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IRS OBSTRUCTION: LOIS LERNER'S MISSING EMAILS, PART II

HEARING

BEFORE THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

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IRS OBSTRUCTION: LOIS LERNER'S MISSING EMAILS, PART II

Tuesday, June 24, 2014

HOUSE OF REPRESENTATIVES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
WASHINGTON, D.C.

The committee met, pursuant to call, at 9:35 a.m., in Room 2154, Rayburn House Office Building, Hon. Darrell E. Issa [chairman of the committee] presiding.

Present: Representatives Issa, Mica, Turner, Duncan, McHenry, Jordan, Chaffetz, Walberg, Gosar, Meehan, DesJarlais, Gowdy, Farenthold, Lummis, Woodall, Collins, Meadows, Bentivolio, DeSantis, Cummings, Maloney, Norton, Tierney, Clay, Lynch, Connolly, Speier, Duckworth, Kelly, Davis, Welch, Horsford, and Lujan Grisham.

Staff Present: Molly Boyl, Deputy General Counsel and Parliamentarian; Lawrence J. Brady, Staff Director; David Brewer, Senior Counsel; Ashley H. Callen, Deputy Chief Counsel for Investigations; Sharon Casey, Senior Assistant Clerk; Steve Castor, General Counsel; Drew Colliatie, Professional Staff Member; John Cuaderes, Deputy Staff Director; Adam P. Fromm, Director of Member Services and Committee Operations; Linda Good, Chief Clerk; Tyler Grimm, Senior Professional Staff Member; Erin Hass, Senior Professional Staff Member; Frederick Hill, Deputy Staff Director for Communications and Strategy; Christopher Hixon, Chief Counsel for Oversight; Mark D. Marin, Deputy Staff Director for Oversight; Ashok M. Pinto, Chief Counsel, Investigations; Jeffrey Post, Senior Professional Staff Member; Laura L. Rush, Deputy Chief Clerk; Jessica Seale, Digital Director; Andrew Shult, Deputy Digital Director; Jonathan J. Skladany, Deputy General Counsel; Peter Warren, Legislative Policy Director; Rebecca Watkins, Communications Director; Aryele Bradford, Minority Press Secretary; Susanne Sachsman Grooms, Minority Deputy Staff Director/Chief Counsel; Jennifer Hoffman, Minority Communications Director; Elisa LaNier, Minority Director of Operations; Juan McCullum, Minority Clerk; Valerie Shen, Minority Counsel; Donald Sherman, Minority Chief Oversight Counsel; Katie Teleky, Minority Staff Assistant; and Michael Wilkins, Minority Staff Assistant.

Chairman ISSA. Good morning. The committee will come to order.

Without objection, the chair is authorized to declare a recess of the committee at any time.

As I said last night late for many of you, and I say again this morning, the Oversight Committee exists to secure two fundamental principles: First, Americans have a right to know that the

money Washington takes from them is well spent; and second, Americans deserve an efficient, effective government that works for them.

Our duty on the Oversight and Government Reform Committee is to protect these rights. Our solemn responsibility is to hold government accountable to taxpayers, because taxpayers have a right to know what they get from their government. It's our job to work tirelessly, in partnership with citizen watchdogs, to deliver the facts to the American people and bring genuine reform to the Federal bureaucracy. This is our mission, this is our passion, and this is what we are here for today.

The committee meets today to continue our effort to get to the truth about the IRS's targeting of conservative groups. Last night, we heard testimony from the Commissioner about how and why the IRS came to not save and, in fact, to destroy the disk drive that contained emails of the now well understood and criminally charged by the House former head of the Exempt Organizations, Lois Lerner. And I say that again: Lois Lerner has been referred for criminal charges, multiple criminal charges by the Ways and Means Committee and held in contempt by the full House. Her disk drive is missing.

His testimony included a number of significant admissions and facts. For example, the Commissioner testified that he has seen no evidence that there was any attempt in 2011 to retrieve 6 months of lost Lois Lerner emails from backup tapes or, in fact, from the main hard drive of the server. He testified that he does not know who at the IRS was involved in leaking the knowledge about Lois Lerner's emails to Treasury and on to the White House. He further testified that he did not believe leaking to the White House was a problem because the White House itself does not leak information. We will chalk that one up to naive, not perjury. He testified that because he does not know what was in Lois Lerner's email, he has no grounds to believe they contain Federal records.

While I appreciate his time and effort, our relationship with the IRS and the Commissioner was not improved by his disappointing performance. In fact, one of the most troubling portions of his testimony was to tell us that someone, who he could not name, who worked for him, had told him sometime in the entire month of April, not the 1st of April, not the 15th of April, when we all have to pay our taxes, and not the end of April, but just sometime in a 30-day period someone, he could not remember, had told him one of the most important pieces of information any of us could imagine, that thousands, tens of thousands, or perhaps more emails of Lois Lerner were gone forever.

I hope the witnesses before us today can help us understand further how we can have an agency that expects all Americans to maintain critical documents for at least 7 years and, in fact, the agency itself systematically destroys records after 6 months. They are worried about data integrity for a catastrophic event but not for criminal wrongdoing of their own employees, not for waste, fraud, and abuse within the agency.

This is an agency the Commissioner was sent to fix. This is an agency that had lavish partners and did not even live up to the requirement for tax filing by its own members when it held a party,

complete with a very expensive video, at Disneyland. This is an agency that targeted conservatives for their political beliefs, that asked them for who their donors were and whether they said prayers at the beginning of an event. What they did in every way and held out their application for 501(c)(4) like a carrot, never informing them that even the President's 501(c)(4) wasn't registered.

Today, the committee will hear testimony from Jennifer O'Connor, a former IRS attorney who directly managed the IRS's production, or lack thereof, of documents to this committee and others. During a transcribed interview last year, IRS Chief Counsel William Wilkins testified that Ms. O'Connor was one of the two key supervisors overseeing the IRS' response to congressional oversight. In fact, Ms. O'Connor was hired by the IRS for the sole purpose of overseeing the agency's response to congressional investigations of the targeting scandal. From May 2013 to November 2013, Ms. O'Connor led the IRS' response to congressional oversight of the IRS' targeting of conservatives.

In May of this year, Ms. O'Connor was promoted to the White House Counsel's office to work on responding to all congressional oversight across the entire administration. The IRS supposedly has spent $10 million in its response to Congress. I am hoping Ms. O'Connor will enlighten us about how the IRS spent so much of the taxpayers' money but supposedly took them over a year to realize 2 years of emails from the most critical witness had gone missing and, in fact, that same year since she first took the Fifth. The idea that the IRS just didn't notice is without believability.

We will also want to know from Ms. O'Connor how the White House came to have insider knowledge about Ms. Lerner's missing emails and, more broadly, what role the White House plays in this investigation.

Today we will also hear from the Archivist of the United States, David Ferriero, about the rules and regulations for preserving Federal records. These laws include the Federal Records Act that were put in place precisely for the purpose of preserving important Federal records. In particular, I want to ask the Archivist about one claim the Commissioner made last night. The Commissioner said the IRS did not report a loss or destruction of Federal records because there is no way to know what was in Ms. Lerner's missing emails. But, in fact, we do know some things about where—that were in Ms. Lerner's lost emails. We know that, from 2010, email correspondence we found at the Department of Justice, that Ms. Lerner sent over 1.1 million pages of a database to assist the possible prosecution of those same groups that were targeted, and that that information included 6103 personal identifiable information, including donors.

I am hoping the Archivist can offer an opinion about whether such correspondence and documents are, in fact, covered by the Federal Records Act and whose loss and destruction would and should have been reported in 2011.

The hearing today continues the committee's oversight efforts of the IRS' targeting to get to the basic answers for the American people. The committee will continue to aggressively search for answers about how and why the IRS allowed to be destroyed Lois Lerner's

emails. This information is critical to the committee's investigation of the IRS targeting of conservative organizations.

I might add in closing, the Archivist is a welcome friend of this committee. The Archives fall within our primary jurisdiction. We take great pride in the work that the National Archives does. Just last night, very proudly, I showed to the Commissioner and put in the record a little piece of history of General Jackson demanding that his government in 1803 return some of the tax revenue taken from him for liquor that could never be produced because his still burned. That is a piece of history that was not covered by the Federal Records Act. But because of the unique work that National Archives does, often with volunteers from around America who come and study and research, we know what we did not know then and would have not ever demanded to store.

So I would say here today to my ranking member and to all the members of the committee, the Federal Records Act is a minimum of what must be stored. But there can be no limit to the maximum of what will benefit generations unborn if we can preserve a greater amount of documents with the massive capability that our electronic era gives us.

With that, I recognize the ranking member.

Mr. CUMMINGS. Good morning.

And I welcome the opportunity to hear this morning from the Archivist of the United States about outstanding challenges at Federal agencies with electronic records retention. During the Bush administration, Federal agencies admitted to losing millions, millions of emails related to ongoing congressional and criminal investigations, including the U.S. attorney firings and the outing of covert CIA agent Valerie Plame, and a host of other matters.

Our committee played an integral role in investigating these problems. Representative Henry Waxman, our former chairman, engaged in a constructive effort to find solutions to these challenges. He hosted monthly meetings with the Archivist and the White House Counsel's Office to monitor progress in implementing recommendations.

I believe the Archivist would agree with his predecessor that those meetings served a useful purpose.

Today, the White House system automatically preserves emails from all employee email accounts. Since 2008, there has been additional progress. On November 28, 2011, President Obama issued a directive to agencies managing Federal records. The President also directed the Archivist and the Director of the Office of Management and Budget to craft a modernized framework to improve agency performance and begin managing email records in electronic formats by 2016. I look forward to hearing a status report on these efforts.

Also, the Archivist, Mr. Ferriero, will give us his view on legislation I introduced last year, the Electronic Message Preservation Act, which would require Federal agencies to preserve email records electronically. The committee voted on a bipartisan basis to approve my legislation, but it has languished since then. And the Republican leaders have declined to bring it to the floor for a vote. Although today's hearing could have the potential to help improve agency systems for managing electronic records, I was just made

last night that Chairman Issa issued a unilateral subpoena to compel Ms. O'Connor to appear here today. Today's hearing title is, "Lois Lerner's Missing Emails."

It is true that Ms. O'Connor used to work at IRS. She worked there from May to November of last year. The problem is that Ms. O'Connor left the IRS 7 months ago, in 2013, well before these recent discoveries about Lois Lerner's emails. As Commissioner Koskinen testified last night, IRS officials learned there was a potential problem in February of 2014. And it was not until May of 2014 that they understood the scope of the problem, completed their investigation, and determined the extent to which emails were available or not.

Ms. O'Connor left the IRS before any of these discoveries occurred. So why is she here? According to the chairman's own press release, it's not because of her old job; it's because of her new one. She currently works at the White House Counsel's Office. She has worked there for less than a month. One month. But apparently that's enough to warrant a subpoena from the committee.

Last night, the Republicans demanded to know when the White House first became aware that the IRS was having difficulty locating Ms. Lerner's emails. I am sure my colleagues will repeat those questions today over and over and over and over again. But we already know the answer. The White House sent a letter to Congress on June 18th, and it said this, "In April of this year, Treasury's Office of General Counsel informed the White House Counsel's Office that it appeared Ms. Lerner's custodial email account contained very few emails prior to April 2011 and that the IRS was investigating the issue and, if necessary, would explore alternate means to locate additional emails." That was in April.

But Ms. O'Connor did not start her job at the White House until at least a month later.

I ask unanimous consent to enter this June 18th letter into the record.

Chairman ISSA. Without objection, so ordered.

Mr. CUMMINGS. Today's hearing is not about policy. Today's hearing is not about policy or substance. It's about politics and press. Today, Ms. O'Connor will join the ranks of dozens of other officials during Chairman Issa's tenure who have been hauled up here unnecessarily, without a vote, without any debate, as part of a partisan attempt to generate headlines with unsubstantiated accusations against the White House. Regardless of how many times the Republicans claim the White House was behind the IRS actions, there is still no evidence, none, that the White House was involved in any way with screening applicants for tax-exempt status. No one of the 41 witnesses we have interviewed has identified any evidence of White House involvement or political motivation. Not one. And the inspector general has also, by the way, who was appointed by President Bush, has also identified no evidence to support these baseless claims. Issuing a subpoena to a White House lawyer does not change that fact.

I sincerely hope that today's hearing will focus on a serious examination of the longstanding and widespread challenges of retaining electronic records and on constructive solutions. And I actually look forward to the statements of our witnesses.

With that, Mr. Chairman, I yield back.

Chairman ISSA. I thank the gentleman.

Members may have 7 days to submit opening statements for the record.

It's now my pleasure to welcome our panel of witnesses. Ms. Jennifer O'Connor is an attorney currently in the Office of the White House Counsel and, prior to that, as Mr. Cummings said, worked as the primary deliverer of discovery to this committee while at the IRS.

The Honorable David Ferriero is the Archivist of the United States at the National Archives and Records Administration. Additionally, Mr. Ferriero has asked that he be accompanied by Paul Wester, the chief records officer at the National Archives and Records Administration.

And as I understand and I ask unanimous consent that he also be allowed to join the panel and answer questions. And he will be sworn in. And my understanding, for all of us, is that in fact Mr. Wester is the man most knowledgeable of and working with the CIOs throughout government to ensure that the Records Act, or the Federal Records Act and Presidential Records Act, are adhered to and, as a result, is in fact—and Mr. Ferriero, I appreciate your bringing him—the man who probably knows the most about what has been asked of government and what government could and should deliver, and at what budget.

So, with that, I would ask that you all please rise pursuant to the committee rules and take the oath.

Please raise your right hands. High, please.

Thank you.

Do you solemnly swear or affirm the testimony you are about to give will be the truth, the whole truth, and nothing but the truth? Thank you.

Please be seated. Let the record reflect that all witnesses answered in the affirmative.

For those who have not testified here before, there is a 5-minute clock in front of you. I do not gavel people at 5 minutes, but I would ask that as you see it go yellow, summarize. As you see it go red, bring it to a conclusion as quickly as possible.

Ms. O'Connor, please give us your opening statement.

WITNESS STATEMENTS

STATEMENT OF JENNIFER O'CONNOR

Ms. O'CONNOR. Chairman Issa, Ranking Member Cummings, and members of the committee, my name is Jennifer O'Connor. I am an attorney by training. I practiced for many years at the law firm Wilmer Hale, where I managed large complex litigation matters.

On May 30 of 2013, I joined the IRS as counselor to Acting Commissioner Werfel. I left that position on November 30th of 2013. I understand the committee is interested in my time at the IRS, and I look forward to answering all of your questions today. Thank you.

Chairman ISSA. Thank you.

Mr. Ferriero.

STATEMENT OF THE HONORABLE DAVID S. FERRIERO

Mr. FERRIERO. Chairman Issa, Ranking Member Cummings, and members of the committee, thank you for this opportunity to provide testimony on maintaining email records in Federal agencies and NARA's response to the recent reports regarding the alleged unauthorized disposal of email records at the IRS.

Accompanying me today is Paul Wester, the chief records officer of the United States Government and a member of my senior management.

First, concerning the reported unauthorized disposal, Federal agencies are responsible for preventing the unauthorized disposition of Federal records, including their unlawful or accidental destruction, deletion, alteration, or removal from Federal custody. Agencies should carefully monitor the implementation of approved record schedules to prevent such unauthorized destruction.

In accordance with the Federal Records Act, when an agency becomes aware of an incident of unauthorized destruction, they must report the incident to us. The report should describe the records, the circumstances in which the unauthorized destruction took place, and the corrective steps being taken to properly manage the records in the future. If we hear about the incident before the agency has reported it, we will notify the agency and request similar information. The goal of this process is to ensure that the circumstances that may have led to the loss of Federal records are corrected and not repeated.

NARA learned of the alleged unauthorized disposal of the IRS records through a letter, dated June 13th, 2014, from the IRS to Senators Wyden and Hatch. In this letter, the IRS reported the loss of email records of Lois Lerner, the former head of IRS Exempt Organizations Division, dating from 2009 to 2011, as a result of the failure of a hard drive.

Accordingly, NARA asked the IRS to investigate the alleged disposal of records, and whether it was broader than was reported in the June 13th, 2014 letter. As is typical when we send a letter such as this, we asked for a response within 30 days.

On a daily basis, NARA staff and records and information professionals in each Federal agency work to ensure records management policies and practices meet the needs of the agencies, protect the rights and interests of the government and its citizens, and identify the permanently valuable records that document the national experience.

In November 2011, the President issued a memorandum on managing government records, which resulted in the Archivist of the United States and the Director of OMB issuing the Managing Government Records Directive in August 2012. It has two high level goals: First, require electronic record keeping to ensure transparency, efficiency, and accountability; and second, demonstrate compliance with Federal records management statutes and regulations. There are a number of activities associated with each of these goals, but the two major actions are by the end of 2016, Federal agencies must manage all email records in an electronic format, and by the end of 2019, all permanent electronic records in Federal agencies will be—all permanent records in Federal agencies will be managed electronically to the fullest extent possible.

The effective management of email is a central animating issue for the National Archives as we work to meet the requirements of the directive. To help agencies meet the goal of managing their email in electronic form by the end of 2016, NARA has issued updated email guidance, known as Capstone. NARA developed the Capstone approach as part of our ongoing efforts to evaluate how agencies have used various email repositories to manage email records. They provide agencies with a workable and cost-efficient solution to email records management challenges, especially as they consider cloud-based solutions. It also offers the agencies the option of using a simplified and automated approach to manage email, as opposed to either print and file or click and file systems that require staff to file individual email records. The Capstone approach allows for the capture of records that should be preserved as permanent from the accounts of officials at or near the top of an agency or an organizational subcomponent. An agency may designate email accounts of additional employees as Capstone when they are in positions that are likely to create or receive permanent email records. Following this approach, an agency can schedule all of their email in Capstone accounts as permanent records. The agency should then schedule the remaining email accounts in the agency or organizational unit which are not captured as permanent as temporary and preserve all of them for a set period of time based on the agency's needs.

The Capstone approach is part of our initial effort in providing assistance to agencies to enable them to meet the email records requirement in the directive. We will continue to provide additional information and guidance as we strive to meet all of the directive's mandates.

Thank you for the opportunity to appear today. Mr. Wester and I look forward to answering your questions about Federal records.

Chairman ISSA. Thank you.

[Prepared statement of Mr. Ferriero follows:]

TESTIMONY OF DAVID S. FERRIERO
ARCHIVIST OF THE UNITED STATES

BEFORE THE

HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

ON

"IRS OBSTRUCTION: LOIS LERNER'S MISSING E-MAILS, PART II"

TUESDAY, JUNE 24 2014

Thank you for the opportunity to provide testimony on recent activities of the National Archives and Records Administration (NARA) related to managing email in Federal agencies and our response to the recent reports regarding the alleged unauthorized disposal of email records at the Internal Revenue Service (IRS). Accompanying me today is Paul Wester, the Chief Records Officer for the U.S. Government and a member of my senior management team at NARA.

First, concerning the reported unauthorized disposal, NARA and Federal agencies are responsible for preventing the unauthorized disposition of Federal records, including their unlawful or accidental destruction, deletion, alteration, or removal from Federal custody. Agencies should carefully monitor the implementation of approved records schedules to prevent such unauthorized destruction.

In accordance with the Federal Records Act (44 U.S.C. §§ 2905(a) and 3106) and its implementing regulations (36 CFR Part 1230), when an agency becomes aware of an incident of unauthorized destruction, they must report the incident to us. The report should describe the records, the circumstances in which the unauthorized destruction took place, and the corrective steps being taken to properly manage the records in the future. If we hear about the incident before the agency has reported it, we will notify the agency and request similar information. The goal of this process is to ensure that the circumstances that may have led to the loss of Federal records are corrected and not repeated.

NARA learned of the alleged unauthorized disposal by the IRS through a letter, dated June 13, 2014, from the IRS to Senators Ron Wyden and Orrin Hatch of the Senate Committee on Finance. In this letter, the IRS reported the loss of email records of Lois Lerner, the former head of the IRS' Exempt Organization Division, dating from 2009-2011, as the result of the failure of a hard drive.

Accordingly, NARA asked the IRS to investigate the alleged disposal of the items in question and whether the alleged disposal was broader than was reported in the June 13, 2014, letter. A

report of the investigation into this matter is required within 30 days, as stated in 36 CFR § 1230.16(b).

On a daily basis, National Archives staff in the Chief Records Officer organization, and records and information professionals in each federal agency, work to ensure records management policies and practices meet the needs of agencies, protect the rights and interests of the government and its citizens, and identify and eventually make available to the public the permanently valuable records that document the national experience.

In November 2011, the President issued a Memorandum to all agencies on Managing Government Records, which directed the Archivist of the United States and the Director of the Office of Management and Budget to issue an implementing directive, which they did in August 2012 – the Managing Government Records Directive, OMB M12-18. Through this directive, NARA and OMB identified two high-level goals:

- First, require electronic recordkeeping to ensure transparency, efficiency, and accountability.
- Second, demonstrate compliance with federal records management statutes and regulations.

There are a number of activities associated with each of these goals, but the two major actions are:

- By the end of 2016, Federal agencies must manage all email records in an electronic format.
- By the end of 2019, all permanent electronic records in Federal agencies will be managed electronically to the fullest extent possible.

The effective management of email is a central, animating issue for the National Archives and the government as a whole as we work to meet the requirements of OMB M12-18. To help agencies meet the goal of managing their email in electronic form by the end of 2016, NARA was required to issue updated email guidance by December 31, 2013.

This revised email guidance, known as "Capstone," was released on August 29, 2013. NARA developed the Capstone approach as part of our ongoing efforts to evaluate how agencies have used various email repositories to manage email records. This approach was developed in recognition of the difficulty in practicing traditional records management on the overwhelming volume of email that Federal agencies produce. Capstone provides agencies with workable and cost efficient solutions to email records management challenges, especially as they consider cloud-based solutions. Capstone also offers agencies the option of using a more simplified and automated approach to managing email, as opposed to using either print-and-file or click-and-file systems or records management applications that require staff to file email records individually.

Using this approach, an agency can categorize and schedule email based on the work and/or position of the email account owner. The Capstone approach allows for the capture of records that should be preserved as permanent from the accounts of officials at or near the top of an agency or an organizational subcomponent. An agency may designate email accounts of additional employees as Capstone when they are in positions that are likely to create or receive permanent email records. Following this approach, an agency can schedule all of the email in Capstone accounts as permanent records. The agency could then schedule the remaining email accounts in the agency or organizational unit, which are not captured as permanent, as temporary and preserve all of them for a set period of time based on the agency's needs. Alternatively, approved existing or new disposition authorities may be used for assigning disposition to email not captured as permanent.

Because of the novel approach in this guidance, agencies have requested a number of briefings and training sessions. Staff from several NARA offices have participated in dozens of these sessions and continue to attend as necessary. Resources have also been placed on NARA's portal for email (http://www.archives.gov/records-mgmt/email-mgmt.html). Several training sessions have also been recorded and made available on NARA's Records Management Training YouTube playlist.

Also earlier this year, NARA released expanded guidance on the formats acceptable for transferring permanent electronic records. This revised guidance applies to all electronic records that have been appraised and scheduled for permanent retention, including email.

The Capstone approach and our expanded format guidance are NARA's first efforts at providing assistance to agencies to enable them to meet the requirement in OMB M12-18 that they manage their email in an electronic form. We will continue to provide additional information and guidance to agencies, not only on email, but on all Federal records as we strive to meet all of the mandates in OMB M12-18.

There are a number of challenges and opportunities related to the use of electronic records in the Federal government. The talented staff of the National Archives and Records Administration – particularly those I work most closely with on a daily basis on these challenges – look forward to working through these issues now and for many years to come. The long-term success of the National Archives – and the historical records of our nation – depends on our collective success.

Thank you for the opportunity to appear today. Mr. Wester and I look forward to answering your questions about Federal records management and the Capstone approach to managing Federal email records.

Chairman ISSA. Mr. Wester, I understand you don't have a formal opening statement. But in order to set the tone for the committee, if you would briefly tell the committee about what your relationship is with CIOs, how you are working with them, how you are working to hit the deadlines of Capstone on behalf of the Archivist, and of course the nature of how you receive documents, to the best of your knowledge, from Treasury and the IRS today, including the documents such as the ones we are discussing. If you could set the stage, I think that's a good non partisan way to begin.

STATEMENT OF PAUL WESTER

Mr. WESTER. Okay. Thank you. I work with 100 staff members here in the Washington, D.C., area and around the country to provide records management assistance to all Federal agencies across the government, of which there are about 250 active agencies that we work with. The staff that works on records management policy activities at the National Archives works with the CIO Council, the Records Management Council, and other councils across the government to identify different ways that we need to approach this records management, electronic records management challenge. What we have been doing since the implementation of the directive back in August of 2013 is working with all of the different agencies across the government to figure out how we can meet the two deadlines that David outlined, which is by the end of the decade ensuring all agencies are managing their permanently valuable records in automated ways and also making sure that email records are being managed in automated ways with temporary and permanent emails by the end of 2016.

So there has been a number of different activities which I can answer questions about as we go. But we work very closely with agency records officers across the government, including at Treasury and the Internal Revenue Service, so that they understand where we are trying to go with electronic records management as a government and understand what their obligations are with the Federal Records Act and the directive itself and how we try to bring those two things together to make effective records management work across the government.

Chairman ISSA. Thank you.

I will now recognize myself for a series of questions.

Mr. Ferriero, last night we finished late, so I wasn't able to get to Best Buy. But 2 days before, I needed to acquire a storage device, so I spent about $150 and bought a 3 terabyte hard drive for about $149 plus sales tax. The IRS Commissioner last night told us that it would cost about $10 million if he was going to maintain the kind of data that we were interested in. The 80 or so depositories, as I understand, would have been a fraction of 3 terabytes, a fraction of $149 if they were simply moving them to a single NAS and then backing that up.

So I guess, Mr. Wester, it may be more your bailiwick, but is it true realistically that a few hundred dollar drive and then a duplicate of that drive realistically would be able to hold all of the data that those 80 depositories typically set aside as important permanent documents?

Mr. WESTER. Chairman Issa, I think you identify one part of the larger records management challenge that we have to deal with, which is being able to store and preserve email and other electronic records. And as you identified, the costs of doing this are coming down tremendously. And that is not a huge factor within the issue that we are talking about.

The issue that agencies are confronting is that they need to be able to organize that data and be able to provide access to it, which is separate from the storage piece. And that is where there are additional costs that agencies need to incur to be able to do that.

Having said that, a lot of agencies, to be able to be responsive to FOIA requests, be responsible to committees like this one, to be responsible for other kinds of requests and business needs that they have, have to develop search capabilities to be able to access those materials that are on those drives. And so that is where some of the complexity and the costs start to add up. So as agencies are doing that kind of procurement anyway to be able to support their business needs, we believe that a purchase like the Capstone email approach allow agencies to be able to do that effectively.

Chairman ISSA. Thank you.

Mr. Ferriero, there is a document being put up on the board, dated October 6, 2010, in which Lois Lerner sent about 1.1 million documents, including personally identifiable 6103 information, to Department of Justice in order to aid potential prosecution. Have you viewed that email?

Mr. FERRIERO. Yes, I have.

Chairman ISSA. Would you say that that is a record under the Federal Records Act?

Mr. FERRIERO. Not having access to the records schedule that was created by which this was—this message was created, it is an email that is record. Whether it's a temporary record or a permanent record I can't tell.

Chairman ISSA. But when the Commissioner said that in fact he didn't know if the lost emails, of which this is one, included items covered under the Federal Records Act, he was mistaken. Is that correct?

Mr. FERRIERO. All I can say is that if it was created, from what I read, it is a record. What I can't tell is whether it's a temporary record or a permanent record.

Chairman ISSA. Okay.

Lastly, this committee has jurisdiction over FOIA. Is it reasonable to destroy, after 6 months, data routinely so that a FOIA request simply goes to data that isn't there any longer? If you want to know what was said or done, if it doesn't happen to have been maintained by choice, it is gone at the end of 6 months at the IRS.

Mr. FERRIERO. That's right.

Chairman ISSA. So FOIA requests essentially to the IRS are pretty useless. And we now know at the FTC, for example, it's 45 days. Is that, in fact, in the best interests of freedom of information, in your opinion?

Mr. FERRIERO. There, again, if it was a permanent record then it is not best practice.

Chairman ISSA. Ms. O'Connor, you declined to come here voluntarily so we subpoenaed you. Clearly, you are not pleased to be

here, but it is important that you are here. You were at the IRS and hired when we began our investigation and requested selected documents of Lois Lerner in May of 2013. Is that correct?

Mr. CONNOLLY. I started on May 30th.

Chairman ISSA. Okay. So they hired you as soon as we said we want a bunch of documents. Correct?

Ms. O'CONNOR. Mr. Werfel, who was the acting Commissioner.

Chairman ISSA. Yes or no, please. You are a hostile witness. Yes or no, were you hired?

Ms. O'CONNOR. I am not at all a hostile witness.

Chairman ISSA. Yes, you are. So you were hired in May. In June, when we were not getting delivery, we went and subpoenaed. In August, you were at the IRS. Is that correct?

Ms. O'CONNOR. I was there in August.

Chairman ISSA. In August of 2013, we requested all Lois Lerner emails and not any selection, not any limited group. Are you aware of that?

Ms. O'CONNOR. Yes.

Chairman ISSA. And what did you do to determine the envelope or the window of "all" at that time, in August of 2013?

Ms. O'CONNOR. So can I explain the process a little bit? I think it would help to——

Chairman ISSA. My time has technically expired, so I would just ask that you be full and complete in—wait a second. Okay. Just full and complete in what you did from August until the time you left to secure all the documents, please.

Ms. O'CONNOR. So I think a little background is helpful. When I arrived on May 30th, the IRS had a team that was already in place collecting materials and beginning to respond to the congressional investigations. I joined, at Mr. Werfel's request, to be his counselor and perform a number of different things, a piece of which was helping to respond to the four different congressional committees and the IG and others who were seeking materials. And so I played a role that was a liaison to him. His direction was to be cooperative and try and gather and produce the materials as quickly as possible, and also to be a liaison to your staff and the staff of the other committees who were interested in figuring out how they could get their priorities to them as quickly as they could. And by that, what I mean is identifying the employees whose materials they wanted to see first and using search terms in order to identify the documents at interest.

The reason search terms were necessary as opposed to just turning every everything over wholesale, among others, is I know you know there is a statute called Internal Revenue Code 6103, which is an important—it's a criminal statute passed by the Congress that requires the IRS to protect taxpayer information. And the way in which they do that in situations like this is they have to read every single document to see if there is taxpayer information in it and then redact it if necessary before producing it.

So a big piece of the effort was to figure out how we could move information as quickly to the congressional committees and move them what they were looking for. So, in May, what that amounts to is when I arrived, Ms. Lerner's material had already been collected, as had some other employees' materials. There was more

collection that went on after that. And the process, as they explained it to me—and I am not a tech expert—but the IRS' material is protected with careful encryption. And, so, it needs to be processed before it can be reviewed. So, they have to load it and then flatten it and then decrypt it. And the decryption, I was told, creates errors sometimes. Then they have to do it again. And in that piece of the process, which is the first piece of the process, they would run the terms that the congressional committee staff had identified over the material. And then, once that was done and the material was viewable, they would move it over into a review tool.

And when I first got there, one of the things that I was doing was talking about how in order to move the volume quickly, we would need to add people because the IRS had never encountered something like this, didn't have staff in place to do this kind of a document review and production. In addition, the technical infrastructure wasn't really there to support it. So we had a lot of issues that we had to deal with in terms of adding servers and adding capacity and having technical experts deal with the systems that it would be stable.

When we got to August, which is I think where your question was, you did express an interest in all of the emails. We were, at that point, already sort of well into a process that had begun in May with Ms. Lerner and other—everybody else's emails that had been loaded at that point had been loaded with all of the terms. And so they were being reviewed. And so the staff who were working on this day to day continued to review all of that material. It was Mr. Werfel's intention that as soon as we got all of that done, we would circle back and make sure the subpoena was complied with.

And I left in November. We were still in the process of the rolling production. It wasn't finished yet. But it was certainly my understanding, and I believe it to be true—I have no reason to think it's not true—that they intended to continue to produce information. But the difference between the selected Lois Lerner information and all of Lois Lerner's information comes from the fact that, initially, the process was organized around material that was—had search terms applied to it versus the material at the end.

I hope that sort of lays that out clearly.

Chairman ISSA. I just want to summarize and go to the ranking member. So, in August of 2013, your testimony is that when receiving a subpoena and explicit instructions that this was our highest priority, that we wanted all the emails of the person who took the Fifth in front of this committee and who, in fact, was not cooperating, and who indications were was at the center of this targeting of conservatives, the decision was made to get to it after you got done with all the others. So when you left the agency, they had not yet done the extensive search—they had not yet looked for all of her emails, and as a result, that's why we go until April of this year before we discover that all her emails were never to be found.

Ms. O'CONNOR. So, I wasn't there when the discovery of the lost emails occurred, so I can't really speak to that from my personal knowledge.

Chairman ISSA. That's why I was saying that on the day you left, they had not set out to discover all her emails, but, in fact, had not complied with the subpoena in the sense that they had not gathered all of her emails, that they were waiting until they got done with all these other things they wanted to do, and then they would go look for all of the emails.

Ms. O'CONNOR. I am sorry, that wasn't what I meant.

Chairman ISSA. I would like to know what you meant, because obviously, they didn't know they were missing in the months that you were there after a subpoena asked for all of them. And I appreciate that you told us in great detail, and I appreciate that, it helps us all understand, you told us in great detail about the process that you went through. But of course, the process you went through was a process that you determined that you wanted to go through. We issued a subpoena. And 6103 redaction doesn't take the place of your gathering all of that. TIGTA was entitled to receive all of her emails without redaction and so was Ways and Means, if they chose to receive it.

Ms. O'CONNOR. Right. I believe that they—I understood—it was gathered before I got there. But my understanding from the team, and I didn't interact with them directly, but my understanding from the team who did gather it was they gathered everything that was there. And so in the, you know, process from the point at which I got there to the point at which I left, the team, who was working very hard on being able to get you materials, was reviewing and processing and redacting as necessary all the material that had been loaded and to which the search terms that your staff and the staff of the other committees had identified. The process—I wasn't there when the process of going back to look at the ones that had originally been loaded but hadn't hit the search terms were reviewed. But when I left, my understanding was that that was something that was going to continue because the agency seemed fully intending to continue to comply with your subpoena. And I have no reason to think that it didn't.

Chairman ISSA. Thank you.

Mr. Cummings.

Mr. CUMMINGS. Thank you very much.

Ms. O'Connor, let me ask you this. You were at IRS for about 6 or 7 months from May to November of last year. Is that right?

Ms. O'CONNOR. Six months. From May 30 to November 30, sir.

Mr. CUMMINGS. And you said—I was wondering when you came in, what instructions were you given with regard to production of documents? In other words, what did Mr. Werfel tell you were his priorities and what were you instructed to do? I am just curious.

Ms. O'CONNOR. His strong imperative was that we gather and produce everything that the congressional investigators and the inspector general wanted. And he wanted it to be done as quickly as possible. He was interested in being completely transparent. And the directives he gave to me, one of my roles was to sort of be his liaison to the team that was working full time on the document production. And in that capacity, one of the things I tried to do and worked on doing was to help them to get stuff out faster, to review faster so that more volumes of the material that the committee was looking for—and it is four committees, actually, there are four dif-

ferent committees, four different investigations. But he wanted to be able to get all of it to the investigation staff and committee members, in part because the IRS had been asked by the inspector general not to conduct its own investigation, not to interview witnesses. So the investigative activity was happening in the congressional committees and at the IG. And so it was important to get them all that material. That's what he told me to do. And that's what I worked with the team on doing.

Mr. CUMMINGS. And is that what you tried to do?

Ms. O'CONNOR. That's very much what I tried to do.

Mr. CUMMINGS. And so you left in November. Is that right?

Ms. O'CONNOR. Yes.

Mr. CUMMINGS. Of 2013. So you were not there this past February when the IRS first identified potential issues with Lois Lerner's emails. Is that right?

Ms. O'CONNOR. That's correct.

Mr. CUMMINGS. You said something that was very interesting. You said, when you got there, Ms. Lerner's information had already been collected. Is that you what you said?

Ms. O'CONNOR. Yes, that's correct.

Mr. CUMMINGS. What does that mean?

Ms. O'CONNOR. Well, to my understanding—and I didn't directly interface with the staff who did this—but professional long-term IRS staff went to Ms. Lerner's computer, took the hard drive and imaged it, took the emails that were on it, made copies of all of that. My understanding is that a set of staff—and again, it happened before I got there, so this is my, you know, understanding—also went through her office to collect any paper copies that were—I think they collected probably everything and then went through it to find out what was responsive.

Mr. CUMMINGS. So they actually went through her office, to your knowledge, to try to find paper copies, in addition to everything else?

Ms. O'CONNOR. To my knowledge, yes. Again, I want to clarify that I didn't witness it. I wasn't there. But that's what I was told.

Mr. CUMMINGS. I understand. I see. And so let me ask you, did you feel that you were able to carry out the instructions of Mr. Werfel? In other words, you said he told you to do things quickly. He told you to be transparent. And he told you to—that's what you told us. Did you do that?

Ms. O'CONNOR. We did our best. I mean, there were hurdles with the technology. And we had to add resources. We had to add staff. We had to add technological resources. And so I think, you know, nobody thought it was as quick as they would have liked. But we worked very hard to get the material to the committees as quickly as we could.

Mr. CUMMINGS. Now, you were not there in April when the Commissioner learned that some of Ms. Lerner's emails might not be recoverable. Is that right?

Ms. O'CONNOR. I was not there in April, no.

Mr. CUMMINGS. You weren't even working at the IRS when Mr. Koskinen was Commissioner. Is that right? Were you there at any time that he was there?

Ms. O'CONNOR. No, we didn't overlap.

Mr. CUMMINGS. So you never worked for him.

Ms. O'CONNOR. No.

Mr. CUMMINGS. And how long have you worked at the White House?

Ms. O'CONNOR. About a month. I just got there.

Mr. CUMMINGS. You just got the job?

Ms. O'CONNOR. Yes.

Mr. CUMMINGS. So, Ms. O'Connor, Congress received a letter from the White House last week, on June 18th, and it explains how the White House found out about Ms. Lerner's emails. It says, "In April of this year, Treasury's Office of General Counsel informed the White House Counsel's office that it appeared Ms. Lerner's custodial email account contained very few emails prior to April 2011 and that the IRS was investigating the issue and, if necessary, would explore alternate means to locate additional emails." So the Treasury told the White House in April, which would have been a month before you started at the White House. Is that right?

Ms. O'CONNOR. That's what that letter says. I wasn't there, so I don't know.

Mr. CUMMINGS. Now, Ms. O'Connor, I want to thank you very much for being here today. I know this is difficult. But are you a lawyer?

Ms. O'CONNOR. I am.

Mr. CUMMINGS. Do you know what a hostile witness is?

Ms. O'CONNOR. I do.

Mr. CUMMINGS. You do. And the chairman told you that you were a hostile witness, and you said you were not. Is that right?

Ms. O'CONNOR. That's correct.

Mr. CUMMINGS. Do you consider yourself a hostile witness?

Ms. O'CONNOR. I am definitely not hostile.

Mr. CUMMINGS. So you got a subpoena last night, a unilateral subpoena. No committee vote, no debate at all, nothing. And then you had to turn around and testify here this morning.

And so I want to state for the record that we have seen no evidence that Ms. O'Connor did anything inappropriate whatsoever.

And we want to thank you for your service and for your testimony.

Mr. Ferriero, let me turn to you. The challenges at IRS are not unique. Many Federal agencies have had problems retaining electronic records. I know the President has made some improvement with his memorandum in 2011 and that you and the Office of Management and Budget have set target dates for agencies to improve their electronic data systems. But we can always do better, can't we?

Mr. FERRIERO. We sure can.

Mr. CUMMINGS. As you know, I introduced the Electronic Message Preservation Act a year and a half ago. This bill would amend the Federal Records Act to require you to establish minimum standards for Federal agencies to manage and preserve email records electronically. The bill would complement your efforts to get agencies to modernize their recordkeeping systems. This bill passed our committee with bipartisan support, I am very pleased to say. You have testified several times in support of the legisla-

tion. Do you think the legislation could help improve the quality of the Federal email preservation?

Mr. FERRIERO. I certainly do. And, in fact, the directive relied heavily upon the language of EMPA as we were crafting the directive.

Mr. CUMMINGS. You know, I sat here last night, I think we were here until 10:10, and I listened to, you know, the testimony, and this goes to you, Mr. Wester, and I am trying to figure out how do we—it seems as if when—it seems like our system at IRS, and probably other agencies— is we are so far behind the electronic—I mean, the IT modern world. How do we get a hold of that and move forward? Because it sounds like that was part of the problem here. Mr. Ferriero?

Mr. FERRIERO. And that's what we addressed in the directive. I agree with you we have a lot of work to do in the Federal Government, working with our CIO partners.

Mr. CUMMINGS. Is it too big to solve?

Mr. FERRIERO. No, it's not. It's not too big. We have created something within the National Archives, this Capstone project, which is one solution that takes advantage of existing technologies. The biggest problem over time, and this is in the paper environment as well as in the electronic environment, is whenever you have a human being in the middle of it making decisions, then you have problems. And our focus has been on getting the human being out of the process and relying on technology to capture the information that we need to capture.

Mr. CUMMINGS. My last question. What can we do? You know, I can see us sitting here—I probably won't be here—but in 5 years, 10 years from now, sitting here going through the same situation. What can we do as Members of Congress during our watch to help address this issue? I mean, you said people. Well, we got to have people. So we can't let everybody go. So what do we do?

Mr. FERRIERO. Well, we have the directive, and we are moving ahead, so we have the support of the administration for this, and we have the EMPA bill. If you could convince your colleagues to get the EMPA bill passed and get it through the Senate, that would also help us, because that would legislate the change in the Federal Records Act that we need. The Federal Records Act today says "print and save." This is 2014, and we are printing and saving? This is embarrassing.

Mr. CUMMINGS. Thank you very much.

Thank you, Mr. Chairman.

Chairman ISSA. Thank you. I just want to make sure I make the record clear on something the ranking member said.

I checked with Congressman Gowdy, who has a lot more knowledge of law as a prosecutor than I do. And he said the term I should have used was noncooperative witness rather than hostile, since you and the White House refused to provide your services here on an ordinary request, and we had to subpoena unilaterally based on the denial that you would appear otherwise. So I want to make sure that I don't use a word that perhaps does make people think something that isn't true. This is simply a witness that refused to cooperate without a subpoena.

Mr. Mica.

Mr. MICA. Thank you, Mr. Chairman.

And just for the record, I heard the ranking member start with the comments that we were hauling people up here unnecessarily. That was his phrase.

And I would take great difference with that comment. First of all, last night, we brought Mr. Koskinen back, the Commissioner. And we brought him back, and I went through his testimony when he came to us in March. And he never mentioned any problem with the emails back in March, Lois Lerner's emails. The chairman showed everyone on the committee, both sides of the aisle, asking for Lois Lerner's emails. He came and said to us that last week—this is his testimony in March—last week, we informed this committee and others that we believe we completed production of all of the requests under the inspector general's report of May 2013.

And he in fact testified last night in his written testimony that he had been aware of technical problems back in February. So I think we had every right to call him back.

The other side, when it intimates that this is some kind of Republican stirring things up, my goodness, last week, the entire country and the Congress was stunned to find out that 27 months of Lois Lerner's emails had supposedly been destroyed or her computer crashed. So I think we have every right.

Mr. Archivist, the law says that—the Federal records law requires that the National Archives be noticed when documents are destroyed or lost. Is that the law, sir?

Mr. FERRIERO. That is the law.

Mr. MICA. Okay.

And, Ms. O'Connor, you were brought on board after this report. This is not a Republican report. This report was prepared by the Treasury Inspector General for Tax Administration to see if groups were targeted. And it confirmed that. You are aware of this report, Ms. O'Connor?

Ms. O'CONNOR. I have read the report, yes.

Mr. MICA. And you were brought on to what, to compile the records from and all the information pertaining to what was in that report or——

Ms. O'CONNOR. I was brought on to give advice to Acting Commissioner Werfel on a number of things.

