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Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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STAFF DIRECTOR

March 27, 2012

Ms. Lois G. Lerner
Director, Exempt Organizations Division
Internal Revenue Service
11 Constitution Avenue N.W., Room 3000
Washington, D.C. 20224

Dear Ms. Lerner:

Over the past several weeks the Internal Revenue Service (IRS) sent many organizations, operating under tax exempt status, lengthy and detailed questionnaires.¹ These questionnaires ask for information well beyond the scope of typical disclosures required under IRS Form 1024. These questionnaires may be connected to IRS's 2012 work plan.² The work plan indicates that the IRS is initiating a review of certain 501(c)(4), 501(c)(5), and 501(c)(6) organizations "to ensure that they have classified themselves correctly and that they are complying with applicable rules."³ According to the Internal Revenue Code, it is permissible for certain tax-exempt organizations to lobby and engage in political activity:

Seeking legislation germane to the organization's programs is a permissible means of attaining social welfare purposes. Thus, a section 501(c)(4) social welfare organization may further its exempt purposes through lobbying as its primary activity without jeopardizing its exempt status. . . . [A] section 501(c)(4) social welfare organization may engage in some political activities, so long as that is not its primary activity.⁴

The IRS should provide appropriate scrutiny of organizations applying for tax exempt status. However, several experts suggest that these recent IRS questionnaires exceed appropriate scrutiny. For example, Marcus Owens, who ran the IRS's exempt organizations department for a decade, called the IRS initiative an "overreach."⁵ Moreover, the IRS must apply the same criteria for all organizations applying for tax exempt status. News reports, however, indicate that

¹ Janie Lorber, "IRS Oversight Reignites Tea Party Ire: Agency's Already Controversial Role Is in Dispute After Questionnaires Sent to Conservative Groups," Roll Call, March 8, 2012; Susan Jones, "IRS Accused of 'Intimidation Campaign' Against Tea Party Groups," CNSNews.com, March 7, 2012.

² IRS Tax Exempt and Government Entities, "Exempt Organizations - 2011 Annual Report and 2012 Work Plan."

³ *Id.*

⁴ IRS, Social Welfare Organizations. Available at: <http://www.irs.gov/charities/nonprofits/article/0,,id=96178.00.html>.

⁵ Janie Lorber, "IRS Oversight Reignites Tea Party Ire: Agency's Already Controversial Role Is in Dispute After Questionnaires Sent to Conservative Groups," Roll Call, March 8, 2012.

the IRS effort lacks balance, with conservative organizations being the target of the IRS's heightened scrutiny. *Roll Call* contacted several liberal groups, including Protect-YourCare, a 501(c)(4) set up to defend the new health care law, and reported that none had received the recently-sent questionnaire.⁶

Given the potentially serious implications of IRS overreach and selective enforcement of IRS's 2012 work plan pertaining to 501(c)(4), 501(c)(5), and 501(c)(6) organizations, the Committee on Oversight and Government Reform requests that the IRS provide information about the IRS's 2012 work plan for 501(c)(4), 501(c)(5), and 501(c)(6) organizations and the questionnaire. We respectfully request that you provide the following information to the Committee by April 16, 2012:

1. All documents and communications referring or relating to the IRS's 2012 work plan for 501(c)(4), 501(c)(5), and 501(c)(6) organizations.
2. All documents and communications between IRS officials and elected officials or any employee of a federal agency or department, referring or relating to the 2012 IRS work plan for 501(c)(4), 501(c)(5), and 501(c)(6) organizations.
3. A chart showing the number of applications for tax exempt status for all 501(c)(3), 501(c)(4), 501(c)(5), and 501(c)(6) applications, filed by organizations since January 1, 2009. This chart should include the number of applications that have been approved, the number that have been denied, and the number that are still pending for each application type.
4. A list of all the organizations that the IRS sent these types of questionnaires to this year, the date the questionnaire was sent by the IRS, the date the IRS asked for a response, and the date the organizations sent their initial application for tax exempt status.
5. A list of the objective criteria the IRS used for determining which groups would be sent these types of questionnaires.
6. IRS Form 1040 does not require organizations applying for tax exempt status to provide specific donor information for donors giving less than \$5,000 a year. In addition, the names and addresses of donors giving the organization at least \$5,000 were not made public by the IRS. However, many of the IRS questionnaires sent to organizations seeking 501(c)(4) status specifically ask for all the organization's donors and the amounts of each of the donations. The IRS has informed the organizations that it plans to make this donor information public. Provide all documents and communications referring or relating to the decision to ask for this type of donor information and to make this information public.

