaign activities that do not promote social welfare. Today's proposed guidance would reduce the need to conduct fact-intensive inquiries by replacing this test with more definitive rules.

In defining the new term, "candidate-related political activity," Treasury and the IRS drew upon existing definitions of political activity under federal and state campaign finance laws, other IRS provisions, as well as suggestions made in unsolicited public comments.

Under the proposed guidelines, candidate-related political activity includes:

1. Communications

- Communications that expressly advocate for a clearly identified political candidate or candidates of a political party.
- Communications that are made within 60 days of a general election (or within 30 days of a primary election) and clearly identify a candidate or political party.
- Communications expenditures that must be reported to the Federal Election Commission.

2. Grants and Contributions

- Any contribution that is recognized under current law for purposes as an acceptable contribution.
- Grants to section 527 political organizations and other tax-exempt organizations that conduct candidate-related political activities (note that a grantor can rely on a written certification from a grantee stating that it does not engage in, and will not use grant funds for, candidate-related political activity).

3. Activities Closely Related to Elections or Candidates

- Voter registration drives and "get-out-the-vote" drives.
- Distribution of any material prepared by or on behalf of a candidate or by a section 527 political organization.
- Preparation or distribution of voter guides that refer to candidates (or, in a general election, to political parties).
- Holding an event within 60 days of a general election (or within 30 days of a primary election) at which a candidate appears as part of the program.

These proposed rules reduce the need to conduct fact-intensive inquiries, including inquiries into whether activities or communications are neutral and unbiased.

Treasury and the IRS are planning to issue additional guidance that will address other issues relating to the standards for tax exemption under section 501(c)(4). In particular, there has been considerable public focus regarding the proportion of a section 501(c)(4) organization's activities that must promote social welfare. Due to the importance of this aspect of the regulation, the proposed guidance requests initial comments on this issue.

The proposed guidance also seeks comments regarding whether standards similar to those proposed today should be adopted to define the political activities that do not further the tax-exempt purposes of other tax-exempt organizations and to promote consistent definitions across the tax-exempt sector.

Page Last Reviewed or Updated: 02-Dec-2013

EXHIBIT

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CAUSE of ACTION
Advocates for Government Accountability
A 501(c)(3) Nonprofit Corporation

December 24, 2013

VIA CERTIFIED MAIL

Mr. Bertrand Tzeng
IRS FOIA Request
HQ FOIA
Stop 211
290 Brandywine Road
Chamblee, GA 30341

Re: Freedom of Information Act Request

Dear Mr. Tzeng:

On November 29, 2013, the Internal Revenue Service (IRS) issued a Notice of Proposed Rulemaking revising the qualification requirements for the tax-exemption of social welfare organizations under 26 U.S.C. § 501(c)(4).[1] Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Cause of Action hereby requests the following records:

1. Copies of the "unsolicited public comments" that the IRS "drew upon" in defining "candidate-related political activity" in the aforementioned Notice of Proposed Rule Making, as well as any agency correspondence with the commenters.[2]
2. All records of correspondence between IRS employees within the Tax Exempt and Government Entities (TEGE) Division, and all records of correspondence between those same IRS employees and the public, concerning revisions to the qualification requirements for tax-exempt status under Section 501(c)(4), including the redefinition of "candidate-related political activity." This request includes, but is not limited to, communications between: (a) the IRS and employees or representatives of Citizens for Responsibility and Ethics in Washington; (b) the IRS and employees or representatives of Democracy 21; (c) the IRS and employees or representatives of the Campaign Legal Center; and (d) the IRS and U.S. Representative Chris Van Hollen (D-MD) or his staff.
3. Any and all records of correspondence to and from Amy F. Giuliano, Office of Associate Chief Counsel, TEGE, pertaining to the aforementioned Notice of Proposed Rule Making, including her communications with the public and other administrative agencies.

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[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).
[2] Press Release, Internal Revenue Service, Treasury, IRS Will Issue Proposed Guidance for Tax-Exempt Social Welfare Organizations (IRS-2013-92) (Nov. 26, 2013), *available at* http://www.irs.gov/uac/Newsroom/Treasury,-IRS-Will-Issue-Proposed-Guidance-for-Tax-Exempt-Social-Welfare-Organizations.

4. All records of communications between the IRS and any employee of the Office of Management and Budget (OMB) and/or the Office of White House Counsel regarding the redefinition of "candidate-related political activity."

The time period for the request is January 2013 to the present.

Cause of Action Is Entitled to a Public Interest Fee Waiver.

Cause of Action also requests a waiver of any and all applicable fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). The FOIA provides that requested records shall be furnished without or at reduced charge if "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester."[3] As discussed below, Cause of Action satisfies the statutory standard for a public interest fee waiver.