Mr. MICA. But we had requested in May certain documents. When you came on in early June the IRS sent documentation retention notices to employees who were identified as having documents, including relevant email, potentially relevant information to investigators. You were part of that request and notice to employees in early June. You were there in early June?

Ms. O'CONNOR. I was there in early June, but my understanding is that a subset of employees had already——

Mr. MICA. Well, this had been sent out, but you're aware that that request had been made to employees to preserve and present documents?

Ms. O'CONNOR. Absolutely it's important——

Mr. MICA. Yes. And that was your job.

Ms. O'CONNOR. Yes.

Mr. MICA. So it's appropriate that you're both here today.

When did you first learn that there were emails missing?

Ms. O'CONNOR. I learned that Ms. Lerner's emails were missing as the result of a computer crash the week before last.

Mr. MICA. So you were in charge from May until November of compiling information from Congress and you never heard before that that there was any missing documentation as far emails?

Ms. O'CONNOR. I didn't hear that any of Ms. Lerner's emails were missing, no.

Mr. MICA. Now, when you were compiling this information for the four committees of Congress and working with Mr. Werfel, who did you report to?

Ms. O'CONNOR. Mr. Werfel.

Mr. MICA. Okay. And were you aware that he was reporting your activity and what was being found? You were in charge of compiling the information, reporting to Mr. Werfel, right? Did you interact at all with anyone at the White House?

Ms. O'CONNOR. Not when I was there.

Mr. MICA. Between May and November when you were there, if I get your emails, your schedule, like Shulman or the—who is the——

Ms. O'CONNOR. I cannot recall ever having any conversation with——

Mr. MICA. Shulman was there before that. He came and testified to us that the only time he went to the White House was for egg rolling. And then we subpoenaed the White House records, find he went there 113 times, or something like that. But you had no contact with the White House during that period?

Ms. O'CONNOR. Actually you're jogging my memory, and I actually want to use that as a footnote to just say that I'm doing this completely by the fly off my memory because of the subpoena coming last night.

Mr. MICA. Was there some contact? Because now you——

Ms. O'CONNOR. Yes. I'm going to tell you what it is.

Mr. MICA. Yeah. And now you wind up in the White House. You had a subsequent job, I guess helping with the Obamacare situation.

Ms. O'CONNOR. Could I answer that question?

Mr. MICA. Yes, go right ahead.

Ms. O'CONNOR. I feel like it's something important to finish the sentence. Mr. Werfel went to the White House in I think late June with Secretary Lew in order to give the President his report, and I went into the White House with him. I wasn't in their meeting.

Mr. MICA. Was this matter discussed at all?

Ms. O'CONNOR. I wasn't in the meeting. I just accompanied——

Mr. MICA. You weren't.

Ms. O'CONNOR. —him to the building.

Mr. MICA. Okay. So we would find that record. No other contact in the White House during that period?

Ms. O'CONNOR. No.

Mr. MICA. But you're aware—would you be aware that your activities were being reported to Mr. Werfel? And usually they have the counsel or someone, it might have been Treasury, reporting to the White House as to what was going on, say, with this report. You're not aware of what took place there?

Ms. O'CONNOR. So in terms of the IG report, I have no idea what, if anything, was reported to the White House. The visit that I had with Mr. Werfel was to give his 30-day report to the President.

Mr. MICA. No, but again, your activity was reported to Werfel, where you were in the investigation and compiling for Congress, you weren't aware of it being transmitted beyond him?

Ms. O'CONNOR. No.

Mr. MICA. Okay. Thank you.

Chairman ISSA. Thank you.

We now go to the gentlelady from New York, Mrs. Maloney.

Mrs. MALONEY. Thank you. I regret I was not able to join you last night for the hearing. We had a Financial Services Committee—or rather a bill on the floor that I had been working on and we were in debate on the floor. But I just wanted to make a brief statement about the hearing that we had last night on the overall IRS. And this whole IRS mess seems to flow directly from confusion over just how the IRS should enforce a law that was passed by this Congress that gives tax-exempt status to not-for-profits, but only if they are essentially politically nonpartisan. And what the IRS was looking at is whether these activities of these not-for-profits really merited being tax exempt because they're getting 100 percent deduction and putting a great deal of money into political campaigns.

Now, we don't have——

Chairman ISSA. Would the gentlelady yield?

Mrs. MALONEY. Okay.

Chairman ISSA. You probably were not here when this was discussed, but 501(c)(4)s do not get 100 percent deduction. You are not tax deductible on your donations of 501(c)(4)s.

Mrs. MALONEY. At all?

Chairman ISSA. Not at all, not a penny.

Mrs. MALONEY. Not a penny.

Chairman ISSA. They are tax exempt in that the money they receive from taxpayers who have paid their taxes and then give them their after-tax income, they don't count it as profit. They simply spend it on their behalf. But they are not tax deductible the way a charity is, and it's a very significant difference. It is one of the reasons that they can do up to half of their activities in these. These are social welfare groups, not charities.

Mrs. MALONEY. They are social welfare groups and they don't get a tax deduction?

Chairman ISSA. When you give to a 501(c)(4), you do so without a tax deduction. It is taxable, and then you give your after-tax. It's exactly the same kind of tax deduction you get when you receive a political campaign. Your donors pay their taxes and then give you after-tax income. It is not a charity.

Mrs. MALONEY. Not at all?

Chairman ISSA. Not at all.

Mrs. MALONEY. Well, I stand corrected. I thought 501(c)(4)s had a tax treatment that was favorable to them, and I was saying why not just have a rule that no one gets a tax deduction that gets involved in political activities.

But I think, getting back to the emails, when 22 million emails from the Bush White House went missing in 2003 and 2005, which

was only discovered under the Valerie Plame affair, our colleagues across the aisle had a different take on how things should happen. And were there any provisions put in place after this loss of emails between 2003 and 2005 that made it less likely that emails could go missing again? I ask anyone who would like to answer that.

There was a terrible debacle in 2003 and 2005. What changes were put in place to prevent this from happening again?

Mr. WESTER. So I would suggest that that's an example of some of the challenges that all Federal agencies across the government have as it relates to managing email. And the instance that we're talking about today with the IRS is also another where agencies need to be able to understand how their email systems work, how their email systems work in connection with the Federal Records Act, and how they're ensuring that preservation is occurring according to disposition schedules. So that's been a wakeup call for the entire Federal Government.

Mrs. MALONEY. Well, I would also say that a wakeup call is that you need your infrastructure to be high tech and in place.

And, Mr. Ferriero, as you may be aware, the IRS has a 1 billion IT infrastructure, but the Federal Times recently reported that sequestration and other cuts have imposed terrible restrictions on the IRS, including a reduction in the agency's supplies and materials and budgets. And so you basically have an antiquated IT system, in addition to not putting reforms in place, so can you discuss how maintaining an antiquated IT system might impact an agency's record-retention capability? What does this mean, these budget cuts and not having an updated IT system?

Mr. FERRIERO. It certainly plays a role in this particular case in terms of the capacity of their hard drives to retain information, the number of emails that they're actually able to capture at one time.

The upside of the directive that we're in the process of implementing is that it gives us the authority to work with the industry, the electronic mail industry, the high-tech industry to create solutions that will work for the Federal Government, efficient, effective, and cost-benefit solutions to this problem. So I'm optimistic about the future.

Mrs. MALONEY. Well, has funding been a significant challenge to some of these agencies in modernizing their IT records and retention infrastructure?

Mr. FERRIERO. It certainly has.

Mrs. MALONEY. The Commissioner testified, and I read his testimony, he has proposed $400 million to $500 million of modernization and improvement activities, but this has not become a reality in the budget. Others have complained that the department still has not completed the switch from Microsoft Windows XP to Windows 7. What kind of problem is that? Can you elaborate a little further?

Mr. FERRIERO. This is a problem across the government in terms of the investment in technology.

Mr. CONNOLLY. Would my colleague yield?

Mrs. MALONEY. Absolutely.

Mr. CONNOLLY. At last night's hearing, it was established that the IRS has had over $800 million worth of cuts in its budget in the last 4 years, and it's slated for an additional $350 million this

year. You can't have it both ways. You can't be cutting the IRS that kind of amount and then decry the fact that they've got antiquated IT systems.

I thank my colleague for yielding.

Mrs. MALONEY. My time has expired. Thank you.

Chairman ISSA. I thank the gentlelady. And I thank the gentleman for pointing out the 10,000 less workers, but not in fact a smaller IT budget.

Mr. CONNOLLY. But I know the chairman shares my concern about the IT investment.

Chairman ISSA. You know what, I really do, and I wish you had stayed longer last night to hear the accolades from both sides of the dais for the IG and his independence, his nonpartisan, the TIGTA's efforts, and how much he's relied on as a nonpartisan. I think it would have been very, very insightful.

Mr. CONNOLLY. You know, Mr. Chairman, I appreciate that. My wife is ill, and I have had to go home at night to——

Chairman ISSA. Well, you certainly have our sympathies.

Mr. CONNOLLY. I know that he would appreciate that.

Chairman ISSA. Thank you.

The gentleman from Ohio, Mr. Jordan, is recognized.

Mr. JORDAN. I thank the chairman.

Ms. O'Connor, in the 6 months you were at the Internal Revenue Service who was the person in charge of getting the documents that Congress wanted to—this committee and to the Ways and Means Committee?

Ms. O'CONNOR. I guess I would say that that's Mr. Werfel, because he directed the agency at the time and told us what his directives were to——

Mr. JORDAN. But in the people who were working on document production, who was in charge?

Ms. O'CONNOR. So I served, as I think I was describing, as sort of the liaison between him and the team, the big team of people——

Mr. JORDAN. So it was you? Was it you? Were you the person in charge?

Ms. O'CONNOR. I wasn't working on it full-time because I had a number of other responsibilities.

Mr. JORDAN. Well, when we interviewed Mr. Wilkins, who is the Chief Counsel at the IRS, he said it was you. He said employees who have been responsible for collecting and producing documents, we asked him who was responsible for that process, and he said it is Tom Kane and Jennifer, are the two I identify as the key supervisors. And then he said, Ms. O'Connor? And he said yes. So he identified you as the chief person.

So in the 6 months you were there, this is a huge story, you got the key player in this who took the Fifth, it's in the news every day, and in that time, you're telling us, you did not have any inclination that a bunch of Lois Lerner's emails were lost.

Ms. O'CONNOR. I did not know that her emails were missing and unrecoverable and that there had been a laptop crash that had caused that.

Mr. JORDAN. Okay. So when you did learn, what was the date that the White House Counsel's office learned—Mr. Koskinen told

us last night he thought he had no duty to disclose, that he knew in February that there was a problem, he knew in March that there were lost emails, he didn't tell us at the end of March, but he did—well, someone at the White House learned in April. We didn't learn until June when they sent us a letter just a week and a half ago. So when did the White House Counsel's office learn that there were lost emails?

Ms. O'CONNOR. So I just got there.

Mr. JORDAN. I understand, but I'm asking when the Counsel. How big—there's only, like, 25 lawyers in the whole——

Ms. O'CONNOR. I wasn't there in April. I have seen the same letter that you've seen, and it, you know, describes there——

Mr. JORDAN. But Do you know the date?

Ms. O'CONNOR. I don't.

Mr. JORDAN. Is it fair to say April? I mean, that's what your boss Mr. Eggleston said, he said it was in sometime in April when they learned from the Treasury. Is that accurate?

Ms. O'CONNOR. I have no reason to doubt that it's true. I just wasn't there.

Mr. JORDAN. Okay. And then do you know who from Treasury told the White House Counsel's office that emails were lost, do you know who that person was?

Ms. O'CONNOR. I don't know.

Mr. JORDAN. You don't know who was in that meeting or if it was a meeting or if it was a phone call, how it was communicated?

Ms. O'CONNOR. I'd love to be helpful. I just started, so I'm unable to answer your question. I just wasn't there yet.

Mr. JORDAN. And do you know if anyone in the White House Counsel, once they got that information, did they tell anybody else? Did your boss, did the White House Counsel's office, did they tell the Chief of Staff at the White House, did they tell the President? Who was that communicated to?

Ms. O'CONNOR. Again, I'm sorry, I don't mean to be a broken record, but I wasn't there.

Mr. JORDAN. You didn't talk? I mean, we asked you to come to this hearing a week ago, so in the week you didn't ask, like, what happened here? We learned in April, the Congress didn't learn until June, you didn't ask any of your colleagues in that. How many lawyers are in the White House Counsel's office? Approximately 25?

Ms. O'CONNOR. I'm sufficiently new that I have not done a head count. I honestly don't know.

Mr. JORDAN. Well, our understanding it's around 25 lawyers. You'd think maybe you would talk to those folks and get the details about what you're going to come to this committee and have to answer questions about. You didn't do that?

Ms. O'CONNOR. So, the letter that I received from Chairman Issa said that the reason that you wanted to talk to me was to understand what I learned at my time at the IRS. I obviously did not have much time to prepare, but I prepared to come and tell you about that.

Mr. JORDAN. But you didn't even think to ask about the fact that the White House knew in April and the people's house doesn't know until June, you didn't think there was a duty to figure out,

you know, who gave you the information, who you may have shared that information with? I mean, it seems like everyone knows this stuff except the Congress, and we don't get it for months later.

Ms. O'CONNOR. So again, what I'd like to be able to do is be as helpful as I can with what I knew when I was at the IRS.

Mr. JORDAN. Well, it would have been helpful if you'd have had those answers to those questions. Do you know if the White House Counsel's office, once they got this information that, in fact, Lois Lerner's emails in a critical 2-year timeframe were lost, do you know if the White House Counsel's office told the FBI and told the Justice Department?

Ms. O'CONNOR. So, what I can tell you is what I knew when I was at the IRS.

Mr. JORDAN. No, no, I'm talking about now. You work at the White House Counsel's office. They knew this information in April. We didn't know it till June. There's a 2-month time difference there. In that time, did the White House Counsel's office tell the FBI? Remember what the President said. He said he's angry about this, people have to pay, this is outrageous, there's no place. This is all the things he said when this scandal broke. So I'm wondering, if you get important information like Lois Lerner's emails are lost, did you share that with the agency doing the criminal investigation? Did you say, hey, this is serious, we better get this information to the FBI and to the Justice Department? Did you guys do that?

Ms. O'CONNOR. I'm happy to answer questions about my time at the IRS. I was there for 6 months.

Mr. JORDAN. I'm asking did your boss, did the folks you work for at the White House Counsel's office when they got this critical information, did they share it with the Justice Department?

Ms. O'CONNOR. Mr. Eggleston actually started the same day that I did. So our tenures are the same.

Mr. JORDAN. He's the one who wrote the letter to Dave Camp saying they learned of it in April from the Treasury's Chief Counsel. When he got that important information, did he get it to the folks who were running the criminal investigation? That's important. Or do you think there's no duty for the White House when they got critical information, there's no duty, no obligation to share that with the Justice Department who's running a criminal investigation? You don't think they have to do that? They can just sit on the information?

Ms. O'CONNOR. So can I answer the question?

Chairman ISSA. The gentleman's time has expired. You may answer.

Ms. O'CONNOR. Can I answer the question? I'm happy to work with you and with your staff to try to get you information as we can to answer your questions about my time at the White House.

Mr. JORDAN. Mr. Chairman, if I could, that wasn't the question. The question was, do you think the White House Counsel's office has a duty to share critical information about lost emails with the Justice Department when you knew that 2 months ago?

Chairman ISSA. Okay. I think the question is now understood. Can you answer that question, please?

Ms. O'CONNOR. And my answer would be——

Ms. SPEIER. And can she not be interrupted?

Ms. O'CONNOR. My answer would be that I am here as a witness about the facts that I learned at the IRS. To the extent you have questions about activity at the White House, I'm happy to work with you and see what we can do to get you answers. That's not what I'm prepared to talk about today.

Chairman ISSA. Actually, from the chair, I need to advise, when a question is asked and you're an attorney and he's asking if you have an opinion as to whether or not knowledge of a crime should be referred or the knowledge of something you think is a crime should be referred, it really is a yes or no or I do not feel——

Ms. O'CONNOR. I'm happy to answer that.

Chairman ISSA. Please.

Ms. O'CONNOR. I think knowledge of a crime should be referred to the FBI, yes.

Chairman ISSA. Thank you very much. And I thank you.

The next is the patient gentlelady from Illinois, Ms. Duckworth.

Ms. DUCKWORTH. Thank you, Mr. Chairman.

Ms. O'Connor, has it been determined that the crashed hard drive was a crime?

Ms. O'CONNOR. Not as far as I know.

Ms. DUCKWORTH. Thank you. So when the White House—well, let's go back. Last night Commissioner Koskinen testified that he found out about the crashed hard drive in April of this year. Were you working at the White House at that time?

Ms. O'CONNOR. I was not.

Ms. DUCKWORTH. When did you start at the White House?

Ms. O'CONNOR. Just about a month ago.

Ms. DUCKWORTH. About a month ago, so middle of May?

Ms. O'CONNOR. Yes.

Ms. DUCKWORTH. Middle of May. Okay. So would you have any information prior to the middle of May or in April, would the White House have called you and told you that they received information or did not receive information from the IRS before you started working there?

Ms. O'CONNOR. Nobody called me from the White House to tell me they received information from the IRS.

Ms. DUCKWORTH. Okay. So you would not have known?

Ms. O'CONNOR. No.

Ms. DUCKWORTH. The current Commissioner testified that he only learned in April that the crash had happened and that in that process they were still trying to recover some of the lost emails, and in fact, they had managed to recover some of the emails that were lost because, even though they were crashed and lost from the "from" account, Ms. Lerner's account, they were actually found in the 2 accounts of the 82 custodial accounts, the people that received the emails, and they were sort of going through that process. It's by no means complete, but they were going through the process. Again, this happened in April. Would you have had any knowledge of that?

Ms. O'CONNOR. I didn't have any knowledge of that in April. I do think that the measures that they described that they went through sounds exhaustive and appropriate.

Ms. DUCKWORTH. But let's go back to the 5–1/2—5 months you worked at the IRS. My colleague indicated that there had been previous testimony you were identified as the person in charge of employees whose job it was to produce the documents that had been requested by the various committees. Did you write the evaluations for all of those employees?

Ms. O'CONNOR. None of them directly reported to me. My role was as an advisor, and I did my best to help them and advise them and work with them and work with the committees and essentially make sure that the team that was working day to day, all day long, you know, to do this, and all night long, I mean, they worked very, very long hours, knew what the priorities were for which employee's material was going to be produced, what the search terms were supposed to be.

Many of the investigating committees, including this one, had, you know, specific requests, please get me the BOLO spreadsheets or please get me the training materials or whatnot, and I tried to facilitate that and help the team figure out how to prioritize what reviewers were looking at what materials that they could move quickly, those kinds of things. So I played a role, but I didn't write any performance evaluations because none of them directly reported to me.

Ms. DUCKWORTH. Okay. So you played an advisory role, but you had no direct responsibilities in terms of evaluation them, direct them exactly how they should go about doing the data gathering, you simply advised them as they were going through the process, and then your job was to report back to Mr. Werfel on the progress of the effort. Is that correct?

Ms. O'CONNOR. I don't want to leave the impression I didn't work closely with them. I did.

Ms. DUCKWORTH. Okay.

Ms. O'CONNOR. It's just that I was not their direct supervisor.

Ms. DUCKWORTH. Okay. Thank you.

Mr. Ferriero, I'm really interested in the Capstone process, and I want to make sure we give that enough of attention. One of the things that really astounded me last night was when I learned that only records that IRS employees determine relevant would be printed out and then those would be archived, but it was up to the individual employees to decide what would be and what would not be. I'm looking at the National Archives and Record Administration Bulletin 2013–02 titled, "Guidance on a New Approach to Managing Email Records," which talks about Capstone.

And, Mr. Chairman, I would like to have this entered into the record also.

Chairman ISSA. Without objection, so ordered.

Ms. DUCKWORTH. Thank you.

And in point 8, it actually talks about pre-accessioning policy, that talks about how pre-accessioning, if that were to be conducted, would mean that you would actually assume physical custody of copy of all the records usually well before this time to assume legal custody. Can you sort of describe that process and then how that would interact with the individual employees, whether that takes them out of the picture?

Mr. WESTER. I will take that.

Ms. DUCKWORTH. Oh, okay, I'm sorry. Thank you, Mr. Wester.

Mr. WESTER. So with the pre-accessioning policy, what we want do is offer agencies the opportunity to transfer physical custody of email records to us so that we can ensure their preservation at the National Archives so that they are not in any kind of danger or anything in an agency. So this is a way to ensure adequate preservation of archival records, those 2 to 3 percent of records that agencies create that have permanent value that would come into the National Archives. We'd bring them in through that pre-accessioning policy and maintain them physically, and then at the time of transfer, which may be in 15 or 20 or 30 years after that date of their creation, then make available through the National Archives access programs.

Ms. DUCKWORTH. So once you have it, then those IRS employees, for example, whatever agency it is, couldn't actually go and delete the copy that you have, correct?

Mr. WESTER. No, they would be entrusted to the National Archives itself. They would be in our physical custody, even though they would still be in the legal custody of the IRS.

Ms. DUCKWORTH. But that would be useful.

My time is up, Mr. Chairman. I yield back.

Chairman ISSA. Thank you.

I'd ask unanimous consent that the press release from the Treasury Inspector General For Tax Administration, TIGTA, dated November 21st, 2013, be placed in the record. Without objection, so ordered.

Chairman ISSA. It's entitled, "Increased Oversight is Needed of the Internal Revenue Service's Information Technology Hardware Maintenance Contract," and it goes into the tens of millions of dollars that were spent in 2012 fiscal year on maintenance that was neither needed nor was it performed.

We now go to the gentleman from Michigan, Mr. Walberg.

Mr. WALBERG. Thank you, Mr. Chairman.

Mr. Ferriero, just to review a bit, in your testimony you state that when agencies become aware of unauthorized destruction of Federal records, that they're required to report the incidents to the Archives. At any time in 2011, through last Monday, did the IRS report any loss of records related to Lois Lerner?

Mr. FERRIERO. No.

Mr. WALBERG. Is it fair to say that the IRS broke the Federal Records Act?

Mr. FERRIERO. They're required—any agency is required to notify us when they realize they have a problem that could be destruction or disposal—unauthorized disposal.

Mr. WALBERG. But they didn't do that.

Mr. FERRIERO. That's right.

Mr. WALBERG. Did they break the law?

Mr. FERRIERO. I'm not a lawyer.

Mr. WALBERG. But you administer the Federal Records Act.

Mr. FERRIERO. I do.

Mr. WALBERG. If they didn't follow it, can we safely assume they broke the law?

Mr. FERRIERO. They did not follow the law.

Chairman ISSA. Mr. Walberg, I think you've got a witness who's smart enough to know that he knows he would have liked those records, he'd like to have gotten those records, he was entitled to those records, but he'll let the lawyers argue out the law.

Mr. WALBERG. Let the lawyers argue out. The general American public who wouldn't get away with that if they were before the IRS themselves and said that they didn't report a specific page or a specific document, I mean, that's the frustration. I hope those that are watching understand we're dealing with a law here that was broken, that was broken by an agency that has the power to tax, which is also the power to destroy.

Mr. Ferriero, in general, I guess could you briefly describe for us the print and file recordkeeping process and how it works?

Mr. WESTER. I would like to take that question for you. First of all, I need to apologize about intimating that the Federal Records Act itself says print and file. So, the Federal Records Act, as the Archivist has said, does not stipulate that you have to print and file, but it is a practical activity that most agencies have adopted as part of their policy so as to ensure that Federal records, as defined in the Federal Records Act, are identified and put into official recordkeeping systems within agencies.

The connection to the Federal Records Act is that it is based on an analog and paper model for managing records, and as a practical matter, most agencies, if not all agencies across the government have had print and file policies where individual employees are required to identify what the Federal records are and put them into the recordkeeping copy within their agency for retention according to records control schedules that the Archivist of the United States approves.

What we're trying to do with the Capstone policy and the activities with the directive on managing government records is to automate this process so that we can eliminate the human intervention and the likelihood or the possibility of humans making errors and us—and agencies losing control of records. So print and file has a long history of human intervention, whether it's printing it on paper and putting it into a file folder or clicking and dragging an electronic file into an electronic file folder.

Mr. WALBERG. But the IRS has—they have that policy?

Mr. WESTER. Their official policy, as we understand it, is the print and file.

Mr. WALBERG. In general, do you think it would be sufficient for the Federal Records Act for an employee to save emails that are Federal records to a local folder on their computer's hard drive instead of printing those emails out?

Mr. WESTER. It's inconsistent with the guidance that the IRS has given to their employees, and their official guidance is to print and file email records in this case to paper and put them in the official recordkeeping system.

Mr. WALBERG. If an employee were to deliberately not comply with the FRA by not printing out their emails, would they be subject to any sanctions under the FRA? If so, what sanctions?

Mr. WESTER. I am also not a lawyer, but it's not an enforcement statute. What we do with agencies when these sorts of issues arise is have them report to us what has occurred in the instance where

emails or other kinds of records have been alienated or destroyed and then what are their plans for reconstructing those records or putting things in place to make sure that this sort of activity does not happen again in the future.

Mr. WALBERG. Let me just complete the questioning here. If a Federal employee's hard drive crashes with no warning and no backup of the email exists, do you believe it's proper for an agency to assume that no records were lost?

Mr. WESTER. No.

Mr. WALBERG. That's the question, the $100 million question that, Mr. Chairman, we hope we ultimately can get an answer to. I yield back.

Mr. GOWDY. [Presiding] I thank the gentleman.

The chair would now recognize the gentleman from Nevada, Mr. Horsford.

Mr. HORSFORD. Thank you, Mr. Chairman.

Last night the actual chairman, Chairman Issa, took an extreme action by issuing a unilateral subpoena to the White House. He demanded that Ms. O'Connor show up here today within 24 hours and under threat of contempt. There was no vote on this subpoena. The committee did not debate it. Members did not have the opportunity to weigh the gravity of what the chairman did in the committee's name. Now we find out how misguided that subpoena really was.

Ms. O'Connor, let me just confirm what we've heard here this morning. You were not at the IRS when employees were using inappropriate search terms. Is that correct?

Ms. O'CONNOR. I was not at the IRS during the period covered by the Inspector General's report.

Mr. HORSFORD. You joined the IRS after the Inspector General issued his report. Is that correct?

Ms. O'CONNOR. Yes, I joined on May 30, 2013.

Mr. HORSFORD. And you left the IRS in 2013, which was long before the IRS made these recent discoveries this spring about Ms. Lerner's email. Is that correct?

Ms. O'CONNOR. That's correct, yes.

Mr. HORSFORD. And you joined the White House less than a month ago.

Ms. O'CONNOR. About a month ago.

Mr. HORSFORD. And according to a letter we received from the White House, that was after the Treasury Department informed the White House in April about potential problems with Ms. Lerner's email. Is that right?

Ms. O'CONNOR. Right. I've seen that letter, and it refers to an April referral or informing in April, yes.

Mr. HORSFORD. Thank you. I quite honestly do not understand how Chairman Issa was able to rush to issue this subpoena, to force you, Ms. O'Connor, to be here today within 24-hour notice. Your connection to this topic of today's hearing is at best a stretch, and all of these questions could have been answered by simply picking up the telephone and asking. It's just a continuation of the same charade that unfortunately this chairman continues to use this committee to perpetuate. And what's further insulting about

this is that the chairman promised to use the authority of this committee responsibly.

Let me read what the chairman said back in 2011, "I'm going to take the thoughts on why you object seriously. To be honest, I will ask other members of my committee, am I doing the right thing? I will also undoubtedly talk to other Members on your side and say, am I nuts, am I wrong, is this somehow a subpoena that is outside the mainstream? So, I don't intend on simply writing subpoenas endlessly." But that's exactly what Chairman Issa has done.

Since he became chairman 4 years ago he has issued more than 50 unilateral subpoenas. He has never once allowed a debate, and he has never allowed a vote. Not only do these actions contradict the promises that he made 4 years ago as the chairman, but they result in unwarranted and abusive subpoenas like the one he issued last night.

Now, many constituents do care about the issue of the wrongdoing that occurred at the IRS, and there are Members on the other side of the aisle who I have listened to, to try to understand the concerns about the lack of accountability of those individuals who should be held responsible. But unfortunately that is not what the chairman has allowed us to focus on in any of the hearings that we've had dealing with this matter. In fact, he's used this process to politicize the process and to not focus on the proper oversight or government reform function of the committee.

But perhaps this should not be a surprise, because during an interview on August 19, 2010, before Chairman Issa became committee, he was asked what he planned to do with the ability to issue subpoenas, and his response was, "Cabinet officers, assistant secretaries, directors, I will be able to take on everybody that the President hires and relies upon." Well, he has certainly made good on that promise.

I yield back my time.

Mr. GOWDY. I thank the gentleman from Nevada.

The chair would now recognize the gentleman from Arizona, Dr. Gosar.

Mr. GOSAR. Thank you, Mr. Chairman.

You know, the ranking member brings up new legislation about electronic preservation. Mr. Ferriero, that's pretty much immaterial if you don't uphold the rule of law, right.

Mr. FERRIERO. Well, the hope is that you——

Mr. GOSAR. Well, the hope is, but I mean, if you don't uphold the rule of law, you can pass all the legislation you want to, it doesn't make a hill of beans about it, right?

Mr. FERRIERO. That's true.

Mr. GOSAR. How about you, Ms. O'Connor, would you agree with that statement?

Ms. O'CONNOR. The importance of upholding the rule of law?

Mr. GOSAR. Yeah.

Ms. O'CONNOR. It's very important.

Mr. GOSAR. I want to read, former Supreme Court Justice Brandeis made a comment. "In a government of laws, the existence of the government will be imperiled if it fails to observe the law scrupulously. If government becomes a lawbreaker, it breeds contempt for the law; it invites every man to become a law unto himself; it

invites anarchy." So if civil society is important, following the rule of law is very important. Would you agree, Ms. O'Connor?

Ms. O'CONNOR. Absolutely.

Mr. GOSAR. Yeah.

Mr. Ferriero, you found out about the potential loss of documentation by the IRS or through a letter to Senators Wyden and Hatch.

Mr. FERRIERO. Through that letter in June.

Mr. GOSAR. You are aware that Federal Regulation 36 CFR Part 1230.14 states that agencies must report promptly any unlawful or accidental removal, defacing, alteration, or destruction of records in the custody of that agency to the National Archives and Records Administration, Modern Records Programs, true?

Mr. FERRIERO. True.

Mr. GOSAR. Yeah. That's what I thought. So once again we've got a problem. Last night I cited the articles of impeachment for President Richard Nixon, actually cited the inference about the IRS. People are scared of the IRS because the power to tax is the power to destroy. Wouldn't you agree, Mr. Ferriero?

Mr. FERRIERO. I know that people are afraid of the IRS, yes.

Mr. GOSAR. Yeah. Missing documents, kind of similar to missing tape minutes. Wouldn't you agree, Mr. Ferriero?

Mr. FERRIERO. I'm not sure they equate.

Mr. GOSAR. Whoa, whoa, whoa, whoa, whoa, missing material, missing material, missing records, missing records, the same. Agreed?

Mr. FERRIERO. Missing material.

Mr. GOSAR. Yeah. And then we haven't followed the rule of law. So everybody is scared to death that there's one application to bureaucrats and there's another application to the regular lay people on the street, you know. It defies me.

Ms. O'Connor, I mean, you've been in the Clinton White House, you used to help with the Clinton administration with the Teamster Union strike. In fact, you've been quoted as being a veteran of Washington battles. Would you agree with that?

Ms. O'CONNOR. I've been here a long time.

Mr. GOSAR. So you know the process, right?

Ms. O'CONNOR. I'm not sure which process you're referring to.

Mr. GOSAR. The bureaucratic inside-the-Beltway politics process. You know about these recordkeeping and aspects of that as well.

Ms. O'CONNOR. I'm not a recordkeeping expert. Certainly I have——

Mr. GOSAR. But you have to—you're an attorney. You have to know that when there's a problem and you don't have records, where there's a problem with records, you know to report it, right?

Ms. O'CONNOR. I know that if you discover that records have been lost and they're not recoverable, it needs to be reported, yes.

Mr. GOSAR. Let's go back through this again. The accidental removal, defacing, alteration, or destruction of records in the custody. So it's not just loss, it's potential problems with it. So in your tenure over at the IRS, there was no inferences, Ms. O'Connor, that there was some sequencing problems or some problems with the emails out of Ms. Lerner's office, none?

Ms. O'CONNOR. Nobody raised to me what I understand to be the issue that arose here, which is an identification that some of the emails were——

Mr. GOSAR. I didn't ask about missing. That there were some problems with her email. Because even the Commissioner said that it was known that there was problems with that—with her records.

Ms. O'CONNOR. I don't recall knowing that there were problems with the records.

Mr. GOSAR. No one reported to you that there was any problems?

Ms. O'CONNOR. I don't recall anybody telling me that there were problems with the records.

Mr. GOSAR. Would you consider the conduct of Ms. Learner normal?

Ms. O'CONNOR. Which conduct?

Mr. GOSAR. The conduct in front of this committee and her conduct in front of, you know, supplying a question to the audience, seeding a question to the audience? I mean, as an employee and somebody supervising records and looking at it, would you say the conduct of Ms. Learner as being normal?

Ms. O'CONNOR. Well, just to break it out, the question at the conference, it wouldn't be something I would advise. In terms of the laptop situation, my understanding from the material that's become public in the last week or so is that she took quite a number of efforts to have the laptop reconstructed, and that seems to be appropriate.

Mr. GOSAR. You could also look at it from the standpoint of America looking at it is covering up her crime, too.

Ms. O'CONNOR. I have no evidence that that's what's happening.

Mr. GOSAR. Well, if you're from the inside out, I mean, it's pretty interesting that you could actually try to cover that up in regards to the way that you look like you're coming off on disclosure.

Let me ask one last question. So the way she took the Fifth, is that normal, Ms. O'Connor?

Ms. O'CONNOR. I don't have any point of reference for that.

Mr. GOSAR. You've seen plenty of taking the Fifth, have you not?

Ms. O'CONNOR. I have not.

Mr. GOSAR. You have not? Okay.

I yield back.

Mr. GOWDY. I thank the gentleman from Arizona.

The chair will now recognize the gentlelady from Illinois, Ms. Kelly.

Ms. KELLY. Thank you, Mr. Chair.

Mr. Ferriero, the National Archives and Records Administration is required by law to ensure the investigation of all allegations of unauthorized disposal of Federal records. Is that correct?

Mr. FERRIERO. We don't actually do investigations, but we are charged with ensuring that we follow up on any reports that we have and urge the agencies to conduct such an investigation, yes.

Ms. KELLY. So you just said you don't investigate the allegation yourself, but you do instruct the entity to conduct on their own and report back.

Mr. FERRIERO. Right.

Ms. KELLY. Okay. During the Bush administration from 2001 to 2008, the National Archives reported that they opened 92 cases

into whether agencies improperly disposed Federal records. Does that sound correct?

Mr. FERRIERO. I believe so.

Mr. WESTER. It does

Ms. KELLY. Okay. If you do the math, that was a little more than 11 years ago, or almost 1 per month. Is it fair to say that such allegations are relatively common?

Mr. FERRIERO. You have the data.

Mr. WESTER. The allegations are common. I would suggest that it's not unique to administrations, but it's reflective of the challenges that all Federal agencies have with this issue.

Ms. KELLY. Okay. On June 17 the National Archives and Records Administration sent a letter to the IRS chief in the Office of Records and Information Management indicating that the loss of some of Ms. Lerner's emails may constitute an unauthorized disposal of Federal records. Is that correct?

Mr. WESTER. That is correct.

Ms. KELLY. Do you think that records retention is a problem exclusive to the IRS?

Mr. WESTER. No

Ms. KELLY. A 2008 Government Accountability Office investigation found evidence that several Federal agencies, including the Department of Homeland Security and the Department of Housing and Urban Development, admitted at least one requirement of National Archives regulations related to proper management of electronic records. It certainly appears that Federal agencies across administrations have struggled with records retention.

What is the NARA's role in developing a long-term solution to this problem that will endure even after this administration is over?

Mr. FERRIERO. Let me start with just describing the state has been self-identified. Over the past 5 years, 4 years, we having working with each of the agencies to develop a self-assessment of where they stand in terms of their control over especially the electronic records, and the data shows that a high percentage of the agencies self-report that they are at high risk. So that's why we have created the directive and are moving ahead to create the solutions to those problems.

Ms. KELLY. And what can agencies do to mitigate this longstanding problem? What ideas?

Mr. WESTER. There are a number of ideas, most of which are captured within the managing government records directive. As we've talked about earlier, agencies need to identify ways to automate these processes, to take the human intervention out of the activity, because that is where the highest risk for error to occur or other things to occur that do not ensure good recordkeeping. So to the extent that we're able to have industry days and identify private sector vendors and get their ideas about how this auto-categorization and automation can take place with email and other electronic records and then identify what the minimum electronic records management requirements are that the National Archives needs to promulgate to the vendor community and also to Federal agencies so that they can better manage on this electronic content. Those

are some of the things that we're working on so that we're able to meet those deadlines within the directive.

Ms. KELLY. Because it would seem as though as our technologies continue to improve, the amount of information that agencies mustmanage and appropriately store increases. So how important is it for agencies to make improvements to information systems to ensure full compatibility with new technologies?

Mr. WESTER. It's very important. They need to think about this in several kind of sectors. One is the policy piece, which the National Archives is most responsible for in getting that piece organized so that they are thinking more creatively and differently about how to manage records in automated sorts of ways with our support.

Also thinking about the technology issues, working with the vendor community in the private sector to understand how automation can be added in cost-effective ways to make this happen. Then identify ways that agencies can, in a fiscally responsible kind of way, add this technology and implement these policy changes so that agencies are managing their records to meet their business needs, protect the rights and interests of the government, and then from the National Archives' perspective, make sure that we're able to get the currently valuable records into the National Archives so we can make them available to future generations.

Mr. FERRIERO. And there are a couple of other aspects of this directive that we haven't touched on that are very important. The directive calls for the appointment of—identification of a senior agency official, not the records manager, but senior agency official who takes responsibility for records management within that agency, raises the profile of records management in the agency.

At the same time we are working with the Office of Personnel Management to create for the first time in our government the job family "records manager." There is no such thing right now in the records management environment. So we have a variety of credentials that are in operation now across the Federal Government.

Ms. KELLY. Thank you. My time is up. I yield back.

Mr. GOWDY. Thank the gentlelady from Illinois.

The chair would now recognize the gentleman from Tennessee, Dr. DesJarlais.

Mr. DESJARLAIS. Thank you, Mr. Chairman.

Ms. O'Connor, I just wanted to ask you a few questions. What was the reason you were hired in May of 2013 to join the IRS?

Ms. O'CONNOR. So, Mr. Werfel called me the day after he started and said that he had undertaken this significant challenge and was trying to add a few extra people to help him—a chief of staff, a risk officer, and a counselor—and our project was to help him, as needed, in various ways to run the IRS, which at that point was facing new leadership and had the problems that I know your committee knows about.

Mr. DESJARLAIS. Your Chief Counsel, William Wilkins, testified before this committee that you were a key supervisor of the IRS' document review and production process. Would you think Mr. Wilkins was correct?

Ms. O'CONNOR. I don't quibble with what he said, but as I was trying to explain earlier, I wasn't working on that full-time. There

was a large number of people who were working very hard full-time, but I worked with them to try to help them.

Mr. DESJARLAIS. In your time at the IRS from May 2013 to November, did you coordinate the IRS' response to congressional requests for documents?

Ms. O'CONNOR. I worked with the staff of the committees to make sure I understood what they needed. I was certainly a part of the process of making sure that what they were asking for was delivered to them.

Mr. DESJARLAIS. Did you review emails related to IRS targeting?

Ms. O'CONNOR. So the review process involved an enormous number of people who were in sort of tiers.

Mr. DESJARLAIS. Okay. Did you review emails?

Ms. O'CONNOR. I wasn't in the, you know, set of employees who were doing the first level review or the second level review, that sort of thing.

Mr. DESJARLAIS. Did you redact emails related to IRS targeting?

Ms. O'CONNOR. I didn't do any redacting, no.

Mr. DESJARLAIS. None at all?

Ms. O'CONNOR. No.

Mr. DESJARLAIS. Okay. Did you determine the schedule of making document production to the committee?

Ms. O'CONNOR. The schedule was basically as quickly as we can——

Mr. DESJARLAIS. So you did do that?

Ms. O'CONNOR. —and so it was determined by the calendar.

Mr. DESJARLAIS. Okay. So you did make the schedule?

Ms. O'CONNOR. It was determined by the calendar. Basically we looked at how quickly we could amass a sizeable——

Mr. DESJARLAIS. Who decided when the IRS would make a document production? I mean, who specifically?

Ms. O'CONNOR. It really was the calendar.

Mr. DESJARLAIS. Okay.

Ms. O'CONNOR. I mean, the effort was to do it as quickly as could be when there was enough to produce.

Mr. DESJARLAIS. Did you interact with the Treasury Department while at the IRS?

Ms. O'CONNOR. Yes.

Mr. DESJARLAIS. Okay. How?

Ms. O'CONNOR. How? Telephone call. In person.

Mr. DESJARLAIS. Okay. What did you discuss with the Treasury Department?

Ms. O'CONNOR. It was a variety of things. You know, the IRS obviously is part of the Treasury Department. Mr. Werfel reported to Secretary Lew, and, you know, there were a variety of different things at any meeting.

Mr. DESJARLAIS. So did you update them about the response to the congressional investigation and targeting?

Ms. O'CONNOR. I did provide updates when we were going to produce documents that we would be doing it, and things like how many documents were in it and that kind of thing, yes.

Mr. DESJARLAIS. Did you interact with the White House while at the IRS?

Ms. O'CONNOR. I didn't. As I explained earlier, I had the one interaction where I went with Mr. Werfel as he presented his 30-day report to the President. Other than that——

Mr. DESJARLAIS. So Just one time?

Ms. O'CONNOR. I didn't have communications with the White House about my IRS work when I was at the IRS.

Mr. DESJARLAIS. Who was your point of contact at the White House?

Ms. O'CONNOR. For what?

Mr. DESJARLAIS. When you were interacting with them? You said you interacted once.

Ms. O'CONNOR. I didn't have one.

Mr. DESJARLAIS. You didn't have a point of contact. Okay.

When you joined the IRS, were you given training on preserving Federal documents—or Federal records?

Ms. O'CONNOR. There was an enormous amount of training right in the onboarding, and I think it did include records management. But there was so much it's actually hard for me to remember now.

Mr. DESJARLAIS. So it included emails?

Ms. O'CONNOR. I think so.

Mr. DESJARLAIS. Federal records. Who provided the training for you?

Ms. O'CONNOR. I think it was computer based.

Mr. DESJARLAIS. Okay. Did you back up your emails or official records while at the IRS?

Ms. O'CONNOR. I think that my computer, because I was in the Counsel's office, was being backed up, and when I left, my records were all copied by the IT staff in the Counsel's office.

Mr. DESJARLAIS. Okay. Were you ever aware of an attempt not to preserve IRS records by any IRS employee while you were there?

Ms. O'CONNOR. No, I'm not aware of that.

Mr. DESJARLAIS. Do you know, did you store your emails on your hard drive?

Ms. O'CONNOR. I don't know.

Mr. DESJARLAIS. Okay. Do you know what the size of your email box was?

Ms. O'CONNOR. I don't know.

Mr. DESJARLAIS. Okay. That's fair enough. I have no further questions.

Ms. O'CONNOR. Thanks.

Mr. GOWDY. I thank the gentleman from Tennessee.

The chair will now recognize the gentlelady from California, Ms. Speier.

Ms. SPEIER. Mr. Chairman, thank you.

I would just like to point out that the Speaker of this House today admonished all of us that we need to show respect to all the witnesses who come before us. In fact, he said we invite people to come and provide testimony, and frankly, they should be treated with respect. And I believe respect includes asking a question and then allowing a witness to fully answer the question and not cutting them off. So I'm hopeful that as this hearing and other hearings move forward we will continue to show respect as the Speaker of the House has recommended to us.

Let me ask Ms. O'Connor a question or two. Chairman Issa issued a report entitled, "How Politics Led the IRS to Target Conservative Tax-Exempt Applicants for Their Political Beliefs." The report alleged that the President's political rhetoric, quote/unquote, is what, quote, "led the Internal Revenue Service's targeting of tax-exempt applicants."

