



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

September 2, 2015

The Honorable Paul Ryan
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Ryan:

I write in response to your recent letter requesting unredacted documents relating to a notice of proposed rulemaking regarding tax-exempt organizations issued by the Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) in November 2013. Below we describe efforts that Treasury and the IRS have made to provide your Committee and the public with information regarding this rulemaking proceeding, and we offer a path forward to provide you with additional information. We are committed to cooperating with the Committee to provide responsive information consistent with the interests we articulate in this letter.

Treasury and the IRS have conducted a thoughtful and transparent process in pursuit of the goal of providing greater clarity for organizations seeking tax-exempt status. In May and June of 2013, the Treasury Inspector General for Tax Administration, the National Taxpayer Advocate, and members of Congress all recommended that Treasury and the IRS consider additional guidance to clarify the standards for evaluating the tax-exempt eligibility of organizations engaged in political campaign activity. In August 2013, Treasury and the IRS listed guidance on how to measure the “primary activity” of social welfare organizations as an item in the 2013-14 Priority Guidance Plan. In November 2013, consistent with standard agency rulemaking procedures, Treasury and the IRS issued a notice of proposed rulemaking, containing a proposed rule and a number of requests for comments. Treasury and the IRS are carefully working through the issues raised in the more than 150,000 comments submitted in response to that notice—the most comments ever received on a proposed tax regulation.

Treasury and the IRS have kept Congress and the public informed regarding the nature and progress of the rulemaking. The November 2013 notice itself was released publicly. In that notice, Treasury and the IRS discussed the background of the current rules in this area, explained the basis and purpose of the rules proposed in that notice, and sought comment on those proposed rules and other related issues.¹

¹ See Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities, 78 Fed. Reg. 71,535 (2013).

Since the public release of that notice, Treasury and the IRS have provided additional information to Congress regarding the rulemaking proceeding. In February 2014, Treasury sent former Chairman Camp a detailed letter regarding the rulemaking. That letter explained the reasons that Treasury and the IRS issued the November 2013 notice of proposed rulemaking. It discussed the scope and contents of that notice. And it described the rulemaking process that Treasury and the IRS followed before and after issuing the notice. I have enclosed a copy of that letter for your convenience.

Secretary Lew has addressed questions relating to this rulemaking from 13 different members of Congress at six separate hearings. Secretary Lew has also responded in writing to eight questions for the record relating to the rulemaking, including questions from you and Chairman Hatch. Commissioner Koskinen has answered questions regarding this rulemaking at 13 congressional hearings, including two hearings held by this Committee or a subcommittee of this Committee. And, in the last year alone, Commissioner Koskinen has attended 45 meetings with members of Congress at which this rulemaking was discussed; 28 of those meetings involved members of this Committee or the Senate Finance Committee.

In addition to the information that Treasury and the IRS have already provided to Congress and the public, we enclose a set of materials responsive to your request for documents relating to the November 2013 notice. These materials were originally collected and produced in connection with the Freedom of Information Act (FOIA) litigation referenced in your letter. Although deliberative material has been redacted, the documents reveal significant information regarding the rulemaking proceeding, including the timeline of the proceeding leading up to the November 2013 notice, identities of offices involved in developing the November 2013 notice, research collected in connection with preparing that notice, and materials received from stakeholders relating to the issues addressed in the notice. We invite you to review these materials, in addition to the publicly released notice of proposed rulemaking and other information provided to date by Treasury and the IRS, to determine whether the materials address your interest in better understanding this rulemaking process. We stand ready to engage with your staff to get you the information you need in a way that protects the confidentiality of internal deliberations regarding the rulemaking process.

We agree that the statutory exemptions from disclosure under FOIA do not justify withholding information from Congress. Congressional requests for deliberative materials relating to agency rulemaking proceedings do, however, implicate Executive Branch confidentiality interests that long predate FOIA's enactment. As we have explained previously, agency staff and counsel should be able to engage in free, full, and unfettered discussions about policy and legal matters. The public release of agency rulemaking deliberations could chill those deliberations and inhibit the agency's ability to fulfill its statutory responsibilities.² For those reasons, administrations of

² As Treasury and the IRS have stated in prior correspondence with the Committee, the rulemaking proceeding remains ongoing. Your letter notes the IRS's announcement in May 2014 that some changes would likely be made to the November 2013 proposed rules in light of comments received. That announcement indicated that Treasury and the IRS would eventually issue a revised proposed rule and hold a public hearing on that revised proposal. Work on revised proposed rules represents a continuation of the rulemaking proceeding, not a new rulemaking. That work necessarily builds on the analysis conducted (and the many comments received) in connection with the November 2013 notice. Accordingly, disclosing deliberations relating to the November 2013 notice would

both parties have long objected to congressional demands for information relating to the deliberations of agency officials.

Treasury and the IRS remain committed to cooperating with your Committee's requests for information. We are available to work with your staff to get you additional information in a way that respects our interest in protecting the confidentiality of internal deliberations regarding the rulemaking proceeding. To the extent you have additional questions, please do not hesitate to contact me.

Sincerely,



Anne Wall
Assistant Secretary for Legislative Affairs

Enclosure

Identical letter sent to:

The Honorable Orrin G. Hatch

cc: The Honorable Sander Levin
The Honorable Ron Wyden

compromise the confidentiality of Treasury's and the IRS's internal deliberations regarding an ongoing rulemaking proceeding.