



Advocates for Government Accountability

A 501(c)(3) Nonprofit Corporation

February 5, 2014

VIA CERTIFIED MAIL

Chief Information Officer
Information Quality Program Coordinator
Internal Revenue Service, OS:CIO:I
1111 Constitution Ave., NW, IR 3137
Washington, D.C. 20224

Re: Petition for Correction and Disclosure

Dear Sir or Madam:

This is a Petition for Correction and Disclosure in accordance with the Information Quality Act (IQA)¹; the information quality guidelines issued by the Office of Management and Budget (OMB Guidelines)²; and, the IQA Guidelines issued by the Internal Revenue Service (IRS).³

I. REQUESTOR'S IDENTITY

Cause of Action, Inc. is a non-profit, nonpartisan government accountability organization that uses investigative, legal and communications tools to educate the public on how government transparency and accountability protect economic opportunity for American taxpayers. Cause of Action accomplishes these ends through numerous means, including, but not limited to, investigative reporting, scholarly publication, online outreach, Freedom of Information Act (FOIA) requests, and litigation. Cause of Action is a tax-exempt organization as defined under Section 501(c)(3) of the Internal Revenue Code (IRC).

On November 29, 2013, IRS and the Department of the Treasury (Treasury) issued a Notice of Proposed Rule Making (NPRM) containing proposed guidelines⁴ that would define and

¹ Pub. L. No. 106-554, § 515, 114 Stat. 2763A-154 (App. C), 44 U.S.C. § 3516 Note.

² Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies; Republication, 67 Fed. Reg. 8452-60 (Feb. 22, 2002) [hereinafter OMB Guidelines].

³ *Information Quality Guidelines*, INTERNAL REVENUE SERV., <http://www.irs.gov/pub/irs-utl/infoqualityguidelines.pdf> (last visited Jan. 27, 2014) [hereinafter IQA Guidelines]. OMB Guidelines set the minimum information quality standards that IRS must meet in this case. Pursuant to 44 U.S.C. § 3516 Note, Congress permitted agencies to create administrative review and correction mechanisms subject to OMB approval. Nevertheless, agencies must still comply with the quality standards contained in the OMB Guidelines. Thus, to the extent that IRS guidelines are less stringent, they do not apply.

⁴ It should be noted that IRS and Treasury are somewhat inconsistent in their use of nomenclature—the rules are at once “guidelines,” as well as “regulations” and interpretive “rules.” Further, the agencies are inviting public

restrict “candidate related political activities” by social welfare organizations described under Section 501(c)(4) of the IRC.⁵ The paperwork and compliance consequences of the proposed regulations, however, arguably burden those organizations that have financial interaction with 501(c)(4) entities, but which are not themselves tax-exempt under 501(c)(4). To illustrate: If Cause of Action, which is organized under Section 501(c)(3), were to receive a grant from a 501(c)(4) entity, then it would need to establish mechanisms for complying with the proposed regulations. Thus, because the IRS and Treasury have failed to account for the inevitable burden that the proposed guidelines will impose on *all* 501(c) organizations—including Cause of Action—the continued dissemination of certain information contained in the NPRM *misleads* the general public and *frustrates* the purpose of the comment period.

Insofar as the IRS and Treasury continue to posit factual claims without disclosing background sources and methodologies, potential commentators will be unable to provide effective feedback on the proposed regulations. Again, this failure to disclose supporting materials, as well as the undisclosed submissions from which the proposed regulations were drawn, vitiates the purpose of the comment period, namely, to assist the IRS and Treasury in determining “whether there are other specific activities that should be included in, or excepted from, the definition of candidate-related political activity for purposes of section 501(c)(4).”⁶

Accordingly, as Cause of Action is a recognized 501(c)(3) organization, and as it stands to suffer harm from the continued dissemination of the information described below, it is an “affected person” under IQA Guidelines and has standing to submit the present petition.