Ms. O'Connor, did you see any evidence that IRS employees were motivated by politics or political bias in screening applicants for tax-exempt status?

Ms. O'CONNOR. So as I said earlier, I joined the effort after it started at the end of May, and I left midstream at the end of November, and so I didn't see all the documents that were produced even while I was there and more continued to be produced after I left, and I didn't talk to witnesses. All that said, I didn't see any evidence of that, no.

Ms. SPEIER. Are you part of a government-wide conspiracy to target President Obama's political enemies?

Ms. O'CONNOR. Absolutely not.

Ms. SPEIER. Are you here voluntarily and not a hostile witness?

Ms. O'CONNOR. I'm not hostile. I did receive a subpoena.

Ms. SPEIER. Would you have come had you not received a subpoena last night?

Ms. O'CONNOR. Well, the initial response that we gave pointed out that I didn't have a lot of relevant information because I had only been at the IRS for the 6 months and it was after Ms. Lerner's material was collected and it was before the discovery that she had emails that were not recoverable connected to a computer failure. So I think the initial reaction was there would be many better witnesses to assist the committee.

Ms. SPEIER. All right.

Now, Mr. Ferriero, for a long period of time the IRS did not back up their records, and in fact it was incumbent on each of the employees to print a copy of any email that they thought was relevant for historical perspective, which is alarming in and of itself. It's also pretty alarming that they are still using Windows XP, which was first used in 2001, and Microsoft does not even support that anymore.

So I think for every American who pays taxes there's a great sense of insecurity in not knowing that any communication they have with the IRS may in fact be lost, and if there is one agency that we want to have comprehensive backup, it would be the IRS. Is that correct?

Mr. FERRIERO. I agree. But I also can testify that this issue about outdated technology exists in many agencies across the government.

Ms. SPEIER. All right. So this is a problem we should be looking. Maybe this committee could undertake something that was constructive in nature and look at all of these agencies and whether or not there is sufficient backup of documentation.

As I understand it, when Mr. Werfel came to the agency back in May of 2013, he made a decision, implemented IRS-wide, that would require that there would be a daily backup of its email servers. Is that correct?

Mr. FERRIERO. I don't know that.

Ms. SPEIER. So you don't know that.

Do you know that, Ms. O'Connor?

Ms. O'CONNOR. He did

Ms. SPEIER. He did. So now we can confidence in knowing that at the end of every day, there's a backup. All emails that have transpired during the day are backed up within the IRS. Is that correct?

Ms. O'CONNOR. That was my understanding when I was there.

Ms. SPEIER. All right. So my only question is, on the one hand, last night the Commissioner said we have had all these cutbacks and we need more money to be spent to be able to have the kinds of servers necessary to retain all this information. Mr. Werfel did take steps to back up everything. Are we at a point where everything is backed up, or do we still need more technology?

And, Mr. Ferriero, maybe you can answer that.

Mr. WESTER. Actually, the point I'd like to make about that is that having a backup system in place is not a recordkeeping system, and that's, I think, part of the discussion about what kinds of technologies do agencies need to have to have effective electronic recordkeeping. The actions that have been described that the IRS has taken meet the needs of being able to produce emails and other electronic records for inquiries like from committees like this one, but it does not deal with the electronic recordkeeping issues that agencies need to deal with around disposition and preservation and access for business needs within agencies necessarily.

Ms. SPEIER. All right.

Mr. Chairman, I know my time has expired, but I just wanted to point out on behalf of our colleague, Mrs. Maloney, that her point was that 501(c)(3)s and 501(c)(4)s are tax exempt, not that the donors' contributions necessarily are tax exempt, but that the 501(c)(3)s and (c)(4)s are tax exempt for purposes of collection of taxes.

Chairman ISSA. [Presiding] Well, you know, I appreciate your pointing that out. I think the point—and I received a text from the Ways and Means who thanked us for helping point that out because it's one of their frustrations over at that committee. The fact is that corporations in America, if they take in, let's just say that they're providing a computer service, if they take in a million dollars and they spend a million dollars doing support and they have nothing left over at the end, they also pay no taxes.

Ms. SPEIER. That's correct.

Chairman ISSA. So a 501(c)(4) who takes in a million dollars from people who want to have it do some service and spends it all pays no taxes. So the difference is a 501(c)(3), people may give a million dollars and avoid nearly half a million dollars in personal taxes. So the difference in scrutiny for a 501(c)(3)'s activities, not being political because political contributions are not tax deductible, the 501(c)(4)s follow the same rules as your PAC.

Ms. SPEIER. Except that my PAC has to disclose who makes donations to me.

Chairman ISSA. And I truly appreciate——

Ms. SPEIER. And the 501(c)(4) does not.

Chairman ISSA. And I truly appreciate that. The fact is that Congress in its wisdom has not legislated that disclosure. We did not

put it under the Federal Election Commission, a place where Lois Lerner worked for many years, we did not empower that. So the President's OFA does not have to disclose. That's just simply the law as it is.

I just want to make sure, and I think Mrs. Maloney was very surprised, that people do not get a tax write-off for giving to 501(c)(4)s, therefore the term "tax exempt" doesn't have the meaning that most people think it has when they lump together charities, 501(c)(3)s.

And it is extremely important. The American Heart Association, the American Cancer Association cannot engage in 49 percent of its activities in favor of promoting candidates because it's a charity, and there is a huge difference, and it's a difference I think the Ways and Means is sensitive to because legislating changes is serious business. 501(c)(4)s, in fact, do not enjoy that, just as your homeowners association doesn't.

Ms. SPEIER. Except that 501(c)(4)s are supposed to be exclusively for social worker purposes.

Chairman ISSA. I appreciate that, but the court's standing——

Ms. SPEIER. And they are not.

Chairman ISSA. —is majority.

I now recognize Mr. Cummings.

Mr. CUMMINGS. Thank you very much, Mr. Chairman. I want to ask the chairman to admit into the record a letter dated June 23, 2014, from the White House, Neil Eggleston, Counsel to the President. This is a follow-up on what was just——

Chairman ISSA. The letter from the White House will be placed into the record, without objection.

Mr. CUMMINGS. —explaining what Ms. O'Connor was saying with regard to hostile witness. Just explaining, just as you explained yours.

Chairman ISSA. Noncooperative witness, they refused to provide her. She has been informative. I appreciate that.

Mr. CUMMINS. Mr. Chairman, you admitted it?

Chairman ISSA. It's in the record.

Mr. CUMMINGS. Thank you

Chairman ISSA. The gentleman from Texas is recognized. Would the gentleman yield me 10 seconds?

Mr. FARENTHOLD. Certainly.

Chairman ISSA. I just want to put it in perspective for Mr. Wester, and if you agree, you can answer on the gentleman's time. If we continue to collect data the way they're describing, what you're doing is effectively taking all the data at the end of 6 months and throwing it in a trash heap. And then the difference, if you just collect a bunch of tapes, is the equivalent of owning the yard that your trash is hauled to and saying it's all there.

If I understand correctly, what you're trying to achieve with Capstone, Mr. Ferriero is, in fact, to have the meaningful data retained so that it's searchable and usable while recognizing that the vast majority of data is likely not to be of any value. And certainly you would not want to search through it to find the important data that is effectively being thrown out today.

Mr. WESTER. Yes.

Chairman ISSA. Thank you.

Thank you, Mr. Farenthold.

Mr. FARENTHOLD. Thank you.

Ms. O'Connor, I want to follow up on some questions Dr. DesJarlais asked. He mentioned, and you said you had gone through extensive training with the IRS on their document retention records policy and that you felt like your laptop was probably automatically backed up. But the actual document retention policy doesn't have to do with back up or saving files. It has to do with printing out things that you believe fall under the Records Act. How many, in your tenure at the IRS, you have an idea how many things you printed out to keep for the archives?

Ms. O'CONNOR. I have no volume, but just to get back to the—I just want to make sure it was clear what I said. I went through extensive computer-based training. I don't think that much of it was on records retention. All that said, I did understand——

Mr. FARENTHOLD. Did you print out any to save?

Ms. O'CONNOR. Oh, absolutely.

Mr. FARENTHOLD. Would it have been more than one or two a day?

Ms. O'CONNOR. I don't have a recollection, but what I explained is that what happened with my electronic material when I left is that the IT people in the Chief Counsel's office collected that and copied it, they made a copy of it. And my paper records were all transferred so that they could continue to be used by my successor.

Mr. FARENTHOLD. And so when you printed them out was there just like an inbox type thing on your desk, you stuck them in? What did you do with them after you printed them out?

Ms. O'CONNOR. I had files in my office.

Mr. FARENTHOLD. Was it one big file or was it broken up under files based on subject matter? Do you recall how that was done?

Ms. O'CONNOR. It was in different categories. I can't really remember.

Mr. FARENTHOLD. Okay. I guess what I'm getting at is, I'm trying to imagine the amount of work necessary to go in and recover, say, something from Ms. Lerner, and then the amount of work that eventually goes in when those documents get to the National Archives for sorting them out.

Ms. O'CONNOR. I don't have a good point of reference.

Mr. FARENTHOLD. Mr. Ferriero, let's talk about the records. I mean, assuming you have got your Capstone project, would you rather have more records or less records?

Mr. FERRIERO. I would rather have the right records. And the identification, the work that goes on between the records manager and the agency and my records management staff is the creation of schedules.

Mr. FARENTHOLD. But you don't always know what's going to be an important record at the time you get the email. I mean, if there was an email about what parking place somebody is going to get assigned, that probably isn't an important record until maybe, God forbid, an employee comes in with a car bomb and parks in that parking place. All of a sudden it becomes relevant. So trusting an individual at the time it's happening to decide what is a Federal record probably is not a very good way to do it.

Mr. FERRIERO. I agree, I agree, and that's why the Capstone takes that part of the process completely out. It captures everything for the senior executives of the agency.

Mr. FARENTHOLD. So what's the cost of implementing it? I mean, does it work just like something that plugs into the network and captures email, I mean, in a broad general term?

Mr. WESTER. So in general when agencies look to deploy a Capstone sort of solution to manage their email, they are usually doing it in the context of upgrading their email system. So at the National Archives in the past couple of years we've transitioned the email systems, and part of what we have done is rolled out this Capstone technology implementation along with the policies.

Mr. FARENTHOLD. And so you've got it, it's off the shelf, if somebody wants it, they can buy it for their agency?

Mr. WESTER. It's not quite that simple, but it's COTS products that then have to be integrated by the IT shop.

Mr. FARENTHOLD. So again, I used to work in IT. I mean, is it as simple as plugging in a server and loading some software and making sure you have enough storage space on it? I mean, is there much more to it? I mean, obviously, configuration and such. But I can't believe the IRS Commissioner testified $10 million to put in a solution like that last night. Is that an accurate number?

Mr. WESTER. I don't know if it's an accurate number or not, but what I would say is that as agencies are moving to the cloud and as they're trying to identify solutions that can make Capstone work, it's not a free activity. There are costs associated with doing integration and other sorts of things.

Mr. FARENTHOLD. But certainly saving it digitally is a lot cheaper than printing something out when industry standards say each page you print out costs between 5 and 8 cents. It's got to be a massive savings over that.

Mr. WESTER. There are probably massive savings with moving to electronic recordkeeping. Then also it's much easier to provide access electronically than having to provide boxes on carts in research rooms as we do today.

Mr. FARENTHOLD. All right, I see my time has expired.

Chairman ISSA. I thank the gentleman.

We now go to the gentleman from Missouri, Mr. Clay.

Mr. CLAY. I'm in shock, Mr. Chairman, but thank you anyway.

Chairman ISSA. Oh, wait a second.

Ms. Norton, I apologize.

Mr. CLAY. It's Ms. Norton.

Chairman ISSA. They said Clay, but you have returned, and I'm thrilled to see the delegate from the District of Columbia, Ms. Norton.

Ms. NORTON. Thank you very much, Mr. Chairman. I just thought you were looking through me.

We have been asking about backups here. And by the way, as the last member, my friend from Texas indicated, and I couldn't agree more about electronic backup as opposed to paper, of course it costs money to do hardware and to get those things. And so when you already have the old-fashioned stuff you go with the more costly old-fashioned stuff. And that's been the story of the IRS, and of

many of our Federal agencies, because it takes money to do things like that. It takes money to save money.

Before I go any further, we've been talking about Federal records of the kind of course that Congress would subpoena. Those are not the records that the average American would be most concerned about. The Federal records they would be most concerned about, for example, are their own taxpayer documents. Could I ask if there is backup for taxpayer documents, when you file your income taxes, for example?

Mr. Wester?

Mr. WESTER. I do not know the answer to that question. That would be most appropriately brought up with the IRS.

Ms. NORTON. Mr. Ferriero?

Mr. FERRIERO. I agree that that's an IRS question.

Chairman ISSA. If the gentlelady would yield?

Ms. NORTON. I'd be pleased to yield.

Chairman ISSA. We earlier had an oversight of IBM's role in the subcontracts to Mr. Castillo and so on. At that time I became aware that, yes, the electronic data for filing of taxpayer records, which is the vast majority of filing today, which is far greater and far more vast than these emails we're discussing, does have a system and a backup, and it is a big part, a significant part of the $1.8 billion spent on IT. That's actually one of the interesting points of, this is the small back end of the IRS compared to their massive spending in that database.

Ms. NORTON. Mr. Chairman, could I ask you, at the same time, did we discover at that time whether there's backup for the healthcare data that's coming into the IRS, since these witnesses apparently don't have that——

Chairman ISSA. You know, my confidence is high that it does exist in that data trove, but that came in after our investigation. But it is a significant part, hundreds of millions of dollars of the IRS' new budget go forward is the maintenance of those transactions.

Ms. NORTON. As the chairman says, this is kind of the back end, and this doesn't come up very often. It's very important. And let me say, because there has been a lot of back and forth and contentious—not testimony, contention among members—so let me just say for the record, whenever anybody loses emails there is always going to be a suspicion. So I just want to say that for the record.

My concern was that nothing that Lois Lerner did, contemporaneous emails, and the question is, if you do lose—if you do crash, could I ask both of you, if you crash, if you're in the old IRS, because that's where these people are now, what should you do when you know that you may be called before a committee of Congress? What should you do when they tell you they couldn't retrieve your emails? What precautions should you take?

Mr. WESTER. So what we counsel agencies to do is to make sure that IT, the legal counsel, and the records management and records officers are all working together on the different aspects of the Federal Records Act to make sure that records are identified and preserved and policies are being followed. If there were a crash of an individual's hard drive——

Ms. NORTON. Apparently there have been a great number of crashes.

Mr. WESTER. Yes. So a crash in and of itself doesn't necessarily mean that Federal records have been lost, but it does indicate that there are probably issues that need to be addressed with the IT organization, with the records organization, with the——

Ms. NORTON. I'm now assuming the records have been lost. Obviously, that's catastrophic.

Mr. WESTER. Yeah.

Ms. NORTON. And somebody is going to be accused, as has occurred here, because there is hardly any way to prove that negative. So I want to know what precautions should be taken. They tell you the records are lost, it's a crash, what should be done? Because we may have this situation again, and now we know that the suspicion will come up. And I don't regard the suspicion as unfounded. I just think that the suspicion needs to be shown. So I need to know what you should do since I don't see any way we can avoid this happening again, and so if we get new software and new computers.

Mr. FERRIERO. So the first step is to notify the National Archives that there is a problem so that we can start the process.

Ms. NORTON. Do you know whether this was done in this case?

Mr. FERRIERO. It was not done.

Ms. NORTON. So that's the first thing, to notify the National Archives, even before you try to retrieve it. Just say, look, I've lost something. I want you to know it. Go ahead.

Mr. FERRIERO. And we would, as we did in this case when we found out, write a letter to the records manager there.

Ms. NORTON. When did you find out in this case?

Mr. FERRIERO. We found out when you did, that letter to Senators Wyden and Hatch, and we submitted our letter.

Ms. NORTON. So what's the point of notifying you, just for credibility sake? Is that it?

Mr. FERRIERO. Well, no, because it's we're demanding that they investigate and report back to us in 30 days what's the situation.

Ms. NORTON. Yeah. Of course they were already doing that. So it must be more than that. I mean, they weren't just sitting there.

Mr. FERRIERO. This is the first indication we had that there was a problem. So we snap into action when we're notified. We weren't notified——

Ms. NORTON. But you were convinced that they were already trying to do that?

Mr. WESTER. Well, what was going on at the time, it was clear that activity was going on. What was not clear to me until that letter appeared was that there were emails that potentially were not able to be reproduced and were lost. And that's the difference for us. There is a lot of activities that go on across the government every day to recover, you know, crashed hard drives or other kinds of IT issues. But it becomes a serious concern of ours when it becomes increasingly clear that records may have been lost. That's when we do get into action.

Ms. NORTON. Yes, sir?

Chairman ISSA. Go ahead. If the gentlelady would close up.

Ms. NORTON. I was going to say, when it becomes clear, I mean, it either is clear or not clear. It can't be increasingly clear. Someone has to look and it may take some time. At the end of that search, then you can conclude it's lost or not lost.

Chairman ISSA. You can answer if you would.

Mr. WESTER. Actually, I wanted to make a couple of points related to this if it was okay.

Chairman ISSA. Sure.

Mr. WESTER. An individual in an agency should be working with their records officer to make sure that they're managing their records within the official recordkeeping system. I am not familiar with too many official recordkeeping systems that entail saving records on a hard drive to maintain them. You would do that for access purposes or reference purposes or things like that, but not as an official recordkeeping system.

So part of what we would counsel agencies to do is be in contact with your records officer, be in contact with your IT staff, be in contact with your counsel so when these issues happen you can figure out what needs to be done from a Federal Records Act perspective.

Going forward with the directive and having agencies manage email in automated ways by the end of 2016 and pursuing Capstone and other sorts of policy ideas that we have promulgated with the directive, we anticipate a day where we'll be able to remove human intervention from this sort of activity and then be able to manage these records more effectively.

Chairman ISSA. Thank you.

Ms. NORTON. Thank you, Mr. Chairman.

Chairman ISSA. We now go to the gentleman from North Carolina for 5 minutes. I would ask for just 10 seconds if I may.

Mr. Wester, would it be fair to say that when you should have been informed if Lois Lerner knew that there could be Federal records on the lost drive, it would have been at the point that she discovered her drive was broken and/or at the point they were convinced they couldn't recover it? At that point wouldn't it have come to the National Archives as now you get to try to recover them if there are known to be Federal records on them? That would have been the timeframe is what I think I asked.

Mr. WESTER. It would have been preferred for us to know about it when there was an issue that would have indicated that email was lost.

Chairman ISSA. Right. And on hundreds of other places where Lois Lerner could have helped you look for and find the records that would have existed in real time rather than years later.

Mr. WESTER. The reason I'm having difficulty answering that question, it's more of an operational issue within the IRS as opposed to a National Archives sort of issue.

Chairman ISSA. But prompt reporting to you makes a difference.

Mr. WESTER. Yes, because the prompt reporting to us allows the agency itself to be on notice to itself with our imprimatur that they need to take action.

Chairman ISSA. Thank you.

Mr. Meadows.

Mr. CHAFFETZ. Mr. Chairman, can I ask unanimous consent that the gentleman from North Carolina be allowed to——

Chairman ISSA. Without objection, so ordered.

Mr. CHAFFETZ. Thank you.

Mr. MEADOWS. I thank the gentleman from Utah.

And thank you, Ms. O'Connor. It's good to have you back, good to see you again. In your testimony, you talked about when you got to the IRS in May of 2013 that all of Lois Lerner's emails were in this area to be redacted and worked on. Is that correct? That's what you had——

Ms. O'CONNOR. I think they were still in the processing part where they were being flattened and decrypted, but they had been gathered already.

Mr. MEADOWS. So they had all been gathered. Was there not anybody who looked and saw this huge hole between 2009 and 2011 and says, man, this is really strange that the email activity during this period, a lot of it disappeared. Was there anybody that looked at it, like you would look—like Treasury would look at a counterfeit dollar and say, gosh, this is a fake. Was there not anybody that raised that concern?

Ms. O'CONNOR. So it wasn't brought to my attention, and——

Mr. MEADOWS. Would you be mad about that? Since you were overseeing that, wouldn't you be mad if somebody saw that and didn't bring it to your attention?

Ms. O'CONNOR. If somebody had seen it, I would have hoped that it would have been brought to my attention.

Mr. MEADOWS. So, you think that somebody didn't see it?

Ms. O'CONNOR. I have no reason to think that anybody saw it and didn't say anything about it.

Mr. CONNOLLY. Mr. Chairman, can I ask the witness please to speak into the microphone, Ms. O'Connor?

Mr. MEADOWS. Ms. O'Connor, can you move it closer?

Ms. O'CONNOR. Yes, I'm sorry.

Mr. CONNOLLY. If you could speak into it. Thank you.

Ms. O'CONNOR. Sorry about that.

Mr. MEADOWS. So, who is responsible for making sure that all the documents and materials are complete to submit to this committee, or any other committee, who is responsible to make sure that that body of work is complete?

Ms. O'CONNOR. I think it's probably the head of whichever agency has been asked——

Mr. MEADOWS. And so we just trust them to make sure that it's complete. So there's no real oversight within the IRS to make sure that what we get is complete?

Ms. O'CONNOR. I mean, within the IRS we had a whole number of different layers of sort of quality checking to make sure that the materials that were being reviewed were appropriately redacted and were then produced.

Mr. MEADOWS. But there was no—all those layers, there was really nobody that was there saying, well, we've got everything we need?

Ms. O'CONNOR. The thing that I think is challenging about the situation is that I believe that the people who collected all of Ms. Lerner's material most likely believed they had it all because they got successfully what was on her hard drive. I think the missing piece was not knowing that there had been a crash.

Mr. MEADOWS. So when they looked at, and they were going back to 2009, they didn't see that there was a whole big hole of where all of a sudden the email volume picked up in June of 2011 when she got her new hard drive. They wouldn't have seen just this unbelievable anomaly of additional emails?

Ms. O'CONNOR. So nobody brought it to my attention. I didn't——

Mr. MEADOWS. So let me go on a little bit further because here is the bombshell in all of this. Every one of us have been counting on the TIGTA report for a chronological of who knows what when. Over 65 percent of what they reported were solely based on emails. So if we have a whole lot of emails that are missing, wouldn't that suggest that the whole TIGTA timeframe is at best incomplete?

Ms. O'CONNOR. So one of the things that I think is important in this is that my understanding is what the IRS has done is provided all the emails to——

Mr. MEADOWS. But that's after the TIGTA report. During the TIGTA report, what they reported, because this is new since then, wouldn't you agree that at best it is incomplete? Yes or no? You're a smart person. I have dealt with you before. Yes or no? Wouldn't you agree that it would be incomplete?

Ms. O'CONNOR. I can't answer, and I can tell you why. The reason why is because my understanding of the TIGTA report is that it was based on interviews, extensive interviews.

Mr. MEADOWS. It was based on 30 percent interviews, 65 percent—I have read the TIGTA report more—it has put me to sleep a number of times. So in that, if most of it's based on emails, wouldn't you say that if you didn't have all the emails that the TIGTA report might not be the full story? It's a real easy answer.

Ms. O'CONNOR. If there were a significant and relevant email that was missing then that might be true, but——

Mr. MEADOWS. And now we know that there are thousands of emails that they never got to see from Lois Lerner, and maybe several others.

Ms. O'CONNOR. I'm not sure that we know that there are thousands that we haven't——

Mr. MEADOWS. Okay. All right. So let me go on very quickly to my good friend there with the National Archives, and I say that in a sincere fashion. Now that we found last night that not only is it Lois Lerner's hard drive, but it's a number of other people at the IRS, do they call you on a regular basis to say, listen, we may have this problem? Have you gotten a number of notifications from those higher officials that have had hard drive issues?

Mr. FERRIERO. Not to date.

Mr. MEADOWS. Neither of you?

Mr. WESTER. No.

Mr. FERRIERO. So we have a Federal law that is being ignored by the IRS.

I'll yield back.

Mr. CHAFFETZ. [Presiding] Thank the gentleman.

Now recognize the gentleman from Missouri, Mr. Clay, for 5 minutes.

Mr. CLAY. Thank you, Mr. Chairman.

And let me provide a recent history lesson to my colleagues. During the administration of President Bush government officials lost

millions of emails, including significant numbers of White House emails in the midst of congressional and criminal investigations. In one instance, the Bush administration lost nearly 5 million emails related to various White House matters under investigation by Congress. At the time a White House spokesman stated, "We screwed up and we're trying to fix it."

Mr. Ferriero, your predecessor Allen Weinstein wrote to the White House counsel at the time, Fred Fielding, and said this: "It is essential that the White House move with the utmost dispatch both in assessing any problems that may exist with preserving email and in taking whatever action may be necessary to restore any missing email." Those Bush era documents were also pertinent to criminal and congressional investigation.

In 2006, special prosecutor Patrick Fitzgerald hit a roadblock when emails relating to the Valerie Plame leak investigation went missing. Fitzgerald explained, "Not all email of the Office of the Vice President and the Executive Office of the President for certain time periods in 2003 was preserved through the normal archiving process on the White House computer system." In 2009, the Department of Justice investigated a so-called torture memo, but one key Bush administration official's relevant emails had been, "deleted," and reportedly were not recoverable.

Mr. Ferriero, I understand that you were not the Archivist in the previous administration, but I assume you agree that the IRS is not the only agency to have lost emails related to congressional investigations. Is that correct?

Mr. FERRIERO. That's correct.

Mr. CLAY. And I assume you also agree that the Federal Government has had significant and longstanding challenges with records retention, especially that of emails. Is that——

Mr. FERRIERO. From the very beginning of the government.

Mr. CLAY. From the very beginning of us using emails.

Mr. FERRIERO. And using paper. This is not just an email problem. This is a records management problem.

Mr. CLAY. And according to the General Counsel of the Archives at the time, the Archivist's requests to the Bush White House went largely ignored. My, my, what a few— how a few years changes things.

You know, the General Counsel reported that the National Archives knew, "virtually nothing about the status of the alleged missing White House emails." Mr. Ferriero, can you discuss some of the policy changes President Obama has made to improve records retention throughout the Federal Government?

Mr. FERRIERO. As I described earlier, he has issued a memorandum on records management, the first time since the Truman administration that the White House has gotten involved, recognized an issue around records management, and authorized the creation of a directive by the Office of Management and Budget and myself that went to all the agencies outlining what we need to do to get our act together, as well as a set of promises about how the Archives is going to support that work involving industry partners in creating new tools, creating more visibility, credibility within all of the agencies around records management, professionalizing records management across the government, doing a better

job of training every member of the Federal Government in terms of their records responsibilities. So there has been a huge focus on records management.

Mr. CLAY. So you have seen a change in how IT managers at the different agencies archive?

Mr. FERRIERO. There has been a great deal of interest, support, and collaboration for the first time that I can see between the records management community and the CIO community in the Federal Government.

Mr. CLAY. And do you believe that President Obama has made retention of these records a priority of his administration?

Mr. FERRIERO. The administration certainly understands the problem and has authorized the direction for us to implement new ways of solving this problem.

Mr. CLAY. Thank you.

Mr. CONNOLLY. Would my friend yield for a question?

Mr. CHAFFETZ. The gentleman's time has expired.

Mr. CONNOLLY. I would ask the chair for a little leeway given the fact that the chair of the full committee has many times been granted time throughout this hearing.

Mr. CLAY. I have been patient, Mr. Chairman, all morning.

Mr. CONNOLLY. I simply have a question for my colleague if the chair would allow it.

Mr. CHAFFETZ. Proceed.

Mr. CONNOLLY. I thank the chair. Is it not true, you brought the Bush administration experience, is it not true that many of the 5 million emails that were lost that you described were, in fact, deleted. It wasn't because of crashed computers. They were actually deleted.

Mr. CLAY. Sure. Intentionally deleted——

Mr. CONNOLLY. Intentionally deleted.

Mr. CLAY. —in order to hide whatever it is they didn't want the public to see——

Mr. CONNOLLY. I thank my friend.

Mr. CLAY. —out of the Vice President's office, of all places.

Mr. CONNOLLY. I thank my friend. I thank the chair for his courtesy.

Mr. CHAFFETZ. The gentleman's time has expired.

I now recognize the gentleman from Pennsylvania, Mr. Meehan, for 5 minutes.

Mr. MEEHAN. I thank the chairman and remind my colleagues, Mr. Fitzgerald was a colleague of mine. There were people that were investigated and convicted as a result of that matter. We have gone a long way in this without even getting close to that particular issue.

Ms. O'Connor, I have great respect for your history as an attorney, and you, yourself, have identified that you managed complex litigation matters before you came here. So I'm asking for some of your insight even though this may have been prior to your actual involvement. But in June—early in June 2011, in fact, June 3, chairman, Ways and Means Chairman Dave Camp sent a letter to Doug Shulman, the Commissioner, in which he identified alleged discriminatory practices on the part of the IRS very specifically. From your perspective, when somebody alleges discrimination, do

you think that there is ever a chance that that matter gets to litigation?

Ms. O'CONNOR. Allegations of discrimination do sometimes get to litigation, yes.

Mr. MEEHAN. Yeah, so they do sometimes get to litigation, don't they now?

Mr. CONNOLLY. Mr. Chairman, could I please just ask the witness to speak into the microphone?

Ms. O'CONNOR. I'm very sorry, sir.

Mr. MEEHAN. Around 2011, in fact, very similar to the same time, there were a series—there had only been 2,000 pages of responsive materials when these original requests had come in, only 2,000 pages, but hundreds of those 2,000 pages that came from the IRS were materials and emails that were purportedly showing that the efforts were being directed not just to conservative organizations, but at liberal organizations as well.

So we have, in my mind, a very responsive body on the part parsing the materials that are being returned in response to the Ways and Means subpoena. So knowing that there are discriminatory allegations and knowing that the IRS and those who are advising the IRS and the very limited return are using great degrees of discretion in the form of the materials they are returning, how do you comport with the responsibility under the law of what is emails which may be subject to electronic discovery? This is not ambiguous. Certain electronic records may need to be identified and preserved when litigation is anticipated. Why was there not an effort undertaken on the part of people to preserve those records as far back as 2011?

Ms. O'CONNOR. Which records in particular?

Mr. MEEHAN. The records of Lois Lerner. And she was advised in January of 2011 very specifically that her communications were potentially the subject of discriminatory practices. And by your own admission there is a recognition that those emails may be subject to litigation by the requirements in preparation for litigation. As an attorney, I used to receive those. You are required to maintain those. Why weren't those emails retained in 2011 when she had notice that she was potentially subject to discriminatory practices?

Ms. O'CONNOR. I don't know. I wasn't at the agency then.

Mr. MEEHAN. Well, I do have a question about that, and that's one of the problems, because it appears that that also happens to be just the same timeframe, just the same timeframe within weeks in June 2011 that seven people from IRS had their computers crash. Pardon me for being suspicious about the timing.

Now, in terms of response, and response to emails that have actually been sent to us here—well, I'm sorry, my time has expired. I had one more follow-up question, but I'm not going to be able to do it.

Mr. CHAFFETZ. You still have 15 seconds. Go ahead.

Mr. MEEHAN. Yeah, I need a document. Wait a second. I have it. I have it right here.

The question is responsing to all emails. There have been numerous requests from this committee and others for all of Lois Lerner's emails. And yet, in a letter that just came only probably a week or two ago, we have the IRS telling us that fulfilling the request

would require that you go beyond the search terms that were originally loaded for review. So let me ask, why are there search terms for emails when every email is being requested, and this is only weeks ago that we're finding this response? What is ambiguous about every Lerner email?

Ms. O'CONNOR. So I believe all of the—I don't know if it's all, but many of the pieces of correspondence that accompanied the documents that were produced referred to the fact that they were produced according to the terms that we had talked with your staff and other staffs about, the committee staff. I mean, there are four different committees doing investigations. We met with all four staffs, asked them to provide search terms. The staff of this committee provided many of those terms.

Mr. MEEHAN. But you're saying it was their response. What is ambiguous about all?

Mr. CHAFFETZ. I'm sorry, the gentleman's time has expired. You may complete your answer.

Ms. O'CONNOR. The reason that in any large document production search terms are applied is that it enables the people who are seeking the material to get what they want faster. That's the reason for the use of search terms.

Mr. CHAFFETZ. The gentleman from Virginia, Mr. Connolly, is now recognized for 5 minutes.

Mr. CONNOLLY. I thank the chair.

Mr. Ferriero, there are 90,000 employees in the IRS, is that correct, to your knowledge?

Mr. FERRIERO. To the best of my knowledge, yes.

Mr. CONNOLLY. How many of them have computers?

Mr. FERRIERO. I have no idea.

Mr. CONNOLLY. Mr. Wester, any guess?

Mr. WESTER. I do not have one either.

Mr. CONNOLLY. Do you know how many computers? We had testimony last night from Commissioner Koskinen, so far this year, and it's only June, 3,000 IRS computers have already crashed. Were you aware of that fact?

Mr. WESTER. From the testimony last night, yes.

Mr. CONNOLLY. So that's a pretty high percentage. Well, let's assume, therefore, if we stay on that trajectory, we're going to have 12,000 computers crash in the IRS alone, right? If you double the number? I mean, excuse me, 6,000.

Mr. WESTER. Six thousand.

Mr. CONNOLLY. Six thousand. That is a pretty high percentage every year of, if you assume 90,000 computers, the maximum number, that's a lot. And my friend from Pennsylvania sees some conspiracy, it's just coincidental that right after her computer crashed, Lois Lerner, seven people in Cincinnati go rogue on us and created BOLOs that, you know, seem to be nefarious. But the fact of the matter is, there is no evidence that because of one thing happening in Cincinnati it is related. I mean, that is a logical fallacy that is taught in law schools and in logic courses. The two are not necessarily related. In fact, there is no evidence the two are related unless one wants to treat Lois Lerner's computer crashing as a unique event in the IRS, which is indisputably not true. Would you agree with that, Mr. Ferriero?

Mr. FERRIERO. I agree with that.

Mr. CONNOLLY. And this isn't unique to the IRS, is it? I mean, we're dealing with an aging set of IT investments in the Federal Government because we don't keep up with investment. The chairman and I, Chairman Issa, have introduced a bill, FITARA, the Federal Information Technology Acquisition Reform Act—a mouthful—otherwise known as Issa-Connolly, which, thank God, is being marked up this week in the Senate. Passed the House three times unanimously. And it is designed to try to upgrade our investments. We spend $82 billion a year in IT investments; $20 billion at least is inefficiently used for just maintenance of legacy systems. And that's got to be of enormous concern, and if Congress wants to do something about it, wouldn't it be a wise thing to try to make some prudent and targeted investments, Mr. Ferriero, so we're not dealing with this kind of issue?

Mr. FERRIERO. It sure would, and you'd have a lot of friends in both the CIO and the records management community if this gets passed.

Mr. CONNOLLY. Right. Now, I heard you say earlier that the Federal Records Act requires print and save as the policy.

Mr. FERRIERO. And I misspoke. It doesn't—that language is not actually in the law, but that's the guidance that many agencies are following.

Mr. CONNOLLY. All right. So based on that law, some guidance was issued that says, at least for now, print and save. I assume the reason for that guidance is because with antiquated systems we don't want to take the risk of backup that could crash.

Mr. FERRIERO. Well, actually, the guidance came before electronic mail was even——

Mr. CONNOLLY. Oh, so we haven't even updated?

Mr. FERRIERO. That's right.

Mr. WESTER. That's right. The guidance issue precedes the IT problem.

Mr. CONNOLLY. Well, Lord almighty.

Mr. FERRIERO. Which is why EMPA is very important, to get that passed.

Mr. CONNOLLY. Yeah. By the way, why not use the cloud? I mean, our legislation would consolidate data centers throughout the Federal family. Why not move to the cloud? Do you have security concerns, Mr. Ferriero, with respect to the cloud such that we shouldn't do that as an alternative to paper backup?

Mr. FERRIERO. We are using the cloud in the National Archives. We're using the Federal cloud.

Mr. CONNOLLY. Okay. Because we heard from Mr. Koskinen last night that he was a little concerned about security, and I understand that concern, but one could make the argument, especially after the Lois Lerner computer crash, that actually security might be better in the cloud, in the private sector-managed cloud, than, frankly, relying on these old, cranky, obsolete, hard-to-maintain systems in the Federal Government.

Mr. Wester?

Mr. WESTER. I would say that the 6103 issues that were brought up last night are very serious concerns, and we have them as well for IRS records that we work with the IRS to maintain and provide

access to. But your point is well taken, and it's actually one of the items within the directive to move the Federal Government to the cloud and ensure that as agencies move into the cloud that effective records management policies and practices are implemented.

Mr. CONNOLLY. I just want to say, Mr. Chairman, in closing, and I thank the chair for his indulgence, I understand some who want to pursue a conspiracy theory and try to use an isolated—well, not such an isolated event, the crash of a computer at IRS, and ascribe to it all kinds of nefarious reasons. I prefer to say from an IT perspective, frankly, unfortunately, this is par for the course. This is what happens when we allow the degradation of our IT investments throughout the Federal Government, and I don't know how we can be surprised. And the fact that there were 3,000 computer crashes already this year in one agency, the IRS, I think makes the point that, sadly, what happened to Lois Lerner's computer is hardly unique. I thank the chair.

Mr. CHAFFETZ. I thank the gentleman.

Now recognize the gentleman from South Carolina, Mr. Gowdy, for 5 minutes.

Mr. GOWDY. Thank you, Mr. Chairman.

Mr. Archivist, I want to thank you again for coming to South Carolina. You were and remain a big hit with everyone who had a chance to hear you, and I had a number of people ask that you come back to South Carolina and that I not come back to South Carolina.

So with respect to the retention of documents, can you give us, not as an expert, just 35,000-foot level, why is it important that we as a Republic retain documents?

Mr. FERRIERO. So that the American people can hold their government accountable, so that they can see for themselves how decisions were made, so that they can learn themselves from the original documents about our history.

Mr. GOWDY. Right. There strikes me that there is a historical component, there is a constitutional component, so you can have checks on the separation of powers, and there is also a legal component. And you were gracious enough to brag about not being a lawyer earlier. We have an expert lawyer sitting beside you, so I am going to ask Ms. O'Connor what spoliation of evidence is.

Ms. O'CONNOR. So I encountered that once in a case. And what happened was that after the case had begun, somebody who worked for one of the parties, without realizing the material was supposed to have been kept, destroyed it, burned it is what happened, and then it wasn't available for the trial.

Mr. GOWDY. Right. And from an evidentiary standpoint what happens? There is a presumption that whatever you destroyed or altered would not have been good for you, right?

Ms. O'CONNOR. So the judge had to go through an effort of evaluating whether or not there should be a negative inference from that.

Mr. GOWDY. Well, the jury can decide that. The judge decides whether or not to charge that, but the jury ultimately determines whether or not to draw that inference. And it's important for us to note that the reason we have that spoliation of evidence in the law is so that people don't destroy evidence that would not be favorable

to them. I mean, it's commonsensical. If you can get away with destroying evidence that is not favorable to you, everyone would do it. So we have to have a presumption built in.

And with respect to my colleague, the former United States Attorney from Pennsylvania, you talked about search terms. I have got to be candid with you, I don't know what search term you would use if you're looking for an email where Lois Lerner responds "yoo-hoo" when somebody says a Democrat beat a Republican the night before. What search term would you recommend?

Ms. O'CONNOR. So I haven't looked at them in a while, but I'm pretty sure "Democrat" and "Republican" were on the list.

Mr. GOWDY. But what if "Democrat" and "Republican" weren't in the email? What if they used the name of the Democrat who beat the name of the Republican, and her response was "yoo-hoo."

Ms. O'CONNOR. So most of the terms came from the majority staff of this committee and included many politicians, actually.

Mr. GOWDY. But what's wrong with the search terms being "to" and "from"?

Ms. O'CONNOR. Well, that would get you everything, which would——

Mr. GOWDY. Right. That's my point.

Ms. O'CONNOR. —purposes of reducing the amount to review in order to get——

Mr. GOWDY. But why? Why reduce it? If you want access to all of the information, if you want access to all of the truth, why are you reducing the search terms? Why not just "to Lois Lerner" and "from Lois Lerner"?

Ms. O'CONNOR. Right. As I explained earlier, I can't remember if you were here, at the beginning of the project we met with the staffs of the four committees——

Mr. GOWDY. Right. And it's important to note that that was your request to meet with them because you thought the original request was too voluminous. And my response is, when any administration, Republican, Democrat, Whig, Bull Moose, don't care, but when you come to a committee of Congress and you try to negotiation a reduction in the search terms because of time constraints or resources and this happens, let me tell you the next subpoena you're going to get is going to be simply "to" and "from," and you can save yourself a trip to come over and try to negotiate the terms. It was done to make life easier for you, not for Congress. Agreed?

Ms. O'CONNOR. Honestly, honestly, it was done in order to get you the material you wanted faster.

Mr. GOWDY. Well, it didn't wind up happening. So shame on us if we let it happen again.

What negative inference would you draw from the failure to retain the documents in this particular case.

Ms. O'CONNOR. You're talking about Ms. Lerner's hard drive crash?

Mr. GOWDY. No, what I'm talking about is the failure to retain, whatever the mechanism of the failure, whether it's intentional or just negligent. You have someone who said maybe the FEC will save the day. You have someone who said we need a project, but we need to make sure it's not per se political, and then the emails

disappear. What negative inference would you draw, if you were just one of our fellow citizens watching this, you know that initially there was a denial of targeting, you know that she picked a very obscure ABA conference to disclose that targeting had taken place, you know that initially it was blamed on two rogue agents, in fact, Jay Carney perpetuated that myth, you know that Lois Lerner took the Fifth Amendment, you know that the President of the United States said there is not a smidgeon of corruption, and now you're told that the evidence doesn't exist, email don't exist. What negative inference, if you were just a regular citizen sitting at home watching this, and you've got that litany of failed defenses, those false exculpatory statements, and now you're told that evidence doesn't exist, what negative inference would you draw?

Ms. O'CONNOR. One of the things that I found instructive in the material that became public in the last week was that Ms. Lerner had sent her hard drive to the Criminal Investigative Unit for them to attempt to recover it. And the inference that I would draw is that if she wanted intentionally to destroy the material she would not have sent it to the Criminal Investigation——

Mr. GOWDY. Did she ever use her personal computer?

Ms. O'CONNOR. I don't know.

Mr. GOWDY. She did.

Mr. CHAFFETZ. The gentleman's time has expired.

Now recognize the gentleman from Vermont, Mr. Welch, for 5 minutes.

Mr. WELCH. Thank you very much. Thank you, Mr. Chairman.

A couple of things. First of all, I want to thank you all for being here, subpoena or not. I appreciate the work that you do.

Second, I want to say a couple of things. One is, I am a strong supporter of congressional oversight, and I do believe that when Congress requests information it should be provided. But I have some significant concerns about the way we've proceeded on this hearing.

When you go back to the basics here there is a very serious question about what happened to the emails, and we're investigating that. The IG has investigated that. But there is also a very serious question about the abuse of the 501(c)(4) status. And that, in my view, is a worthy topic of investigation. No group should be targeted because of their political affiliation, whether they're conservative or liberal. I totally agree with that. But no one should be allowed to abuse the 501(c)(4) status. That's worthy, in my view, of investigation. It's not a tax exemption, as Mr. Issa mentioned, but it's a way of funneling money under the cover of doing social welfare work which is really about political advocacy.

And political advocacy is fine, but do it in the daylight, not in the dark, and don't undercut the merits and the legitimacy of 501(c)(4) social welfare organizations by turning them into political operations. And, frankly, I'd like to see our committee giving equal weight to that investigation. This dark money that's going into politics in my view is really pernicious for democracy.

And it's terrible if we have any agency of government that's not providing requested information. There is always a fair question if there has been a computer crash, how did that happen? Was it intentional? But there is also this fundamental question about the

money and politics and the use of the 501(c)(4) organizations by liberal or conservative groups basically to hide the money that's going into political advocacy.

A second thing Mr. Chairman, is that, yes, we have to examine these questions, but I do not think that jumping to conclusions and assuming the worst possible interpretation is a way to, A, give respect to folks who dedicate their lives to public service, whether it's in the IRS or any other agency; and B, any way to educate the American people about what the problems may be in an organization because the whole point of accuse first and examine facts second is to attack the very legitimacy of the organization that's being investigated.

