

Lois Lerner
Director, Exempt Organizations

Written Response to TIGTA,
11/2/12

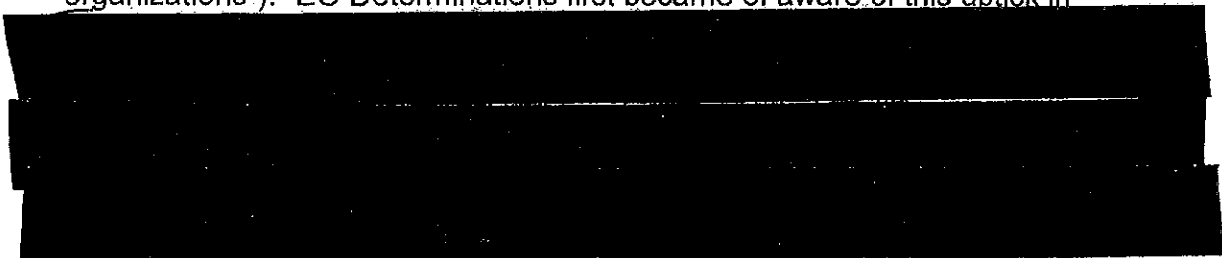
1. To the best of your knowledge, did any individual or organization outside the IRS influence the creation of criteria targeting applications for tax exemption that mention: 1) the "Tea Party," "Patriots," or the "9/12 Project", 2) government spending, government debt or taxes, 3) education of the public by advocacy/lobbying to "make America a better place to live", or 4) criticizing how the country is being run?

No. To the best of my knowledge, no individual or organization outside the IRS influenced the creation of these criteria.

2. To the best of your knowledge, did IRS or Tax Exempt and Government Entities Division management sanction the use of criteria targeting applications for tax exemption that mention: 1) the "Tea Party," "Patriots," or the "9/12 Project", 2) government spending, government debt or taxes, 3) education of the public by advocacy/lobbying to "make America a better place to live", or 4) criticizing how the country is being run?

3. When did you become aware the IRS was targeting applications for tax exemption that mention: 1) the "Tea Party," "Patriots," or the "9/12 Project", 2) government spending, government debt or taxes, 3) education of the public by advocacy/lobbying to "make America a better place to live", or 4) criticizing how the country is being run?

In early 2010, EO Determinations witnessed an uptick in the number of applications for § 501(c)(3) or 501(c)(4) status that contained indicators of potentially significant amounts of political campaign intervention ("advocacy organizations"). EO Determinations first became aware of this uptick in



To ensure consistent treatment of applications, EO Determinations had long been alerting its specialists to emerging issues by sending emails describing particular issues or factual situations warranting additional review or coordinated processing. Because it was difficult to keep track of all of these separate email alerts, EO Determinations staff requested a consolidated list of all such alerts. EO Determinations was developing the Be On the Lookout (BOLO) list in early 2010. The BOLO, which is an Excel spreadsheet, provides a centralized source of regularly updated information to EO Determinations specialists about potentially abusive organizations or fraud issues, issues and cases requiring coordinated processing, emerging issues and issues for which to watch. The

BOLO currently includes four tabs: (1) Potential Abusive, (2) Emerging Issues, (3) Coordinated Processing, and (4) Watch List.

The first BOLO list contained the following entry on the Emerging Issues tab: "These case involve various local organizations in the Tea Party movement are applying for exemption under 501(c)(3) or 501(c)(4) [sic]." That description was added to the BOLO to help specialists identify cases involving potentially significant political campaign intervention for assignment to a particular Determinations group so that they could be consistently processed in accordance with advice provided by EO Technical. The language used on the BOLO was selected by Determinations specialists with the involvement of a front-line manager in EO Determinations. At this time, the language was not reviewed or approved by executive management.

As the number of advocacy cases grew, the Acting Director, EO Rulings & Agreements wanted to ensure that EO Determinations was not being over-inclusive in identifying such cases (including organizations that were solely engaged in lobbying or policy education with no apparent political campaign intervention). In addition, in light of the diversity of applications selected under this "tea party" label (e.g., some had "tea party" in their name but others did not, some stated that they were affiliated with the "tea party" movement while others stated they were affiliated with the Democratic or Republican party, etc.), the Acting Director, EO Rulings & Agreements sought clarification as to the criteria being used to identify these cases. In preparation for briefing me, the Acting Director, EO Rulings & Agreements asked the EO Determinations Program Manager what criteria Determinations was using to determine whether a case was a "tea party" case. Because the BOLO only contained a brief reference to "Organizations involved with the Tea Party movement applying for exemption under 501(c)(3) and 501(c)(4)" in June 2011, the EO Determinations Program Manager asked the manager of the screening group what criteria were being used to label "tea party" cases ("Do the applications specify/state 'tea party'? If not, how do we know applicant is involved with the tea party movement?"). The manager of the screening group responded that, "The following are issues that could indicate a case to be considered a potential 'tea party' case and sent to Group 7822 for secondary screening. 1. 'Tea Party', 'Patriots' or '9/12 Project' is referenced in the case file. 2. Issues include government spending, government debt and taxes. 3. Educate the public through advocacy/legislative activities to make America a better place to live. 4. Statements in the case file that are critical of the how the country is being run."

As TIGTA's interviews with EO Determinations employees revealed, the BOLO description and the above-referenced list of criteria used by EO Determinations to determine which cases fell under the BOLO description were their shorthand way of referring to the group of advocacy cases rather than targeting any particular group. Applications that did not contain these terms, but that contained indicators of potentially significant political campaign intervention, were also referred to the group assigned to work such cases.

I first became aware that the BOLO referenced "tea party" organizations and EO Determinations was using the above criteria to determine what organizations met that description when I was briefed on these cases on June 29, 2011. I immediately directed that the BOLO be revised to eliminate the reference to "tea party" organizations and refer instead more generally to advocacy organizations. The BOLO was revised on July 11, 2011; the "issue name" was changed from "Tea Party" to "Advocacy Orgs", and the "Issue Description" was changed to "Organizations involved with political, lobbying, or advocacy for exemption under 501(c)(3) or 501(c)(4)."

Unbeknownst to me, EO Determinations further revised the BOLO issue description on January 25, 2012 to "political action type organizations involved in limiting/expanding government, educating on the Constitution and Bill of Rights, social economic reform/movement." When I learned of this change, I directed that the BOLO description be revised. EO Determinations management explained that the group working the advocacy cases had made the change because they were receiving a substantial number of 501(c)(4) applications that only involved lobbying activity, which is a permissible activity, and no indication of political campaign activity. They were trying to edit the description to avoid capturing these organizations. Per my direction, the BOLO was updated on May 17, 2012. The separate entries for [REDACTED] were deleted and the advocacy organization description was revised to read, "501(c)(3), 501(c)(4), 501(c)(5), and 501(c)(6) organizations with indicators of significant amounts of political campaign intervention (raising questions as to exempt purpose and/or excess private benefit). Note: advocacy action type issues (e.g., lobbying) that are currently listed on the Case Assignment Guide (CAG) do not meet this criteria."

At the same time that I directed the BOLO be revised, I also directed the Acting Director of EO Rulings & Agreements to implement procedures for updating the BOLO that included executive-level approval. On May 17, 2012, the Acting Director of EO Rulings & Agreements issued a memorandum that set forth such procedures, which require that all additions and changes to the BOLO be approved by the manager of the emerging issues coordinator, the EO Determinations Program Manager, and the Director, Rulings & Agreements.