A. *Disclosure of the requested records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government.*

As an initial matter, we note that "obtaining information to act as a 'watchdog' of the government is a well-recognized public interest in the FOIA."[4] Cause of Action is a non-profit, nonpartisan government accountability organization that uses investigative, legal, and communications tools to educate the public about how government transparency and accountability protect economic opportunity for American taxpayers. It is in pursuit of these educational goals that Cause of Action seeks disclosure of the requested records.

In this instance, Cause of Action meets the four-factor test used by the IRS to determine whether disclosure of the requested information is in the public interest.[5] First, the requested records concern identifiable "operations or activities of the government," specifically, the administration and revision of the Internal Revenue Code.[6] Second, the requested information is "likely to contribute"[7] to the understanding of the IRS's operations because the information is not already in the public domain and consists largely of substantive material, as opposed to routine administrative information. Third, disclosure will contribute to "public understanding," as opposed to the understanding of the requester or a narrow segment of interested persons.[8] Cause of Action has both the intent and ability to make the results of this request available to the public in various medium forms. Cause of Action's staff has a wealth of experience and expertise in government oversight, investigative reporting, and federal public interest litigation. These professionals will analyze the information responsive to this request, use their editorial

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[3] 5 U.S.C. § 552(a)(4)(A)(iii).
[4] Balt. Sun v. U.S. Marshals Serv., 131 F. Supp. 2d 725, 729 (D. Md. 2001); *see also* Ctr. to Prevent Handgun Violence v. U.S. Dep't of the Treasury, 981 F. Supp. 20, 24 (D.D.C. 1997) ("This self-appointed watchdog role is recognized in our system.").
[5] *See, e.g.*, 26 C.F.R. § 601.702(f)(2)(A)-(D) (outlining first four factors of the IRS's fee waiver regulation).
[6] *Id.* § 601.702(f)(2)(A).
[7] *Id.* § 601.702(f)(2)(B).
[8] *Id.* § 601.702(f)(2)(C).

skills to turn raw materials into a distinct work, and share the resulting analysis with the public, whether through Cause of Action's regularly published online newsletter, memoranda, reports, or press releases. For example, Cause of Action has recently published reports on its website which reached a broad segment of the public via Twitter and e-mail.[9] Fourth, and finally, disclosure is likely to contribute "significantly" to the public understanding of the IRS's activities, as these records are not readily available from other sources and public understanding of the IRS's operations will be substantially greater as a result of disclosure.[10]

B. *Disclosure of the requested information is not primarily in the commercial interest of Cause of Action.*

Cause of Action does not seek this information to benefit commercially. Cause of Action is a nonprofit organization, as defined under Section 501(c)(3) of the Internal Revenue Code, committed to advancing public awareness of the activities of government agencies and to ensuring the lawful and appropriate use of government funds by those agencies. Cause of Action will not make a profit from the disclosure of this information. Rather, this information will be used to further the knowledge and interests of the general public regarding how the IRS intends to evaluate applicants for 501(c)(4) tax-exempt status. In the event the disclosure of this information does create a profit motive, however, that is not dispositive for the commercial interest test; media requesters like Cause of Action can have a profit motive, so long as the dissemination of the information requested is in their professional capacity and would further the public interest.[11] For the foregoing reasons, this request is not primarily in the commercial interest of Cause of Action.[12]

Request for News Media Status

For fee purposes, Cause of Action qualifies as a "representative of the news media" under 5 U.S.C. § 552(a)(4)(A)(ii)(II). Cause of Action is organized and operated, *inter alia*, to research, generate, publish, and broadcast news, *i.e.*, information that is about current events or that would be of current interest to the public. Cause of Action gleans the information that it regularly publishes from a wide variety of sources and methods, including whistleblowers/insiders, government agencies, universities, scholarly works, and FOIA requests. Cause of Action routinely and systematically disseminates information acquired from such sources to the public through various media. For example, Cause of Action distributes articles, blog posts, published reports, and newsletters about current events of interest to the general public through its website, which has been viewed just under 120,000 times in the past year alone.[13] Cause of Action also disseminates news to the public via social media platforms, such

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[9] *See* CAUSE OF ACTION, POLITICAL PROFITEERING: HOW FOREST CITY ENTERPRISES MAKES PRIVATE PROFITS AT THE EXPENSE OF AMERICAN TAXPAYERS PART III (Dec. 9, 2013), *available at* http://causeofaction.org/report-unfair-enrichment-forest-city-enterprises-acts-law/; *see also* CAUSE OF ACTION, GREENTECH AUTOMOTIVE: A VENTURE CAPITALIZED BY CRONYISM (Sept. 23, 2013), *available at* http://causeofaction.org/2013/09/23/greentech-automotive-a-venture-capitalized-by-cronyism-2/.