And I'd point out that when you lose information it does raise a question, but I know Mr. Issa, our chairman, during the Bush administration had to explain that oftentimes that can happen with computers. Was it innocent? Was it deliberate? We don't know.

And one suggestion, talking to Mr. Lynch, who may discuss this, why not have the IG take a look at this? Why not have the IG do it? You know, we've got a partisan situation going on here that's getting in our way of getting to I think what is a shared goal of getting to the bottom of this.

Chairman ISSA. Would the gentleman yield?

Mr. WELCH. I will yield.

Chairman ISSA. This won't surprise you. The way this investigation started is I went to the IG, TIGTA, because they had the ability to look at 6103 and we were interested and they began that investigation. One of the problems is the IG was never given that drive, nor were any entities independent and outside the IRS, which is, you know, one of the reasons that as an IT background guy, I've never seen a disk drive that has zero left on it.

Mr. WELCH. Well, may I, reclaiming my time, thank you. And I thought that was a good move on your part. I think we're getting a little bit off the rails now, because I think if we got the IG to look into this question where essentially there is a motivation issue that both sides without the facts can come to their own conclusions, and usually we all come to conclusions to suit our political bias, I think it just creates a swamp, you know.

The dysfunction that we have in this committee, Mr. Issa, as you know, and I appreciate your aggression, but there has got to be, in my view, a balance where, yes, we investigate real hard, but it doesn't so overwhelm that this fundamental question about the 501(c)(4) abuse, in my view, suddenly is not an issue. I mean, I was one of the people who was concerned and wrote a letter to the IRS saying, what's going on? Do your job. Investigate.

And, you know, there's no free ride around here. If you're a taxpayer and you're not paying your taxes, I think the IRS should investigate you. I think if you're a 501(c)(4) organization and you're essentially a cover for a liberal or conservative political ideology and you're not doing social welfare work, you should lose your 501(c)(4) investigation.

And thank you, Mr. Issa, for doing that with the IG initially, and I'd like to see us get back on track here and maybe they can help us out with the specific question that we're dealing with now.

And I yield back.

Mr. CHAFFETZ. I thank the gentleman. I'll now recognize myself for 5 minutes.

Ms. O'Connor, the IG, the Inspector General issued their report on May 14, 2013. You were then appointed, I believe, on May 30 of 2013. What did you do? What's the first thing that you do when you walk onto this new role?

Ms. O'CONNOR. I got a badge. I had some training. I think the 6103 training——

Mr. CHAFFETZ. But how did you organize? Who did you bring into the room and say, all right, we need to move forward, this is what I got to do? Who do you bring into the room at that point?

Ms. O'CONNOR. Well, it wasn't like that. I mean, it really was—the first and most important thing was the 6103 training, because——

Mr. CHAFFETZ. Okay. So after you got trained, then what did you do?

Ms. O'CONNOR. And then I believe I met with Mr. Werfel to see kind of what was on the plate and what the marching orders were.

Mr. CHAFFETZ. Okay, after that, yeah?

Ms. O'CONNOR. I can't remember the sort of play by play, honestly.

Mr. CHAFFETZ. Who did you gather around you to get your job done?

Ms. O'CONNOR. I didn't gather anybody around me to get my job done.

Mr. CHAFFETZ. There was nobody, you just did it all by yourself?

Ms. O'CONNOR. No. I mean, my job, as I explained earlier, was to advise the Commissioner on a variety of things. One of the things that I did was to work with a team that was fairly small at that time, but got very large later.

Mr. CHAFFETZ. Who was on that team?

Ms. O'CONNOR. It's a whole number of IRS people and it changed over time.

Mr. CHAFFETZ. Go ahead and start with somebody. I'd like a list, please.

Ms. O'CONNOR. I think the best way to get you accurate information on that would be to ask the IRS.

Mr. CHAFFETZ. No, I'm asking you. You were the IRS at that point. You were the person in the room that they were reporting to. So you come with great title. Tell me who you were interacting with.

Ms. O'CONNOR. The team had some 6103 experts on it. It had some tax litigators on it.

Mr. CHAFFETZ. Who? Who? Name a person. I want actual names.

Ms. O'CONNOR. Honestly, I would like to be able to have accurate and complete testimony, and it's going to be hard for me to recreate it.

Mr. CHAFFETZ. Can you name even one person that you interacted with?

Ms. O'CONNOR. Well, I certainly interacted with Mr. Werfel quite a lot.

Mr. CHAFFETZ. Okay, Mr. Werfel. Who else?

Ms. O'CONNOR. Mr. Wilkins was the Chief Counsel and I interacted with him.

Mr. CHAFFETZ. We assume that, those are the people you reported to. I want to talk about who reported to you. Name some people that reported to you.

Ms. O'CONNOR. I think that the best way to do it is

to——

Mr. CHAFFETZ. I know, but you're here in front of Congress, you knew this was going to happen. Name one person that you interacted with.

Ms. O'CONNOR. I interacted with a lot of people.

Mr. CHAFFETZ. I know you did, a lot of people. Name somebody.

Ms. O'CONNOR. Who I interacted with?

Mr. CHAFFETZ. Yes.

Ms. O'CONNOR. The Deputy Chief Counsel, Chris Sterner.

Mr. CHAFFETZ. Chris Sterner. Anybody in the IT arena?

Ms. O'CONNOR. I didn't actually interact directly with people in the IT arena. There was somebody whose name was—I can't even remember his last name. I think his first name may have been Ben.

Mr. CHAFFETZ. So a guy named Ben, a dude named Ben. Who else?

Ms. O'CONNOR. I don't recall.

Mr. CHAFFETZ. You were there 6 months. You had people around you that would jump at your very presence. Who are these people?

Ms. O'CONNOR. Nobody ever jumped at my very presence, I can assure you of that.

Mr. CHAFFETZ. I'd like to ask them that. Who are these people?

Ms. O'CONNOR. Again, I didn't interact with the IT staff very much.

Mr. CHAFFETZ. You were there 6 months. You had some people reporting to you, did you not?

Ms. O'CONNOR. I didn't have any direct reports, no.

Mr. CHAFFETZ. Did you have people that were responsive that you asked questions of?

Ms. O'CONNOR. On any variety of issues——

Mr. CHAFFETZ. Who did you ask questions of?

Ms. O'CONNOR. I worked with a lot of people in the Chief Counsel's office. If we could get——

Mr. CHAFFETZ. Ms. O'Connor, you're a very bright person, you're very bright, you're a very personable person. Why are you being so elusive. Why don't you just tell us who you asked questions of, who interacted with you? You haven't named a single person.

Ms. O'CONNOR. I've named Deputy Chief Counsel Chris Sterner.

Mr. CHAFFETZ. You named three people that you report to. I want to hear of people that you asked questions to, that ran, got the information, and then came back and gave you information. Name one person in that category.

Ms. O'CONNOR. People who I asked questions of who ran and got me the information? I don't even think I can characterize anybody that way.

Mr. CHAFFETZ. Did you ever ask anybody in the IRS to provide you information?

Ms. O'CONNOR. Sure, yes.

Mr. CHAFFETZ. Give me one example.

Ms. O'CONNOR. In the Tax Exempt organization, the person who replaced Ms. Lerner, whose name is Ken Corbin, was somebody who I would call to ask for information about how the unit was working and——

Mr. CHAFFETZ. Okay, there is one. How many people do you think you asked information of?

Ms. O'CONNOR. Probably a lot of people.

Mr. CHAFFETZ. Can you name more than one?

Ms. O'CONNOR. I've named a couple now.

Mr. CHAFFETZ. Why are you being so elusive?

Ms. O'CONNOR. I'm not being elusive. I haven't been there for——

Mr. CHAFFETZ. How long would it take you to get that information and provide that information to me?

Ms. O'CONNOR. The IRS can provide that information to you.

Mr. CHAFFETZ. Why can't you provide that information?

Ms. O'CONNOR. Because I'm not there anymore and I don't have any records from when I was there.

Chairman ISSA. Mr. Chairman?

Mr. CHAFFETZ. Yes.

Chairman ISSA. I think you may be unfair to the witness. The fact is that last night the Commissioner could not remember 60 days ago who told him about the importance of losing those documents. Last night, he could not narrow 60 days—less than 60 days ago within 30 days when he was told. I think that, in fact, the ability to remember at the IRS is simply limited.

Mr. CHAFFETZ. Do you know Thomas Kane?

Ms. O'CONNOR. I do.

Mr. CHAFFETZ. Who's that?

Ms. O'CONNOR. I think his title was Associate Deputy Chief Counsel.

Mr. CHAFFETZ. And did you interact with him?

Ms. O'CONNOR. I did.

Mr. CHAFFETZ. I think my time has expired here. And in deference to what this committee does, I can't believe that you're not more candid with us and just telling us who you interacted with, a simple, easy question. It's hard to believe that it took 5 minutes to try to extract out a dude named Ben and one other person.

I yield back. I'll now recognize the gentleman from Massachusetts, Mr. Lynch, 5 minutes.

Mr. LYNCH. Thank you, Mr. Chairman.

I think sometimes the search for conspiracy is interfering with the meaningful oversight that we should be doing. I think sometimes my colleagues on the other side of the aisle are reaching for the most grandiose conspiracy theory and forgetting that we do have some evidence of wrongdoing here that we should be going after. I just want to try to refocus on that.

In spite of all the conspiracy allegations, there is some evidence here before us—and I have been hearing from some of my colleagues on this side of the aisle that there is no evidence of wrongdoing. And look, I am not here to make excuses for the IRS. I am not here to, you know, to protect the IRS or to downplay what they have done here. But let me try to refocus here. There was serious wrongdoing on the part of the IRS here. There is evidence that

they used improper search terms. They used: "Tea Party" search terms, "patriot" search terms. If you had a complaint in your file about government spending or taxation or if your case file, in applying for 501(c)(4) status, included statements that criticized how the government was run, the IRS targeted you. The IRS also asked inappropriate—asked for inappropriate information. They asked for the names of donors. They asked for the list of issues that the applicant cared about and what their positions were on those issues. They asked whether the applicant or officer intended to run for office. They asked the political affiliation of the applicant for the 501(c)(4).

Now, Ms. O'Connor, are you aware—I know you weren't at the IRS when this analysis was going on, but you went there later. And also I think you might have been on some of the interviews we had with some witnesses from the IRS. Are you aware of an IRS BOLO, Be on the Lookout listing for groups with "progressive" in their name?

Ms. O'CONNOR. Yes.

Mr. LYNCH. Okay. Are you aware of evidence that the IRS employees treated progressive organizations in a similar manner as conservative groups?

Ms. O'CONNOR. Certain, yes.

Mr. LYNCH. I ask unanimous consent, we actually have a report here of the IRS, entitled "Inappropriate Criteria Were Used to Identify Tax-Exempt Applicants for Review." And we also have a letter here from Acting Commissioner Werfel that indicates the progressive groups that were also targeted.

Ask unanimous consent that they be entered into the record.

Mr. JORDAN. [presiding.] Without objection, so ordered.

Mr. JORDAN. I would also ask unanimous consent to enter the report from the majority staff, "Debunking the Myth that the IRS Targeted Progressives."

Mr. LYNCH. My information is more recent and is completely accurate, and it includes a disavowal by the inspector general of your report, which he testified in.

Mr. JORDAN. I would stand behind the accuracy of this report as well. I am just saying we are going to enter this in the record and you are going to enters yours in the record.

Mr. LYNCH. Okay. We can fight it out.

Mr. JORDAN. All right. Thank you.

Mr. LYNCH. The IRS subsequently released information that the IRS targeted Emerge America, ACORN-affiliated group. Now, look, I am not saying this to mitigate the wrongdoing or the misconduct of the IRS. This makes it worse. It makes it worse that the IRS was actually violating the constitutional rights of progressive groups and conservative groups. This is wrongdoing. It doesn't help the conspiracy theorists, but it certainly indicates wrongdoing, serious misconduct on the part of the IRS, probably our Nation's most powerful agency. It's got information on health care, finances, knows everything about you. So they are violating the free speech of our citizens, violating their freedom of association of our citizens, violating the freedom to petition the government of our citizens, and violating I think the constitutional right against search and seizure because of the way they are conducting themselves.

And this isn't just evidence; the IRS has stipulated this in their report. They said, Yeah, we did this. So we have some serious wrongdoing. And now, in pursuing the evidence of that wrongdoing, we have 27 months of emails disappear. And I am asking you, how do we restore the trust in this? How do we pursue this in a way that—look, I am not going after President Obama here, but I am going against the IRS because of their misconduct. And that's the thing we are overlooking here. In going for this grand conspiracy theory, you are overlooking the stipulated fact that the IRS conducted misconduct here. And I think we are missing what we should truly be going after. Can you suggest what we should be doing? Any of the witnesses here? In terms of getting to the bottom of this, getting to the IRS misconduct?

Mr. JORDAN. Witnesses, if someone wants to respond? Great. If not, we will move to our next.

Mr. LYNCH. Okay.

Mr. JORDAN. I thank the gentleman.

The gentleman from Ohio is recognized.

Mr. TURNER. Thank you. I appreciate Mr. Lynch's statements that this was wrongdoing and misconduct. The issue that we have that we are all struggling with, which is how Mr. Lynch ended his question, is what do you do to pursue that wrongdoing and misconduct? We are still sitting here without a complete understanding of the basics of an investigation, which are who, what, when, where? Everybody knows the four Ws, who, what, when, where. And we know that the missing emails in part thwart the ability to complete that story, as also included is Ms. Lerner's failure to willingly testify before this committee. I want to put all that aside for a second.

Ms. O'Connor, you are White House Counsel. I am a lawyer. You are a lawyer. I want to step away from the IRS problem and investigation for a minute and just have a comparative discussion, because I think in the responses there may be some misunderstanding with respect to the independent—the Treasury Inspector General for Tax Administration. And I would like to talk to you a minute about their powers. Not with the IRS, but just in general. I would like to compare the powers of the Treasury Inspector General for Tax Administration with the FBI. Because one of the things that we heard from the commissioner yesterday is, well, we are going to do—the Inspector General is going to do an investigation. And that is probably a good thing. There are many who don't believe it's enough. But you and I, having a discussion on a comparative just of authority and powers, perhaps can let other people decide whether or not that's sufficient investigation or whether an additional investigation is going to take it. So let's talk about the inspector general and the FBI. The inspector general's mission statement is that they were established under the IRS Restructuring and Reform Act to provide independent oversight of IRS activities. They promote the economy, efficiency, and effectiveness of the administration of the internal revenue laws. It is committed to the prevention and detection of fraud, waste, and abuse within the IRS. The Department of Justice says the FBI includes upholding and enforcing criminal laws of the United States. Pretty big distinction. So let's go down with some of those powers. Because the

FBI is involved in criminal investigations, and the inspector general is involved in internal investigations in the IRS. We give them different powers. Let's go over some of those. Now, the inspector general does not have the ability to compel people to testify outside of the IRS. Isn't that correct?

Ms. O'CONNOR. I believe that's correct.

Mr. TURNER. The FBI does. Correct?

Ms. O'CONNOR. Yes.

Mr. TURNER. Yes. So when the inspector general undertakes an investigation of the IRS, they are only going to be able to interview those people that are there. Only the people at the IRS are the only ones that they can compel to testify. If there is somebody outside the IRS who may have been involved or have information about it, the inspector general falls short, doesn't have the ability to do that. They can't even do that with respect to contractors. So when people say the IG is doing an investigation, it's not the same. Let's go to another one. The IG doesn't have the ability to arrest anybody. Right?

Ms. O'CONNOR. So I want to be helpful, but I am not an expert on the IG act.

Mr. TURNER. You know the IG cannot go and arrest someone. Right? You are a lawyer, I am a lawyer. Ms. O'Connor, you know this. You are the White House General Counsel. They wouldn't hire you unless you knew this basic—the five things I am going to ask you are real basic, simple comparatives. The IG cannot go arrest someone, right?

Ms. O'CONNOR. I trust what you are saying, but I haven't reviewed the IG act.

Mr. TURNER. We both know the FBI can, right?

Ms. O'CONNOR. Yes.

Mr. TURNER. Okay. Excellent. Warrants. The IG does not have an ability to execute a warrant; the FBI does. So the difference here is that the FBI can go seize things, where the inspector general has to request them like we do, and ask for things to be delivered to them. So the FBI can actually go in and take hard drives and take materials that could lead them to an investigation. The IG is in a responsive or requesting mode. Subpoena power.

Again, the IG has that, but only of Treasury employees. The FBI, as you will agree, the FBI can subpoena anybody who is relevant to the investigation. Right?

Ms. O'CONNOR. Yes.

Mr. TURNER. Okay. So the issue that we have here is when people say, well, we are doing an investigation, the IG is doing an investigation, you and I can agree it is not the same type of investigation the FBI would do. And the FBI's mission is enforcing the criminal laws of the United States. And as you know and as Mr. Lynch was saying, the concern that people have of this wrongdoing and misconduct is that perhaps a law was broken. Now, if you are going to do a criminal investigation, wouldn't you agree that the FBI is the one that should be doing a criminal investigation versus the IG?

Ms. O'CONNOR. So my——

Mr. TURNER. I am not talking about the IRS, just in general. Just come with me on the issue of just in general if you have a

criminal investigation and you are the White House Counsel, Ms. O'Connor, do you assign that to an inspector general or do you assign that to the FBI? Where would you put that as an attorney?

Ms. O'CONNOR. My understanding of the situation here is that——

Mr. TURNER. No, we are not in a situation here. I am saying if there is a criminal matter and you are assigning it, do you assign it to the IG or the FBI? Come on, you can give me this one. You would give it to the FBI, right?

Ms. O'CONNOR. I recall when I was at the IRS, that the IG had a number of deputies, one of whom was—his deputy for investigations. They seemed to be very hardworking.

Mr. TURNER. I am certain they are incredibly competent people, but by law, they are limited in their investigative powers. And the scope that they are given of their mission is not the scope we gave the FBI. We don't need five FBIs. So wouldn't you agree that if there is a criminal matter, you wouldn't choose the IG; you would choose the FBI.

Ms. O'CONNOR. If the matter is what happened to a laptop within the IRS——

Mr. TURNER. No, I am not asking your opinion on this matter. Just criminal. I tell you what. It belongs in the FBI. The IG has very limited powers. They should not be the sole source of this investigative authority.

Thank you.

Mr. JORDAN. I thank the gentleman.

The gentleman, Mr. Davis, is recognized for 5 minutes.

Mr. DAVIS. Thank you.

Thank you very much, Mr. Chairman.

Ms. O'Connor, let me continue the focus of your work during your tenure at the IRS, because supposedly that's the reason you were subpoenaed to testify here today. When were you hired by the Internal Revenue Service?

Ms. O'CONNOR. May 30 of 2013.

Mr. DAVIS. And it's my understanding that you had a role in assisting Acting Commissioner Werfel in complying with the numerous congressional investigations into IRS employees' handling of applications for tax-exempt status. Is that correct?

Ms. O'CONNOR. Yes.

Mr. DAVIS. And according to an August 2nd, 2013, letter from Mr. Werfel to this committee, and that would be back when you were still there, the Internal Revenue Service went to extraordinary lengths to cooperate with Congress. The letter explains that the IRS dedicated, "more than 100 employees who are working diligently to gather documents, to review them, and protects the taxpayer-specific information in them as required by law." Is that correct? And if so, did you have a role in setting up that process?

Ms. O'CONNOR. I had a role in advising and helping the people who were engaged in that process, yes.

Mr. DAVIS. Thank you.

Then, Mr. Chairman, I would ask unanimous consent to enter this August 2nd, 2013, IRS letter into the record.

Mr. JORDAN. Without objection, so ordered.

Mr. DAVIS. Thank you.

Ms. O'Connor, when the IRS set up the process, what was the goal?

Ms. O'CONNOR. The goal was to get as much information as Congress and the four different committees and other investigators, such as the IG, to get them what they needed to be able to conduct their investigations, and to do it accurately and with care with regard to the redactions, and as quickly as we could.

Mr. DAVIS. There appear to be a lot of confusion about why the IRS did not discover the lost emails earlier. So let's see if we can clear that up. It is my understanding that it was Congress, not the Internal Revenue Service, that prioritized what documents you searched for, and Congress, not the IRS, that provided the search terms. Is that correct?

Ms. O'CONNOR. Yes, that's correct.

Mr. DAVIS. Well, in addition to using Congress' search terms, what did the IRS do to further facilitate the production of documents?

Ms. O'CONNOR. Among the things the IRS did was to ask lawyers and other staff people who were dedicated to things like implementing the tax laws and enforcing them to put aside their jobs and work full time to review documents. The IRS increased the IT resources to the effort, bought servers, got additional IT resources in order to stabilize a very large system. We also, I, personally, and Mr. Werfel as well, met with and talked with the staff of the investigative committees, who in addition to saying who the employees were, whose material they wanted, and which search terms they were interested in, they also had very specific requests for certain types of documents. For example, I would like the training materials, you know, from this period of time, things like that. And we worked hard to satisfy those sort of one-off requests, as well as getting to everybody the large body of material that was sought.

And at the time at which I left, more than 400,000 pages of material I think had been produced. And I have read in the media that at this point, the IRS has produced somewhere near three-quarters of a million pages of material. And I think that it is a lot of material, and to have been able to produce in that period of time I think reflects a very serious effort to be able to provide what the committees were seeking in a speedy fashion.

Mr. DAVIS. Let me ask you, how do you respond to allegations from Republican Members of Congress that you were part of some IRS plot to obstruct Congress?

Ms. O'CONNOR. Well, it is not at all true. And I think that the record of the IRS while I was there and since then reflects very, very hard work and diligence at providing the materials that the investigating committees were seeking through them.

Mr. DAVIS. My time is up. So I thank you very much.

Thank you, Mr. Chairman, and I yield back.

Chairman ISSA. [presiding.] We now go to the gentlelady from Wyoming, Ms. Lummis, for 5 minutes.

Mrs. LUMMIS. Thank you, Mr. Chairman.

Some of our colleagues on the other side of the aisle have opined that maybe we are getting a little off base about the attention that we are focusing in this investigation.

So I would like to focus back on some of my concerns about the failure of Lois Lerner to testify, her failure to testify truthfully about whether she broke no laws, whether she violated no rules, and whether she did nothing wrong. My concern here is if someone could come before this committee and say that and then assert their Fifth Amendment right against self-incrimination, and then subsequently this committee finds that their own emails refute the fact that she did nothing wrong and that she violated no laws, that we should be aggressive in trying to find those emails. We already have some of them. And some of those emails suggest that she was very actively involved in violating laws. We know that she gave confidential taxpayer information to another agency, and that that violates the law. We know that she specifically, while saying that it was rogue agents in Cincinnati who were involved in this, was actively involved herself in looking at, for example, Crossroads GPS, which is a Karl Rove-linked organization, Karl Rove being one of the agitators that the political left most dislikes.

Here, as the Wall Street Journal editorial board writes, Ms. Lerner twice refused to testify before Congress; IRS General Counsel William Wilkins claimed 80 times that he couldn't recall events.

And subsequently it goes on to explain that the most troubling new evidence are documents showing that Ms. Lerner actively corresponded with liberal campaign finance group Democracy 21 and the Campaign Legal Center, which had asked the IRS to investigate if conservative groups, including Crossroads GPS, were violating their tax-exempt status. After personally meeting with the two liberal outfits, Ms. Lerner contacted the director of the Exempt Organizations Examination Unit in Dallas to ask why Crossroads had not been audited.

I believe that Ms. Lerner was appropriately held in contempt of Congress. I, quite frankly, believe that Ms. Lerner should be tried for her violations and that she should become an example that's held up to Federal employees and especially employees in the IRS who violate the rights of Americans in their role and capacity as public servants. And that is why I am interested in knowing why her emails are not—all of her emails are not available. That's why I want to know why we find out just now that her email crashed. So I believe that this investigation is on the right track; it's perfectly legitimate. And I am of the opinion that this inquiry is well placed.

You know, every single night the University of Wyoming backs up every email for the entire State of Wyoming. And every night the State of Wyoming backs up every email for the University of Wyoming, along with their own. So they not only have a backup system, they back up each other so there is a redundant backup system for all of the emails in the Wyoming State Government and the University of Wyoming, because they are reciprocating with each other. Why that kind of thing isn't happening in an agency like the IRS, where people are relying on the veracity of what's going on there to get consistent, clear, rules and regs interpretation, guidance to taxpayers, and fair treatment of the people of this country, is beyond me.

Now, here is my question, Ms. O'Connor. During your time so far in the White House, have you been aware of any instances of the

White House reviewing documents requested by Congress under the guise of White House equities?

Ms. O'CONNOR. As I explained earlier, and I am not sure if you were here yet, I came today to be able to answer questions about my time in the IRS, the 6 months that I was there, which is what the chairman's letter to me said that this hearing would be about. And so I am not prepared to talk about my other experiences today.

Mrs. LUMMIS. Now, if we were to subpoena you and ask you to talk about whether you were aware of any instances of the White House reviewing documents requested by Congress under the guise of White House equities, would you come back and answer that specific question?

Ms. O'CONNOR. Well, I have been here for a long time today. But what I would say about the issue of questions about the White House, I am happy to work with you and the staff to see if we can accommodate and provide some of the information or what we can do. I am happy to provide that kind of assistance to support legitimate oversight inquiries.

Mrs. LUMMIS. Thank you, Ms. O'Connor.

Mr. Chairman, I yield back.

Chairman ISSA. Thank you.

Mr. Cummings, you have anything further? I am going to close. I was going to let you close first.

Mr. CUMMINGS. Let me ask you something, Ms. O'Connor.

Going back to some of Mr. Gowdy's questions. I was sitting here trying to figure this out. I take it that you went to—you said the search terms were given to you by the committees. Is that right?

Ms. O'CONNOR. Yes.

Mr. CUMMINGS. So Mr. Gowdy made a big deal that maybe you shouldn't have used search terms; you should have just said from and to.

I assume, and correct me if I am wrong, I take it what you were all trying to do was to get the relevant documents out first? Is that how that works? In other words, because you had the 6103 issues, you had to go through the documents. I take it that—how did it come about that you even got the committees to even be giving you search terms? You follow what I am saying?

Ms. O'CONNOR. I do. The volume of material, what I recall, was there were 82 or 83 employees. And the way the IRS went about collecting their material was just to pull all of their emails that were on whatever computer they had, and from employee to employee, that was massive. And because of 6103, which is the law that requires the IRS to protect taxpayer information and, therefore, in this instance, to redact taxpayer information, every scrap of that information would have to be reviewed before it's produced. And that would take a very, very long time. And in order to make it much more efficient and to get you the documents about the subject at issue, the tax-exempt organizations and their screening process and how applications were processed, we said to the committees, If you could tell us the terms you want us to use, we will zero in on the material in this vast body of information and get you the material about the tax exempt organization process. Our staffs were very cooperative and provided us——

Mr. CUMMINGS. And staff knew what was going on. They knew what was going on there. And you were trying to get the information out as out as fast as you could that the committees wanted. Is that right?

Ms. O'CONNOR. Yes.

Mr. CUMMINGS. Now, so when you get that information, let's say, for example, you use the search terms, you cull out the search term emails, what happens with the ones that are left? In other words, so you have gotten—you are trying to get them out, but you still got some left that might very well have information in them that the committee would be interested in. And a lot has made of making sure that you got—we got all of the emails. So what happens? Do they go back then and look at those? Do you follow what I am saying?

Ms. O'CONNOR. So when I left the IRS, we were still producing the rolling productions of documents that had been culled through the search term process. And I don't know whether than from what I have seen in the media, what exactly they did after I left, but my understanding with from what I read, is they pulled at least Ms. Lerner's and I don't know if other people's from the initial set that hadn't hit the search terms in order to provide them to the committees.

Mr. CUMMINGS. Do you know whether that was the plan to go back and pick up the ones that you may not have gotten at the beginning? Do you follow me? After the initial search terms?

Ms. O'CONNOR. At the point at which I left, which was midstream, the plan was to continue complying with the subpoenas. A lot of the decisions were being made just sort of day to day what's next. But the intent was to continue to comply with the subpoena.

Mr. CUMMINGS. Thank you.

Mr. Ferriero, you know, this whole thing of 2,000 computers crashing, we are in trouble, aren't we? I mean, in IRS, 2,000 so far this year.

Mr. FERRIERO. As I said earlier, the state of technology in the Federal Government is not where it should be.

Mr. CUMMINGS. I mean, that's a lightweight description. It sounds like we are in the Dark Ages. I am not trying to be funny. If you got computers crashing, 2,000, and we are only half a year, and there was something that was entered into the record not long ago about services for repair of computers, services not being needed, and apparently, it said something about not delivered, there is one thing to have the money. It's another thing to spend the money effectively and efficiently. I mean, from what you have seen, are we spending the money effectively and efficiently in these various agencies, including IRS? Or do we need to do something differently?

Mr. FERRIERO. I think we are on the right track. We have—for the first time, we have the CIO Council and the Records Management Council working together on solutions. We have engaged the industry in developing new tools to help the agencies do their work more efficiently. So we are on the right track. And from what I just heard about your support for increased funding for IT, that makes me very optimistic.

Mr. CUMMINGS. I want to thank you all for being here.

Thank you, Mr. Chairman.

Chairman ISSA. Thank you. I now want to correct the record as best I can. I know Mr. Lynch will not agree with this. But he cited a number of reports, August 19, 2013, and a follow-up report. I just want to make it clear our comprehensive staff report of April 7, 2014, "Debunking the Myth That the IRS Targeted Progressive Groups," stands for itself. And it comes after these earlier questions. I know none of you are here for the core question of——

Mr. LYNCH. Mr. Chairman?

Chairman ISSA. No, it is my time—for the core questions of who was targeted. So we are going to leave that aside, and we will let the report speak for itself. I think the paper record is fine.

Mr. LYNCH. I actually asked the witness, though, Mr. Chairman. I derived that information from the witness using the documents there. I wasn't relying on the documents alone. I had independent, you know, reassurance from the witness what the document indicated. That's why I used it.

Chairman ISSA. From Ms. O'Connor.

Mr. LYNCH. Ms. O'Connor, yes.

Chairman ISSA. Somebody who had absolutely nothing to do with the underlying investigation.

Mr. LYNCH. No, she was actually there when the witnesses from the IRS came forward and said that they had targeted progressive groups. That was her testimony.

Chairman ISSA. Okay.

Ask unanimous consent I start over then.

Ms. O'Connor, what's your independent knowledge that progressive groups were targeted and treaty unfairly by the people in Cincinnati, Lois Lerner, or others in Washington?

Ms. O'CONNOR. So I now can't remember the exact question. But——

Chairman ISSA. That's my question.

Ms. O'CONNOR. The BOLO spreadsheets had progressive and other terms on them that reflected progressive organizations.

Chairman ISSA. Isn't it true they had the couple of terms that might have done it in another section, and when they looked for reconstituted ACORN, that was a criminal enterprise, that was an entity that went out of business because it was found to have committed crimes? So is that really the same as looking at all Tea Party Patriots?

Now, I will ask you the question again, not a rhetorical question that we know the answer to. What treatment are you aware of to any progressive group that gave them unfair questions, hauled them over the coals as to who their donors were, whether anyone in their organization intended to run for political offices, or any of that treatment that has been specified as what conservative groups went through. What is your knowledge of that?

Ms. O'CONNOR. So my knowledge is limited. And I want to make that clear.

Chairman ISSA. What is your firsthand knowledge of any of that?

Ms. O'CONNOR. My only firsthand knowledge of it is the fact that I did see some of the emails, and not all of them, that were produced in the period of time when I was at the IRS. And the email production was not complete, obviously. I didn't conduct a——

Chairman ISSA. So you have no personal knowledge of abuse of progressive groups or liberal groups at all. Studies have shown that there were a number of names that came up that were not all conservative patriot groups. But the unfair treatment of these groups, the 2 years and more of withholding their approval, granting them neither a yes nor a no, do you have any knowledge—do you have any knowledge of that treatment or mistreatment occurring to any progressive left-leaning group?

Ms. O'CONNOR. So my knowledge is not direct from being there. I saw some of the emails. I saw, for example——

Chairman ISSA. I just want to make sure I understand, your answer is, no, you do not have direct knowledge.

Mr. LYNCH. Mr. Chairman, the title of the report that you——

Chairman ISSA. No, wait a second. This is my time. Does the gentleman have a question, a point of order?

Mr. LYNCH. Yeah. What's the title of your report? It says, "Debunking the Myth of Progressives Being Targeted."

Mr. CUMMINGS. Did you shut the mike off?

Chairman ISSA. No, I stopped the clock to let him go as long as he wants.

Anything else, Steve?

Mr. LYNCH. Okay. Sir, my line of questioning was to counter the assertion in your report, and the title of your report that progressives were not targeted. The questions to the witness indicated that progressive search terms and BOLOs were used to target progressive groups. That's the simple point I was trying to make. And I think it's relevant, and I think it's admissible. That's all.

Chairman ISSA. And Steve, I appreciate that. But as you know, there were additional names added sort of after the jig was up that brought additional names, progressive names in. But no evidence has been found of their being unfairly treated, which is different than a search term.

Mr. LYNCH. They were targeted, though. They were targeted. They are going out—it is relevant in both cases of the IRS intent, which is to go after certain people with those search terms.

Chairman ISSA. The IRS' intent, Lois Lerner's intent has been well demonstrated in over a thousand pages of multiple reports.

Mr. LYNCH. And it includes these progressive names as well. That's all.

Chairman ISSA. Lois Lerner's intent was to overturn Citizens United, which she objected to. And her emails show that. That's what we really have. We have the President shaking his fist at Citizens United, and then her saying in public statements, they want us to do it, they want us to do it.

Mr. LYNCH. That is a characterization.

Chairman ISSA. No, those are her words.

Ms. O'Connor, just one more time, you have no firsthand knowledge of mistreatment of progressive groups, do you?

Ms. O'CONNOR. All of my knowledge is based on having seen——

Chairman ISSA. Okay. So written records that have been provided to this committee would be the best for both sides to put out in their reports.

Ms. O'CONNOR. Written records, and the records of the witnesses that you have spoken with, yes.

Chairman ISSA. Okay. Now, we called you here because in fact you were at the IRS during the time in which a vast amount of documents were delivered pursuant to search terms. Is that correct?

Ms. O'CONNOR. I think you called me here because I was there for 6 months during——

Chairman ISSA. During the time that vast amounts of documents were delivered pursuant to search terms. You have been testifying to that. I just wanted to set the stage. During that time, in August, because in fact, we were getting voluminous amounts of documents based on search terms not of our choosing, but of everybody's choosing, they just kept adding to it, and we were not getting the—and they were being prioritized. We were getting, quote, progressive stuff seemingly first. And the minority was using it at hearings and so on. And we knew that Lois Lerner was beginning to emerge as a key figure. I issued a subpoena, and item one on my subpoena said all documents on Lois Lerner, all her emails. Did you have any question but that I was saying stop, at least as to this committee, both sides, stop bombarding us with documents that your organization would constantly say we have—we have given you 64,000, we have given you 64 million, we have given you 64 billion. What we wanted was Lois Lerner's emails, and you never went and looked for them for the rest of your time. They were not safeguarded. It was not discovered they weren't there. We asked for Lois Lerner because she became a person of interest for being the center of the unfair treatment and the deliberate effort to overturn Citizens United using the power of the IRS. So we issued a subpoena. That subpoena was very clear. And we reissued it in February. We wanted all her emails, while the IRS continued to, as you said it, slowly go through these search terms. Right? And deliver other documents first. You have testified to that today, they delivered other documents first even after our subpoena was issued.

Ms. O'CONNOR. Your subpoena asked for a number of things.

Chairman ISSA. It asked for, and we made it very clear in testimony and in communication, we wanted all her emails.

Ms. O'CONNOR. I understand that. The subpoena was much broader than that. And all the material that the IRS continued to produce was responsive to your subpoena as well as to the other committees. And I know it's——

Chairman ISSA. It's a question of first.

Ms. O'CONNOR. —frustrating that there were many committees that were investigating, but there were.

Chairman ISSA. Right. And I am just going to close with something.

Ms. O'CONNOR. There were a lot of demands.

Chairman ISSA. I want to make sure one thing since you were at the IRS. You said four committees. There is really two committees times two sides of the Capitol. There is us and our Senate copartners, there is the Ways and Means and Senate Finance. Senate Finance and Ways and Means have the ability to see all documents unredacted. Right?

Ms. O'CONNOR. Yes.

Chairman ISSA. Did you, in fact, as soon as you got a printout, just send it to them in bulk?

Ms. O'CONNOR. No.

Chairman ISSA. No. So you applied much of that $10 million worth of time and effort going through and selecting what to give. You never gave those documents in bulk to the 6103 entities that were allowed to receive it. Had you given all of Lois Lerner's emails, looked for all of them and given them to Ways and Means and Senate Finance, then you would have known there were substantial amounts missing much sooner, wouldn't you?

Ms. O'CONNOR. Could I just address what you just said?

Chairman ISSA. Absolutely.

Ms. O'CONNOR. The reason that even the committees that can receive the 6103 information didn't just get massive quantities of anybody's emails is because from the beginning of the investigation, their request letters were specific. They wanted certain kinds of material. They wanted training materials. They wanted BOLO lists. They wanted emails to and from this person or to and from that person. There was a lot of very specific material. And even your subpoena, I think, identified a number of different witnesses that you wanted. And I don't believe it said only give us the first one first. That said, I did hear you in August say that you had a priority on her emails. I think I heard Mr. Jordan say that Mr. Wilkins was a priority of him. I mean, there was a lot of competing demands. And the IRS tried to balance all of that. It was really a challenge. I think at the end of the day, a lot of information has been provided. And I gather—I completely understand that it's frustrating to not get, you know, the stuff that you wanted first. But I will say that they were doing their best to try to get a lot of material to a lot of requesters.

Chairman ISSA. Mr. Lynch, you have anything?

Mr. Davis?

Then I will close with no further questions, other than a short comment. I have spent almost 30 years in business. I have gone from non-network to PC networks to Novell networks to Microsoft networks. I have gone through Lotus Notes and exchange servers. I have gone through a lot of technology. Today, my entire companies are run on an Amazon cloud. It backs up every day. And incrementally, I can name any day for as far back as I want to go the date, and they can restore in a very short period of time a functional copy so that I can search it. The tools exist at my former company, which is not a large company. It's a few hundred million dollars. They exist to search the entire record of years' worth of millions of emails and millions of other factual events, invoices and the like, and do so, compliant with Federal rules of discovery, because, in fact, the Federal rules of discovery do not tolerate you saying, here is paper, sort through it, or our dog ate it, or we destroyed everything by simply not backing it up after 6 months.

So as this committee, including Mr. Cummings, looks at holding the Federal Government and all agencies to a level, we will look to the Federal Government's own rules of discovery, the Federal Government's own rules of what we hold the private sector responsible for.

I think for the Archivist, Mr. Ferriero, there is no question that if we held ourselves to the same level that we hold corporate America for, and the IRS holds them accountable for, we would get a

very different result. The IRS, in fact, insists on direct transparency when they are doing an audit as to data and information. That's expected. And in fact, Price Waterhouse Coopers also insists on that. We have gone too long having excuses. We purge after 45 days. We purge after 6 months. We allow 90,000 disk drives that are unsupervised, including laptops, to download 6103 information and go home. Not too many years ago, we had one of the great scandals, millions of Social Security numbers of our veterans that were on a laptop that left. Reforms were insisted at that time to try to protect information. Very clearly, no one knows what was on Lois Lerner's laptop that entered and left as a portable, as I understand it, or any of these others. The protections that we expect the private sector to do, and we are handling a case right now where the FTC holds the private sector responsible if there is a loss of personal information, we don't hold ourselves responsible for.

So I am delighted, Ms. O'Connor, that you accepted our subpoena.

Mr. Ferriero, Mr. Wester, I am even more delighted that you are partners in us trying to bring a level of accountability to the Federal Government to maintain the important records the American people have a right to.

And I look forward to follow-up investigations and follow-up legislation, including portions of Mr. Cummings' bill if we can find offsets for the cost of the bill, so that we can, in fact, bring up the standards of the Federal Government in accountability. Because the American people right now do not believe or trust that, in fact, we are getting the honest answer from the IRS. And much of it is based on not getting prompt answers to questions. But much of it is based on the systematic failure to retain documents for a period of time that the American people assume the documents will always be kept at. I want to thank you. I believe this panel was unique in that it really had people that you ordinarily wouldn't see next to each other. But it played well together for a problem we are dealing with, and Mr. Ferriero and Mr. Wester, for a problem we are going to deal with together for many years.

I now recognize the ranking member.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

I just wanted to say as I was listening to you—first of all, I thank you also for being here.

And thank you, Mr. Chairman. I will be very brief.

But Ms. O'Connor, I know the IRS employees are watching this. And I want them to know that we appreciate their efforts. When I listen to what you were saying, the four committees and what you had to do, and these employees are working very, very hard. And I just want to thank them for what they do. And I know it's kind of difficult sometimes. And I know you are no longer there. But you said they were working very, very long hours, hard hours trying to deal with various priorities, getting all kinds of information from staff, and trying to balance all of that. And I am sure many of them have come under criticism. But I just want them to know, on behalf of our Nation, we appreciate them.

Chairman ISSA. Thank you.

And there is always one more thing that arrives at the end of a hearing that gets into the record.

This one is from Mr. Cummings. H.R. 1234, his bill that has been mentioned several times, has a score by the Congressional Budget Office of only $15 million for the entire government, which says very clearly that, in fact, the $10 million claimed last night by the Commissioner would seem to be an excess cost compared to CBO's government-wide score in order to meet Mr. Cummings' legislative initiative.

So I look forward to working with the ranking member and Mr. Ferriero to try to make this a reality. And I guarantee you we will find the $15 million. And with that, we stand in recess.

[Whereupon, at 1:13 p.m., the committee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

Opening Statement of Chairman Darrell Issa
"IRS Obstruction: Lois Lerner's Missing E-mails, Part II"
June 24, 2014

- The Committee meets today to continue our efforts to get to the truth about the IRS targeting of conservative groups.

- Last night, we heard testimony from Commissioner Koskinen about how and why the IRS destroyed e-mails sent and received by Lois Lerner.

- His testimony included a number of significant admissions and facts. For example:

    - Commissioner Koskinen testified he has seen no evidence that there was any attempt in 2011 to retrieve 6 months of lost Lois Lerner e-mails from back-up tapes.

    - He testified that he does not know who in the IRS was involved in leaking knowledge of Lerner's missing e-mails to the White House.

    - He further testified that he did not believe leaking to the White House was a problem because the White House itself does not leak

information.

- He testified that because he does not know what was in Lois Lerner's e-mails, there are no grounds to believe they contained federal records.

- While I appreciate his time and effort, the sometimes plain partisanship the Commissioner displayed was disappointing and I found parts of his testimony troubling.

- I hope that the witnesses before us today can further our understanding of the Commissioner's claims.

- Today, the Committee will hear testimony from Jennifer O'Connor, a former IRS attorney who directly managed the IRS's production of documents to this Committee and others.

- During a transcribed interview last year, IRS Chief Counsel William Wilkins testified that Ms. O'Connor was one of two "key supervisors" overseeing the IRS's response to congressional oversight.

- In fact, Ms. O'Connor was hired by the IRS for the sole purpose of overseeing the agency's response to congressional investigations of the targeting scandal.

- From May 2013 to November 2013, Ms. O'Connor led the IRS's response to congressional oversight of the IRS's targeting of conservatives.

- In May of this year, Ms. O'Connor was promoted to the White House Counsel's office to work on responding to congressional oversight across the Administration.

- The IRS has supposedly spent over $10 million in its response to Congress.

- I am hoping Ms. O'Connor will enlighten us about how the IRS spent this much money but it supposedly took them a year to realize two years of e-mails from the most critical witness had gone missing. The idea that the IRS just didn't notice is incredulous.

- We will also want to know from Ms. O'Connor how the White House came to have insider knowledge about Ms. Lerner's missing e-mails and, more broadly, what role the White House plays in this investigation.

- Today, we will also hear from the Archivist of the United States, David Ferriero, about the rules and regulations for preserving federal records.

- These laws, including the Federal Records Act, are put in place precisely for the purpose of preserving important federal records.