II. INFORMATION ON WHICH PUBLIC COMMENTS HAVE BEEN REQUESTED

Agencies are not free to disregard IQA requirements. Like the National Environmental Policy Act (NEPA),⁷ IQA mandates a process, not an outcome, and compliance is mandatory, not permissive.⁸ Therefore, all of the statistical information used by the IRS and Treasury in or to prepare the NPRM, including its estimates of burden, must comply with the IQA and the IRS and Treasury thus are obligated to certify and demonstrate that they have met OMB and IRS information quality guidelines requiring validation, the use of methodologies that are consistent with generally accepted professional standards, transparency and reproducibility, among other

comment and entertaining requests for public hearings despite the fact that “it has been determined that . . . [the proposed guidelines are] not a significant regulatory action . . . [and] that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply.” Thus, the exact nature of the proposed guidelines, and the procedures by which they might presently be challenged, are somewhat indeterminate.

⁵ Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities, 78 Fed. Reg. 71535-42 (proposed Nov. 29, 2013) (to be codified at 26 C.F.R. pt. 1) [hereinafter NPRM].

⁶ *Id.* at 71540.

⁷ 42 U.S.C. § 4321 *et seq.*

⁸ Compare 44 U.S.C. § 3516 note; 67 Fed. Reg. 8452; 40 C.F.R. § 1505.1(b) (federal agencies must assure NEPA compliance); *Environmental Defense Fund v. Massey*, 986 F.2d 528, 532 (D.C. Cir. 1993)(NEPA “does not dictate agency policy or determine the fate of contemplated action” but failure to comply is grounds for remand).

things.⁹ An agency's failure to comply with IQA quality guidelines is, without more, arbitrary, capricious and grounds for remand.

Cause of Action is an "affected person" as contemplated by IQA Guidelines.¹⁰ Further, there is little reason to expect that the resolution of this petition would unduly delay the finalization of the proposed guidelines. The IRS need only disclose the background information that it used to predict the burden of the proposed guidelines under the Paperwork Reduction Act (PRA)¹¹ and correct the relevant portions of the NPRM identified below. Moreover, failure to resolve this complaint prior to the end of the comment period—February 27, 2014—will prevent Cause of Action, and other tax-exempt organizations, from preparing a meaningful comment. An accurate and forthcoming NPRM and docket provides the only basis for taxpayers to provide comments to the IRS. Thus, Cause of Action will suffer actual harm if the IRS fails to resolve this petition immediately and order correction and disclosure.

III. SPECIFIC DESCRIPTION OF DISSEMINATED INFLUENTIAL INFORMATION

The influential information that is the subject of this Petition includes the following portions of text disseminated in the November 29, 2013 NPRM:

- a) "These regulations will affect tax-exempt social welfare organizations and organizations seeking such status."¹²
- b) "The expected recordkeepers are section 501(c)(4) organizations that choose to contribute to, and to seek a written representation from, a section 501(c) organization. *Estimated number of record keepers: 2,000. Estimated average annual burden hours per recordkeeper: 2 hours. Estimated total annual recordkeeping burden: 4,000 hours.* A particular section 501(c)(4) organization may require more or less time, depending on the number of contributions for which a representation is sought."¹³

IV. GROUNDS FOR DISCLOSURE AND CORRECTION

Overview

The IQA provides, in relevant part, that OMB "shall . . . provide policy and procedural guidance to federal agencies for ensuring and maximizing the quality, objectivity, utility, and

⁹ See *Prime Time, Inc. v. Vilsack*, 599 F.3d 678, 682 (granting judicial review and treating OMB Guidelines as legislative rules entitled to Chevron deference); see also *Motor Vehicle Mfr. Ass'n v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983).

¹⁰ See Section I, *supra*.

¹¹ Pub. L. No. 96-511, 94 Stat. 2812, 44 U.S.C. §§ 3501-3521.

¹² NPRM, *supra* note 5, at 71535.