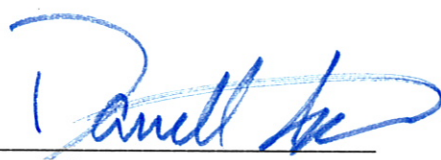
⁶ *Id.*

7. Each of the requests for information, listed below, that has appeared on an IRS questionnaire is beyond the scope of IRS Form 1024. For each of these requests, listed below, please state: a) the IRS's authority for asking for the information; b) the IRS's rationale for needing this piece of information; c) whether any precedent exists for the IRS asking for this type of information; d) the objective standards the IRS will use when reviewing the response; and e) how the IRS will use the information to determine tax-exempt status.
 - A) For all the events you have conducted or will conduct for 2012 and 2013, provide the date of each event, issues presented at the event, copies of material provided, speakers invited, details of speeches made at the event and actions promoted by the speakers, and expenses incurred.
 - B) Provide the time, location, and content of each of your meetings, copies of any material provided at the meeting, lists of speakers who have attended the meetings, topics discussed, contents of speeches, and expenses incurred on these meetings.
 - C) Provide copies of any lease or rental agreements.
 - D) Provide copies of any materials or other communications prepared by another person or individual that you have or will distribute, when the distribution was or will be conducted, and who has distributed or will distribute the materials.
 - E) Provide copies of all solicitations your organization has made regarding fundraising, including pamphlets, flyers, brochures, and webpage solicitations. Provide all sources of fundraising expenses.
 - F) Provide all newsletters, emails and other items distributed to your members or other interested individuals.
 - G) Provide all copies of your corporate and meeting minutes from your organization's inception to present.
 - H) Provide the names of all donors, contributors, and grantors and the amounts of each donation, contribution, and grant.
 - I) Provide the details of how your organization will use the donations, contributions, and grants.
 - J) Provide a resume, total compensation package, and rationale for how each compensation package was determined for your past and present directors, officers, and key employees.
 - K) Provide a list of all issues that are important to your organization, indicating your position regarding each issue.
 - L) Provide details regarding all training your organization has provided or will provide, indicating who has received or will receive the training and providing all copies of the training material.
 - M) Provide the member application and registration form, the membership agreement and rules that govern members, and copies of your website that only members can access.
 - N) Provide a vendor list, a list of all merchandise items sold, your cost for each item, and the selling price for each item.
 - O) Provide all activities your organization has engaged in with the new media, including copies of articles printed or transcripts of items aired because of that activity.

- P) Provide copies of all direct or indirect communication with members of legislative bodies.

In preparing your answers to these questions, please answer each question individually and include the text of each question along with your response. When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. If you have any questions about this request, please contact Brian Blase of the Committee on Oversight and Government Reform at 202-225-5074. Thank you for your attention to this matter.

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



Darrell Issa
Chairman

Sincerely,



Jim Jordan
Chairman
Subcommittee on Regulatory Affairs,
Stimulus Oversight and Government Spending

Enclosure

cc: The Honorable Elijah Cummings, Ranking Minority Member
Committee on Oversight and Government Reform

The Honorable Dennis Kucinich, Ranking Minority Member, Subcommittee on
Regulatory Affairs, Stimulus Oversight and Government Spending

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Responding to Committee Document Requests

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

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when they were requested.
8. When you produce documents, you should identify the paragraph in the Committee's request to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full, compliance shall be made to the extent possible and shall include an explanation of why full compliance is not possible.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. The time period covered by this request is included in the attached request. To the extent a time period is not specified, produce relevant documents from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.
19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

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

otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

4. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.