- In particular, I want to ask the Archivist about one claim that Commissioner Koskinen made last night. The Commissioner said the IRS did not report a loss or destruction of Federal Records because there is no way to know what was in Ms. Lerner's missing e-mails.

- But, in fact, we do know some things that were in Lerner's lost e-mails. We know from 2010 e-mail correspondence we found at the Department of Justice that Ms. Lerner sent over a 1.1 million page database to assist the possible prosecution of the same groups she targeted.

- I am hoping the Archivist can offer an opinion about whether such correspondence and documents are in fact Federal Records whose loss or destruction should have been reported in 2011.

- This hearing today continues the Committee's oversight efforts of the IRS targeting to get basic answers for the American people.

- The Committee will continue to aggressively search for answers about how and why the IRS destroyed Lois Lerner's e-mails. This information is crucial to the Committee's investigation of the IRS targeting of conservative groups.

Horsford 6/23/14

THE WHITE HOUSE

WASHINGTON

June 18, 2014

The Honorable Dave Camp
Chairman
Committee on Ways and Means
United State House of Representatives
Washington, D.C. 20515

The Honorable Ron Wyden
Chairman
Committee on Finance
United State Senate
Washington, D.C. 20515

Dear Chairmen Camp and Wyden:

I write in response to your letters to the President dated June 16, 2014 and June 17, 2014, respectively, regarding the Committees' investigations related to the Internal Revenue Service (IRS) and the Treasury Inspector General for Tax Administration's May 14, 2013 audit report. Your letters requests all communications between Lois Lerner and any persons within the Executive Office of the President (EOP) for the period between January 1, 2009 and May 1, 2011.

We conducted a search for responsive documents and were unable to identify any communications between Lois Lerner and persons within the EOP during the requested period. We identified three communications where a third party emailed both Lois Lerner and persons within the EOP. One communication is a spam email from October 2009. Two communications are emails from February 2009 where a person sought tax assistance and, according to one of the emails, included a number of officials in Congress and at Federal agencies as recipients. These documents are enclosed. As the two documents from February 2009 include personally identifiable taxpayer information, we trust you will treat the information with appropriate care.

Chairman Camp's letter also asked when the EOP was informed, and by whom, that some of Lois Lerner's emails could not be located. In April of this year, Treasury's Office of General Counsel informed the White House Counsel's Office that it appeared Ms. Lerner's custodial email account contained very few emails prior to April 2011 and that the IRS was investigating the issue and, if necessary, would explore alternate means to locate additional emails.

Sincerely,

W. Neil Eggleston
Counsel to the President

Enclosures

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Opening Statement
Rep. Elijah E. Cummings, Ranking Member

Hearing on "IRS Obstruction: Lois Lerner's Missing E-Mails"

June 24, 2014

I welcome the opportunity to hear testimony this morning from the Archivist of the United States about longstanding challenges at federal agencies with electronic records retention.

During the Bush Administration, federal agencies admitted to losing millions of emails related to ongoing Congressional and criminal investigations, including the U.S. Attorney firings, the outing of covert CIA agent Valerie Plame, and a host of other matters.

Our Committee played an integral role in investigating these problems. Rep. Henry Waxman, our former Chairman, engaged in a constructive effort to find solutions to these challenges. He hosted monthly meetings with the Archivist and the White House Counsel's office to monitor progress in implementing recommendations. I believe the Archivist would agree with his predecessor that those meetings served a useful purpose. Today, the White House system automatically preserves emails from all employee email accounts.

Since 2008, there has been additional progress. On November 28, 2011, President Obama issued a directive to agencies on managing federal records. The President also directed the Archivist and the Director of the Office on Management and Budget to craft a modernized framework to improve agency performance and begin managing email records in electronic formats by 2016. I look forward to hearing a status report on these efforts.

I also hope the Archivist will give us his view on legislation I introduced last year, the Electronic Message Preservation Act, which would require federal agencies to preserve email records electronically. The Committee voted on a bipartisan basis to approve my legislation, but it has languished since then, and Republican leaders have declined to bring it to the floor for a vote.

Although today's hearing could have the potential to help improve agency systems for managing electronic records, I was dismayed last night that Chairman Issa issued a unilateral subpoena to compel Ms. O'Connor to appear here today.

Today's hearing title is "Lois Lerner's Missing Emails." It is true that Ms. O'Connor used to work at the IRS. She worked there from May to November of last year.

The problem is that Ms. O'Connor left the IRS seven months ago—in 2013—well before these recent discoveries about Lois Lerner's emails. As Commissioner Koskinen testified last night, IRS officials learned there was a potential problem in February of 2014, and it was not until May of 2014 that they understood the scope of the problem, completed their investigation, and determined the extent to which emails were available or not. Ms. O'Connor left the IRS before any of these discoveries occurred.

So why is she here? According to the Chairman's own press release, it's not because of her old job, it's because of her new one. She currently works at the White House Counsel's office. She has worked there less than one month—one month—but apparently that is enough to warrant a subpoena from this Committee.

Last night, Republicans demanded to know when the White House first became aware that the IRS was having difficulty locating Ms. Lerner's emails. I am sure my colleagues will repeat those questions today. But we already know the answer. The White House sent a letter to Congress on June 18, 2014, and it said this:

> "In April of this year, Treasury's Office of General Counsel informed the White House Counsel's Office that it appeared Ms. Lerner's custodial email account contained very few emails prior to April 2011 and that the IRS was investigating the issue and, if necessary, would explore alternate means to locate additional emails."

That was in April, but Ms. O'Connor did not start her job at the White House until at least a month later. I ask unanimous consent to enter this June 18 letter into the record.

Today's hearing is not about policy or substance, it's about politics and press. Today, Ms. O'Connor will join the ranks of dozens of other officials during Chairman Issa's tenure who have been hauled up here unnecessarily, without a vote, and without any debate, as part of a partisan attempt to generate headlines with unsubstantiated accusations against the White House.

Regardless of how many times Republicans claim that the White House was behind these IRS actions, there is still no evidence—none—that the White House was involved in any way with screening applicants for tax-exempt status. Not one of the 41 witnesses we have interviewed has identified any evidence of White House involvement or political motivation.

And the Inspector General has also identified no evidence to support these baseless claims. Issuing a subpoena to a White House lawyer does not change that fact.

I sincerely hope that today's hearing will focus on a serious examination of the longstanding and widespread challenges of retaining electronic records and on constructive solutions. I look forward to the statements of our witnesses.

NARA Bulletin 2013-02

August 29, 2013

TO: Heads of Federal Agencies

SUBJECT: Guidance on a New Approach to Managing Email Records

EXPIRATION DATE: August 31, 2016

1. What is the purpose of this Bulletin?
This Bulletin provides agencies with a new records management approach, known as "Capstone," for managing their Federal record emails electronically. This Bulletin discusses the considerations that agencies should review if they choose to implement the Capstone approach to manage their email records.

NARA developed the Capstone approach as part of NARA's continuing efforts to evaluate how agencies have used various email repositories to manage email records (see NARA Bulletin 2011-03, "Guidance Concerning the use of E-mail Archiving Applications to Store E-mail,"). This approach was developed in recognition of the difficulty in practicing traditional records management on the overwhelming volume of email that Federal agencies produce. Capstone will provide agencies with feasible solutions to email records management challenges, especially as they consider cloud-based solutions. Moreover, the Capstone approach supports the Presidential Memorandum on Managing Government Records and allows agencies to comply with the requirement in OMB/NARA M-12-18 Managing Government Records Directive to "manage both permanent *and* temporary email records in an accessible electronic format" by December 31, 2016.

NARA bulletins provide fundamental guidance to Federal agency staff, who must then determine the most appropriate ways to incorporate recordkeeping requirements into their business processes and identify the specific means by which their agencies will fulfill their responsibilities under the Federal Records Act.

2. What is the Capstone approach?
Capstone offers agencies the option of using a more simplified and automated approach to managing email, as opposed to using either print and file systems or records management applications that require staff to file email records individually. Using this approach, an agency can categorize and schedule email based on the work and/or position of the email account owner. The Capstone approach allows for the capture of records that should be preserved as permanent from the accounts of officials at or near the top of an agency or an organizational subcomponent. An agency may designate email accounts of additional employees as Capstone when they are in

positions that are likely to create or receive permanent email records. Following this approach, an agency can schedule all of the email in Capstone accounts as permanent records. The agency could then schedule the remaining email accounts in the agency or organizational unit, which are not captured as permanent, as temporary and preserve all of them for a set period of time based on the agency's needs. Alternatively, approved existing or new disposition authorities may be used for assigning disposition to email not captured as permanent.

While this approach has significant benefits, there are also risks that the agency must consider, including choosing the appropriate Capstone accounts, the possible need to meet other records management responsibilities, and the possibility of incidentally collecting personal and other non-record email. Agencies must determine whether end users may delete non-record, transitory, or personal email from their accounts. This will depend on agency technology and policy requirements.

3. What are the advantages of the Capstone approach?
The Capstone approach simplifies electronic management of email records for agencies and may provide the following advantages:

1. Cuts down reliance on print-and-file, click-and-file drag and drop, or other user-dependent policies;
2. Optimizes access to records responsive to discovery or FOIA requests;
3. Preserves permanent email records for eventual transfer to NARA;
4. Provides a practical approach to managing legacy email accounts;
5. Eases the burden of email management on the end-user;
6. Represents a simplified approach to the disposition of temporary and permanent email records;
7. Reduces the risk of unauthorized destruction of email records; and
8. Leverages technologies that exist at many agencies for other purposes – e.g., email archives/e-vaults used for e-discovery, including in cloud-based platforms.

4. What should an agency consider before deciding to use the Capstone approach?
Before implementing Capstone, an agency must determine its suitability for individual agency programs. This determination is made in consultation with appropriate stakeholders from the Office of the Chief Information Officer, Office of the General Counsel, and other agency decision makers.

Within an agency, the appropriate organizational level to implement Capstone may vary. An agency may have multiple implementations of Capstone depending on the business functions of their programs. Considerations when using Capstone include:

1. Is the Capstone approach compatible with an agency's current email and other records management/archiving systems?
2. Does the current email repository capture metadata required in 36 CFR 1236.22, or can it be configured to do so?
3. Do all permanent email records contain required metadata at the time of transfer to NARA?
4. Are records accessible to authorized staff for business purposes?
5. Does the agency's repository have appropriate security controls to prevent unauthorized access, modification, or deletion of email records?
6. Can the technology be configured to allow Capstone officials to remove or delete personal and non-record emails from permanent capture?
7. Depending on agency technology and implementation, is the tradeoff of potentially capturing personal and non-record messages in Capstone accounts acceptable?
8. Will new agency policies addressing FOIA, discovery, IT security, and other issues need to be developed to implement Capstone?
9. What specific training will be required to implement Capstone?
10. Will records be retained too long or too short a time in terms of agency needs when implementing the Capstone approach?
11. Will Capstone records be duplicated in separate filing systems?
12. Do some Capstone records have legal requirements to be destroyed after a specific time?

After considering the above questions, an agency will be able to determine if Capstone will enhance its records management program. If an agency decides to use the approach, the agency must identify their Capstone accounts and determine if they will apply the Capstone approach to legacy email accounts. Once these decisions are made, agencies will need to apply an appropriate disposition authority. Agencies are encouraged to consult with their NARA Appraisal Archivists to determine the appropriate strategy for managing email records created in their agency.

5. Does Capstone change agencies' recordkeeping responsibilities for email?
Capstone can reduce the burden on individual end-users by encouraging the greater use of automated methods for managing email accounts. Agencies are responsible for managing their records in accordance with NARA regulations and to fulfill the requirements of the Managing Government Records Directive. When using the Capstone approach for capturing and managing email, agencies must continue to:

a. Ensure email records are scheduled.
Agencies should work with their NARA Appraisal Archivist to ensure email records are covered by an approved disposition authority. This may include creating new schedules, using existing schedules, or using an applicable General Records Schedule.

b. Prevent the unauthorized access, modification, or deletion of declared records.
Agencies must ensure the email repository has appropriate security measures in place to prevent unauthorized access and/or destruction of records. Records must retain authenticity, reliability, and trustworthiness throughout capture, maintenance, and transfer.

c. Ensure all records in the repository are retrievable and usable.
Email records maintained in a repository must be accessible to appropriate staff for as long as needed to conduct agency business. Agencies should also consider retrievability and usability when migrating from one repository to another.

d. Consider whether email records and attachments can or should be associated with related records under agency guidance.
As a supplement to the Capstone approach, an agency may want or need to associate certain email records that relate to other records, such as case files or project files, with the related records. This consideration depends on an agency's needs and how it chooses to implement its Capstone approach. This may be accomplished by:

1. Using electronic pointers (such as metadata tags) to establish linkages, or
2. In select cases, filing with associated paper or electronic case or project files.

e. Capture and maintain required metadata.
An agency is responsible for ensuring that email metadata listed in 36 CFR 1236.22, Parts (1) and (3) are preserved. Required metadata elements include the date of the email and the names and email addresses of all senders and recipients particularly if the system uses nicknames, distribution lists, or a blind copy feature. The agency may wish to retain and preserve additional metadata for legal and business purposes. Regardless of the repository, agencies must examine email upon transfer to another repository or to NARA to ensure that names and addresses are appropriately associated with each email. Agencies are responsible for working with vendors and their information technology departments to confirm that their repository is capturing and can export the required metadata elements.

6. How do agencies identify Capstone email accounts?
When adopting the Capstone approach, agencies must identify those email accounts most likely to contain records that should be preserved as permanent. Agencies will determine Capstone accounts based on their business needs. They should identify the accounts of individuals who, by virtue of their work, office, or position, are likely to create or receive permanently valuable Federal records. NARA's Appraisal Archivists can assist agencies in helping to determine Capstone accounts. For example, these accounts may include

> *[H]eads of departments and independent agencies; their deputies and assistants; the heads of program offices and staff offices including assistant secretaries, administrators, and commissioners; directors of offices, bureaus, or equivalent; principal regional officials; staff assistants to those aforementioned officials, such as special assistants, confidential assistants, and administrative assistants; and career Federal employees, political appointees, and officers of the Armed Forces serving in equivalent or comparable positions.* (GRS 23, Item 5)

Agencies may wish to use the U.S. Government Manual or the United States Government Policy and Supporting Positions (Plum Book) as a starting point to identify potential Capstone accounts. The goal is to capture the email accounts of high level policy/decision makers-- including any secondary or alias accounts-- and the accounts of those authorized to communicate on their behalf in the development of agency policy or important decision-making. There may be other accounts containing permanent records not covered by these suggestions that relate to the mission of the agency and would meet the criteria for a Capstone account.

7. Must agencies use a specific technology to implement Capstone?
No, Capstone implementation is not dependent on a specific technology or software. This approach is designed to utilize technologies that already exist at many agencies. Agencies may use native email systems, email archiving applications (which many agencies are already utilizing for other purposes), or other repositories to implement Capstone. Evolving technologies, such as auto-categorization and advanced search capabilities, may enable agencies to cull out transitory, non-record, and personal email. In the absence of a technological solution, agencies must rely on policy, procedures, and training to fully implement Capstone.

8. How does NARA's Pre-accessioning policy apply to Capstone?
Pre-accessioning is an option for agencies when implementing the Capstone approach. Pre-accessioning is when NARA receives and fully processes a copy of permanently valuable electronic records before those records are scheduled to legally become part of the National Archives of the United States. In other words, pre-accessioning means that NARA assumes physical custody of a *copy* of the records, usually well before it is time to assume legal custody. The transferring agency retains a complete and fully functional copy of the transferred records even after a pre-accessioning transfer, and that copy must be maintained until NARA assumes legal custody at a future date. Pre-accessioning allows NARA to preserve permanently valuable electronic records early in their lifecycle while the agency retains its authority and responsibility for providing access. This is done in part to mitigate risk over time, since electronic records are subject to potential obsolescence between the time they are created and the time that they are ready for NARA to assume legal custody, which may be many years in the future. It also gives NARA a means to provide agencies with off-site, no-cost security

copies of the pre-accessioned records. For more information about Pre-accessioning, refer to NARA Bulletin 2009-03: Pre-accessioning permanent electronic records and Pre-accessioning: A Strategy for Preserving Electronic Records.

9. What other NARA resources are available?
NARA has the following additional resources that may be useful:

Guidance on Managing Records in Cloud Computing Environments: A NARA bulletin addressing records management considerations in cloud computing environments.
Toolkit for Managing Electronic Records: A resource for agencies to share and access records management guidance and best practices. Examples include tools that address the creation of business rules for managing email and related issues.
Records Express: The official blog of the Office of the Chief Records Officer at NARA highlights guidance and upcoming events. It also discusses how we are working with our agency partners to improve records management in the Federal government.
Frequently Asked Questions about Records Management: Provides a list of FAQs on noteworthy records management topics.

10. Whom should I contact for more information?
If additional information is needed, or if you have any questions, please contact your agency Records Officer or the NARA Appraisal Archivist or records management contact with whom you regularly work. Please refer to the List of NARA Contacts for Your Agency, available at /records-mgmt/appraisal/.

Treasury Inspector General for Tax Administration

Press Release

November 21, 2013
TIGTA - 2013-47
Contact: Voneka Bennett
(202) 927-1188
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TIGTACommunications@tigta.treas.gov

Increased Oversight Is Needed Of the Internal Revenue Service's Information Technology Hardware Maintenance Contracts

WASHINGTON – The Internal Revenue Service (IRS) paid for information technology hardware maintenance services it neither needed nor received, according to a report publicly released today by the Treasury Inspector General for Tax Administration (TIGTA).

The IRS spent $47.8 million on hardware maintenance contracts in Fiscal Year 2012. These contracts are managed by acquisition teams that include employees responsible for monitoring contractor performance and ensuring that the contractor delivers what is called for in the contract. Coordination among acquisition team members is key to ensuring that the contractor is meeting the Government's interest in terms of providing deliverables that are of high quality, complete, timely, and cost-effective.

TIGTA assessed whether the IRS has adequate controls over its hardware maintenance contracts and is actively mitigating contract fraud risks. TIGTA selected seven maintenance contracts for review, identified the roles and responsibilities of acquisition team members, and reviewed contract files.

TIGTA found several weaknesses in the oversight of selected information technology hardware maintenance contracts. Specifically, TIGTA found instances where IRS contracting personnel were not always effectively monitoring the contracts.

In one of the contracts reviewed, TIGTA identified 10 pieces of hardware that were retired six months prior to the expiration of the maintenance contract. The IRS continued to pay for the service rather than submit a contract modification.

In another contract, 22 of 54 storage devices had been retired prior to the end of the service contract or were migrated to a separate storage contract as part of the IRS's efforts to consolidate data storage. The same contract stipulated 34 different performance standards, such as keeping the system in working order and providing an inventory list, along with associated deliverables. TIGTA found that reports required by the contract were no longer needed. As a result of the lack of coordination and oversight, the IRS paid for services it did not receive or need.

"While we did not identify any potentially fraudulent activity among the contracts reviewed, the IRS paid for services it either did not need or did not receive," said J. Russell George, Treasury Inspector General for Tax Administration. "This is not a good use of the public's fisc," he added.

TIGTA made three recommendations to the IRS's Chief Technology Officer to ensure that contracts are modified when IT hardware is retired or removed from service or changes to performance requirements are

made. The IRS agreed with TIGTA's recommendations and plans to emphasize with managers the need to following IRS policies regarding the administration and oversight of hardware maintenance contracts.

Read the report.

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Note: The difference between the date TIGTA issues an audit report to the Internal Revenue Service and the date TIGTA publicly releases the report is due to TIGTA's internal review process to ensure that public release is in compliance with Federal confidentiality laws.

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THE WHITE HOUSE

WASHINGTON

June 23, 2014

The Honorable Darrell Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Issa:

I write in response to your request last Thursday for the testimony of Jennifer O'Connor, a former Internal Revenue Service (IRS) employee who is now a member of my staff, at a hearing of the Committee on Oversight and Government Reform tomorrow, June 24, 2014. Your letter indicates that the purpose of the hearing is to examine the IRS's inability to recover certain emails sent by Lois Lerner after a computer failure.

I understand that your Committee and others in the House of Representatives have recently sought and are already receiving substantial information from the IRS concerning the computer failure. Press reports indicate that information technology staff from the IRS briefed congressional staff last week on the inability to recover certain emails, as well as the agency's success in recovering a substantial number of other emails. Last Friday, the Commissioner of the IRS answered questions over the course of three hours at a hearing before the House Committee on Ways and Means.

At the time of your letter, you did not have the benefit of Commissioner Koskinen's testimony last Friday. As you now know, Commissioner Koskinen explained that the IRS first discovered the possibility that certain emails from Ms. Lerner could be missing in February 2014, which postdates Ms. O'Connor's six-month tenure at the agency from May 30, 2013 to November 30, 2013. Moreover, Commissioner Koskinen is also scheduled to appear before your Committee this evening to again answer questions on this topic. And finally, I understand that you have subpoenaed additional documents and materials from the IRS, and you will no doubt carefully review the materials that you receive in response to the subpoena.

It thus appears that you and others in Congress are now receiving substantial information from those at the IRS most familiar with the discovery of, and investigation into, the computer failure—and from the head of the agency himself. This new information should address the questions that may have prompted your earlier hearing invitation to Ms. O'Connor, and I expect that the IRS will continue to work to comply with your subpoena for documents.

If there are legitimate questions that remain after exhausting your review of information provided by the IRS, I trust that you will articulate the reasons for your continued interest in the matter at the appropriate time.

Sincerely,

W. Neil Eggleston
Counsel to the President

cc: Ranking Member Representative Elijah Cummings

Treasury Inspector General for Tax Administration
Office of Audit

INAPPROPRIATE CRITERIA WERE USED TO IDENTIFY TAX-EXEMPT APPLICATIONS FOR REVIEW

Issued on May 14, 2013

Highlights

Highlights of Report Number: 2013-10-053 to the Internal Revenue Service Acting Commissioner, Tax Exempt and Government Entities Division.

IMPACT ON TAXPAYERS

Early in Calendar Year 2010, the IRS began using inappropriate criteria to identify organizations applying for tax-exempt status to review for indications of significant political campaign intervention. Although the IRS has taken some action, it will need to do more so that the public has reasonable assurance that applications are processed without unreasonable delay in a fair and impartial manner in the future.

WHY TIGTA DID THE AUDIT

TIGTA initiated this audit based on concerns expressed by members of Congress. The overall objective of this audit was to determine whether allegations were founded that the IRS: 1) targeted specific groups applying for tax-exempt status, 2) delayed processing of targeted groups' applications, and 3) requested unnecessary information from targeted groups.

WHAT TIGTA FOUND

The IRS used inappropriate criteria that identified for review Tea Party and other organizations applying for tax-exempt status based upon their names or policy positions instead of indications of potential political campaign intervention. Ineffective management: 1) allowed inappropriate criteria to be developed and stay in place for more than 18 months, 2) resulted in substantial delays in processing certain applications, and 3) allowed unnecessary information requests to be issued.

Although the processing of some applications with potential significant political campaign intervention was started soon after receipt, no work was completed on the majority of these applications for 13 months. This was due to delays in receiving assistance from the Exempt Organizations function Headquarters office. For the 296 total political campaign intervention applications TIGTA reviewed as of December 17, 2012, 108 had been approved, 28 were withdrawn by the applicant, none had been denied, and 160 were open from 206 to 1,138 calendar days (some for more than three years and crossing two election cycles).

More than 20 months after the initial case was identified, processing the cases began in earnest. Many organizations received requests for additional information from the IRS that included unnecessary, burdensome questions (*e.g.*, lists of past and future donors). The IRS later informed some organizations that they did not need to provide the information that was previously requested. IRS officials stated that any donor information received in response to a request from its Determinations Unit was later destroyed.

WHAT TIGTA RECOMMENDED

TIGTA recommended that the IRS finalize the interim actions taken, better document the reasons why applications potentially involving political campaign intervention are chosen for review, develop a process to track requests for assistance, develop and publish guidance, develop and provide training to employees before each election cycle, expeditiously resolve remaining political campaign intervention cases (some of which have been in process for three years), and request that social welfare activity guidance be developed by the Department of the Treasury.

In their response to the report, IRS officials agreed with seven of our nine recommendations and proposed alternative corrective actions for two of our recommendations. TIGTA does not agree that the alternative corrective actions will accomplish the intent of the recommendations and continues to believe that the IRS should better document the reasons why applications potentially involving political campaign intervention are chosen for review and develop and publish guidance.

READ THE FULL REPORT

To view the report, including the scope, methodology, and full IRS response, go to:

http://www.treas.gov/tigta/auditreports/2013reports/201310053fr.pdf.

E-mail Address: ***TIGTACommunications@tigta.treas.gov*** ***Phone Number:*** ***202-622-6500***
Website: ***http://www.treasury.gov/tigta***

U.S. House of Representatives

Committee on Oversight and Government Reform

Darrell Issa (CA-49), Chairman

Debunking the Myth that the IRS Targeted Progressives: How the IRS and Congressional Democrats Misled America about Disparate Treatment

Staff Report
113th Congress

April 7, 2014

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Executive Summary

In the immediate aftermath of Lois Lerner's public apology for the targeting of conservative tax-exempt applicants, President Obama and congressional Democrats quickly denounced the IRS misconduct.[1] But later, some of the same voices that initially decried the targeting changed their tune. Less than a month after the wrongdoing was exposed, prominent Democrats declared the "case is solved" and, later, the whole incident to be a "phony scandal."[2] As recently as February 2014, the President explained away the targeting as the result of "bone-headed" decisions by employees of an IRS "local office" without "even a smidgeon of corruption."[3]

To support this false narrative, the Administration and congressional Democrats have seized upon the notion that the IRS's targeting was not just limited to conservative applicants. Time and again, they have claimed that the IRS targeted liberal- and progressive-oriented groups as well – and that, therefore, there was no political animus to the IRS's actions.[4] These Democratic claims are flat-out wrong and have no basis in any thorough examination of the facts. Yet, the Administration's chief defenders continue to make these assertions in a concerted effort to deflect and distract from the truth about the IRS's targeting of tax-exempt applicants.

The Committee's investigation demonstrates that the IRS engaged in disparate treatment of conservative-oriented tax-exempt applicants. Documents produced to the Committee show that initial applications transferred from Cincinnati to Washington were filed by Tea Party groups. Other documents and testimony show that the initial criteria used to identify and hold Tea Party applications captured conservative organizations. After the criteria were broadened in July 2012 to be cosmetically neutral, material provided to the Committee indicates that the IRS still intended to target only conservative applications.

A central plank in the Democratic argument is the claim that liberal-leaning groups were identified on versions of the IRS's "Be on the Look Out" (BOLO) lists.[5] This claim ignores significant differences in the placement of the conservative and liberal entries on the BOLO lists

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[1] *See, e.g.*, The White House, Statement by the President (May 15, 2013) (calling the IRS targeting "inexcusable"); *"The IRS: Targeting Americans for their Political Beliefs": Hearing before the H. Comm. on Oversight & Gov't*, 113th Cong. (2013) (statement of Ranking Member Elijah E. Cummings) ("The inspector general has called the action by IRS employees in Cincinnati, quote, "inappropriate," unquote, but after reading the IG's report, I think it goes well beyond that. I believe that there was gross incompetence and mismanagement in how the IRS determined which organizations qualified for tax-exempt status."); Press Release, Rep. Nancy Pelosi, Pelosi Statement on Reports of Inappropriate Activities at the IRS (May 13, 2013) ("While we look forward to reviewing the Inspector General's report this week, it is clear that the actions taken by some at the IRS must be condemned. Those who engaged in this behavior were wrong and must be held accountable for their actions.").

[2] *State of the Union with Candy Crowley* (CNN television broadcast June 9, 2013) (interview with Rep. Elijah E. Cummings); *Fox News Sunday* (Fox News television broadcast July 28, 2013) (interview with Treasury Secretary Jacob Lew).

[3] *"Not even a smidgeon of corruption": Obama downplays IRS, other scandals*, FOX NEWS, Feb. 3, 2014.

[4] *See, e.g.*, Lauren French & Rachael Bade, *Democratic Memo: IRS Targeting Was Not Political*, POLITICO, July 17, 2013.

[5] *See Hearing on the Status of IRS Review of Taxpayer Targeting Practices: Hearing before the H. Comm. on Ways & Means*, 113th Cong. (2013).

and how the IRS used the BOLO lists in practice. The Democratic claims are further undercut by testimony from IRS employees who told the Committee that liberal groups were not subject to the same systematic scrutiny and delay as conservative organizations.[6]

The IRS's independent watchdog, the Treasury Inspector General for Tax Administration (TIGTA), confirms that the IRS treated conservative applicants differently from liberal groups. The inspector general, J. Russell George, wrote that while TIGTA found indications that the IRS had improperly identified Tea Party groups, it "did not find evidence that the criteria [Democrats] identified, labeled 'Progressives,' were used by the IRS to select potential political cases during the 2010 to 2012 timeframe we audited."[7] He concluded that TIGTA "found no indication in any of these other materials that 'Progressives' was a term used to refer cases for scrutiny for political campaign intervention."[8]

An analysis performed by the House Committee on Ways and Means buttresses the Committee's findings of disparate treatment. The Ways and Means Committee's review of the confidential tax-exempt applications proves that the IRS systematically targeted conservative organizations. Although a small number of progressive and liberal groups were caught up in the application backlog, the Ways and Means Committee's review shows that the backlog was 83 percent conservative and only 10 percent were liberal-oriented.[9] Moreover, the IRS approved 70 percent of the liberal-leaning groups and only 45 percent of the conservative groups.[10] The IRS approved every group with the word "progressive" in its name.[11]

In addition, other publicly available information supports the analysis of the Ways and Means Committee. In September 2013, *USA Today* published an independent analysis of a list of about 160 applications in the IRS backlog.[12] This analysis showed that 80 percent of the applications in the backlog were filed by conservative groups while less than seven percent were filed by liberal groups.[13] A separate assessment from *USA Today* in May 2013 showed that for 27 months beginning in February 2010, the IRS did not approve a single tax-exempt application filed by a Tea Party group.[14] During that same period, the IRS approved "perhaps dozens of applications from similar liberal and progressive groups."[15]

The IRS, over many years, has undoubtedly scrutinized organizations that embrace different political views for varying reasons – in many cases, a just and neutral criteria may have

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[6] *See, e.g.*, Transcribed interview of Carter Hull, Internal Revenue Serv., in Wash., D.C. (June 14, 2013); Transcribed interview of Stephen Daejin Seok, Internal Revenue Serv., in Wash., D.C. (June 19, 2013); Transcribed interview of Lucinda Thomas, Internal Revenue Serv., in Wash., D.C. (June 28, 2013).
[7] Letter from J. Russell George, Treasury Inspector Gen. for Tax Admin., to Sander M. Levin, H. Comm. on Ways & Means (June 26, 2013).
[8] *Id.*
[9] *Hearing on the Internal Revenue Service's Exempt Organizations Division Post-TIGTA Audit: Hearing before the Subcomm. on Oversight of the H. Comm. on Ways & Means*, 113th Con. (2013) (opening statement of Chairman Charles Boustany) [hereinafter "Ways and Means Committee September 18th Hearing"].
[10] *Id.*
[11] *Id.*
[12] *See* Gregory Korte, *IRS List Reveals Concerns over Tea Party 'Propaganda,'* USA TODAY, Sept. 18, 2013.
[13] *Id.*
[14] Gregory Korte, *IRS Approved Liberal Groups while Tea Party in Limbo*, USA TODAY, May 15, 2013.
[15] *Id.*

been fairly utilized. This includes the time period when Tea Party organizations were systematically screened for enhanced and inappropriate scrutiny. But the concept of *targeting*, when defined as a systematic effort to select applicants for scrutiny simply because their applications reflected the organizations' political views, only applied to Tea Party and similar conservative organizations. While use of term "targeting" in the IRS scandal may not always follow this definition, the reality remains that there is simply no evidence that any liberal or progressive group received enhanced scrutiny because its application reflected the organization's political views.

For months, the Administration and congressional Democrats have attempted to downplay the IRS's misconduct. First, the Administration sought to minimize the fallout by preemptively acknowledging the misconduct in response to a planted question at an obscure Friday morning tax-law conference. When that strategy failed, the Administration shifted to blaming "rogue agents" and "line-level" employees for the targeting. When those assertions proved false, congressional Democrats baselessly attacked the character and integrity of the inspector general. Their attempt to allege bipartisan targeting is just another effort to distract from the fact that the Obama IRS systematically targeted and delayed conservative tax-exempt applicants.

Findings

- The IRS treated Tea Party applications distinctly different from other tax-exempt applications.
- The IRS selectively prioritized and produced documents to the Committee to support misleading claims about bipartisan targeting.
- Democratic Members of Congress, including Ranking Member Elijah Cummings, Ranking Member Sander Levin, and Representative Gerry Connolly, made misleading claims that the IRS targeted liberal-oriented groups based on documents selectively produced by the IRS.
- The IRS's "test" cases transferred from Cincinnati to Washington were exclusively filed by Tea Party applicants: the Prescott Tea Party, the American Junto, and the Albuquerque Tea Party.
- The IRS's initial screening criteria captured exclusively Tea Party applications.
- Even after Lois Lerner broadened the screening criteria to maintain a veneer of objectivity, the IRS still sought to target and scrutinize Tea Party applications.
- The IRS targeting captured predominantly conservative-oriented applications for tax-exempt status.
- Myth: IRS "Be on the Lookout" (BOLO) entries for liberal groups meant that the IRS targeted liberal and progressive groups. Fact: Only Tea Party groups on the BOLO list experienced systematic scrutiny and delay.
- Myth: The IRS targeted "progressive" groups in a similar manner to Tea Party applicants. Fact: The IRS treated "progressive" groups differently than Tea Party applicants. Only seven applications in the IRS backlog contained the word "progressive," all of which were approved by the IRS. The IRS processed progressive applications like any other tax-exempt application.
- Myth: The IRS targeted ACORN successor groups in a similar manner to Tea Party applicants. Fact: The IRS treated ACORN successor groups differently than Tea Party applicants. ACORN successor groups were not subject to a "sensitive case report" or reviewed by the IRS Chief Counsel's office. The central issue for the ACORN successor groups was whether the groups were legitimate new entities or part of an "abusive" scheme to continue an old entity under a new name.
- Myth: The IRS targeted Emerge affiliate groups in a similar manner to Tea Party applicants. Fact: The IRS treated Emerge affiliate groups differently than Tea Party

applicants. Emerge applications were not subjected to secondary screening like the Tea Party cases. The central issue in the Emerge applications was private benefit, not political speech.

- Myth: The IRS targeted Occupy groups in a similar manner to Tea Party applicants. Fact: The IRS treated Occupy groups differently than Tea Party applicants. No applications in the IRS backlog contained the words "Occupy." IRS employees testified that they were not even aware of an Occupy entry on the BOLO list.

Coordinated and misleading Democratic claims of bipartisan IRS targeting

As the IRS targeting scandal grew, the Administration and congressional Democrats began peddling the allegation that the IRS targeting was not just limited to conservative tax-exempt application, but that the IRS had targeted liberal-leaning groups as well. These assertions kick-started when Acting IRS Commissioner Daniel Werfel told reporters that IRS "Be on the Look Out" lists included entries for liberal-oriented groups. Congressional Democrats seized upon his announcement and immediately began feeding the false narrative that liberal groups received the same systematic scrutiny and delay as conservative applicants. In the ensuing months, the IRS even reconsidered its previous redactions to provide congressional Democrats with additional fodder to support their assertions. Although TIGTA and others have rebuffed the Democratic argument, senior members of the Administration and in Congress continue this coordinated narrative that the IRS targeting was broader than conservative applicants.

The IRS acknowledges that portions of its BOLO lists included liberal-oriented entries

On June 24, 2013, Acting IRS Commissioner Daniel Werfel asserted during a conference call with reporters that the IRS's misconduct was broader than just conservative applicants.[16] Werfel told reporters that "[t]here was a wide-ranging set of categories and cases that spanned a broad spectrum."[17] Although Mr. Werfel refused to discuss details about the "inappropriate criteria that was [*sic*] in use," the IRS produced to Congress hundreds of pages of self-selected documents that supported his assertion.[18] The IRS prioritized producing these documents over other material, producing them when the Committee had received less than 2,000 total pages of IRS material. Congressional Democrats had no qualms in putting these self-selected documents to use.

Virtually simultaneous with Mr. Werfel's conference call, Democrats on the House Ways and Means Committee trumpeted the assertion that the IRS targeted liberal groups similarly to conservative organizations.[19] Ranking Member Sander Levin (D-MI) released several versions of the IRS BOLO list.[20] Because these versions included an entry labeled "progressives," Ranking Member Levin alleged that "[t]he [TIGTA] audit served as the basis and impetus for a wide range of Congressional investigations and **this new information shows that the**

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[16] *See* Alan Fram, *Documents show IRS also screened liberal groups*, ASSOC. PRESS, June 24, 2013.
[17] *Id.*
[18] *See* Letter from Leonard Oursler, Internal Revenue Serv., to Darrell Edward Issa, H. Comm. on Oversight & Gov't Reform (June 24, 2013).
[19] Press Release, H. Comm. on Ways & Means Democrats, New IRS Information Shows "Progressives" Included on BOLO Screening List (June 24, 2013).
[20] *Id.*

foundation of those investigations is flawed in a fundamental way."[21] (emphasis added). These documents would initiate a sustained campaign designed to falsely allege that the IRS engaged in bipartisan targeting.

Ways and Means Committee Democrats allege bipartisan IRS targeting

During a hearing of the Ways and Means Committee on June 27, 2013, Democrats continued to spin this false narrative, arguing that liberal groups were mistreated similarly to conservative groups. Ranking Member Levin proclaimed during his opening statement:

> This week we learned for the first time the three key items, one, the screening list used by the IRS included the term "progressives." Two, progressive groups were among the 298 applications that TIGTA reviewed in their audit and received heightened scrutiny. And, three, the inspector general did not research how the term "progressives" was added to the screening list or how those cases were handled by a different group of specialists in the IRS. The failure of the I.G.'s audit to acknowledge these facts is a fundamental flaw in the foundation of the investigation and the public's perception of this issue.[22]

Other Democratic Members picked up this thread. While questioning the hearing's only witness, Acting IRS Commissioner Werfel, Representative Charlie Rangel (D-NY) raised the specter of bipartisan targeting. He stated:

> Mr. RANGEL: You said there's diversity in the BOLO lists. And you admit that conservative groups were on the BOLO list. Why is it that we don't know whether or not there were progressive groups on the BOLO list?
>
> Mr. WERFEL: Well, we do know that – that the word "progressive" did appear on a set of BOLO lists. We do know that. When I was articulating the point about diversity, I was trying to capture that the types of political organizations that are on these BOLO lists are wide ranging. But they do include progressives.[23]

Similarly, Representative Joseph Crowley (D-NY) alleged that the IRS mistreated progressive groups identically to Tea Party groups. He said:

> As the weeks have gone on, we have seen that there is a culture of intimidation, but not from the White House, but rather from my Republican colleagues. **We know for a fact that there has been targeting of both tea party and**

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[21] *Id.*
[22] *Hearing on the Status of IRS Review of Taxpayer Targeting Practices: Hearing before the H. Comm. on Ways & Means*, 113th Cong. (2013) (statement of Ranking Member Sander Levin).
[23] *Id.* (question and answer with Representative Charlie Rangel).

progressive groups by the IRS. . . . Then, as we see, the progressive groups were targeted side by side with their tea party counterpart groups.[24] (emphasis added).

Acting IRS Commissioner volunteers to testify at the Oversight Committee's July 17, 2013 subcommittee hearing

On July 17, 2013, the Oversight Committee convened a joint subcommittee hearing on ObamaCare security concerns, featuring witnesses from the federal agencies involved in the law's implementation.[25] The Chairmen invited Sarah Hall Ingram, the Director of the IRS ObamaCare office, to testify.[26] Prior to the hearing, however, Acting IRS Commissioner Werfel personally intervened and volunteered himself to testify as the IRS witness in Ms. Ingram's place. Committee Democrats used Mr. Werfel's appearance as an opportunity to continue pushing their false narrative of bipartisan IRS targeting.

During the hearing, Ranking Member Elijah Cummings (D-MD) used the majority of his five-minute period to question Mr. Werfel not on the subject matter of the hearing, but rather on the IRS's treatment of liberal tax-exempt applicants. They engaged in the following exchange:

Mr. CUMMINGS.	I would like to ask you about the ongoing investigation into the treatment of Tea Party applicants for tax exempt status. During our interviews, we have been told by more than one IRS employee that there were progressive or left-leaning groups that received treatment similar to the Tea Party applicants. As part of your internal review, have you identified non-Tea Party groups that received similar treatment?
Mr. WERFEL.	Yes.
Mr. CUMMINGS.	We were told that one category of applicants had their applications denied by the IRS after a 3-year review; is that right?
Mr. WERFEL.	Yes, that's my understanding that there is a group or seven groups that had that experience, yes.[27]

[24] *Id.* (question and answer with Representative Joseph Crowley).
[25] *"Evaluating Privacy, Security, and Fraud Concerns with ObamaCare's Information Sharing Apparatus": J. Hearing before the Subcomm. on Energy Policy, Health Care and Entitlements of the H. Comm. on Oversight and Gov't Reform and the Subcomm. on Cybersecurity, Infrastructure Protection, and Security Technologies of the H. Comm. on Homeland Security*, 113th Cong. (2013) [hereinafter "July 17th Hearing"].
[26] *See* Letter from James Lankford, H. Comm. on Oversight & Gov't Reform, & Patrick Meehan, H. Comm. on Homeland Security, to Sarah Hall Ingram, Internal Revenue Serv. (July 10, 2013).
[27] July 17th Hearing, *supra* note 25.

It is certain that Ranking Member Cummings would not have had the opportunity to ask these questions had Ms. Ingram testified as originally requested.

The circumstances of Mr. Werfel's statements are striking. He volunteered to replace the undisputed IRS expert on ObamaCare at a hearing focusing on ObamaCare security, after being at the IRS for less than two months. He volunteered to testify at a subcommittee the day before the Committee convened a hearing that would feature testimony about the IRS's targeting of conservative applicants. By all indications, Mr. Werfel's testimony allowed congressional Democrats to continue to perpetuate the myth of bipartisan IRS targeting.

Democrats attack the Inspector General during the Oversight Committee's July 18, 2013 hearing

Unsurprisingly, Democrats on the Oversight Committee highlighted Mr. Werfel's assertions as their main narrative during a Committee hearing on the IRS targeting the following day. During his opening statement, Ranking Member Cummings criticized Treasury Inspector General for Tax Administration J. Russell George, accusing him of ignoring liberal groups targeted by the IRS.[28] Ranking Member Cummings stated:

> I also want to ask the Inspector General why he was unaware of documents we have now obtained showing that the IRS employees were also instructed to screen for progressive applicants and why his office did not look into the treatment of left-leaning organizations, such as Occupy groups. I want to know how he plans to address these new documents. Again, we represent conservative groups on both sides of the aisle, and progressives and others, and so all of them must be treated fairly.[29]

Representative Danny Davis (D-IL) utilized Mr. Werfel's testimony from the day before to also criticize the inspector general. Representative Davis said:

> **Yesterday, the principal deputy commissioner of the Internal Revenue Service, Danny Werfel, testified before this committee that progressive groups received treatment from the IRS that was similar to Tea Party groups when they applied for tax exempt status.** In fact, Congressman Sandy Levin, who is the ranking member of the Ways and Means Committee, explained these similarities in more detail. He said the IRS took years to resolve these cases, just like the Tea Party cases. And he said the IRS, one, screened for these groups, transferred them to the Exempt Organizations Technical Unit, made them the subject of a sensitive case report, and had them reviewed by the Office of Chief Counsel. According to the information provided to the Committee on Ways and Means, some of these progressive groups actually had their applications denied

[28] *"The IRS's Systematic Delay and Scrutiny of Tea Party Applications": Hearing before the H. Comm. on Oversight & Gov't Reform*, 113th Cong. (2013) (statement of Ranking Member Elijah E. Cummings) [hereinafter "July 18th Hearing"].
[29] *Id.*

> after a 3-year wait, and the resolution of these cases happened during the time period that the inspector general reviewed for its audit.[30] (emphasis added).