¹³ *Id.* (original emphasis)

integrity of information (including statistical information) disseminated by Federal agencies.”¹⁴ Accordingly, the IRS (and other agencies) must “establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply” with OMB’s directives.¹⁵

The IRS must also disseminate *accurate* and *objective* information supported by statistically-sound data. The IRS must ensure that all affected persons, as well as members of the general public, have meaningful access to the data, sources, and methodologies relied upon in the rulemaking process, and which can be used to formulate public comments on IRS’s claims, assertions, and proposals.¹⁶

The need for transparency is all the more compelling considering the current Administration’s directive that rule-making agencies “provide the public with access to all relevant materials” pertaining to proposed regulations, at least “[t]o the extent that they are part of a rulemaking.”¹⁷ In this case, the IRS has admitted that it “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.*”¹⁸ Yet within the NPRM, the IRS fails to provide a single citation to *any* background information, except for a recent IRS report on the politicization of the tax-exempt application process.¹⁹ Even more distressing is the fact that the IRS has not uploaded a single supporting or related document to the electronic docket for the NPRM, notwithstanding the over-20,000 comments that the proposed guidelines have generated.²⁰

Again, information quality is a direct function of objectivity. As the OMB Guidelines make clear, the public’s capacity to test *objectivity* depends entirely upon the full and accurate disclosure of data and research methods.²¹ According to the IRS, this “objectivity” includes:

[W]hether disseminated information is being presented in an accurate, clear, complete, and unbiased manner. . . . Sometimes . . . other information must also

¹⁴ 44 U.S.C. § 3516, Note.

¹⁵ *Id.*

¹⁶ See OMB Guidelines, *supra* note 2, at 8459-60, §§ III(2), (3), V(3).

¹⁷ White House Memorandum on Increasing Openness in the Rulemaking Process 2 (May 28, 2010), available at http://www.whitehouse.gov/sites/default/files/omb/assets/infocore/edocket_final_5-28-2010.pdf

¹⁸ Treasury, *IRS Will Issue Proposed Guidance for Tax-Exempt Social Welfare Organization: Initial Proposed Guidance Clarifies Qualification Requirements and Seeks Public Input*, IR-2013-92, INTERNAL REVENUE SERV. (Nov. 26, 2013), available at <http://www.irs.gov/uac/Newsroom/Treasury,-IRS-Will-Issue-Proposed-Guidance-for-Tax-Exempt-Social-Welfare-Organizations> (emphasis added).

¹⁹ NPRM, *supra* note 5, at 71536 (citing to INTERNAL REVENUE SERV., CHARTING A PATH FORWARD AT THE IRS: INITIAL ASSESSMENT AND PLAN OF ACTION 20 (June 24, 2013), available at <http://www.irs.gov/pub/newsroom/Initial%20Assessment%20and%20Plan%20of%20Action.pdf>).

²⁰ *Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities*, REGULATIONS.GOV, <http://www.regulations.gov/#!documentDetail;D=IRS-2013-0038-0001> (last visited Feb. 3, 2014) [hereinafter Electronic Docket].

²¹ OMB Guidelines, *supra* note 2, at 8455-58, § V(3)(a) (agency must identify sources of disseminated information so public can assess for itself the objectivity of that information and have access to full, accurate, transparent documentation and error sources affecting data quality).

be disseminated in order to ensure an accurate, clear, complete, and unbiased presentation. Also, the agency needs to identify the sources of the disseminated information . . . and, in a scientific, financial, or statistical context, the supporting data and models, so that the public can assess for itself whether there may be some reason to question the objectivity of the sources. . . . In addition, “objectivity” involves a focus on ensuring accurate, reliable, and unbiased information.²²

The IQA bars the IRS from disseminating inaccurate, imprecise, unsupported, or misleading information. The IRS must be forthcoming about the burdens of the proposed regulations contained in the NPRM and the parties upon whom those burdens will likely fall. Insofar as the IRS withholds the information or data required to dispel any ambiguities, it violates OMB guidelines. Agency correction, and the appropriate disclosure of background information upon which an agency’s determinations are based, is the congressionally-mandated remedy. For the reasons set forth below, Cause of Action is entitled to such relief.