[10] 26 C.F.R. § 601.702(f)(2)(D).

[11] *See* Campbell v. U.S. Dep't of Justice, 164 F.3d 20, 38 (D.C. Cir. 1998).

[12] *See* 26 C.F.R. § 601.702(f)(2)(D)-(E).

[13] Google Analytics for http://www.causeofaction.org (Jan. 1, 2013 – Dec. 16, 2013) (on file with Cause of Action).

as Twitter and Facebook, and provides news updates to subscribers via e-mail. As a result of these activities, federal agencies have continually recognized Cause of Action's news media status in connection with its FOIA requests.[14]

Record Production and Contact Information

In an effort to facilitate record production, Cause of Action requests that responsive records be produced in electronic format (*e.g.*, PDF, email). If a certain set of responsive records can be produced more readily, Cause of Action respectfully requests that those records be produced first and that the remaining records be produced on a rolling basis as circumstances permit.

If you have any questions about this request, please contact me by email at robyn.burrows@causeofaction.org, or by telephone at (202) 499-2421. Thank you for your attention to this matter.

Sincerely,

Robyn Burrows MS

ROBYN BURROWS
COUNSEL

[14] *See, e.g.*, FOIA Request 14F-036, Health Res. & Serv. Admin. (Dec. 6, 2013); FOIA Request CFPB-2014-010-F, Consumer Fin. Prot. Bureau (October 7, 2013); FOIA Request 2013-01234-F, Dep't of Energy (July 1, 2013); FOIA Request 2013-145F, Consumer Fin. Prot. Bureau (May 29, 2013); FOIA Request 2013-073, Dep't of Homeland Sec. (Apr. 5, 2013); FOIA Request 2012-RMA-02563F, Dep't of Agric. (May 3, 2012); FOIA Request 2012-00270, Dep't of Interior (Feb. 17, 2012); FOIA Request No. 12-00455-F, Dep't of Educ. (Jan. 20, 2012); FOIA Request CFPB-2014-002-F, Consumer Fin. Prot. Bureau (Oct. 2, 2013).

EXHIBIT

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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

January 30, 2014

Robyn Burrows
Cause of Action
1919 Pennsylvania Ave, NW
Suite 650
Washington, DC 20006

Dear Ms. Burrows:

I am responding to your Freedom of Information Act (FOIA) request dated December 24, 2013 that we received on December 31, 2013.

I am unable to send the information you requested by January 30, 2014, which is the 20 business-day period allowed by law. I apologize for any inconvenience this delay may cause.

STATUTORY EXTENSION OF TIME FOR RESPONSE

The FOIA allows an additional ten-day statutory extension in certain circumstances. To complete your request I need additional time to search for, collect, and review responsive records from other locations. We have extended the statutory response date to February 13, 2014, after which you can file suit. An administrative appeal is limited to a denial of records, so it does not apply in this situation.

REQUEST FOR ADDITIONAL EXTENSION OF TIME

Unfortunately, we will still be unable to locate and consider release of the requested records by February 13, 2014. We have extended the response date to May 16, 2014 when we believe we can provide a final response.

You do not need to reply to this letter if you agree to this extension. You may wish to consider limiting the scope of your request so that we can process it more quickly. If you want to limit your request, please contact the individual named below. If we subsequently deny your request, you still have the right to file an administrative appeal.

You may file suit if you do not agree to an extension beyond the statutory period. Your suit may be filed in the U.S. District Court:

- Where you reside or have your principal place of business

- Where the records are located, or
- In the District of Columbia

You may file suit after February 13, 2014. Your complaint will be treated according to the Federal Rules of Civil Procedure applicable to actions against an agency of the United States. These procedures require that the IRS be notified of the pending suit through service of process, which should be directed to:

Commissioner of Internal Revenue
Attention: CC:PA: Br 6/7
1111 Constitution Avenue, NW
Washington, D.C. 20224

The FOIA provides access to existing records. Extending the time period for responding to your request will not delay or postpone any administrative, examination, investigation or collection action.

We are granting your request to waive fees associated with this response.

If you have any questions please call Tax Law Specialist Robert Thomas ID # 860636, at 704.548.4406 or write to: Internal Revenue Service, Disclosure Scanning Operation – Stop 93A, PO Box 621506, Atlanta, GA 30362. Please refer to case number F14002-0032.

Sincerely,

Robert Thomas

Robert Thomas
Tax Law Specialist
Badge No. 860636
Headquarters (HQ) Disclosure FOIA Group