Inspector General George testified at the hearing to defend his work and debunk Democratic myths of bipartisan targeting. Committee Democrats took the opportunity to harshly interrogate Mr. George, using Mr. Werfel's testimony. Representative Gerry Connolly (D-VA) said to him:

> Well, so I want to make sure—you're under oath, again—it is your testimony today, as it was in May, but let's limit it to today, that at the time you testified here in May you had absolutely no knowledge of the fact that in any screening, BOLOs or otherwise, the words "Progressive," "Democrat," "MoveOn," never came up. You were only looking at "Tea Party" and conservative-related labels. You were unaware of any flag that could be seen as a progressive—the progressive side of things.[31]

Similarly, Representative Jackie Speier (D-CA) told Mr. George:

> Now, that seems completely skewed, Mr. George, if you are indeed an unbiased, impartial watch dog. It's as if you only want to find emails about Tea Party cases. These search terms do not include any progressive or liberal or left-leaning terms at all. Why didn't you search for the term "progressive"? It was specifically mentioned in the same BOLO that listed Tea Party groups.[32]

Representative Carolyn Maloney (D-NY) said:

> How in the world did you get to the point that you only looked at Tea Party when liberals and progressives and Occupy Wall Street and conservatives are just as active, if not more active, and would certainly be under consideration. That is just common plain sense. And I think that some of your statements have not been—it defies—it defies logic, it defies belief that you would so limit your statements and write to Mr. Levin and write to Mr. Connolly that of course no one was looking at any other area.[33]

Armed with self-selected IRS documents and Mr. Werfel's testimony, congressional Democrats vehemently attacked TIGTA in an attempt to undercut its findings that the IRS had targeted conservative tax-exempt applicants. Their *ad hominen* attacks on an independent inspector general sought to distract and deflect from the real misconduct perpetrated by the IRS.

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[30] *Id.* (question and answer with Representative Danny Davis).
[31] *Id.* (question and answer with Representative Gerry Connolly).
[32] *Id.* (question and answer with Representative Jackie Speier).
[33] *Id.* (question and answer with Representative Carolyn Maloney).

The IRS reinterprets legal protections for taxpayer information to bolster Democratic allegations

The IRS was not an unwilling participant in spinning this false narrative. Section 6103 of federal tax law protects confidential taxpayer information from public dissemination.[34] Under the tax code, however, the IRS may release confidential taxpayer information to the House Ways and Means Committee and the Senate Finance Committee.[35] The IRS cited this provision of law to withhold vital details about the targeting scandal from the American public. The prohibition did not stop the IRS from releasing information helpful to its cause.

In August 2013, the IRS suddenly reversed its interpretation of the law. In a letter to Ways and Means Ranking Member Levin – who already had access to confidential taxpayer information – Acting IRS Commissioner Werfel wrote: "Consistent with our continuing efforts to provide your Committee and the public with as much information as possible regarding the Service's treatment of tax exempt advocacy organizations, we are re-releasing certain redacted documents that had been previously provided to your Committee."[36] Mr. Werfel explained the reversal as the result of "our continuing review of the documents" and "a thorough section 6103 analysis."[37] The reinterpretation allowed the IRS to release information related to "ACORN Successors" and "Emerge" groups.[38]

Congressional Democrats embraced the IRS's sudden reversal. Releasing new IRS documents, Ranking Member Levin and Ranking Member Cummings issued a joint press release announcing that "**new information from the IRS that provides further evidence that progressive groups were singled out for scrutiny in the same manner as conservative groups**."[39] (emphasis added). Ranking Member Levin proclaimed: "These new documents make it clear the IRS scrutiny of the political activity of 501(c)(4) organizations covered a broad spectrum of political ideology and was not politically motivated."[40] Ranking Member Cummings similarly intoned: "This new information should put a nail in the coffin of the Republican claims that the IRS's actions were politically motivated or were targeted at only one side of the political spectrum."[41]

The IRS's sudden reinterpretation of section 6103 allowed congressional Democrats to continue their assault on the truth. Again using documents self-selected by the IRS, these defenders of the Administration carried on their rhetorical campaign to convince Americans that the IRS treated liberal applicants identically to Tea Party applicants.

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[34] I.R.C. § 6103.
[35] *Id.* § 6103(f).
[36] Letter from Daniel I. Werfel, Internal Revenue Serv., to Sander Levin, H. Comm. on Ways & Means (Aug. 19, 2013), *available at* http://democrats.waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/IRS%20Letter%20to%20Levin%20August%2019%2C%202013.pdf.
[37] *Id.*
[38] *Id.*
[39] Press Release, H. Comm. on Ways and Means Democrats & H. Comm. on Oversight & Gov't Reform Democrats, New Documents Highlight IRS Scrutiny of Progressive Groups (Aug. 20, 2013).
[40] *Id.*
[41] *Id.*

Recent Democratic efforts to perpetuate the myth of bipartisan IRS targeting

Democratic efforts to spin the IRS targeting continue through the present. On January 29, 2014, Senator Chris Coons raised the allegation while questioning Attorney General Eric Holder about the Administration's investigation into the IRS's targeting. Senator Coons stated:

> Well, thank you, Mr. Attorney General. I -- I join a number of colleagues in urging and hoping that the investigation into IRS actions is done in a balanced and professional and appropriate way. And I assume it is, unless demonstrated otherwise. **And what I've heard is that there were progressive groups, as well as tea party groups, that were perhaps allegedly on the receiving end of reviews of the 501(c)(3) applications**. And it's my expectation that we'll hear more in an appropriate and timely way about the conduct of this investigation.[42] (emphasis added).

On February 3, 2014, during his daily briefing, White House Press Secretary Jay Carney echoed the Democratic line that the IRS targeted liberal groups in the same manner in which it targeted conservative groups. In defending the President's comments about "not even a smidgeon of corruption," Mr. Carney said:

> Q Jay, in the President's interview with Bill O'Reilly last night, he said that there was "not even a smidgen of corruption," regarding the IRS targeting conservative groups. Did the President misspeak?
>
> A No, he didn't. But I can cite – I think have about 20 different news organizations that cite the variety of ways that that was established, including by the independent IG, who testified in May and, as his report said, that **he found no evidence that anyone outside of the IRS had any involvement in the inappropriate targeting of conservative – or progressive, for that matter – groups in their applications for tax-exempt status**. So, again, I think that this is something –[43] (emphasis added).

During debate on the House floor on H.R. 3865, the Stop Targeting of Political Beliefs by the IRS Act of 2014, Ways and Means Committee Ranking Member Levin spoke in opposition to the bill. He said:

> On a day when the Chairman of the Ways and Means Committee, Mr. Camp, is unveiling a tax measure that requires serious bipartisanship to be successful, we are here on the floor considering a totally political bill in an attempt to resurrect an alleged scandal that never existed. . . . **And what have we learned? That**

[42] *"Oversight of the U.S. Department of Justice": Hearing before the S. Comm. on the Judiciary*, 113th Cong. (2014) (question and answer with Senator Chris Coons).
[43] The White House, Press Briefing by Press Secretary Jay Carney, 2/3/14, http://www.whitehouse.gov/photos-and-video/video/2014/02/03/press-briefing#transcript.

> **both progressive and conservative groups were inappropriately screened out by name and not by activity.**[44] (emphasis added).

As recently as early March 2014, Democrats have been spreading the myth that liberal-oriented groups were targeted in the same manner as conservative organizations. Appearing on *The Last Word with Lawrence O'Donnell*, Representative Gerry Connolly continued the Democratic allegations of bipartisan targeting. Representative Connolly said:

> You know, that's true, but I think we need to back up. This is not an honest inquiry. This is a Star Chamber operation. **This is cherry picking information, deliberately colluding with a Republican idea in the IRS to make sure the investigation is solely about tea party and conservative groups even though we know that the tilt is included progressive titles as well as conservative titles and that they were equally stringent.** It was a foolish thing to do. And it's wrong, but it was not just targeted at conservatives. But Darrell Issa wants to make sure that information does not get out.[45] (emphasis added).

The Democratic myth of bipartisan IRS targeting simply will not die. Working hand in hand with the Obama Administration's IRS, congressional Democrats vigorously asserted that the IRS mistreated liberal tax-exempt applicants in a manner identical to Tea Party groups. The IRS – the very same agency under fire for its actions – assisted these efforts by producing self-selected documents and volunteering helpful information. The result has been a fundamental misunderstanding of the truth about the IRS's targeting of conservative tax-exempt applicants.

The Truth: The IRS engaged in disparate treatment of conservative applicants

Contrary to Democratic claims, substantial documentary and testimonial evidence shows that the IRS systematically engaged in disparate treatment of conservative tax-exempt applicants. The Committee's investigation shows that the initial applications sent to the Washington as "test" cases were all filed by Tea Party-affiliated groups. The IRS screening criteria used to identify and separate additional applications also initially captured exclusively Tea Party organizations. Even after the criteria were changed, documents show the IRS intended to identify and separate Tea Party applications for review.

No matter how hard the Administration and congressional Democrats try to spin the facts about the IRS targeting, it remains clear that the IRS treated conservative tax-exempt applicants differently. As detailed below, the IRS treated Tea Party and other conservative tax-exempt applicants unlike liberal or progressive applicants.

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[44] Press Release, H. Comm. on Ways & Means Democrats, Levin Floor Statement on H.R. 3865 (Feb. 26, 2014).
[45] *The Last Word with Lawrence O'Donnell* (MSNBC television broadcast Mar. 5, 2014) (interview with Representative Gerry Connolly).

The Committee's evidence shows the IRS sought to identify and scrutinize Tea Party applications

To date, the Committee has reviewed over 400,000 pages of documents produced by the IRS, TIGTA, the IRS Oversight Board, and others. The Committee has conducted transcribed interviews of 33 IRS employees, totaling over 217 hours. From this exhaustive undertaking, one fundamental finding is certain: the IRS sought to identify and scrutinize Tea Party applications separate and apart from any other tax-exempt applications, including liberal or progressive applications.

The initial "test" cases were exclusively Tea Party applications

From documents produced by the IRS, the Committee is aware that the initial test cases transferred to Washington in spring 2010 to be developed as templates were applications filed by Tea Party-affiliated organizations. According to one document entitled "Timeline for the 3 exemption applications that were referred to [EO Technical] from [EO Determinations]," the Washington office received the 501(c)(3) application filed by the Prescott Tea Party, LLC on April 2, 2010.[46] The same day, the Washington office received the 501(c)(4) application filed by the Albuquerque Tea Party, Inc.[47] After Prescott Tea Party did not respond to an IRS information request, the IRS closed the application "FTE" or "failure to establish." The Washington office asked for a new 501(c)(3) application, and it received the application filed by American Junto, Inc., on June 30, 2010.[48]

Testimony provided by veteran IRS tax law specialist Carter Hull, who was assigned to work the test cases in Washington, confirms that they were exclusively Tea Party applications. He testified:

> Q Now, sir, in this period, roughly March of 2010, was there a time when someone in the IRS told you that you would be assigned to work on two Tea Party cases?
>
> A Yes.
>
> ***
>
> Q Do you recall when precisely you were told that you would be assigned two Tea Party cases?
>
> A When precisely, no.
>
> Q Sometime in –

[46] Internal Revenue Serv., Timeline from the 3 exemption applications that were referred to EOT from EOD. [IRSR 58346-49]
[47] *Id.*
[48] *Id.*

A Sometime in the area, but I did get, they were assigned to me in April.

***

Q Okay, and just to be clear, April of 2010?

A Yes.

***

Q And sir, were they cases 501(c)(3)s, or 501(c)(4)s?

A One was a 501(c)(3), and one was a 501(c)(4).

Q So one of each?

A One of each.

Q What, to your knowledge, was it intentional that you were sent one of each?

A Yes.

Q Why was that?

A I'm not sure exactly why. I can only make assumptions, but those are the two areas that usually had political possibilities.

***

Q The point of my question was, no one ever explained to you that you were to understand and work these cases for the purpose of working similar cases in the future?

***

A All right, I -- I was given -- they were going to be test cases to find out how we approached (c)(4), and (c)(3) with regards to political activities.

***

Q Mr. Hull, before we broke, you were talking about these two cases being test cases, is that right? Do you recall that?

A I realized that there were other cases. I had no idea how many, but there were other cases. And they were trying to find out how we should approach these organizations, and how we should handle them.

***

Q And when you say these organizations, you mean Tea Party organizations?

A The two organizations that I had.[49]

Hull's testimony also confirms that the Washington IRS office requested a similar 501(c)(3) application to replace the Prescott Tea Party's application. He testified:

Q Did you send out letters to both organizations the 501(c)(3) and 501(c)(4)?

A I did.

Q Did you get responses from both organizations?

A I got response from only one organization.

Q Which one?

A The (c)(4).

Q (C)(4). What did you do with the case that did not respond?

A I tried to contact them to find out whether they were going to submit anything.

Q By telephone?

A By telephone. And I never got a reply.

Q Then what did you do with the case?

A I closed it, failure to establish.

***

Q So at this time, when the (c)(3) became the FTE, did you begin to work only on the (c)(4)?

[49] Transcribed interview of Carter Hull, Internal Revenue Serv., in Wash., D.C. (June 14, 2013).

A I notified my supervisor that I would need another (c)(3) if they wanted me to work one of each.

***

Q How did you phrase the request to Ms. Hofacre? Was it -- were you asking for another (c)(3) Tea Party application?

A I was asking for another (c)(3) application in the lines of the first one that she had sent up. I'm not sure if I asked her for a particular organization or a particular type of organization. I needed a (c)(3) that was maybe involved in political activities.

Q And the first (c)(3), it was a Tea Party application?

A Yes, it was.[50]

[50] Transcribed interview of Carter Hull, Internal Revenue Serv., in Wash., D.C. (June 14, 2013).

Fig. 1: IRS Timeline of Tea Party "test" cases[51]

A. Timeline for the 3 exemption applications that were referred to EOT from EOD

1. Prescott Tea Party, LLC	**2. American Junto, Inc.**	**3. Albuquerque Tea Party, Inc.**
The Applicant sought exemption under §501(c)(3) formed to educate the public on current political issues, constitutional rights, fiscal responsibility, and support for a limited government. It planned to undertake this educational activity through rallies, protests, educational videos and through its website. The organization also intended to engage in legislative activities. The case was closed FTE on May 26, 2010.	The organization applied for exemption under §501(c)(3), stating it was formed to educate voters on current social and political issues, the political process, limited government, and free enterprise. It also indicated it would be involved in political campaign intervention and legislative activities. The case was closed FTE on January 4, 2012.	The organization applied for exemption under §501(c)(4) as a social welfare organization for purposes of issue advocacy and education. A proposed adverse is being prepared on the basis that the organization's primary activity is political campaign intervention supporting candidates associated with a certain political faction, its educational activities are partisan in nature, and its activities are intended to benefit candidates associated with a specific political faction as opposed to benefiting the community as a whole.
Timeline: **2009** • **11/09/2009** → Application received by EOD. • **12/18/2009** → Case assigned to EOD specialist. **2010** • **3/08/2010** → **Date the case was referred to EOT.** Case pulled from EOD files to send to EOT for review. • **3/11/2010** → EOD prepared a memo to transfer the case to EOT as part of EOT's review of some of the "advocacy organization" cases being received in EOD. • **4/02/2010** → Case assigned to EOT. • **4/14/2010** → 1st development letter mailed to Taxpayer (Response due by 5/06/2010). • **5/26/2010** → Case closed FTE (90-day suspense date ended on 8/26/2010).	**Timeline:** **2010** • **2/11/2010** → Application was received by EOD. • **4/11/2010** → Case assigned to a specialist in EOD. • **4/25/2010** → EOD emailed EOT (Manager Steve Grodnitzky) regarding who EOD should contact for help on "advocacy organization" cases being held in screening. • **5/25/2010** → EOT requested a §501(c)(3) "advocacy organization" case be transferred from EOD to replace Prescott Tea Party, LLC, a §501(c)(3) advocacy organization applicant that had been closed FTE. • **6/25/2010** → Memo proposing to transfer the case to EOT was prepared by EOD specialist. • **6/30/2010** → **Date the case was referred to EOT.** • **7/7/2010** → 1st development letter sent (Response due by 7/28/2010). • **7/28/2010** → EOT received Taxpayer's response to 1st development letter.	**Timeline:** **2010** • **1/4/2010** → Application was received by EOD. • **2/22/2010** → Case assigned to EOD specialist. • **3/11/2010** → EOD prepared memo to transfer the case to EOT as part of EOT's help reviewing the "advocacy organization" cases received in EOD. • **4/02/2010** → Case assigned to EOT. • **4/21/2010** → 1st development letter sent (Response due by 5/12/2010). • **4/29/2010** → Taxpayer requested extension for time to respond to 1st development letter. TLS granted extension until 6/11/2010. • **6/8/2010** → EOT received the Taxpayer's response to 1st development letter.

[51] Internal Revenue Serv., Timeline from the 3 exemption applications that were referred to EOT from EOD. [IRSR 58346-49]

The initial screening criteria captured exclusively Tea Party applications

Documents and testimony provided to the Committee show that the IRS's initial screening criteria captured only conservative organizations. According to a briefing paper prepared for Exempt Organizations Director Lois Lerner in July 2011, the IRS identified applications and held them if they met any of the following criteria:

- "Tea Party," "Patriots" or "9/12 Project" is referenced in the case file
- Issues include government spending, government debt or taxes
- Education of the public by advocacy/lobbying to "make America a better place to live"
- Statements in the case file criticize how the country is being run.[52]

Based on these criteria, which skew toward conservative ideologies, the IRS sent applications to a specific group in Cincinnati.

Fig. 2: IRS Briefing Document Prepared for Lois Lerner[53]

Background:

- EOD Screening has identified an increase in the number of (c)(3) and (c)(4) applications where organizations are advocating on issues related to government spending, taxes and similar matters. Often there is possible political intervention or excessive lobbying.
- EOD Screening identified this type of case as an emerging issue and began sending cases to a specific group if they meet any of the following criteria:
  - "Tea Party," "Patriots" or "9/12 Project" is referenced in the case file
  - Issues include government spending, government debt or taxes
  - Education of the public by advocacy/lobbying to "make America a better place to live"
  - Statements in the case file criticize how the country is being run

Testimony presented by the two Cincinnati employees shows that the initial applications in the growing IRS backlog were exclusive Tea Party applications. Elizabeth Hofacre, who oversaw the cases from April 2010 to October 2010, testified during her transcribed interview that "we were looking at Tea Parties." She testified:

> Q And you mentioned the Tea Party cases. Do you have an understanding of whether the Tea Party cases were part of that grouping of organizations with political activity, or were they separate?
>
> A That was the group of political cases.
>
> Q So why do you call them Tea Parties if it includes more than –

[52] Justin Lowe, Internal Revenue Serv., Increase in (c)(3)/(c)(4) Advocacy Org. Applications (2011). [IRSR 2735]
[53] *Id.*

A Well, at that time that's all they were. That's all that we were -- that's how we were classifying them.

Q In 2010, you were classifying any organization that had political activity as a Tea Party?

A No, it's the latter. I mean, we were looking at Tea Parties. I mean, political is too broad.

Q What do you mean when you say political is too broad?

A No, because when -- what do you mean by "political"?

Q Political activity -- if an application has an indication of political activity in it.

A I mean, I was tasked with Tea Party, so that's all I'm aware of. So I wasn't tasked with political in general.

Q Was there somebody who was tasked with political in general?

A Not that I'm aware of.[54] (emphasis added).

During the Committee's July 2013 hearing about the IRS's systematic scrutiny of Tea Party applications, Hofacre specifically rejected claims that liberal-oriented groups were part of the IRS backlog. She testified:

Mr. MICA. Okay, the beginning of 2010. And you—this wasn't a targeting by a group of your colleagues in Cincinnati that decided we're going to go after folks. And most of the cases you got, were they "Tea Party" or "Patriot" cases?

Ms. HOFACRE. Sir, they were all "Tea Party" or "Patriot" cases.

Mr. MICA. Were there progressive cases? How were they handled?

Ms. HOFACRE. **Sir, I was on this project until October of 2010, and I was only instructed to work "Tea Party"/ "Patriot"/"9/12" organizations.**[55] (emphasis added)

Ron Bell, who replaced Hofacre in overseeing the growing backlog of applications in Cincinnati, similarly testified during a transcribed interview that he only received Tea Party applications from October 2010 until July 2011. He testified:

[54] Transcribed interview of Elizabeth Hofacre, Internal Revenue Serv., in Wash., D.C. (May 31, 2013).
[55] July 18th Hearing, *supra* note 28.

Q Okay. So at this point between October 2010 and July 2011, were all the Tea Party cases going to you?

A Correct.

Q And to your knowledge, during this same time period, was it only Tea Party cases that were being assigned to you or were there other advocacy cases that were part of this group?

***

A Does that include 9/12 and Patriot?

Q Yes, yes.

A Yes.

Q Okay. So it was just those type of cases, not other type of advocacy cases that maybe had a different -- a different political -- a liberal or progressive case?

A Correct.

***

Q Okay. And to your knowledge, when you were first assigned these cases in October 2010 and through July 2011, do you know what criteria the screening unit was using to identify the cases to send to you?

A Yes.

Q And what was that criteria?

A It was solicited on the Emerging Issues tab of the BOLO report.

Q And what did that say? What did that Emerging Issue tab on the BOLO say?

A In July 20 –

Q In October 2010 we'll start.

A I don't know exactly what it said, but it just -- Tea Party cases, 9/12, Patriot.

Q And do you recall how many cases you inherited from Ms. Hofacre?

A 50 to 100.

Q And were those only Tea Party-type cases as well?

A To the best of my knowledge.[56]

The IRS continued to target Tea Party groups after the BOLO criteria were broadened

From material produced to the Committee, it is apparent that Exempt Organizations Director Lois Lerner began orchestrating in late 2010 a "c4 project that will look at levels of lobbying and pol[itical] activity" of nonprofits, careful that the effort was not a "*per se* political project."[57] Consistent with this goal, Lerner ordered the implementation of new screening criteria for the Tea Party cases in summer 2011, broadening the BOLO language to "advocacy organizations." According to testimony received by the Committee, Lerner ordered the language changed from "Tea Party" because she viewed the term to be "too pejorative."[58] While avoiding *per se* political scrutiny, other documents obtained by the Committee suggest that Lerner's change was merely cosmetic. These documents show that the IRS still intended to target and scrutinize Tea Party applications, despite the facial changes to the BOLO criteria.

An internal "Significant Case Report" summary chart prepared in August 2011 illustrates that Lerner's change was merely cosmetic (figures 3A and 3B). While the name of entry was changed "political advocacy organizations," the description of the issue continued to reference the Tea Party movement.[59] The issue description read: "Whether a tea party organization meets the requirements under section 501(c)(3) and is not involved in political intervention. Whether organization is conducting excessive political activity to deny exemption under section 501(c)(4)."[60]

[56] Transcribed interview of Ronald Bell, Internal Revenue Serv., in Wash., D.C. (June 13, 2013).
[57] E-mail from Lois Lerner, Internal Revenue Serv., to Cheryl Chasin et al., Internal Revenue Serv. (Sept. 16, 2010). [IRSR 191030]
[58] Transcribed interview of Carter Hull, Internal Revenue Serv., in Wash., D.C. (June 14, 2013).
[59] Internal Revenue Serv., Significant Case Report (Aug. 31, 2011). [IRSR 151653]
[60] *Id.*

Fig. 3A: IRS Significant Case Report Summary, August 2011[61]

A. Open SCs:

	Name of Org/Group	Group #/Manager	EIN	Received	Issue	Tax Law Specialist	Estimated Completion Date	Status/Next action	Being Elevated to TEGE Commissioner This Month
1.	Political Advocacy Organizations	T2/Ron Shoemaker	[redacted]	4/2/2010	Whether a tea party organization meets the requirements under section 501(c)(3) and is not involved in political intervention. Whether organization is conducting excessive political activity to deny exemption under section 501(c)(4)	Chip Hull & Hilary Goldhausen	3/31/2011 (Orig) 05/31/2011 (Rev) 07/31/2011 (Rev) 10/30/2011 (Rev) 12/31/2011 (Rev)	Developing both a (c)(3) and (c) (4) cases. Proposed (c)(4) favorable is currently being reviewed. Proposed denial currently being reviewed on (c)(3). Cases were discussed with Judy Kindell on 04/06/11. Judy requested staff to get additional information from taxpayers regarding certain activities. Development letters were sent. Proposed favorable (c)(4) ruling forwarded to Chief Counsel for comments on 06/04/11. Information from (c)(3) organization regarding activities due on 05/18/2011.Waiting on taxpayer response . : Met with Director EO on June 29, 2011. Met with Counsel on 8/10/11 to discuss the cases; Counsel recommended further development of the cases by getting information on the organizations' 2010 activities. Counsel gave us directions on the type of information needed. [redacted] Next Action: [redacted]	No

Fig. 3B: IRS Significant Case Report Summary, August 2011 (enlarged)[62]

	Name of Org/Group	Group #/Manager	EIN	Received	Issue
1.	Political Advocacy Organizations	T2/Ron Shoemaker	[redacted]	4/2/2010	Whether a tea party organization meets the requirements under section 501(c)(3) and is not involved in political intervention. Whether organization is conducting excessive political activity to deny exemption under section 501(c)(4)

Likewise, in comparing the individual sensitive case report prepared for the Tea Party cases in June 2011 with the report prepared in September 2012, it is apparent that the BOLO criteria changed was superficial. The reports' issue summaries are nearly identical, except for replacing "Tea Party" with "advocacy organizations."[63] The June 2011 sensitive case report (figure 4A) identified the issue as: "The various 'tea party' organizations are separately organized, but appear to be a part of a national political movement that may be involved in political activities. The 'tea party' organizations are being followed closely in national newspapers (such as The Washington Post) almost on a regular basis."[64]

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[61] *Id.*
[62] *Id.*
[63] *Compare* Internal Revenue Serv., Sensitive Case Report (June 17, 2011) [IRSR 151687-88], *with* Internal Revenue Serv., Sensitive Case Report (Sept. 18, 2012). [IRSR 150608-09]
[64] Internal Revenue Serv., Sensitive Case Report (June 17, 2011). [IRSR 151687-88]

Fig. 4A: IRS Sensitive Case Report for Tea Party cases, June 17, 2011[65]

CASE OR ISSUE SUMMARY:
The various "tea party" organizations are separately organized, but appear to be a part of a national political movement that may be involved in political activities. The "tea party" organizations are being followed closely in national newspapers (such as The Washington Post) almost on a regular basis. Cincinnati is holding three applications from organizations which have applied for recognition of exemption under section 501(c)(3) of the Code as educational organizations and approximately twenty-two applications from organizations which have applied for recognition of exemption under section 501c)(4) as social welfare organizations. Two organizations that we believe may be "tea party" organizations already have been recognized as exempt under section 501(c)(4). EOT has not seen the case files, but are requesting copies of them. The issue is whether these organizations are involved in campaign intervention or, alternatively, in nonexempt political activity.

The September 2012 sensitive case report (figure 4B) identified the issue as: "These organizations are 'advocacy organizations,' and although are separately organized, they appear to be part of a larger national political movement that may be involved in political activities. These types of advocacy organizations are followed closely in national newspapers (such as The Washington Post) almost on a regular basis."[66]

Fig. 4B: IRS Sensitive Case Report for "Advocacy Organizations," Sept. 18, 2012[67]

CASE OR ISSUE SUMMARY:
These organizations are "advocacy organizations," and although are separately organized, they appear to be part of a larger national political movement that may be involved in political activities. These types of advocacy organizations are followed closely in national newspapers (such as The Washington Post) almost on a regular basis. Cincinnati has in its inventory a number of applications from these types of organizations that applied for recognition of exemption under section 501(c)(3) of the Code as educational organizations and from organizations that applied for recognition of exemption under section 501(c)(4) as social welfare organizations.

Reading these items together, it is clear that although the BOLO language was changed to broader "political advocacy organizations," the IRS still intended to identify and single out Tea Party applications for scrutiny. Ron Bell testified that after the BOLO change in July 2011, he received more applications than just Tea Party cases. He testified:

Q And do you recall when that – when the BOLO was changed after – you said it was after the meeting [with Lerner], they changed the BOLO after the meeting, do you recall when?

A July.

Q Of 2011?

A Yes, sir.

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[65] *Id.*
[66] Internal Revenue Serv., Sensitive Case Report (Sept. 18, 2012). [IRSR 150608-09]
[67] *Id.*

Q And you were going to say the BOLO became more, and then you were cut off. What were you going to say?

A It became more – they had more the advocacy, more organizations to the advocacy, like I mentioned about maybe a cat rescue that's advocating for let's not kill the cats that get picked up by the local government in whatever cities.[68]

Bell also stated that while he could not process the Tea Party applications because he was awaiting guidance from Washington, he could process the non-Tea Party applications. He testified:

Q Mr. Bell, in July 2011, when the BOLO was changed where they chose broad language, after that point, did you conduct secondary screening on any of the cases that were being held by you?

A You mean the cases that I inherited from Liz are the ones that had already been put into the whatever timeframe, Tea Party advocacy, slash advocacy?

Q Other type, yes.

A No, these were new ones coming in that someone thought that they perhaps should be in the advocacy, slash, Tea Party inventory.

Q Okay.

A They were assigned to Group 7822, and I reviewed them, and you know, maybe some were, but a vast majority was like outside the realm we were looking for.

Q And so they were like the . . . cat type cases you were discussing earlier?

A Yes.

***

Q After the July 2011 change to the BOLO, how long did you perform the secondary screening?

A Up until July 2012.

Q So, for a whole year?

A Yeah.

[68] Transcribed interview of Ronald Bell, Internal Revenue Serv., in Wash., D.C. (June 13, 2013).

Q And you would look at the cases and see if they were not a Tea Party case, you would move that either to closing or to further development?

A Yeah, and then the BOLO changed about midway through that timeframe.

Q Okay.

A To make it where we put the note on there that we don't need the general advocacy.

Q And after the BOLO changed in January 2012, did that affect your secondary screening process?

A There was less cases to be reviewed.

Q Okay. **So during this whole year, the Tea Party cases remained on hold pending guidance from Washington while the other cases that you identified as non-Tea Party cases were moved to either closure or further development; is that right?**

A **Correct.**[69] (emphasis added).

The IRS's own retrospective review shows the targeted applications were predominantly conservative-oriented

In July 2012, Lerner asked her senior technical advisor, Judith Kindell, to conduct an assessment of the political affiliation of the applications in the IRS backlog. On July 18, Kindell reported back to Lerner that of all the 501(c)(4) applications, having been flagged for additional scrutiny, at least 75 percent were conservative, "while fewer than 10 [applications, or 5 percent] appear to be liberal/progressive leaning groups based solely on the name."[70] Of the 501(c)(3) applications, Kindell informed Lerner that "slightly over half appear to be conservative leaning groups based solely on the name."[71] Unlike Tea Party cases, the Oversight Committee's review has received no testimony from IRS employees that any progressive groups were scrutinized because of their organization's expressed political beliefs.

[69] *Id.*
[70] E-mail from Judith Kindell, Internal Revenue Serv., to Lois Lerner, Internal Revenue Serv. (July 18, 2012). [IRSR 179406]
[71] *Id.*

Fig. 5: E-mail from Judith Kindell to Lois Lerner, July 18, 2012[72]

From:	Kindell Judith E
Sent:	Wednesday, July 18, 2012 10:54 AM
To:	Lerner Lois G
Cc:	Light Sharon P
Subject:	Bucketed cases

Of the 84 (c)(3)

cases, slightly over half appear to be conservative leaning groups based solely

on the name. The remainder do not obviously lean to either side of the

political spectrum.

Of the 199 (c)(4)

cases, approximately 3/4 appear to be conservative leaning while fewer than 10

appear to be liberal/progressive leaning groups based solely on the name.

The remainder do not obviously lean to either side of the political

spectrum.

Documents and testimony obtained by the Committee demonstrate that the IRS sought to identify and scrutinize Tea Party applications. For fifteen months beginning in February 2010, the IRS systematically identified, separated, and delayed Tea Party applications – and only Tea Party applications. Even after the IRS broadened the screening criteria in the summer of 2011, internal documents confirm that that agency continued to target Tea Party groups.

The IRS treated Tea Party applications differently from other applications

Evidence obtained by the Committee in the course of its investigation proves that the IRS handled conservative applications distinctly from other tax-exempt applications. In February 2011, Lerner directed Michael Seto, the manager of Exempt Organizations Technical Unit, to put the Tea Party test cases through a "multi-tier" review.[73] Lerner wrote to Seto: "This could be the vehicle to go to court on the issue of whether Citizen's [*sic*] United overturning ban on corporate

[72] *Id.*

[73] Transcribed interview of Michael Seto, Internal Revenue Serv., in Wash., D.C. (July 11, 2013).

spending applies to tax exempt rule. Counsel and Judy Kindell need to be in on this one please."[74]

Carter Hull, an IRS specialist with almost 50 years of experience, testified that this multi-tier level of review was unusual. He testified:

Q Have you ever sent a case to Ms. Kindell before?

A Not to my knowledge.

Q This is the only case you remember?

A Uh-huh.

Q Correct?

A This is the only case I remember sending directly to Judy.

***

Q Had you ever sent a case to the Chief Counsel's office before?

A I can't recall offhand.

Q You can't recall. So in your 48 years of experience with the IRS, you don't recall sending a case to Ms. Kindell or a case to IRS Chief Counsel's office?

A To Ms. Kindell, I don't recall ever sending a case before. To Chief Counsel, I am sure some cases went up there, but I can't give you those.

Q Sitting here today you don't remember?

A I don't remember.[75]

Similarly, Elizabeth Hofacre, the Cincinnati-based revenue agent initially assigned to develop cases, told the Committee during a July 2013 hearing that the involvement of Washington was "unusual."[76] She testified:

I never before had to send development letters that I had drafted to EO

[74] E-mail from Lois Lerner, Internal Revenue Serv., to Michael Seto, Internal Revenue Serv. (Feb. 1, 2011). [IRSR 161810]
[75] Transcribed interview of Carter Hull, Internal Revenue Serv., in Wash., D.C. (June 14, 2013).
[76] *"The IRS's Systematic Delay and Scrutiny of Tea Party Applications": Hearing before the H. Comm. on Oversight & Gov't Reform*, 113th Cong. (2013) (statement of Elizabeth Hofacre).

Technical for review, and I never before had to send copies of applications and responses that were assigned to me to EO Technical for review. I was frustrated because of what I perceived as micromanagement with respect to these applications.[77]

Hofacre's successor on the cases, Ron Bell, also told the Committee that it was "unusual" to have to wait on Washington to move forward with an application.[78] He testified:

Q So did you see something different in these Tea Party cases applying for 501(c)(4) status that was different from other organizations that had political activity, political engagement applying for 501(c)(4) status in the past?

A I'm not sure if I understand that.

Q I guess what I'm getting at is you said you had seen previous applications from an organization applying for 501(c)(4) status that had some level of political engagement, and these Tea Party groups are also applying for 501(c)(4) status and they have some level of political engagement. Was there any difference in your mind between the Tea Party groups and the other groups that you'd seen in your experience at the IRS?

A No.

Q So, do you think that Tea Party groups are treated the same as these other groups from your previous experience?

A No.

***

Q In your experience, was there anything different about the way that the Tea Party 501(c)(4) cases were treated that was as opposed to the previous 501(c)(4) applications that had some level of political engagement?

A Yes.

Q And what was different?

A Well, they were segregated. They seemed to have been more scrutinized. I hadn't interacted with EO technical [in] Washington on cases really before.

Q You had not?

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[77] *Id.*

[78] Transcribed interview of Ronald Bell, Internal Revenue Serv., in Wash., D.C. (June 13, 2013).

A Well, not a whole group of cases.[79]

Another Cincinnati employee, Stephen Seok, testified that the type of activities that the conservative applicants conducted made them different from other similar applications he had worked in the past. He testified:

Q And to your knowledge, the cases that you worked on, was there anything different or novel about the activities of the Tea Party cases compared to other (c)(4) cases you had seen before?

***

A **Normal (c)(4) cases we must develop the concept of social welfare, such as the community newspapers, or the poor, that types. These organizations mostly concentrate on their activities on the limiting government, limiting government role, or reducing government size, or paying less tax. I think it[']s different from the other social welfare organizations which are (c)(4).**

***

Q **So the difference between the applications that you just described, the applications for folks that wanted to limit government, limit the role of government, the difference between those applications and the (c)(4) applications with political activity that you had worked in the past, was the nature of their ideology, or perspective, is that right?**

A **Yeah, I think that's a fair statement**. But still, previously, I could work, I could work this type of organization, applied as a (c)(4), that's possible, though. Not exactly Tea Party, or 9-12, but dealing with the political ideology, that's possible, yes.

Q **So you may have in the past worked on applications from (c)(4), applicants seeking (c)(4) status that expressed a concern in ideology, but those applications were not treated or processed the same way that the Tea Party cases that we have been talking about today were processed, is that right?**

A **Right**. Because that [was] way before these – these organizations were put together. So that's way before. If I worked those cases, way before this list is on.[80] (emphases added).

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[79] *Id.*

[80] Transcribed interview of Stephen Daejin Seok, Internal Revenue Serv., in Wash., D.C. (June 19, 2013).

This evidence shows that the IRS treated conservative-oriented Tea Party applications differently from other tax-exempt applications, including those filed by liberal-oriented organizations. Testimony indicates that the IRS instituted new procedures and different hurdles for the review of Tea Party applications. What would otherwise be a routine review of an application became unprecedented scrutiny and delays for these Tea Party groups.

Myth versus fact: How Democrats' claims of bipartisan targeting are not supported by the evidence

In light of the evidence available to the Committee and under close examination, each Democratic argument fails. Despite their claims that liberal-leaning groups were targeted in the same manner as conservative applicants, the facts do not bear out their assertions. Instead, the Committee's investigation and public information shows the following:

- IRS BOLO entries for liberal groups and terms only appear on lists used for awareness and were never used as a litmus test for enhanced scrutiny;
- Some liberal-oriented organizations were identified for scrutiny because of objective, non-political concerns, but not because of their political beliefs;
- Substantially more conservative-leaning applicants than liberal-oriented applicants were caught in the IRS's backlog;
- The IRS treated Tea Party applicants differently from "progressive" groups;
- The IRS treated Tea Party applicants differently from ACORN successor groups;
- The IRS treated Tea Party applicants differently from Emerge affiliate groups; and
- The IRS treated Tea Party applicants differently from Occupy groups.

When carefully examined, these facts refute the myths perpetrated by congressional Democrats and the Administration that the IRS engaged in bipartisan targeting. The facts show, instead, that the IRS targeted Tea Party groups for systematic scrutiny and delay.

Perhaps most telling is the IRS's own actions. When Lois Lerner publicly apologized for the IRS's targeting of Tea Party applicants, she offered no such apology for its targeting of any liberal groups. When asked if the IRS had treated liberal groups inappropriately, Lerner responded: "I don't have any information on that."[81] This admission severely undercuts Democratic *ex post* allegations of bipartisan targeting.

BOLO entries for liberal groups and terms only appear on lists used for awareness and were never used as a litmus test for enhanced scrutiny

Congressional Democrats and some in the Administration claim that the IRS targeted liberal groups because some liberal-oriented organizations appeared on entries of the IRS BOLO

[81] Aaron Blake, *'I'm not good at math': The IRS's public relations disaster*, WASH. POST, May 10, 2013.

lists.[82] This claim is not supported by the facts. The presence of an organization or a group of organizations on the IRS BOLO list did not necessarily mean that the IRS targeted those groups. As the Ways and Means Committee phrased it, "being on a BOLO is different from being targeted and abused by the IRS."[83] A careful examination of the evidence demonstrates that only conservative groups on the IRS BOLO lists experienced systematic scrutiny and delay.

The Democratic falsehood rests on a fundamental misunderstanding of the structure of the BOLO list. The BOLO list was a comprehensive spreadsheet document with separate tabs designed for information intended for different uses. For example, the "Watch List" tab on the BOLO document was designed to notify screeners of potential applications that the IRS has not yet received.[84] The "TAG Issues" tab listed groups with potentially fraudulent applications. The "Emerging Issues" tab, contrarily, was designed to alert screeners to groups of applications that the IRS has *already received* and that presented special problems.[85] Therefore, whereas the Watch List tab noted hypothetical applications that could be received and TAG Issues tab noted fraudulent applications, the Emerging Issues tab highlighted non-fraudulent applications that the IRS was actively processing.

The Tea Party entry on the IRS BOLO appears on the "Emerging Issues" tab, meaning that the IRS had already received Tea Party applications. The liberal-oriented groups on the BOLO list appear on either the Watch List tab, meaning that the IRS was merely notifying its screeners of the potential for those groups to apply, or the TAG Issues tab, indicating a concern for fraud. In effect, then, whereas the appearance of Tea Party groups on the BOLO signifies the *actuality* of review and subsequent delay, the appearance of the liberal groups on the BOLO signifies either the *possibility* that some group may apply in the future or the potential for fraud in a group's application.

The differences in where the entries appear on the BOLO document manifests in the IRS's differential treatment of the groups. According to evidence known to the Committee, only Tea Party applications appearing on the Emerging Issues tab resulted in systematic scrutiny and delay. Although some liberal groups appeared on versions of the BOLO, their mere presence on the document did not result in systematic scrutiny and delay – contrary to Democratic claims of bipartisan IRS targeting.

The IRS identified some liberal-oriented groups due to objective, non-political concerns, but not because of their political beliefs

Where the IRS identified liberal-oriented groups for scrutiny, evidence shows that it did so for objective, non-political reasons and not because of the groups' political beliefs. For

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[82] *See, e.g., Hearing on the Status of IRS Review of Taxpayer Targeting Practices: Hearing before the H. Comm. on Ways & Means*, 113th Cong. (2013); The White House, Press Briefing by Press Secretary Jay Carney, 2/3/14, http://www.whitehouse.gov/photos-and-video/video/2014/02/03/press-briefing#transcript.
[83] H. Comm. on Ways & Means, Being on a BOLO is Different from Being Targeted and Abused by the IRS (June 24, 2013), http://waysandmeans.house.gov/news/documentsingle.aspx?DocumentID=340314.
[84] Internal Revenue Serv., Heightened Awareness Issues. [IRSR 6655-72]
[85] *Id.*

instance, the IRS scrutinized Emerge America applications for conveying impermissible benefits to a private entity, which is prohibited for nonprofit groups.[86] The IRS scrutinized ACORN successor groups due to concerns that the organizations were engaged in an abusive scheme to rebrand themselves under a new name.[87] Likewise, the IRS included an entry for "progressive" on its BOLO list out of concern that the groups' partisan campaign activity "may not be appropriate" for 501(c)(3) status, under which there is an absolute prohibition on campaign intervention.[88] Unlike the Tea Party applications, which the IRS scrutinized for their social-welfare activities, the Committee has received no indication that the IRS systematically scrutinized liberal-oriented groups because of their political beliefs.

Substantially more conservative groups were caught in the IRS application backlog

Another familiar refrain from the Administration and congressional Democrats is that the IRS targeted liberal groups because left-wing groups were included in the IRS backlog along with conservative groups. Ways and Means Ranking Member Sander Levin (D-MI) alleged that the IRS engaged in bipartisan targeting because some "progressive groups were among the 298 applications that TIGTA reviewed in their audit and received heightened scrutiny."[89] Similarly, Representative Gerry Connolly (D-VA) said that "the tilt . . . included progressive titles as well as conservative titles and that they were equally stringent."[90] These allegations are misleading. Several separate assessments of the IRS backlog prove that substantially more conservative groups than liberal groups were caught in the IRS backlog.