Influential Disseminated Information of Concern

- a) *“These regulations will affect tax-exempt social welfare organizations and organizations seeking such status.”*²³

Grounds for Correction

The IRS’s claim that the content of the NPRM “will affect tax-exempt social welfare organizations and organizations seeking such status”²⁴ constitutes the “dissemination” of “influential” information because (a) it was contained in a document distributed to the public²⁵ and (b) could reasonably have been determined to have a clear and substantial impact on important public policies or important private sector decisions regarding candidate-related political activity undertaken by tax-exempt organizations.²⁶

To a certain extent, the IRS has already intimated that the burden of the proposed guidelines will extend beyond 501(c)(4) organizations.²⁷ Indeed, the proposed guidelines effectively acknowledge that *all* 501(c) organizations that have financial interaction with a

²² IQA Guidelines, *supra* note 3, at 20.

²³ NPRM, *supra* note 5, at 71535.

²⁴ *Id.*

²⁵ See 5 C.F.R. § 1320.3(d) (defining “Conduct or Sponsor”); see also IQA Guidelines, *supra* note 3, at 21.

²⁶ See IQA Guidelines, *supra* note 3, at 21.

²⁷ *E.g.*, NPRM, *supra* note 5, at 71539 (“The Treasury Department and the IRS recognize that a section 501(c)(4) organization making a contribution may not know whether a recipient section 501(c) organization engages in candidate-related political activity. The proposed regulations provide that, for purposes of this definition, a recipient organization would not be treated as a section 501(c) organization engaged in candidate-related political activity if the contributor organization obtains a *written representation from an authorized officer of the recipient organization* stating that the *recipient organization does not engage in any such activity and the contribution is subject to a written restriction that it not be used for candidate-related political activity.*”) (emphasis added).

501(c)(4) entity (e.g., receive a grant) will have to establish a system for complying with the proposed regulations.²⁸ As one commentator on the NPRM has suggested:

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 regulated 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 . . . is preposterously low.²⁹

The failure to properly identify the class of tax-exempt entities that will suffer increased reporting and recordkeeping requirements as a result of the proposed guidelines violates the IRS’s guidelines on information quality. It fails the IQA’s presentation objectivity test because it is an inaccurate and incomplete summary of the effect of the guidelines.³⁰ And it fails the IQA’s utility test insofar as it misleads tax-exempt entities that rely on the characterization of the proposed guidelines in determining whether they will be subject to heightened reporting and recordkeeping burdens.

Requested IRS Action

Cause of Action requests that the IRS clarify the wide-reaching effects of the NPRM by amending the identified information so that it details the possibility of an increased reporting and record keeping burden for all tax-exempt organizations that have financial interaction with a 501(c)(4) entity. This could be accomplished by amending the line thusly: “These regulations will primarily affect tax-exempt social welfare organizations and organizations seeking such status, but may also affect any tax-exempt entity that has financial interaction with a social welfare organization.”

²⁸ *Id.* at 71541 (“(D) *Special rule regarding contributions to section 501(c) organizations.* For purposes of paragraph (a)(2)(iii)(A)(4) of this section, a contribution to an organization described in section 501(c) will not be treated as a contribution to an organization engaged in candidate-related political activity if—(1) The contributor organization obtains a written representation from an authorized officer of the recipient organization stating that the recipient organization does not engage in such activity (and the contributor organization does not know or have reason to know that the representation is inaccurate or unreliable); and (2) The contribution is subject to a written restriction that it not be used for candidate-related political activity within the meaning of this paragraph (a)(2)(iii).”). Insofar as a tax-exempt organization is required to provide written representations of its candidate-related political activity—as defined under the proposed guidelines—it must engage in the same sort of record-keeping and reporting as any other social welfare entity organized under Section 501(c)(4) of the IRC.

²⁹ Letter from Cleta Mitchell, Foley & Lardner LLP (p.p. Tea Party Patriots, Inc. & Freedom Works, Inc.), to Desk Officer for the Dep’t of Treasury, Office of Information & Regulatory Affairs, Office of Mgmt. & Budget 4 (Jan. 28, 2014) [hereinafter Mitchell Letter] (enclosed as Exhibit 1).

³⁰ OMB Guidelines, *supra* note 2, at 8459, § V(3)(a); *see also* IQA Guidelines, *supra* note 3, at 20.

- b) *“The expected recordkeepers are section 501(c)(4) organizations that choose to contribute to, and to seek a written representation from, a section 501(c) organization. Estimated number of record keepers: 2,000. Estimated average annual burden hours per recordkeeper: 2 hours. Estimated total annual recordkeeping burden: 4,000 hours. A particular section 501(c)(4) organization may require more or less time, depending on the number of contributions for which a representation is sought.”*³¹

Grounds for Disclosure/Correction

The IRS’s predictions for the increased reporting and recordkeeping burdens imposed by the proposed guidelines contained in the NPRM³² constitute the “dissemination” of “influential” information because (a) they were contained in a document distributed to the public³³ and (b) could reasonably have been determined to have a clear and substantial impact on important public policies or important private sector decisions regarding candidate-related political activity undertaken by tax-exempt organizations.³⁴

As discussed above, the IRS has already intimated that the burden of the proposed guidelines will extend beyond 501(c)(4) organizations.³⁵ Indeed, the proposed guidelines effectively acknowledge that *all* 501(c) organizations that have financial interactions with a 501(c)(4) entity (*e.g.*, receive a grant) will have to establish a system for complying with the proposed regulations.³⁶ Some commentators have suggested that the proposed guidelines will impose voluminous recordkeeping requirements on small non-profits, especially those that rely on volunteer support.³⁷

³¹ NPRM, *supra* note 5, at 71535.

³² *Id.*

³³ See 5 C.F.R. § 1320.3(d) (defining “Conduct or Sponsor”); see also IQA Guidelines, *supra* note 3, at 21.

³⁴ See IQA Guidelines, *supra* note 3, at 21.

³⁵ *E.g.*, NPRM, *supra* note 5, at 71539 (“The Treasury Department and the IRS recognize that a section 501(c)(4) organization making a contribution may not know whether a recipient section 501(c) organization engages in candidate-related political activity. The proposed regulations provide that, for purposes of this definition, a recipient organization would not be treated as a section 501(c) organization engaged in candidate-related political activity if the contributor organization obtains a *written representation from an authorized officer of the recipient organization* stating that the *recipient organization does not engage in any such activity and the contribution is subject to a written restriction that it not be used for candidate-related political activity.*”) (emphasis added).

³⁶ *Id.* at 71541 (“(D) *Special rule regarding contributions to section 501(c) organizations.* For purposes of paragraph (a)(2)(iii)(A)(4) of this section, a contribution to an organization described in section 501(c) will not be treated as a contribution to an organization engaged in candidate-related political activity if—(1) The contributor organization obtains a written representation from an authorized officer of the recipient organization stating that the recipient organization does not engage in such activity (and the contributor organization does not know or have reason to know that the representation is inaccurate or unreliable); and (2) The contribution is subject to a written restriction that it not be used for candidate-related political activity within the meaning of this paragraph (a)(2)(iii).”). Insofar as a tax-exempt organization is required to provide written representations of its candidate-related political activity—as defined under the proposed guidelines—it must engage in the same sort of record-keeping and reporting as any other social welfare entity organized under Section 501(c)(4) of the IRC.

³⁷ Mitchell Letter, *supra* note 29.