An internal IRS analysis conducted for Lois Lerner in July 2012 found that 75 percent of the 501(c)(4) applications in the backlog were conservative, "while fewer than 10 [applications] appear to be liberal/progressive leaning groups based solely on the name."[91] The same analysis found that "slightly over half [of the 501(c)(3) applications] appear to be conservative leaning groups based solely on the name."[92] A Ways and Means examination conducted in 2013 similar found that the backlog was overwhelmingly conservative: 83 percent conservative and only 10 percent liberal.[93]

In September 2013, *USA Today* independently analyzed a list of about 160 applications in the IRS backlog.[94] This review showed that conservative groups filed 80 percent of the

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[86] Transcribed interview of Amy Franklin Giuliano, Internal Revenue Serv., in Wash., D.C. (Aug. 9, 2013).
[87] Transcribed interview of Robert Choi, Internal Revenue Serv., in Wash., D.C. (Aug. 21, 2013).
[88] *See, e .g.*, Internal Revenue Serv., Be on the Look Out List (Nov. 9, 2010). [IRS 1349-64]
[89] *Hearing on the Status of IRS Review of Taxpayer Targeting Practices: Hearing before the H. Comm. on Ways & Means*, 113th Cong. (2013) (statement of Ranking Member Sander Levin).
[90] *The Last Word with Lawrence O'Donnell* (MSNBC television broadcast Mar. 5, 2014) (interview with Representative Gerry Connolly).
[91] E-mail from Judith Kindell, Internal Revenue Serv., to Lois Lerner, Internal Revenue Serv. (July 18, 2012). [IRSR 179406]
[92] *Id.*
[93] Ways and Means Committee September 18th Hearing, *supra* note 9.
[94] *See* Gregory Korte, *IRS List Reveals Concerns over Tea Party 'Propaganda,'* USA TODAY, Sept. 18, 2013.

applications in the backlog while liberal groups filed less than seven percent.[95] An earlier analysis from *USA Today* in May 2013 showed that for 27 months beginning in February 2010, the IRS did not approve any tax-exempt applications filed by Tea Party groups.[96] During that same period, the IRS approved "perhaps dozens of applications from similar liberal and progressive groups."[97]

Testimony received by the Committee supports this conclusion. During a hearing of the Subcommittee on Economic Growth, Job Creation, and Regulatory Affairs, Jay Sekulow – a lawyer representing 41 groups targeted by the IRS – testified that substantially more conservative groups were targeted and that all liberal groups targeted eventually received approval.[98] In an exchange with Representative Matt Cartwright (D-PA), Sekulow testified:

Mr. CARTWRIGHT. And Mr. Sekulow, you were helpful with some statistics this morning, and I wanted to ask you about that. **You mentioned 104 conservative groups targeted. Was that the number?**

Mr. SEKULOW. This is from the report of the IRS dated through July 29th of 2013 – **104 conservative organizations in that report were targeted**.

Mr. CARTWRIGHT. Thank you. **And then seven progressive targeted groups**?

Mr. SEKULOW. **Seven progressive targeted groups, all of which received their tax exemption**.

Mr. CARTWRIGHT. Does it give the total number of applications? In other words, 104 conservative groups targeted. How many – how many applied? How many conservative groups applied?

Mr. SEKULOW. In the TIGTA report there was – I think the number was 283 that they had become part of the target. But actually, applications, a lot of the IRS justification for this, at least purportedly, was an increase in applications, and there was actually a decrease in the number.

Mr. CARTWRIGHT. Right. And does it give the number of progressive groups that applied for tax-exempt status?

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[95] *Id.*
[96] Gregory Korte, *IRS Approved Liberal Groups while Tea Party in Limbo*, USA TODAY, May 15, 2013.
[97] *Id.*
[98] *"The IRS Targeting Investigation: What Is the Administration Doing?": Hearing before the Subcomm. on Economic Growth, Job Creation, and Regulatory Affairs of the H. Comm. on Oversight & Gov't Reform*, 113th Cong. (2014) (question and answer with Rep. Matt Cartwright).

Mr. SEKULOW. No, the only report that has the progressive –

Mr. CARTWRIGHT. No, no?

Mr. SEKULOW. The one that I have just is the – the report I have in front of me is the one through the – which just has the seven.

Mr. CARTWRIGHT. OK. All right, thank you.

MR. SEKULOW. None of those have been denied, though.[99] (emphases added).

Contrary to the Democratic claim that the IRS targeting of liberal groups was "equally stringent" to conservative groups,[100] the overwhelming majority of applications in the IRS backlog were filed by conservative-leaning organizations. This evidence further demonstrates that the IRS did not engage in bipartisan targeting.

The IRS treated Tea Party applicants differently than "progressive" groups

Democrats in Congress and the Administration argue that the IRS treated "progressive" groups in a manner similar to Tea Party applicants. Because the IRS BOLO list had an entry for "progressives," Democrats allege that "progressive groups were singled out for scrutiny in the same manner as conservative groups,"[101] and that "the progressive groups were targeted side by side with their tea party counterpart groups."[102] Again, the evidence available to the Committee does not support these Democratic assertions. Rather, the evidence clearly shows that the IRS did not subject "progressive" groups to the same type of systematic scrutiny and delay as conservative applicants.

Perhaps the most significant difference between the IRS's treatment of Tea Party applicants and "progressive" groups is reflected in the IRS BOLO lists. The Tea Party entry was located on the tab labeled, "Emerging Issues," meaning that the IRS was actively screening for similar cases.[103] The "progressive" entry, however, was located on a tab labeled "TAG historical," meaning that the IRS interest in those cases was dormant.[104] Cindy Thomas, the manager of the IRS Cincinnati office, explained this difference during a transcribed interview with Committee staff.[105] She told the Committee that unlike the systematic scrutiny given to the

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[99] *Id.*
[100] *The Last Word with Lawrence O'Donnell* (MSNBC television broadcast Mar. 5, 2014) (interview with Representative Gerry Connolly).
[101] Press Release, H. Comm. on Ways and Means Democrats & H. Comm. on Oversight & Gov't Reform Democrats, New Documents Highlight IRS Scrutiny of Progressive Groups (Aug. 20, 2013).
[102] *Hearing on the Status of IRS Review of Taxpayer Targeting Practices: Hearing before the H. Comm. on Ways & Means*, 113th Cong. (2013) (question and answer with Representative Joseph Crowley).
[103] *See* Internal Revenue Serv., Heightened Awareness Issues. [IRSR 6655-72]
[104] *Id.*
[105] Transcribed interview of Lucinda Thomas, Internal Revenue Serv., in Wash., D.C. (June 28, 2013).

conservative-oriented applications as a result of the BOLO, "progressive" cases were never automatically elevated to the Washington office as a whole. She testified:

Q Ms. Thomas, is this an example of the BOLO from looks like November 2010?

A I don't know if it was from November of 2010, but –

Q This is an example of the BOLO, though?

A Yes.

Q Okay. And, ma'am, under what has been labeled as tab 2, TAG Historical?

A Yes.

***

Q Let's turn to page 1354.

A Okay.

Q Do you see that, it says -- the entry says progressive?

A Yes.

Q This is under TAG Historical, is that right?

A Yes.

Q So this is an issue that hadn't come up for a while, is that right?

A Right.

Q And it doesn't note that these were referred anywhere, is that correct? What happened with these cases?

A This would have been on our group as – because of – remember I was saying it was consistency-type cases, so it's not necessarily a potential fraud or abuse or terrorist issue, but any cases that were dealing with these types of issues would have been worked by our TAG group.

Q **Okay. And were they worked any different from any other cases that EO Determinations had?**

A **No. They would have just been worked consistently by one group of agents.**

Q Okay. And were they cases sent to Washington?

A I'm not – I don't know.

Q Not that you are aware?

A I'm not aware of that.

Q As the head of the Cincinnati office you were never aware that these cases were sent to Washington?

A There could be cases that are transferred to the Washington office according to, like, our [Internal Revenue Manual] section. I mean, there's a lot of cases that are processed, and I don't know what happens to every one of them.

Q Sure. But these cases identified as progressive as a whole were never sent to Washington?

A Not as a whole.[106]

The difference in where the entries appeared in the BOLO list resulted in disparate treatment of Tea Party and "progressive" groups. Unlike the systematic scrutiny given to Tea Party applicants, "progressive" cases were never similarly scrutinized.

The House Ways and Means Committee, with statutory authority to review confidential taxpayer information, concluded that the IRS treated conservative tax-exempt applicants differently than "progressive" groups. The Ways and Means Committee's review found that while the IRS approved only 45 percent of conservative applicants, it approved 100 percent of groups with "progressive" in their name.[107] Likewise, Acting IRS Commissioner Daniel Werfel testified before the Way and Means Committee:

Mr. REICHERT. Mr. Werfel, isn't it true that 100 percent of tea party applications were flagged for extra scrutiny?

Mr. WERFEL. I think that – yes. The framework from the BOLO. It's my understanding, the way the process worked is if there's "tea party" in the application it was automatically moved into -- into this area of further review, yes.

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[106] *Id.*

[107] *Hearing on the Internal Revenue Service's Exempt Organizations Division Post-TIGTA Audit: Hearing before the Subcomm. on Oversight of the H. Comm. on Ways & Means*, 113th Con. (2013) (opening statement of Chairman Boustany).

Mr. REICHERT.	OK, and you – you know how many progressive groups were flagged?
Mr. WERFEL.	I do not have that number.
Mr. REICHERT.	I do.
Mr. WERFEL.	OK.
Mr. REICHERT.	Our investigation shows that there were seven flagged. Do you know how many were approved?
Mr. WERFEL.	I do not have that number at my fingertips.
Mr. REICHERT.	All of those applications were approved.[108]

The IRS's independent inspector general has repeatedly confirmed the Ways and Means Committee's assessment. During the Oversight Committee's July 2013 hearing, TIGTA J. Russell George told Members that "progressive" groups were not subjected to the same systematic treatment as Tea Party applicants. He testified:

> With respect to the 298 cases that the IRS selected for political review, as of the end of May 2012, three have the word "progressive" in the organization's name; another four were used—are used, "progress," none of the 298 cases selected by the IRS, as of May 2012, used the name "Occupy."[109]

Mr. George also informed Congress that at least 14 organizations with "progressive" in their name were not held up and scrutinized by the IRS.[110] "In total," Mr. George wrote, "**30 percent of the organizations we identified with the words 'progress' or 'progressive' in their names were process as potential political cases. In comparison, our audit found that 100 percent of the tax-exempt applications with Tea Party, Patriots, or 9/12 in their names were processed as potential political cases** during the timeframe of our audit."[111] (emphasis added).

Documents produced by the IRS support the finding of disparate treatment toward Tea Party groups. Notes from one training session in July 2010 reflect that the IRS ordered screeners to transfer Tea Party applications to a special group for "secondary screening."[112] The same notes show that the screeners were asked to "flag" progressive groups.[113] But multiple

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[108] *Hearing on the Status of IRS Review of Taxpayer Targeting Practices: Hearing before the H. Comm. on Ways & Means*, 113th Cong. (2013) (question and answer with Representative Dave Reichert).
[109] *"The IRS's Systematic Delay and Scrutiny of Tea Party Applications": Hearing before the H. Comm. on Oversight & Gov't Reform*, 113th Cong. (2013) (statement of J. Russell George).
[110] Letter from J. Russell George, Treasury Inspector Gen. for Tax Admin., to Sander M. Levin, H. Comm. on Ways & Means (June 26, 2013).
[111] *Id.*
[112] Internal Revenue Serv., Screening Workshop Notes (July 28, 2010). [IRSR 6703-04]
[113] *Id.*

interviews with IRS employees who worked individual cases have yielded no evidence that these "flags" or frontline reviews for political activity led to enhanced scrutiny – except for Tea Party organizations. One sentence on the notes explicitly reminds screeners that "progressive' applications are not considered "Tea Parties.'"[114] These notes confirm testimony from Elizabeth Hofacre, the "Tea Party Coordinator/Reviewer," who told the Committee that she only worked Tea Party cases.[115]

Fig. 6: IRS Screening Workshop Notes, July 28, 2010[116]

Screening Workshop Notes - July 28, 2010 2

- The emailed attachment outlines the overall process.
- Glenn deferred additional statements and/or questions to John Shafer on yesterday's developments; how they affect the screening process and timeline.
- Concerns can be directed to Glenn for additional research if necessary.

Current/Political Activities: Gary Muthert

- Discussion focused on the political activities of Tea Parties and the like-regardless of the type of application.
- If in doubt Err on the Side of Caution and transfer to 7822.
- Indicated the following names and/or titles were of interest and should be flagged for review:
  - 9/12 Project,
  - Emerge,
  - Progressive
  - We The People,
  - Rally Patriots, and
  - Pink-Slip Program.

- Elizabeth Hofacre, Tea Party Coordinator/Reviewer
  - Re-empathize that applications with Key Names and/or Subjects should be transferred to 7822 for Secondary Screening. Activities must be primary.
  - "Progressive" applications are not considered "Tea Parties"

Despite creative interpretations of this individual document, the full evidence rebuts the Democratic claim that the IRS targeted "progressive" groups alongside Tea Party applicants. Although "progressive" groups were referenced in the IRS BOLO lists and internal training documents, Democrats in Congress and the Administration have repeatedly ignored critical distinctions that qualify their meaning. A careful evaluation of facts in context reveals one conclusion: the IRS treated Tea Party groups differently than "progressive" groups.

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[114] *Id.*
[115] Transcribed interview of Elizabeth Hofacre, Internal Revenue Serv., in Wash., D.C. (May 31, 2013).
[116] Internal Revenue Serv., Screening Workshop Notes (July 28, 2010). [IRSR 6703-04]

The IRS treated Tea Party applicants differently than ACORN successor groups

Democratic defenders of the IRS misconduct also argue that the IRS treated Tea Party applicants similar to ACORN successor groups. ACORN endorsed President Barack Obama in his election campaign and had established deep political ties before its network of affiliates delinked and rebranded themselves following scandalous revelations about the organization in 2009.[117] To support allegations about ACORN being targeted, Democrats have pointed to BOLO lists and training documents that "instructed [IRS] screeners to single out for heightened scrutiny . . . ACORN successors."[118]

But allegations of targeting fall flat. First, ACORN successor groups appear on the "Watch List" tab of the BOLO list, unlike Tea Party groups, which appear on the "Emerging Issues" tab.[119] According to IRS documents, the Watch List tab was intended to include applications "not yet received," or "issues [that] are the result of significant world events," or "organizations formed as a result of controversy."[120] The Emerging Issue tab was created to spot groups of applications *already* received by the IRS. An internal IRS training document specifically cites "Tea Party cases" as an example of an emerging issue; it does not similarly cite ACORN successor groups.

Second, Robert Choi, the director of EO Rulings and Agreements until December 2010, testified to several differences between how the IRS treated ACORN successors and how the IRS treated Tea Party applicants. He told the Committee that unlike the Tea Party "test" cases, he did not recall the ACORN successor applications being subject to a "sensitive case report" or worked by the IRS Chief Counsel's office.[121] Most importantly, he explained that the IRS had objective concerns about rebranded ACORN affiliates that had nothing to do with the organization's political views. The primary concern about the ACORN successor groups, according to Choi, was whether the groups were legitimate new entities or part of an "abusive" scheme to continue an old entity under a new name.[122] Mr. Choi testified:

> Q You said earlier in the last hour there was email traffic about the ACORN successor groups in 2010; is that right?
>
> A That's correct, yes.
>
> Q But the ACORN successor groups were not subject to a sensitive case report; is that right?

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[117] Stephanie Strom, *On Obama, Acorn and Voter Registration*, N.Y. TIMES, Oct. 10, 2008; Stanley Kurtz, *Inside Obama's Acorn*, NAT'L REVIEW ONLINE, May 29, 2008.
[118] Press Release, H. Comm. on Ways and Means Democrats & H. Comm. on Oversight & Gov't Reform Democrats, New Documents Highlight IRS Scrutiny of Progressive Groups (Aug. 20, 2013).
[119] *See* Internal Revenue Serv., Be on the Look Out list, "Filed 112310 Tab 5 – Watch List." [IRSR 2562-63]
[120] Internal Revenue Serv., Heightened Awareness Issues. [IRSR 6655-72]
[121] Transcribed interview of Robert Choi, Internal Revenue Serv., in Wash., D.C. (Aug. 21, 2013).
[122] *Id.*

A I don't recall if they were listed in there, in the sensitive case report.

Q So you don't recall them being part of a sensitive case report?

A I think what I'm saying is they may be part of a sensitive case report. I do not have a specific recollection that they were listed in a sensitive case report.

Q But you do have a specific recollection that the Tea Party cases were on sensitive case reports in 2010.

A Yes.

Q To your knowledge, did any ACORN successor application go to the Chief Counsel's Office?

A I am not aware of it.

Q Are you aware of any ACORN successor groups facing application delays?

A I do not know if – well, when you say "delays," how do you –

Q Well –

A I mean, I'm aware of successor ACORN applications coming in, and I am aware of email traffic that talked about my concern of delays on those cases and, you know, that there was discussion about seeing an influx of these applications which appear to be related to the previous organization.

***

Q And the concern behind the reason that they weren't being processed was that they were potentially the same organization that had been denied previously?

A Not that they were denied previously. **These appeared to be successor organizations, meaning these were newly formed organizations with a new EIN, employer identification number, located at the same address as the previous organization and, in some instances, with the same officers. And it was an issue of concern as to whether or not these were, in fact, the same organizations just coming in under a new name**; whether, in fact, the previous organizations, if they were, for example, 501(c)(3) organizations, properly disposed of their assets. Did they transfer it to this new organization? Was this perhaps an abusive

scheme by these organizations to say that they went out of business and then not really but they just carried on under a different name?

Q And that's the reason they were held up?

A Yes.[123] (emphasis added).

Choi's testimony shows that the inclusion of ACRON successor groups on the BOLO list centered on a concern for whether the new groups were improperly standing in the shoes of the old groups. As the Committee has documented previously, ACORN groups received substantial attention in 2009 and 2010 for misuse of taxpayer funds and other fraudulent endeavors.[124] In fact, Congress even cut off funding for ACORN groups given widespread concerns about the groups' activities.[125] Six Democratic current members of the Oversight Committee and seven Democratic current members of the Ways and Means Committee voted to stop ACORN funding.[126] The IRS included ACORN successor groups on a special watch list, according to Choi, due to concern "as to whether or not these were, in fact, the same organizations just coming in under a new name."[127]

This information undercuts allegations by congressional Democrats that the IRS's placement of ACORN successor groups on the BOLO list signified that those groups were targeted by the IRS in the same manner as Tea Party cases. Unlike the Tea Party applicants, ACORN successor groups were placed on the IRS BOLO out of specific and unique concern for potentially fraudulent or abusive schemes and not because of their political beliefs. Once identified, even ACORN successor groups were apparently not subjected to the same systematic scrutiny and delay as Tea Party applicants.

The IRS treated Tea Party applicants differently than Emerge affiliate groups

Congressional Democrats attempt to minimize the IRS's targeting of Tea Party applicants by alleging a false analogy to the IRS's treatment of Emerge affiliate groups. Emerge touts itself as the "premier training program for Democratic women" and states as a goal, "to increase the number of Democratic women in public office."[128] In particular, citing IRS training documents, Ranking Member Sander Levin and Ranking Member Elijah Cummings argued that "the IRS

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[123] *Id.*

[124] *See* H. COMM. ON OVERSIGHT & GOV'T REFORM MINORITY STAFF, IS ACORN INTENTIONALLY STRUCTURED AS A CRIMINAL ENTERPRISE? (July 23, 2009).

[125] *See* H. COMM. ON OVERSIGHT & GOV'T REFORM MINORITY STAFF, FOLLOW THE MONEY: ACORN, SEIU AND THEIR POLITICAL ALLIES (Feb. 18, 2010).

[126] *See* 155 Cong. Rec. H9700-01 (Sept. 17, 2009). The Democratic Members who opposed ACORN funding were Representatives Maloney (D-NY); Tierney (D-MA); Clay (D-MO); Cooper (D-TN); Speier (D-CA); Welch (D-VT); Levin (D-MI); Doggett (D-TX); Thompson (D-CA); Larson (D-CT); Blumenauer (D-OR); Kind (D-WI); and Schwartz (D-PA). *Id.*

[127] Transcribed interview of Robert Choi, Internal Revenue Serv., in Wash., D.C. (Aug. 21, 2013).

[128] Emerge America, www.emergeamerica.org (last visited Apr. 2, 2014).

instructed its screeners to single out for heightened scrutiny 'Emerge' organizations."[129] The evidence, once more, fails to support their contention. The IRS did not target Emerge affiliate groups in any similar manner to Tea Party applicants.

The same training documents cited by congressional Democrats as proof of bipartisan IRS targeting clearly show differences between the treatment of Tea Party applications and those filed by Emerge affiliate. The IRS ordered its screeners to transfer Tea Party applications to a special group for "secondary screening," but it asked the screeners to merely "flag" Emerge groups.[130] While another training document specifically offers the Tea Party as an example of an emerging issue, the Emerge affiliate groups were not referenced on the document.[131]

Democrats cite testimony from IRS employee Steven Grodnitzky to support their argument that the IRS engaged in bipartisan targeting. Ranking Member Cummings referenced this testimony when questioning Acting IRS Commissioner Daniel Werfel during his unsolicited testimony before the Committee on July 17, 2013.[132] Although Grodnitzky did testify that some liberal applications experienced a three-year delay,[133] he also gave testimony that contradicts the Democrats' manufactured narrative. Grodnitzky testified that unlike the Tea Party cases, which were filed by unaffiliated groups with similar ideologies, the Emerge cases were affiliated entities with different "posts" in each state.[134] He also testified that unlike the Tea Party applications, where the IRS was focused on political speech, the central issue in the Emerge applications was that the groups were conveying an impermissible private benefit upon the Democratic Party.[135] Finally, Grodnitzky testified that there were far fewer Emerge cases than Tea Party applications.[136] While Grodnitzky's testimony supports a conclusion that specific and objective concerns at the IRS led to scrutiny and delayed applications from Emerge affiliates, it does not support a parallel between these organizations and what the IRS did to Tea Party applicants.

Emerge existed as a series of affiliated organizations. One IRS employee testified that whereas the Tea Party applicants waited years for IRS action, some of the Emerge applications were approved by Cincinnati IRS employees in a "matter of hours."[137] But the IRS eventually reversed course, out of concern about impermissible private benefit. Because Emerge affiliates were seen as essentially the same organization, the IRS wanted to flag new affiliates to ensure that these new applications were considered in a consistent manner. Testimony from IRS employee, Amy Franklin Giuliano, explains why the Emerge applicants "were essentially the same organization."[138] She testified:

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[129] Press Release, H. Comm. on Ways and Means Democrats & H. Comm. on Oversight & Gov't Reform Democrats, New Documents Highlight IRS Scrutiny of Progressive Groups (Aug. 20, 2013).
[130] Internal Revenue Serv., Screening Workshop Notes (July 28, 2010). [IRSR 6703-04]
[131] Internal Revenue Serv., Heightened Awareness Issues. [IRSR 6655-72]
[132] *See* July 17th Hearing, *supra* note 25.
[133] Transcribed interview of Steven Grodnitzky, Internal Revenue Serv., in Wash., D.C. (July 16, 2013).
[134] *Id.*
[135] *Id.*
[136] *Id.*
[137] Transcribed interview of Amy Franklin Giuliano, Internal Revenue Serv., in Wash., D.C. (Aug. 9, 2013).
[138] Transcribed interview of Amy Franklin Giuliano, Internal Revenue Serv., in Wash., D.C. (Aug. 9, 2013).

Q The reason that the other five cases would be revoked if that case the Counsel's Office had was denied, was that because they were affiliated entities?

A It is because they were essentially the same organization. I mean, every – the applications all presented basically identical facts and basically identical activities.

Q And the groups themselves were affiliated.

A And the groups themselves were affiliated, yes.[139]

Giuliano also told the Committee that the central issue in these cases was not impermissible political speech activity – as it was with the Tea Party applications – but instead private benefit. She testified:

Q The issue in the case you reviewed in May of 2010 was private benefit.

A Yes.

Q As opposed to campaign intervention.

A We considered whether political campaign intervention would apply, and we decided it did not.[140]

Most striking, Giuliano told the Committee that the career IRS experts recommended *denying* an Emerge application, whereas the experts recommended *approving* the Tea Party application.[141] Even then, despite the recommended approval, the Tea Party applications still sat unprocessed in the IRS backlog.

Documents and testimony received by the Committee demonstrate that the IRS never engaged in systematic targeting of Emerge applicants as it did with Tea Party groups. IRS scrutiny of Emerge affiliates appears to have been based on objective and non-controversial concerns about impermissible private benefit. Taken together, this evidence strongly rebuts any Democratic claims that the IRS treated Emerge affiliates similarly to Tea Party applicants.

The IRS treated Tea Party applicants differently than Occupy groups

Finally, congressional Democrats defend the IRS targeting of Tea Party organization by arguing that liberal-oriented Occupy groups were similarly targeted.[142] Contrary to these claims, evidence available to the Committee indicates that the IRS did not target Occupy groups.

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[139] *Id.*
[140] *Id.*
[141] *Id.*
[142] July 18th Hearing, *supra* note 28

TIGTA found that none of the applications in the IRS backlog were filed by groups with "Occupy" in their names.[143] Several IRS employees interviewed by the Committee testified that they were not even aware of any Occupy entry on the BOLO list until after congressional Democrats released the information in June 2013.[144] Further, there is no indication that the IRS systematically scrutinized and delay Occupy applications, or that the IRS subjected Occupy applicants to burdensome and intrusive information requests. To date, the Committee has not received evidence that "Occupy Wall Street" or an affiliate organization even applied to the IRS for non-profit status.

Conclusion

Democrats in Congress and the Administration have perpetrated a myth that the IRS targeted both conservative and liberal tax-exempt applicants. The targeting is a "phony scandal," they say, because the IRS did not just target Tea Party groups, but it targeted liberal and progressive groups as well. Month after month, in public hearings and televised interviews, Democrats have repeatedly claimed that progressive groups were scrutinized in the same manner as conservative groups.[145] Because of this bipartisan targeting, they conclude, there is not a "smidgeon of corruption" at the IRS.

The problem with these assertions is that they are simply not accurate. The Committee's investigation shows that the IRS sought to identify and single out Tea Party applications. The facts bear this out. The initial "test" applications were filed by Tea Party groups. The initial screening criteria identified only Tea Party applications. The revised criteria still intended to identify Tea Party activities. The IRS's internal review revealed that a substantial majority of applications were conservative. In short, the IRS treated conservative tax-exempt applications in a manner distinct from other applications, including those filed by liberal groups.

Evidence available to the Committee contradicts Democrats' claims about bipartisan targeting. Although the IRS's BOLO list included entries for liberal-oriented groups, only Tea Party applicants received systematic scrutiny because of their political beliefs. Public and nonpublic analyses of IRS data show that the IRS routinely approved liberal applications while holding and scrutinizing conservative applications. Even training documents produced by the IRS indicate stark differences between liberal and conservative applications: "'progressive' applications are not considered "Tea Parties."'[146] These facts show one unyielding truth: Tea Party groups were target because of their political beliefs, liberal groups were not.

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[143] *"The IRS's Systematic Delay and Scrutiny of Tea Party Applications": Hearing before the H. Comm. on Oversight & Gov't Reform*, 113th Cong. (2013) (statement of J. Russell George).

[144] *See, e.g.*, Transcribed interview of Elizabeth Kastenberg, Internal Revenue Serv., in Wash., D.C. (July 31, 2013); Transcribed interview of Sharon Light, Internal Revenue Serv., in Wash., D.C. (Sept. 5, 2013); Transcribed interview of Joseph Grant, Internal Revenue Serv., in Wash., D.C. (Sept. 25, 2013); Transcribed interview of Nancy Marks, Internal Revenue Serv., in Wash., D.C. (Oct. 8, 2013); Transcribed interview of Justin Lowe, Internal Revenue Serv., in Wash., D.C. (July 23, 2013).

[145] Press Release, H. Comm. on Ways and Means Democrats & H. Comm. on Oversight & Gov't Reform Democrats, New Documents Highlight IRS Scrutiny of Progressive Groups (Aug. 20, 2013).

[146] Internal Revenue Serv., Screening Workshop Notes (July 28, 2010). [IRSR 6703-04]

AUG 0 5 2013

DEPUTY COMMISSIONER

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

August 2, 2013

The Honorable Darrell Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Jim Jordan
Chairman
Subcommittee on Economic Growth, Job Creation
and Regulatory Affairs
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Issa and Chairman Jordan:

I am responding to your letter dated July 30, 2013. Your letter suggests we have not fully cooperated with the Congress. Those statements are inaccurate and unfair. The IRS is fully committed to transparency and cooperation with the ongoing review being conducted by four committees of the Congress, including your committee.

This commitment is demonstrated by our level of effort to date. The IRS is working hard to provide information requested by you and other committees as quickly as possible and to respond to your other requests. No process is perfect, but we are continually striving to improve this one. This effort includes:

- Dedicating more than 100 employees who are working diligently to gather documents, review them, and protect the taxpayer-specific information in them as is required by law. This includes 70 attorneys who are reviewing documents full time.
    - Providing – as of today – weekly rolling productions of documents, including more than 70,000 pages of documents produced to Congress, which includes more than 16,500 pages of documents after review to remove taxpayer information. These include significant documents specifically requested by you and other committees such as: various iterations of "Be on the lookout" or BOLO spreadsheets; the transmission emails associated with those spreadsheets which reflect changes made to the spreadsheets; training materials used by screeners; emails self-selected by witnesses appearing for interviews with your staff; responsive documents in the electronic materials of Doug Shulman that contained the terms tea party,

White House, 501(c), patriot and variations of 9/12; and responsive documents from the electronic materials of Chief Counsel Bill Wilkins and the Office of Chief Counsel, as described more fully below.

- Responding to more than 41 different letters from Members of Congress about these issues.
- Answering questions related to the subjects of your investigation at 15 different hearings as of the end of this week, four of which were hearings before your committee.
- Dedicating hundreds of staff hours in meetings with congressional staff and internal meetings to help ensure we are responsive to questions asked at congressional hearings.
- Engaging in dozens of phone calls and meetings with staff of your committee and others regarding documents and witnesses.
- Facilitating 29 interviews of 19 employees by congressional committees. Many of these employees traveled for full day interviews and spent additional time preparing to answer the questions of congressional staff.

By any measure, this is an enormous undertaking for the IRS. We are aggressively working to share, gather and provide information requested by your committee and others, and we intend to continue to do so. That said, any process can be improved, and we are refining ours on a regular basis. As always we are happy to continue to discuss any specific issues with you and your staff.

Now I will turn to the specific points in your letter. Your letter contains certain misunderstandings I would like to correct.

<u>There are not 64 million responsive documents.</u>

Sixty-four million is not an accurate number to use when determining a baseline for document production in this matter. That number referred to raw data that is largely unrelated to and unresponsive to congressional requests. To ensure documents are responsive to congressional requests, the initial set of raw electronic data must be processed with preliminary search terms that eliminate a portion of non-responsive information. For example, we eliminate material created prior to 2008 because it is not responsive to congressional requests. To date, this application of preliminary search terms to raw data associated with 48 individuals resulted in identification of approximately 660,000 documents, which we loaded into our document review system. Ultimately, once we load into the system information from the remaining individuals identified by your committee and others, we expect there may be a rough approximation of 1.64 million documents to be reviewed by IRS attorneys to further eliminate non-responsive information and for other purposes as described below.

Seventy-two percent of the documents reviewed by the IRS are not responsive to congressional inquiries.

We have found that a high percentage of the documents already reviewed by IRS attorneys are not responsive to congressional requests. Our manual reviews by IRS attorneys indicate approximately 28 percent of documents already reviewed are responsive to the various requests and 72 percent are not. This means that a fraction of the 1.64 million documents will ultimately be produced. We have attempted to prioritize the document review to focus on the information from those individuals we anticipate had the most significant involvement with the issues your committee is reviewing; thus, the ultimate production set may be smaller than a straight extrapolation of 28 percent would suggest.

There are a variety of reasons the material is so heavily non-responsive. First, some of the 119 individuals have little knowledge and information about the events under review because they were identified for collection simply because they work in an IRS office that had involvement with these events. Many of the names were put on the list at the request of congressional staffers, including your staff, and not because the IRS determined that they had a major role in the events under investigation. Second, even individuals who have been identified as having the most involvement in the events under investigation have large amounts of information unrelated to these events. For example, individuals who work in the Exempt Organizations Determinations Unit may work predominantly on cases in which there is no connection to political activity, and their electronic material will contain information largely relating to matters that are not at issue in your investigation.

The IRS is working hard to speed its production, protect taxpayer information as required by law, and respond to specific requests from Congress.

The IRS is taking important steps to ensure we are producing material as quickly as possible to the congressional committees. First, we have tasked 70 IRS attorneys, out of a Chief Counsel office of approximately 1,600 attorneys, to work full-time reviewing documents. These attorneys have ramped up from training to full-time review work over the course of the last four weeks and are now fully engaged on this project.

Second, the IRS is taking its obligations to protect the confidentiality of tax returns and return information under IRC § 6103 very seriously. Protecting taxpayer rights is a core obligation of this agency. Each document that the IRS contemplates releasing must be carefully reviewed by professionals trained in disclosure and privacy law to ensure that confidential tax information is not disclosed in an unauthorized fashion. We have thus dedicated a team of disclosure experts to work full time on this exacting and time-consuming task. Sometimes this process results in the redaction of whole pages, for example if the document is a memorandum about a particular taxpayer and may have come from that taxpayer's application file. Other times we are able to redact just words or lines, as in the case of the BOLO spreadsheets. Importantly, however, I must emphasize that we have produced in unredacted form to Chairman Camp, Ranking Member Levin,

Chairman Baucus and Ranking Member Hatch all of the material that we have produced to you in redacted form.

Third, we have reviewed the search terms requested by committee staff to identify those causing the most nonresponsive or false, "hits." Your staff and the staff of other committees provided the IRS with a total of approximately 80 search terms (initial version attached), some of which were generic and non-specific, for example "election, "independent, and "c3," (which are used in the context of many tax issues within the IRS). Some appear to be completely unrelated to the congressional investigations. The application of this unfocused set of search terms has produced an artificially inflated number of documents to be searched by IRS attorneys on a document-by-document basis. Some terms, such as "C3" are particularly problematic because employees in the Exempt Organizations Determinations Unit work on a broad range of cases and issues involving IRC §501 (c)(3) applications that have no indicators of political activity, such as applications by schools. Accordingly, to be responsive to the concerns raised by your committee and the Ways and Means Committee, this week we are beginning to switch to more focused search terms. We expect this closer focus to boost the percentage of documents reviewed that are responsive to your requests, reduce the total number of documents that must be reviewed manually by attorneys, and ultimately result in documents getting to you faster. We will continue to evaluate and refocus the search terms as needed.[1]

Fourth, we work very hard to provide to you and other committees documents responsive to particular requests. For example, an IRS employee, Ms. Cindy Thomas, wished to provide IRS materials containing confidential taxpayer information to your staff prior to a scheduled interview. As you know and as discussed above, IRC §6103 permits such information only to be given to the Chairs of the tax-writing committees of the Congress or their designees. Accordingly, we needed to review this material in order to redact confidential taxpayer information. Had we not done so, Ms. Thomas would have faced civil or criminal exposure for making an unauthorized disclosure of taxpayer information.

Ms. Thomas' attorneys initially provided a disk of information to the IRS document production team that was password protected by Ms. Thomas, and she was unable to provide the password. Close to a week later, late afternoon on June 24, 2013, we received another disk and a working password. Because this was just days before her scheduled interview, my team informed your staff that processing the documents and redacting any confidential taxpayer information was going to be time-consuming and that we would not be able to perform the redactions in advance of her interview. We then provided it as soon as we were able to complete those redactions.[2]

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[1] We are focused on maximizing the efficiency of our document production efforts, which includes eliminating duplicates to the extent possible. In this regard, consistent with the prevailing practice both in and out of government, the IRS relies on e-discovery technology to eliminate duplicate documents. Although our system eliminates a substantial number of duplicate documents from the set(s) of documents that we ultimately produce to the Congress, the elimination rate is not 100 percent. We are actively working with our technology team to find ways to further eliminate duplicates from the documents we produce to Congress.

[2] I have been informed by my staff that your reference to 288,000 pages of documents cannot be confirmed. We received a disk from Ms. Thomas' attorneys that contained some documents that were either password-protected or unreadable, as we noted in our cover letter. The disk contained 425 emails and attachments that we could review. As we explained in our production letter to you, we

In another example, we quickly worked to address your requests for information from the Office of Chief Counsel as well as Chief Counsel Bill Wilkins. As we stated in our July 26 letter, we searched for emails to/from the Office of IRS Chief Counsel and the Treasury Department and to/from the Office of Chief Counsel and the White House with the specific terms you requested (Citizens United, 2010 election and tea party), and there were zero responsive emails. We specifically included the White House domain as well as Treasury domains in our search.

In addition, we searched all of Mr. Wilkins' emails for the following terms (using these terms only as search terms and not as a reference to any particular taxpayer or group of taxpayers): BOLO, lerner, paz, tea party, we the people, 9/12, political advocacy, emerge, patriot, occupy, acorn and progressive. That search produced seven emails with five attachments. Of those, we produced to you six emails with their attachments. The other document referred to in that letter is an email forwarded to Mr. Wilkins with a draft copy of the TIGTA report, which, as you know, has 6103 information in it; that document is being produced today with redactions. Although our July 26 letter indicates we did not search documents with the tag "private," my staff has reviewed the documents stored in our e-Discovery platform, and there are no documents from Mr. Wilkins tagged "private," so none were withheld on that basis.[3] Further, we have offered to have Mr. Wilkins participate in an interview with your staff, and, they have indicated they prefer not to interview him at this time.

I continue to strongly disagree with the characterization of the facts set forth in your July 30 letter and your statement that the IRS has attempted, in any way, to impede the on-going investigations being conducted by your committee. I remain committed to working with the Congress and the ongoing investigations, and to restoring public trust in our nation's tax system.

Sincerely,

Daniel I. Werfel
Principal Deputy Commissioner

Enclosure

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produced the material dated prior to May 10, 2013, because the material after that date appeared to raise issues of privileges available to the IRS. We explained that we would supplement the first production with additional materials from Ms. Thomas, and we will do so. That production will include the materials we have gathered from her computer, and thus, we expect, will contain the material we were unable to access on her disk.

[3] Many documents the IRS has collected from individuals in connection with these congressional investigations have nothing whatsoever to do with the subject of the congressional investigations. Our instruction to the document reviewers is to tag as "private" a document that looks personal, such as a document discussing day-care arrangements or medical appointments. Documents that are truly private in nature are not responsive to the congressional requests.

EDR 2013 – 064 SEARCH TERMS 20130611

1) "Democrat!"
2) "Independent"
3) "Left wing"
4) "tea party"
5) "9/12"
6) "912"
7) "9-12"
8) "patriot"
9) "make america a better place to live"
10) "conservative"
11) "conservative!"
12) "republican"
13) "republican!"
14) "right wing"
15) "progress!"
16) "liberal"
17) "BOLO"
18) "watch list"
19) "task force"
20) "emerging issue"
21) "High" w/3 "profile"
22) "Government" w/4 "debt"
23) "We the People"
24) "Government" w/4 "spending"
25) "America" w/4 "better place to live"
26) "Critical" w/s "country"
27) "C(4)"
28) "C4"
29) "C(3)"
30) "C3"
31) "501c"
32) "Citizens United"
33) "TIGTA"
34) "Inspector General"
35) "Russell George"
36) "Audit"
37) "Issa"
38) "Oversight"
39) "Ways and Means"
40) "Camp"
41) "Boustany"
42) "Perjur!"
43) "Election"
44) "Be on the Lookout"

45) "Triage"
46) "Advocacy" w/3 "group"
47) "Criteria" w/5 "identify"
48) "Criteria" w/5 "search"
49) "Pro-life"
50) "Pro-choice"
51) "Pro-Israel"
52) "Glenn Beck"
53) "Constitution"
54) "Bill of Rights"
55) "Romney"
56) "Leadership Institute"
57) "Koch"
58) "Wynn"
59) "Adelson"
60) "Rove"
61) "Media"
62) "Donor!"
63) "White House"
64) "WH"
65) "Obama"
66) "POTUS"
67) "Rahm"
68) "Jarrett"
69) "Cutter"
70) "Kelley"
71) "NTEU"
72) "Union"
73) "Lerner"
74) "Paz"
75) "Roady"
76) "American Bar Association"
77) "ABA"
78) "Political"
79) "Campaign"
80) "consisten!"
81) "Emerging" w/2 "issue"

Any email message in which the to or the from line contain the terms:

a) "Treasury"
b) "treas"
c) "who.eop.gov"

presents...
The Future of Mobile:
Policy, Regulation and the Way Forward
June 26
8 AM
RSVP
at&t TechNet

POLITICO

White House hits back in IRS-Lois Lerner flap

By: Rachael Bade and Kim Dixon
June 18, 2014 05:22 PM EDT

The Obama administration on Wednesday struck back against Republican charges of an IRS cover-up by revealing that it found no direct emails between former IRS official Lois Lerner and White House officials in a search conducted for lawmakers.

"We conducted a search for responsive documents and were unable to identify any communications between Lois Lerner and persons within the [Executive Office of the President] during the requested period," reads a Wednesday letter obtained by POLITICO from White House counsel W. Neil Eggleston and addressed to Senate Finance Chairman Ron Wyden (D-Ore.) and House Ways and Means Chairman Dave Camp (R-Mich.).

The requested period refers to emails between Jan. 1, 2009, and May 1, 2011 — which includes the roughly two years for which Lerner's emails are lost.

(Also on POLITICO: The new oil crisis: Exploding trains)

"We found zero emails, sorry to disappoint, between Lois Lerner and anyone within the EOP during this period," White House spokesman Jay Carney said in a briefing to reporters, in response to a question. The EOP is the Executive Office of the President.

The White House defense comes days after the IRS scandal re-emerged when the IRS acknowledged it lost the emails of as many as six employees involved in the matter, including those of Lerner and Nikole Flax, the chief of staff for the IRS's then-acting commissioner.

The email news has reignited Republicans' ire in their probes into wrongdoing related to the scrutiny the IRS gave tea party applicants seeking tax breaks. The IRS commissioner will be on the hot seat at a hearing called by Camp set for Friday.

(Also on POLITICO: 'Redskins' stripped of trademarks)

Camp spokeswoman Sarah Swinehart said they asked for documents nearly a year ago and "they have obstructed and delayed at every step. They now need to lean on all agencies to do an immediate search for Lerner documents and produce them to Congress — especially DOJ and Treasury. Bottom line — we do not have all the documents we requested."

The White House did find three emails where Lerner and White House officials were copied on two third-party tax-assistance inquiries and one spam email.

Democrats have said all along that the ruckus was due to mismanagement and not nefarious intent, a conclusion broadly backed by the original inspector general report that first revealed the agency was using shortcuts to set aside applicants with words like "tea party."

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

NATIONAL DIRECTOR
FOR LEGISLATIVE
AFFAIRS

June 13, 2014

The Honorable Ron Wyden
Chairman
Committee on Finance
United States Senate
Washington, DC 20510

The Honorable Orrin Hatch
Ranking Member
Committee on Finance
United States Senate
Washington, DC 20510

Dear Mr. Chairman and Ranking Member Hatch:

I am writing to provide an update on IRS document productions to Congress. As of mid-March 2014, the Senate Finance Committee and the House Ways & Means Committee had received the documents the IRS identified as related to the processing and review of applications for tax-exempt status as described in the May 2013 report by the Treasury Inspector General for Tax Administration. *See* Enclosure 1. As my August 29, 2013 letter to you described, in order to produce those documents, we ran agreed search terms on many (then 77, now 83) custodians' electronic materials, reviewed the resulting materials for responsive documents, and produced them. *See* Enclosure 2. Production of those materials identified as responsive from the agreed custodians and search terms was completed three months ago. *See* Enclosure 1.

The IRS hopes that your investigation can be concluded and the Senate Finance Committee's report issued in the very near future so that the IRS can then take further corrective action to address issues, where necessary. Congressional reports are important to learn from, address, and move beyond the problems and concerns identified. Your committee's conclusions and recommendations will be a critically important step in that process.

More than 250 IRS employees have spent over 120,000 hours working on compliance with several investigations stemming from last May's report related to the processing and review of applications for tax-exempt status by the Treasury Inspector General for Tax Administration. We have responded to hundreds of Congressional requests for information. In so doing, the IRS has incurred a direct cost of nearly $10 million. We have spent an additional $6-8 million to optimize existing information technology systems and ensure a stable infrastructure for the production and required redactions to protect taxpayer information. I have attached a document describing some of the challenges and limitations that the IRS faced in its production process. *See* Enclosure 3.