The objectivity of the IRS's predictions is questionable. IQA Guidelines require that influential disseminated information be presented in an "accurate, clear, complete, and unbiased manner." In the present case, the IRS should provide—or, at least *identify*—the "supporting data and models" utilized in calculating hourly burdens, "so that the public can assess for itself whether there may be some reason to question the objectivity of the sources."³⁸ Yet neither the NPRM nor the electronic docket for the proposed guidelines contain or identify the data and methodologies which served as the basis for the IRS's predictions.³⁹

The integrity of the identified information may also be compromised insofar as the proposed guidelines are the product of a biased and politicized rule-making process. The IRS has long been manipulated to punish political opponents.⁴⁰ Article II of President Richard Nixon's Articles of Impeachment, for example, provided:

[Nixon] has, acting personally and through his subordinates and agents, endeavored to obtain from the Internal Revenue Service, in violation of the constitutional rights of citizens, confidential information contained in income tax returns for purposes not authorized by law, and to cause, in violation of the constitutional rights of citizens, income tax audits or other income tax investigations to be initiated or conducted in a discriminatory manner.⁴¹

More recently, the Treasury Inspector General for Tax Administration reported on the use of inappropriate criteria in determining the disposition of applications for tax-exempt status for certain conservative and libertarian organizations.⁴² The Obama Administration has subsequently acknowledged the impropriety of this targeting—while paradoxically suggesting that whatever targeting that did take place was the result of "some bone-headed decisions" and did not evidence "even a smidgen of corruption"⁴³—but has nevertheless taken further action to impose similar burdens on these same groups under the guise of "objective" rulemaking.

The proposed guidelines contained in the NPRM revise Treas. Reg. § 1.501(c)(4)-1(a)(2)(ii) to state that "[t]he promotion of social welfare does not include direct or indirect candidate-related political activity."⁴⁴ Such a redefinition would likely inflict a tremendous burden on non-profit organizations by classifying a significant amount of non-political activity as

³⁸ IQA Guidelines, *supra* note 3, at 20; *see also* OMB Guidelines, *supra* note 2, at 8459, § V(3)(a).

³⁹ *See* NPRM, *supra* note 5; *see also* Electronic Docket, *supra* note 20.

⁴⁰ *See generally* DAVID BURNHAM, A LAW UNTO ITSELF: THE IRS AND THE ABUSE OF POWER (1990); Jim F. Couch *et al*, *Political Influence and the Internal Revenue Service*, 19 CATO J. no. 2 (Fall 1999), *available at* <http://object.cato.org/sites/cato.org/files/serials/files/cato-journal/1999/11/cj19n2-8.pdf>.

⁴¹ H.R. REP. NO. 93-1305 at 3 (1974).

⁴² TREASURY INSPECTOR GEN. FOR TAX ADMIN., INAPPROPRIATE CRITERIA WERE USED TO IDENTIFY TAX-EXEMPT APPLICATIONS FOR REVIEW, No. 2013-10-053 (May 14, 2013), *available at* <http://www.treasury.gov/tigta/auditreports/2013reports/201310053fr.pdf>.

⁴³ "Not Even a Smidgen of Corruption": Obama Downplays IRS, Other Scandals, FOX NEWS, <http://www.foxnews.com/politics/2014/02/03/not-even-smidgen-corruption-obama-downplays-irs-other-scandals/> (Feb. 3, 2014).

⁴⁴ NPRM, *supra* note 5, at 71537.

“candidate-related political activity,” including nonpartisan voter guides, speaker forums, pamphlets, and voter-registration drives. Since many conservative and libertarian groups use these same activities to educate the public on matters pertaining to the U.S. Constitution and government spending, they are especially at risk of losing their tax-exempt status should the IRS finalize the proposed guidelines.