Since mid-March, in response to Chairman Dave Camp's request and Chairman Darrell Issa's subpoena, the IRS has been reviewing and producing all remaining email for which Lois Lerner was a custodian – regardless of search terms, relevance, or subject

matter. In other words, these Lerner documents are beyond and in addition to the already-produced Lerner materials the IRS identified as related to the processing and review of applications for tax-exempt status, which your Committee had received by mid-March. In addition, as described in Enclosure 3, when unavailable from Ms. Lerner's custodial account, we are producing Lerner-related email (i.e., email on which Ms. Lerner was an author or recipient) from other custodians regardless of subject matter. In certain instances, such as personal conversations between Ms. Lerner and her family regarding health issues, we expect to make the materials available here at the IRS for interested Congressional staff to come review. In all, the IRS has produced or will produce or make available approximately 67,000 emails in which Ms. Lerner was an author or a recipient. As per your staff's request, we will continue to include your committee in our productions until or unless you instruct us otherwise.

Sincerely,

Leonard Oursler

Enclosures (3)

cc: The Honorable Dave Camp, Chairman, House Ways and Means Committee
The Honorable Sander Levin, Ranking Member, House Ways and Means Committee
The Honorable Carl Levin, Chairman, Senate Permanent Subcommittee on Investigations
The Honorable John McCain, Ranking Member, Senate Permanent Subcommittee on Investigations
The Honorable Darrell Issa, Chairman, House Committee on Oversight and Government Reform
The Honorable Elijah Cummings, Ranking Member, House Committee on Oversight and Government Reform

COMMISSIONER

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

March 19, 2014

The Honorable Ron Wyden
Chairman, Committee on Finance
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

As I have testified, I believe that oversight is a critically important management tool. We can benefit from insights of those entrusted with the oversight function, including Congressional committees and the Treasury Inspector General for Tax Administration (TIGTA).

Last year, TIGTA issued a report related to the determination process and the processing of applications for tax exempt status, *Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review*. Since then, we have taken substantive corrective actions to address the problems TIGTA had identified. We have:

- Created an expedited approval process for 501(c)(4) organizations that has significantly reduced our backlog
- Established an Accountability Review Board to assess individual employees' conduct and recommend discipline where appropriate
- Installed a new management team in the Exempt Organizations (EO) division
- Developed new training and conducted workshops on a number of critical issues, including the difference between issue advocacy and political campaign intervention, and the proper way to identify applications that require review of political campaign intervention activities
- Established a new process to document the reasons why applications are chosen for further review
- Issued guidelines for EO specialists on how to process requests for tax-exempt status involving potentially significant political campaign intervention
- Created a formal, documented process for EO determinations personnel to request assistance from technical experts

For the past ten months, we have cooperated with multiple investigations on issues arising from the original TIGTA report. More than 250 IRS employees have spent nearly 100,000 hours working directly on compliance with the investigations -- at a direct cost of nearly $8 million. For our document collection and production, we worked closely with Congressional staff to select the relevant search terms and to identify the 83 custodians whose email was searched. As a result, your committee has:

- Interviewed 26 current and former IRS employees
- Received more than 690,000 pages of documents, including
  - Tens of thousands of IRS emails
  - Voluminous IRS training, management, and policy materials
  - Hundreds of case files for specific organizations

As you know, we have a duty to make redactions in order to protect taxpayer information before producing documents to committees that do not have authority under Internal Revenue Code Section 6103 to receive such information. Nonetheless, we have produced hundreds of thousands of redacted pages to those committees as well. In order to review, redact, and produce this volume of materials, we spent an additional $6-8 million to optimize existing information technology systems and provide a stable technology infrastructure to support our production efforts while protecting taxpayer-specific information.

We are transmitting today additional information that we believe completes our production to your committee and the House Ways and Means committee of documents we have identified as related to the processing and review of applications for tax-exempt status as described in the May 2013 TIGTA report. We will make redacted copies of these materials available to other committees as soon as we complete the redactions. We will, of course, continue to work with you and your staff on any follow-up questions that you may have.

In light of these productions, I hope that the investigations can be concluded in the very near future. Once we have the resulting reports, we can then take further corrective action, where necessary. These reports are important for us to learn from, address, and move beyond the problems and concerns identified as a result of the ongoing investigations. Your committee's conclusions and recommendations will be a critically important step in that process.

I look forward to working with you to rebuild taxpayer confidence in the IRS and in its ability to fairly and efficiently administer the nation's tax laws. If you have any questions, please contact me, or a member of your staff can contact Leonard Oursler, Director of Legislative Affairs, at (202) 317-6985.

Sincerely,

John A. Koskinen

cc: The Honorable Orrin Hatch
Ranking Member, Senate Committee on Finance

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

August 29, 2013

The Honorable Orrin Hatch
Ranking Member
Committee on Finance
United States Senate
Washington, D.C. 20510

Dear Senator Hatch:

I am responding to your request for documents relating to the application process for tax exemption by organizations that may be engaged in political activity. **Our response includes, where appropriate, information requested under IRC section 6103 (f)(1).** By separate letter, I am providing you with information that has IRC section 6103 information redacted.

We are committed to providing you with as complete a response as possible and our full cooperation with you and your staff in addressing this matter.

We are in the process of gathering relevant information responsive to your request. As part of this process, we have directed our document retention and retrieval specialists to perform an electronic data search of the records of all personnel we have identified who may have potentially relevant information. We are conducting this process under the litigation hold procedures detailed in IRS Chief Counsel Notice CC-2012-017. Much of the raw electronically stored information (ESI) requires decryption, which often corrupts files that must be restored manually before the search process can begin. Once we have the decrypted information, it is electronically searched using the terms in attached Appendix A. The resulting material is then reviewed manually to ensure the documents produced by the search terms are responsive to your request.

We are providing this partial response to your request, which consists of documents from multiple custodians, including Lois Lerner, Dave Fish, Steven Miller, Holly Paz, Steven Grodnitzsky, Jonathan Davis, Nikole Flax, and others. The documents are produced from ESI comprised of emails, attachments to emails, and other files not attached to emails ("loose files") that were responsive as described above.

These documents are Bates-stamped IRS0000176970–181055.

In addition to the above-referenced partial response, we are also providing you with documents that are responsive to several specific requests: your staff's request on August 5 for certain targeted subsets of the responsive material in our review database, and a request for documents related to screening workshops held in July 2010. These two requests are explained more fully below.

IRS Document Request Discussion 8/5/2013

On August 5, 2013 your staff provided us with a list of ten specific document requests to be identified from the responsive material in our review database.[1] That list was later supplemented to include an eleventh such request. Today we are producing the results of the searches conducted to respond to all eleven of these requests, including:

1. Sensitive Case Report summary chart email. All emails containing the chart, as well as all emails replying to the original message or forwarding it. These documents are Bates-stamped IRS0000141718–162642.

2. All communications between the Directors of Rulings &Agreements (Robert Choi, Holly Paz, Dave Fish) to the Director of Exempt Organizations (Lois Lerner) containing or transmitting the Tea Party Sensitive Case Report or a summary of it and all the emails replying or forwarding the report or such summaries. These documents Bates-stamped IRS0000154624-154647, IRS0000156478-156481, IRS0000156485- IRS0000156488, IRS0000156526-156529, IRS0000156535-156557, IRS0000158405-158416, IRS0000158456-158481, IRS0000159382-159383, IRS0000159426-159445, IRS0000160968-161001.

3. All communications between Robert Choi, Holly Paz and Dave Fish and Lois Lerner transmitting or discussing Sensitive Case Reports from April 2010 to June 2013. These documents are Bates-stamped IRS0000162643–163025.

4. All emails with the Tea Party Sensitive Case Report attached, including all emails replying to or forwarding the original message. These documents are Bates-stamped IRS0000163026–167868.

5. Any emails between Steve Grodnitzky and Rob Choi and any emails between either/both of them and Lois Lerner regarding the Tea Party cases. These documents are Bates-stamped IRS0000167869–167941.

6. Calendars for Steve Miller, Doug Shulman, William Wilkins, Lois Lerner, Jonathan Davis, Nikole Flax, and any other chiefs of staff.[2] These documents are Bates-stamped

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[1] Unless otherwise indicated, we used search terms to identify this material. We reviewed the results of the term searches to eliminate non-responsive and "false hit" documents. In addition, we also flagged and have not produced today documents flagged as potentially privileged. This flag is applied to documents that contain deliberation regarding: draft congressional correspondence; draft congressional testimony; draft questions for the congressional record; draft tax regulations and/or draft tax policy documents; and statutory analysis. We will conduct a closer review of this material and either produce it, redact certain lines, or provide a summary by category of documents we ultimately conclude contain privileged material that should not be produced. To date, our review database contains data that we have collected from 77 individuals, who are identified in attached Appendix B. Other individuals' documents may be added to this database, including the material from any other individuals identified by you or your staff.

[2] As discussed with your staff, we have provided these calendars in Outlook monthly view format. For some of these individuals, on some days, certain information is not visible. As we informed your staff, we will both (a) provide fuller views of any particular days at your or their request; and (b) review and provide

IRS0000378201-378440.

7. Emails and calendar entries regarding a February/March/April 2011 meeting between Lois Lerner, Holly Paz and Cindy Thomas regarding the TAG spreadsheet. These documents are Bates-stamped IRS0000167942–168019.

8. Emails between the Office of Chief Counsel and EO Technical in late 2011/early 2012 regarding the guidesheet.[3] These documents are Bates-stamped IRS000054979–71169.

9. A copy of all documents in possession of Holly Paz at time of her interview with the Senate Committee on Finance and the House Committee on Ways and Means.[4] These documents are Bates-stamped IRS0000168020–168131.

10. All emails from or to Lois Lerner, Steve Miller, Doug Shulman, Nikole Flax, William Wilkins and Jonathan Davis that contain the words "tea party" or "advocacy cases" or just "advocacy." These documents are Bates-stamped IRS0000210063 -301111 and IRS0000301158-378200.

11. All emails to/from Lois Lerner from February 2010 to June 2013.[5] These documents are Bates-stamped IRS0000181056-197594, IRS0000197596-198508, IRS0000198510-203694, and IRS0000203696-210062.

July 2010 Screening Workshop

To locate documents responsive to this request, we searched our database for all documents containing the terms "Screening Workshop." We reviewed the results of the term searches to eliminate non-responsive and "false hit" documents. In addition, we also flagged potentially

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any responsive information in the calendars as we proceed with our review of these individuals' electronic material. In addition, you will note that for some of these individuals, there is little information prior to 2012. We have been informed that in a broad migration of computer systems from Windows XP to Windows 7, Outlook calendar information from before 2012 was lost. We are gathering and will produce responsive materials from any copies of that material we are able to locate.

[3] We previously produced this material on August 2, 2013.

[4] To respond to this request, we asked Ms. Paz' attorney to provide us with the material in her possession at the time of her interview and are producing today what her attorney provided to us.

[5] We have previously produced materials from Ms. Lerner on July 1, 2013; July 15, 2013; July 22, 2013; July 26, 2013; August 2, 2013; and August 14, 2013. Today's production completes our initial review of her emails. Prior to loading Ms. Lerner's electronic materials into the review database, the search terms at Appendix C – a set of all terms proposed by congressional staff – were run against it to identify responsive materials, and it was subsequently reviewed manually for responsiveness. In addition, certain documents were flagged at the initial review stage as potentially privileged. We are currently conducting a closer review of these documents and will produce them either in full or with appropriate redactions, along with appropriate explanation, in our next production.

privileged material and will produce it as described in Footnote 1. These documents are Bates stamped IRS0000168132–176969.

Furthermore, I am also providing you these documents in PDF.

I hope this information is helpful. If you have any questions, please contact me or have your staff contact me at (202) 622-3724.

Sincerely,

Leonard Oursler
Area Director

Description of IRS Email Collection and Production

Over the past year, the Internal Revenue Service made a massive document production in response to Congressional and other inquiries. This activity has been challenging since processing email for production to third parties is a more complex process for the IRS than it is for many private or public organizations. Below we analyze why it is so complicated for the agency to respond to what otherwise in this modern day seem like straightforward requests, including an assessment of what is and is not currently possible. Sophisticated IRS information technology systems are designed to facilitate tax administration, cost-effective use of resources, and preserve confidential taxpayer information, not to facilitate matters related to document preservation, collection, processing, and review. The IRS faces unique challenges in producing email to third parties because of how its email is stored, the security required for IRS email, and the laws protecting confidential taxpayer information from disclosure.

I. Background

Over the past year, four Congressional committees, the Treasury Inspector General for Tax Administration (TIGTA), and the Department of Justice have conducted investigations related to the processing and review of applications for tax-exempt status as described in the May 2013 TIGTA report, *Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review.* Congressional committees and individual members of Congress made hundreds of requests for information related to the issues raised in the TIGTA report.

In response, the IRS undertook an unprecedented document collection and production effort. As requested by investigators, electronic mail was a primary focus of IRS efforts. As of mid-March 2014, the Senate Finance Committee and the House Ways & Means Committee had received documents the IRS had identified as related to the processing and review of applications for tax-exempt status as described in the May 2013 report. Since then, IRS efforts have focused on completing the redaction of those materials for production to other committees and, in response to Congressional requests, production of email (on all topics) involving Lois Lerner, former Director of the Exempt Organizations division at the IRS.

More than 1.3 million pages of material have been produced; 750,000 pages in unredacted form to the Congressional committees authorized to receive taxpayer information protected under Section 6103[1] and another 600,000 pages in redacted format to other committees. None of the IRS systems (e.g., email storage, document collection functions) were designed to facilitate such extensive reviews and productions; as a result, the process required significant human capital and financial resources. More than 250 IRS and Chief Counsel employees have spent over 120,000 hours

[1] Under 26 U.S.C. §6103, tax "[r]eturns and return information shall be confidential," and may not be revealed absent statutory authority. Section 6103(f) provides that upon written request by the Chairman of the Senate Finance Committee or the House Ways & Means Committee, the IRS may provide such information to the Chairman's designee(s).

working on compliance with the investigations – at a direct cost of nearly $10 million. Many of these employees worked on the document production and review process to the exclusion of their normal workload for months at a time. The IRS also spent an additional $6-8 million to optimize existing information technology systems and ensure a stable infrastructure for those productions.

II. Physical Retention, Collection, and Production of Email

The IRS email system runs on Microsoft Outlook. Each of the Outlook email servers are located at one of three IRS data centers. Approximately 170 terabytes of email (178,000,000 megabytes, representing literally hundreds of millions of emails) are currently stored on those servers. For disaster recovery purposes, the IRS does a daily back-up of its email servers. The daily back-up provides a snapshot of the contents of all email boxes as of the date and time of the backup. Prior to May 2013, these backups were retained on tape for six months, and then for cost-efficiency, the backup tapes were released for re-use. In May of last year, the IRS changed its policy and began storing rather than recycling its backup tapes.[2]

A. Email Preservation

In late May 2013 and early June 2013, the IRS sent document retention notices to employees identified as having documents (including email) potentially relevant to the investigations. These notices instructed employees not to alter or destroy:

> all communications, documents drafted or reviewed, spreadsheets created or reviewed, notes from meetings, notes relating to specific taxpayers and/or applications, information requests to applicants, training materials, or any other items that relate to the process by which selection criteria were used to identify tax-exempt applications for advocacy organizations for review, including but not limited to Be On the Look Out, from January 1, 2008 to the present.[3]

In that same time frame, the IRS sent similar document retention notices to all employees in the IRS Tax Exempt and Government Entities function and its Chief Counsel counterpart; the IRS Communications and Liaison function; and all employees assigned to respond to the Congressional inquiries.

B. Employees' Email Storage

The IRS has approximately 90,000 employees. Due to financial and practical considerations, the IRS has limited the total volume of email stored on its server by restricting the amount of email most individual users can keep in an inbox at any given time. This is not an uncommon practice within the government or the private sector.

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[2] This practice of retaining rather than recycling tapes is estimated to cost approximately $200,000 annually.
[3] Litigation Hold, Attachment A.

According to estimates, it would cost well over ten million dollars to upgrade the IRS information technology infrastructure in order to save and store all email ever sent or received by the approximately 90,000 current IRS employees.

Currently, the average individual employee's email box limit is 500 megabytes, which translates to approximately 6,000 emails. *See* Attachment B. Prior to July 2011, the limit was lower, 150 megabytes or roughly 1,800 emails. *See* Attachment C. The IRS does not automatically delete email in its employees' email account to meet these limits; rather, each employee is responsible for managing and prioritizing the information stored within his/her email box.

Historically, the email of IRS employees is stored in two locations – email in an individual's active email box and therefore saved on the IRS centralized network and email archived on the individual employee's computer hard drive.[4] If an email user's mailbox gets close to capacity, the system sends a message to the user noting that soon the mailbox will become unable to send additional messages.

When a user needs to create space in his or her email box, the user has the option of either deleting emails (that do not qualify as official records) or moving them out of the active email box (inbox, sent items, deleted items) to an archive. In addition, if an email qualifies as an official record, per IRS policy, the email must be printed and placed in the appropriate file by the employee.[5] Archived email is moved off the IRS email server and onto the employee's hard drive on the employee's individual computer. As a result, these IRS employees' emails no longer exist in the active email box of the employee and are not backed-up as part of the daily backup of the email servers. Email moved to a personal archive of an employee exists only on the individual employee's hard drive. An electronic version of the archived email would not be retained if an employee's hard drive is recycled or if the hard drive crashes and cannot be recovered.

C. Email Collection

There have been questions from third parties about the speed of the review and production of IRS email materials; it is therefore important to understand the features of the IRS email system that make the process difficult and time-consuming. As noted above, the IRS has approximately 90,000 employees, each of whom conceivably could have responsive electronic data to any given request. There is no mechanism to allow IRS to search across its entire email system. To gather email from IRS employees, each potential custodian's mailbox and hard drive must be individually collected.

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[4] The approximately 2,000 IRS Counsel employees (as opposed to IRS employees) have a system that allows archived email to be stored on a central drive.

[5] An official "record" is any documentary material made or received by an agency under federal law or in connection with the transaction of public business and appropriate for preservation (44 U.S.C. § 3301). Not all of the emails on IRS servers or backup tapes qualify as official records; accordingly, the agency's email system does not retain all email indefinitely. Rather, individual employees are responsible for ensuring that any email in their possession that qualifies as a "record" is retained in accordance with the requirements in the Internal Revenue Manual (IRM) and Document 12990 (Record Control Schedules).

Collecting from a hard drive involves an Information Technology employee taking physical possession of the computer and copying the contents of the computer's hard drive. These collection efforts are inherently labor-intensive and time-consuming.

The technology used by the IRS does not permit the IRS to select identifiable emails or groups of emails relating to a particular matter from a particular employee. Instead, all of an employee's email must be collected to start the processing function and limited, if at all, later in the processing function by date restrictions and search terms.

The technology used by the IRS also does not permit the IRS to search the network across multiple employees' email in connection with a particular matter. Similarly, it is impossible currently to search all IRS employees' accounts for email to a particular domain. As a result, to find literally "all email" in the custody and control of IRS on a given topic or to a particular domain (e.g., a specific government agency), every single employee's email would need to be individually collected, then processed and reviewed for responsive material.

D. Email Processing

After an employee's email is collected, it needs to be processed and properly formatted so that it can be searched and analyzed for content potentially responsive to a particular request for information. This typically involves "flattening" the email message to make it readable by, for example, an eDiscovery platform tool. This also involves decrypting the email message – for security and privacy reasons, much of IRS email is encrypted when sent. In order to decrypt an email message, the system must use the individual custodian's encryption certificate and multiple reprocessing steps, so that the email can be readable using an eDiscovery platform tool. Once properly flattened and decrypted, email can be loaded onto an eDiscovery platform tool, where it can be searched using search terms and/or date limitations when appropriate. At this point, the materials are ready for review.

E. Email Review and Redaction to Protect Taxpayer Information

The final step before email can be produced involves identifying the relevant materials and taking steps where necessary to protect confidential taxpayer return information. In the course of our productions, the IRS has reviewed and produced email collected from 83 custodians. The IRS has a unique responsibility to protect confidential taxpayer information as required by I.R.C. § 6103.[6] All emails that might contain statutorily protected information must be reviewed and if necessary redacted.

Because when an email is sent it then exists in the author's and all recipients' email boxes, multiple copies of any one email occur frequently in document review. Although the IRS eDiscovery platform tool has a feature that eliminates certain duplicate emails before they are produced to a third party, the "deduping" feature only eliminates

[6] Taxpayers may have a civil cause of action when these taxpayer confidentiality rules are violated and IRS employees may be subject to disciplinary action and criminal penalties if they violate these rules.

duplicate emails that are virtually identical in every respect. A slight variance in the information contained in one email versus another, e.g., the time sent and the time received, results in the emails being treated as unique documents, which translates into increased review and processing times and added volume of documents produced to a third party.

III. Investigations' Requests and IRS Production

The Congressional committees investigating issues raised in the May 2013 TIGTA report requested a broad array of materials, with date ranges that span multiple years (e.g., from 2009 through mid-2013). As outlined in the attached August 29, 2013 letter,[7] the IRS collaborated with Congressional staff to select search terms and custodians with the goal of gathering and producing information as prioritized by Congress. This document production effort has involved hundreds of people, hundreds of thousands of hours, and millions of dollars.

The IRS followed the process described above in preserving, collecting, processing, and reviewing material in response to Congressional requests related to the processing and review of applications for tax-exempt status as described in the May 2013 TIGTA report. The IRS completed a search of 83 custodians' email using specifically identified search terms, and reviewed the results for responsiveness and for confidential taxpayer information. When email was responsive, it was produced and redacted when required by Section 6103.

Generally, the IRS produced all documents to all six investigations. There are situations, however, in which materials were produced only to investigators with authority to see information protected by Section 6103. One such situation relates to taxpayer files, which are protected in their entirety. Another is a collection of Excel spreadsheets and associated documents that were produced in native format, which format cannot be redacted for Section 6103 material.

In responding to the investigations, the IRS has not withheld relevant documents on the grounds of privilege.

Many times over the course of the year, different committees expressed interest in specific people, time periods, or events. The IRS did its best to accommodate these requests and expedite material in the priority set by investigators. In early 2014, Chairmen Camp and Issa reiterated their requests for all of Lois Lerner's email, regardless of subject matter. Because of Ms. Lerner's unavailability for Congressional interviews and in response to the Chairmen's requests, the IRS agreed to produce or make available for Congressional review all of her email.

Fulfilling the request for Ms. Lerner's emails regardless of subject matter required the IRS to load additional email beyond the email responsive to search terms originally

[7] Attachment D, Leonard Oursler August 29, 2013 letter to Senator Baucus, also sent to Senators Hatch, Levin, and McCain and Congressmen Camp, Levin, Issa, and Cummings.

loaded for review from Ms. Lerner's custodial email box. By mid-March, IRS had produced to the tax-writing committees the Lerner-related (and other) materials it had identified as related to the processing and review of applications for tax-exempt status as described in the May 2013 TIGTA report.[8] IRS then focused on redacting materials for the non-taxwriters and processing the rest of Ms. Lerner's email for production.

Ms. Lerner's emails were subject to the same preservation and collection process as other materials that the IRS produced to investigators.[9] The IRS put Ms. Lerner on administrative leave as of May 23, 2013, at which date she was no longer permitted to access her computer or blackberry. On September 23, 2013 Ms. Lerner separated from the Service.

The electronic data collection for Ms. Lerner's custodial email was completed on May 22, 2013. According to personnel involved in the collection of Ms. Lerner's email, the materials on Ms. Lerner's computer were successfully captured in the data collection process.[10] All of the email from 2009 through 2013 that the IRS collected from Ms. Lerner's computer has or will be produced or made available to Congressional investigators.

As part of the IRS production of materials related to the TIGTA report, email from Ms. Lerner's email box and hard drive previously had been processed using search terms. By mid-March 2014 almost 8,000 such emails from Ms. Lerner's computer and mailbox had been produced in unredacted form. Another 3,000 emails involving Ms. Lerner (as author or recipient) from other custodians also had been produced in unredacted form, for a total of approximately 11,000 produced emails involving Ms. Lerner and related to the TIGTA report.

Producing email regardless of relevance required reprocessing what had been collected from Ms. Lerner so that the email reviewed and produced was no longer limited by search terms or subject matter. As the IRS reviewed Ms. Lerner's email for production and prepared to produce to investigators the balance of 2009-2013 materials from Ms. Lerner's custodial email account (unlimited by subject matter or search terms), it determined that her custodial email (from her email box and hard drive) contains very few emails prior to April 2011, while the number of Ms. Lerner's custodial emails dated after April 2011 is more voluminous. In total, more than 43,000 Lerner custodial emails exist between January 1, 2009 and May 22, 2013, all of which have been or will be produced.

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[8] The IRS also assisted Ms. Lerner's attorneys in identifying and redacting Section 6103 information on documents located on her personal home computer and email on her personal email account.

[9] On May 16, 2013, the IRS Chief Counsel's office sent Ms. Lerner (and many others) a litigation hold notice instructing her not to alter or destroy: "all communications, documents drafted or reviewed, spreadsheets created or reviewed, notes from meetings, notes relating to specific taxpayers and/or applications, information requests to applicants, training materials, or any other items that relate to the process by which selection criteria were used to identify tax-exempt applications for advocacy organizations for review, including but not limited to Be On the Look Out, from January 1, 2008 to the present." Litigation Hold, Attachment A.

[10] TIGTA currently has custody of Ms. Lerner's computer.

Although the IRS is unable to interview Ms. Lerner to learn more, the IRS has determined that Ms. Lerner's computer crashed in mid-2011. *See* Attachment E. At that time, the IRS Information Technology Division tried -- at Ms. Lerner's request -- multiple processes to recover the information stored on her computer's hard drive. However, the data stored on her computer's hard drive was determined at the time to be "unrecoverable" by the IT professionals. Attachment F. Any of Ms. Lerner's email that was only stored on that computer's hard drive would have been lost when the hard drive crashed and could not be recovered.

In order to produce as much email on which Ms. Lerner was an author or recipient as possible, the IRS:

- Retraced the collection process for Ms. Lerner's computer to determine that all materials available in May 2013 were collected;
- Located, processed, and included in its production email from an earlier 2011 data collection of Ms. Lerner's email;
- Confirmed that back-up tapes from 2011 no longer exist because they have been recycled (which not uncommon for large organizations in both the private and public sectors);
- Searched email from other custodians for material on which Ms. Lerner appears as an author or recipient, then produced such email.

As a result of these efforts, the IRS identified approximately 24,000 Lerner-related emails between January 1, 2009 and April 2011 in addition to those related to the processing and review of applications for tax-exempt status as described in the May 2013 TIGTA report, which have already been produced. All such emails have been or will be produced or made available to Congressional committees. In total, Congressional committees have received or will receive more than 67,000 emails in which Ms. Lerner was an author or a recipient.

IV. Conclusion

The Internal Revenue Service has never before undertaken a document production of this size and scope. Hundreds of employees spent thousands of hours locating, processing, reviewing, and redacting documents for the Congressional Committees and other investigators. Because of how the IRS maintains and stores its email, certain challenges were inherent in the process and we have addressed those challenges in as comprehensive a manner as possible.

From: Melcher Glenn J
Sent: Thursday, May 16, 2013 5:57 PM
To: [redacted] Lerner Lois G; [redacted]
Subject: IMPORTANT LITIGATION HOLD NOTICE
Importance: High
Categories: NUUU

You are receiving this e-mail because you have been identified as a person who may have information potentially relevant to a TIGTA audit of criteria used to identify tax-exempt applications for review in which litigation is reasonably anticipated.

Information relevant to this matter will include all communications, documents drafted or reviewed, spreadsheets created or reviewed, notes from meetings, notes relating to specific taxpayers and/or applications, information requests to applicants, training materials, or any other items that relate to the process by which selection criteria were used to identify tax-exempt applications for advocacy organizations for review, including but not limited to Be On the Look Out, from January 1, 2008 to the present.

Under the Federal Rules of Civil Procedure, the Service has an obligation to search, identify, preserve, and isolate all paper records and electronically stored information (ESI) potentially relevant to the above-described matter. Generally, ESI includes, but is not limited to: all e-mail and attachments; word processing documents, spreadsheets, graphics and presentation documents, images, text files, and other information stored on hard drives or removable media (e.g., desktops, portable thumb drives and CDs), meta-data, databases, instant messages, transaction logs, audio and video files, voicemail, webpages, computer logs, text messages, and backup and archived material.

Although we do not need you to gather the ESI at this time, please ensure that steps are put in place so that both ESI information and any paper documents are preserved and not deleted. You may already have been contacted by IRS IT to begin the preservation process but that does not change your obligations to preserve information and to respond to this email. Under no circumstances should ESI information or paper documents be destroyed until this matter is completed or a litigation hold is lifted.

Please provide an e-mail response to this e-mail **within five business days.** In that e-mail, please also provide your SEID and indicate whether you created ESI of the following types while working on anything related to this matter.

Attachment A

1 E-mail and attachments

2. Microsoft Office Suite documents (e.g., Word documents, Excel spreadsheets, PowerPoint presentations)

3. ESI maintained in any other program, application, system or database – please specify.

Please indicate in the e-mail the timeframe during which the ESI was created and your post of duty at the time you created the ESI. If you maintain a particular folder in your e-mail box or in your document folders related to this matter, please include the name of the folder(s) in your e-mail. Also, please indicate whether any of the ESI is maintained offline, that is, on any external drive or storage device (e.g., CDs or flash drives). If you have Grand Jury information of any kind on your computer or other storage device, please note that in your response.

Also provide a brief description of the paper files or documents you have related to this case and an estimate of the quantity of such paper files or documents, if any.

Once located, the ESI needs to be preserved and isolated. Preservation of ESI means that the ESI cannot be altered or destroyed and must be maintained in its native format throughout the duration of this matter. This means that all normal retention schedules related to the ESI have been suspended until such time as the ESI is isolated. ESI is isolated when a mirror image of the ESI in its native format is created and moved to a separate drive, CD, or server for storage for the duration of the litigation. This office will coordinate with the Service's IT personnel to have your ESI isolated and preserved. You should expect IT personnel to need access to your computer and any removable storage devices when they collect the ESI. In the meantime, do not alter or destroy the ESI. **The destruction of ESI could result in judicial sanctions against the agency.** This office also will coordinate the collection of any related paper documents you may have.

In the event you received this e-mail and, after a search of your records, you determine that you were not involved in any way in this matter, please provide an e-mail response to this e-mail **within five business days** informing the sender you were not involved in the subject matter described above.

If you have questions related to this e-mail, please contact the undersigned immediately.

Glenn J. Melcher
Special Counsel for E-Discovery
IRS Office of Chief Counsel
(Procedure and Administration)
Telephone 202-622-2366
Glenn.J.Melcher@irscounsel.treas.gov

1.10.3-1 Reducing the Size of Your Mailbox (07/08/2011)

The Secure Enterprise Messaging system (SEMS) establishes a standard size of 500 MB (500 megabytes) for individual mailboxes. The system mails you daily warning messages that the limit is being approached when your mailbox reaches a size of 475 MB. When it exceeds the 500 MB limit, you will receive the following warning each time you attempt to send a message:

- "You have exceeded your storage limit on your mailbox ".
- Delete some mail from your mailbox or contact your system administrator to adjust your storage limit. (Consider whether any of the items you want to delete may be a federal record. IRM 1.10.3.3.2 above.)

It is not the practice of the SEMS staff to adjust any individual mailbox storage limits, but rather to provide guidance on reducing the size of the contents. The Outlook Help menu provides instructions for enabling and configuring both Auto-archiving and Rules to manage mail and mailbox folders to maintain proper storage limits.

Exhibit 1.10.3-1 (02-20-2009)
Reducing the Size of Your Mailbox

The Secure Enterprise Messaging system (SEMS) establishes a standard size of 150 MB (150 megabytes) for individual mailboxes. The system mails you daily warning messages that the limit is being approached when your mailbox reaches a size of 120 MB. When it exceeds the 150 MB limit, you will receive the following warning each time you attempt to send a message:

- "You have exceeded your storage limit on your mailbox".
- Delete some mail from your mailbox or contact your system administrator to adjust your storage limit. (Consider whether any of the items you want to delete may be a Federal Record. See IRM 1.10.3.3.2 above.)

It is not the practice of the SEMS staff to adjust any individual mailbox storage limits, but rather to provide guidance on how to reduce the size of the contents. Outlook help provides instructions for enabling and configuring both Auto-archiving and Rules to manage mail and mailbox folders to maintain proper storage limits.

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

August 29, 2013

The Honorable Orrin Hatch
Ranking Member
Committee on Finance
United States Senate
Washington, D.C. 20510

Dear Senator Hatch:

I am responding to your request for documents relating to the application process for tax exemption by organizations that may be engaged in political activity. **Our response includes, where appropriate, information requested under IRC section 6103 (f)(1).** By separate letter, I am providing you with information that has IRC section 6103 information redacted.

We are committed to providing you with as complete a response as possible and our full cooperation with you and your staff in addressing this matter.

We are in the process of gathering relevant information responsive to your request. As part of this process, we have directed our document retention and retrieval specialists to perform an electronic data search of the records of all personnel we have identified who may have potentially relevant information. We are conducting this process under the litigation hold procedures detailed in IRS Chief Counsel Notice CC-2012-017. Much of the raw electronically stored information (ESI) requires decryption, which often corrupts files that must be restored manually before the search process can begin. Once we have the decrypted information, it is electronically searched using the terms in attached Appendix A. The resulting material is then reviewed manually to ensure the documents produced by the search terms are responsive to your request.

We are providing this partial response to your request, which consists of documents from multiple custodians, including Lois Lerner, Dave Fish, Steven Miller, Holly Paz, Steven Grodnitzsky, Jonathan Davis, Nikole Flax, and others. The documents are produced from ESI comprised of emails, attachments to emails, and other files not attached to emails ("loose files") that were responsive as described above.

These documents are Bates-stamped IRS0000176970–181055.

In addition to the above-referenced partial response, we are also providing you with documents that are responsive to several specific requests: your staff's request on August 5 for certain targeted subsets of the responsive material in our review database, and a request for documents related to screening workshops held in July 2010. These two requests are explained more fully below.

IRS Document Request Discussion 8/5/2013

On August 5, 2013 your staff provided us with a list of ten specific document requests to be identified from the responsive material in our review database.[1] That list was later supplemented to include an eleventh such request. Today we are producing the results of the searches conducted to respond to all eleven of these requests, including:

1. Sensitive Case Report summary chart email. All emails containing the chart, as well as all emails replying to the original message or forwarding it. These documents are Bates-stamped IRS0000141718–162642.

2. All communications between the Directors of Rulings &Agreements (Robert Choi, Holly Paz, Dave Fish) to the Director of Exempt Organizations (Lois Lerner) containing or transmitting the Tea Party Sensitive Case Report or a summary of it and all the emails replying or forwarding the report or such summaries. These documents Bates-stamped IRS0000154624-154647, IRS0000156478-156481, IRS0000156485- IRS0000156488, IRS0000156526-156529, IRS0000156535-156557, IRS0000158405-158416, IRS0000158456-158481, IRS0000159382-159383, IRS0000159426-159445, IRS0000160968-161001.

3. All communications between Robert Choi, Holly Paz and Dave Fish and Lois Lerner transmitting or discussing Sensitive Case Reports from April 2010 to June 2013. These documents are Bates-stamped IRS0000162643–163025.

4. All emails with the Tea Party Sensitive Case Report attached, including all emails replying to or forwarding the original message. These documents are Bates-stamped IRS0000163026–167868.

5. Any emails between Steve Grodnitzky and Rob Choi and any emails between either/both of them and Lois Lerner regarding the Tea Party cases. These documents are Bates-stamped IRS0000167869–167941.

6. Calendars for Steve Miller, Doug Shulman, William Wilkins, Lois Lerner, Jonathan Davis, Nikole Flax, and any other chiefs of staff.[2] These documents are Bates-stamped

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[1] Unless otherwise indicated, we used search terms to identify this material. We reviewed the results of the term searches to eliminate non-responsive and "false hit" documents. In addition, we also flagged and have not produced today documents flagged as potentially privileged. This flag is applied to documents that contain deliberation regarding: draft congressional correspondence; draft congressional testimony; draft questions for the congressional record; draft tax regulations and/or draft tax policy documents; and statutory analysis. We will conduct a closer review of this material and either produce it, redact certain lines, or provide a summary by category of documents we ultimately conclude contain privileged material that should not be produced. To date, our review database contains data that we have collected from 77 individuals, who are identified in attached Appendix B. Other individuals' documents may be added to this database, including the material from any other individuals identified by you or your staff.

[2] As discussed with your staff, we have provided these calendars in Outlook monthly view format. For some of these individuals, on some days, certain information is not visible. As we informed your staff, we will both (a) provide fuller views of any particular days at your or their request; and (b) review and provide

IRS0000378201-378440.

7. Emails and calendar entries regarding a February/March/April 2011 meeting between Lois Lerner, Holly Paz and Cindy Thomas regarding the TAG spreadsheet. These documents are Bates-stamped IRS0000167942–168019.

8. Emails between the Office of Chief Counsel and EO Technical in late 2011/early 2012 regarding the guidesheet.[3] These documents are Bates-stamped IRS000054979–71169.

9. A copy of all documents in possession of Holly Paz at time of her interview with the Senate Committee on Finance and the House Committee on Ways and Means.[4] These documents are Bates-stamped IRS0000168020–168131.

10. All emails from or to Lois Lerner, Steve Miller, Doug Shulman, Nikole Flax, William Wilkins and Jonathan Davis that contain the words "tea party" or "advocacy cases" or just "advocacy." These documents are Bates-stamped IRS0000210063 -301111 and IRS0000301158-378200.

11. All emails to/from Lois Lerner from February 2010 to June 2013.[5] These documents are Bates-stamped IRS0000181056-197594, IRS0000197596-198508, IRS0000198510-203694, and IRS0000203696-210062.

<u>July 2010 Screening Workshop</u>

To locate documents responsive to this request, we searched our database for all documents containing the terms "Screening Workshop." We reviewed the results of the term searches to eliminate non-responsive and "false hit" documents. In addition, we also flagged potentially

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any responsive information in the calendars as we proceed with our review of these individuals' electronic material. In addition, you will note that for some of these individuals, there is little information prior to 2012. We have been informed that in a broad migration of computer systems from Windows XP to Windows 7, Outlook calendar information from before 2012 was lost. We are gathering and will produce responsive materials from any copies of that material we are able to locate.

[3] We previously produced this material on August 2, 2013.

[4] To respond to this request, we asked Ms. Paz' attorney to provide us with the material in her possession at the time of her interview and are producing today what her attorney provided to us.

[5] We have previously produced materials from Ms. Lerner on July 1, 2013; July 15, 2013; July 22, 2013; July 26, 2013; August 2, 2013; and August 14, 2013. Today's production completes our initial review of her emails. Prior to loading Ms. Lerner's electronic materials into the review database, the search terms at Appendix C – a set of all terms proposed by congressional staff – were run against it to identify responsive materials, and it was subsequently reviewed manually for responsiveness. In addition, certain documents were flagged at the initial review stage as potentially privileged. We are currently conducting a closer review of these documents and will produce them either in full or with appropriate redactions, along with appropriate explanation, in our next production.

privileged material and will produce it as described in Footnote 1. These documents are Bates stamped IRS0000168132–176969.

Furthermore, I am also providing you these documents in PDF.

I hope this information is helpful. If you have any questions, please contact me or have your staff contact me at (202) 622-3724.

Sincerely,

Leonard Oursler
Area Director

09-11

emails that ~~fed~~ records
that should have

From: Douglas Akaisha
Sent: Monday, June 13, 2011 10:19 AM
To: Grant Joseph H; Medina Moises C; &TEGE:EO 1750 Penn Ees
Cc: Cook Janine; Marks Nancy J; Livingston Catherine E; Ingram Sarah H; Flax Nikole C; Holland Tiwana M; Lemons Terry L; Siereveld Brett L; Teser Cheryl A
Subject: LOIS LERNER HARD DRIVE CRASH

Lois' hard drive has crashed on her computer and will be without email. If you need to contact Lois please call her at 202-283-8848. For immediate attention, contact Akaisha Douglas at 202-283-9488.

Akaisha Douglas
IRS, Exempt Organizations
202-283-9488

Attachment E

From: Lerner Lois G
Sent: Saturday, August 06, 2011 7:49 PM
To: Wilburn Lillie V
Cc: Letourneau Diane L; Froehlich Carl T
Subject: Re: Careful What You Ask For - UPDATE

Thanks for trying. I really do appreciate the effort. Sometimes stuff just happens.
Lois G. Lerner----------
Sent from my BlackBerry Wireless Handheld

From: Wilburn Lillie V
Sent: Friday, August 05, 2011 07:38 PM
To: Lerner Lois G
Cc: Letourneau Diane L; Froehlich Carl T
Subject: Re: Careful What You Ask For - UPDATE

Hello Ms Lerner, I was just about to send you an update.

Unfortunately the news is not good. The sectors on the hard drive were bad which made your data unrecover able.

I am very sorry. Everyone involved tried their best.

Lillie Wilburn
Field Director, HQ CSSC
202-302-4160

Sent using BlackBerry

From: Lerner Lois G
Sent: Friday, August 05, 2011 07:06 PM
To: Wilburn Lillie V
Cc: Letourneau Diane L; Froehlich Carl T
Subject: RE: Careful What You Ask For - UPDATE

Thanks! just saw this--any further word/

Lois G. Lerner
Director of Exempt Organizations

From: Wilburn Lillie V
Sent: Monday, August 01, 2011 7:57 PM
To: Lerner Lois G

Attachment F

Cc: Letourneau Diane L; Froehlich Carl T
Subject: RE: Careful What You Ask For - UPDATE

Ms Lerner,

As a last resort, we sent your hard drive to CI's forensic lab to attempt data recovery. The CI tech working on the recovery is unexpectedly out until Aug 3rd and promised to update me when he returns.

I will send you a status on Friday morning.

Lillie V. Wilburn
Field Director, Headquarters CSSC
Customer Service Support
Information Technology Division
OS:CTO:EU:C:HQ
Desk: 202-622-0732
Mobile: 202-302-4160
Fax: 202-622-8873
lillie.wilburn@irs.gov

From: Lerner Lois G
Sent: Wednesday, July 20, 2011 4: 40 PM
To: Wilburn Lillie V
Cc: Letourneau Diane L; Froehlich Carl T
Subject: RE: Careful What You Ask For

Thanks for the update--I'll keep my fingers crossed

Lois G. Lerner
Director of Exempt Organizations

From: Wilburn Lillie V
Sent: Wednesday, July 20, 2011 12:10 PM
To: Lerner Lois G
Cc: Letourneau Diane L; Froehlich Carl T
Subject: RE: Careful What You Ask For

Ms. Lerner,

I checked with the technician and he still has your drive. He wanted to exhaust all avenues to recover the data before sending it to the "hard drive cemetery." Unfortunately, after receiving assistance from several highly skilled technicians including HP experts, he still cannot recover the data.

I do have one other possibility that I am looking into and I hope to update you on the progress soon.

Lillie V. Wilburn
Field Director, Headquarters CSSC
Customer Service Support
Information Technology Division

OS:CTO:EU:C:HQ
Desk: 202-622-0732
Mobile: 202-302-4160
Fax: 202-622-8873
lillie.wilburn@irs.gov

From: Lerner Lois G
Sent: Wednesday, July 20, 2011 10:46 AM
To: Froehlich Carl T
Cc: Letourneau Diane L; Wilburn Lillie V
Subject: RE: Careful What You Ask For

We can only try--but it may be too late--don't they send them off to the hard drive cemetery? In any event, thanks to all.

Lois G. Lerner
Director of Exempt Organizations

From: Froehlich Carl T
Sent: Tuesday, July 19, 2011 6:43 PM
To: Lerner Lois G
Cc: Letourneau Diane L; Wilburn Lillie V
Subject: Re: Careful What You Ask For

Lois,

Lillie Wilburn will call Diane in the morning. If she can't fix it nobody can.

Carl

From: Lerner Lois G
Sent: Tuesday, July 19, 2011 05:21 PM
To: Froehlich Carl T
Cc: Letourneau Diane L
Subject: Careful What You Ask For

It was nice to meet you this morning --although I would have preferred it was under different circumstances. I'm taking advantage of your offer to try and recapture my lost personal files. My computer skills are pretty basic, so nothing fancy --but there were some documents in the files that are irreplaceable. Whatever you can do to help, is greatly appreciated. I've cced my exec assistant. It's always a good idea to include her emails to me because she gets to my emails far faster than I do. Thanks!

Lois G. Lerner
Director of Exempt Organizations