In addition to the undisclosed reporting and recordkeeping burden that will likely fall on those non-501(c)(4) tax-exempt entities that merely have financial interaction with a social welfare organization, Cause of Action is concerned that the proposed guidelines are unnecessary and will stifle political expression by restricting and hampering grassroots education regarding the Constitution, limited government and economic freedom. As Rep. David Camp, Chairman of the House Ways & Means Committee, has observed: “The new regulation[s] so closely mirrors the abused tea-party group applications, it leads me to question *if this new proposed regulation is simply another form of targeting.*”⁴⁵

The failure to properly disclose the background information, supporting data and methodologies, and other undisclosed submissions that led the IRS to quantify the estimated reporting and recordkeeping burden violates the IQA. It fails the IQA’s presentation objectivity test because it is impossible to determine whether there may be some reason to question the objectivity of the sources used in drafting the proposed guidelines.⁴⁶ Due to lack of disclosure, Cause of Action and others are unable to test or reproduce the NPRM’s predictions.⁴⁷ And considering the recent history of abuse and politicization, and the manifest lack of transparency in the publication of this NPRM,⁴⁸ the integrity of the identified information—as well as the proposed guidelines as a whole—is called into question.

Requested IRS Action

Cause of Action requests that the IRS update the electronic docket of the NPRM in question and grant the public access to the background information, supporting data and methodologies, and undisclosed public comments used by the IRS in determining the expected reporting and recordkeeping burden for 501(c) organizations engaged in candidate-related political activity.

⁴⁵ Kimberly A. Strassel, *IRS Targeting: Round 2*, WALL ST. J. (Dec. 12, 2013)

<http://online.wsj.com/news/articles/SB10001424052702303932504579254521095034070>.

⁴⁶ IQA Guidelines, *supra* note 3, at 20; *see also* OMB Guidelines, *supra* note 2, at 8459, § V(3)(a).

⁴⁷ *See* IQA Guidelines, *supra* note 3, at 21.

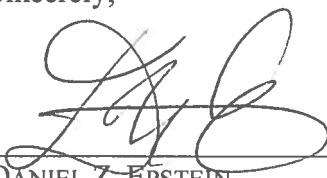
⁴⁸ On December 24, 2013, Cause of Action submitted a FOIA request to the IRS requesting, among other things, the release of the “unsolicited public comments” that the IRS “drew upon” in defining “candidate-related political activity” in the NPRM, as well as any agency correspondence with those who submitted these comments. Letter from Cause of Action to Bertrand Tzeng, HQ Disclosure FOIA Group, Internal Revenue Serv. (Dec. 24, 2013) (on file with Cause of Action). On January 30, 2013, the IRS finally acknowledged receipt of the request, invoked a ten-day statutory extension of time for response, and indicated it would be unable to provide a final response until May 1, 2014. Letter from Robert Thomas, HQ Disclosure FOIA Group, Internal Revenue Serv. (Jan. 30, 2014) (on file with Cause of Action).

V. CONCLUSION

President Obama said that his Administration was “committed to creating an unprecedented level of openness in Government,”⁴⁹ and so he directed Executive Branch departments and independent agencies to establish a system of “transparency, public participation, and collaboration.”⁵⁰ The IRS and Treasury violate the President’s directives by failing to comply fully with the IQA. Thus, Cause of Action requests that the IRS entertain the present petition, correct the NPRM and make the requested disclosures in the electronic docket.

If you have any questions about this request, please contact Robyn Burrows, Counsel, by e-mail at robyn.burrows@causeofaction.org, or by telephone at (202) 499-4232. Thank you for your attention to this matter.

Sincerely,



DANIEL Z. EPSTEIN
EXECUTIVE DIRECTOR

Encl: Letter from Cleta Mitchell, Foley & Lardner LLP (p.p. Tea Party Patriots, Inc. & Freedom Works, Inc.), to Desk Officer for the Dep’t of Treasury, Office of Information & Regulatory Affairs, Office of Management & Budget (Jan. 28, 2014).

⁴⁹ Presidential Memorandum on Transparency and Open Government, 74 Fed. Reg. 4685-86 (Jan. 26, 2009).

⁵⁰ *Id.*