



*Review of Selected Criteria Used to Identify  
Tax-Exempt Applications for Review*

**September 28, 2017**

**Reference Number: 2017-10-054**

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**Redaction Legend:**

1 = Tax Return/Return Information

2 = Law Enforcement Techniques/ Procedures and Guidelines for Law Enforcement Investigations or Prosecutions

3 = Personal Privacy Information

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## HIGHLIGHTS

### REVIEW OF SELECTED CRITERIA USED TO IDENTIFY TAX-EXEMPT APPLICATIONS FOR REVIEW

## Highlights

Final Report issued on  
September 28, 2017

Highlights of Reference Number: 2017-10-054 to the Commissioner of Internal Revenue.

### IMPACT ON TAXPAYERS

In a prior audit, TIGTA determined that the IRS used inappropriate criteria to select tax-exempt applications for further review. Moreover, ineffective management resulted in substantial delays in processing certain applications and allowed unnecessary information requests to be issued. It is critical that tax laws are administered in a fair and impartial manner.

### WHY TIGTA DID THE AUDIT

In the prior review, TIGTA audited criteria that the IRS stated it used to select potential political cases for additional review from May 2010 through May 2012. The overall objective of this audit was to provide a historical account of the IRS's development and use of 17 select criteria from 259 criteria used to identify tax-exempt applications for review. The 17 criteria discussed in this report were selected based on input from staff of various congressional committees of jurisdiction and the IRS as well as from training documents that were not provided to TIGTA in the prior audit.

### WHAT TIGTA FOUND

TIGTA found that, from August 2004 through June 2013, the IRS potentially used 259 criteria to identify tax-exempt applications for further review. Most of these criteria involved issues besides political campaign intervention, such as potential fraud, abuse, and links to terrorism.

In the prior audit, TIGTA found that the IRS used a tracking sheet to show which potential political cases were selected for further review; however, IRS management stated that case listings such

as the one provided in the prior audit were not required. Due to the lack of case listings for all but one of the 17 criteria, TIGTA used various sources to identify more than 900 cases that could potentially have been selected for review based on the 17 criteria. However, TIGTA could not verify whether all relevant cases were identified.

Based on TIGTA's review of case documentation, 181 of the more than 900 cases had evidence of political activities or indications of significant potential political campaign intervention (the subject of the prior audit). Thirty-five of these cases were not processed while the applicable criteria were in use and did not appear to be processed based on the criteria. For the remaining 146 cases, TIGTA determined that 83 were processed based upon the criteria and 63 were processed while the criteria were in use, but TIGTA could not confirm these 63 cases were selected based upon the criteria. Analysis of the 146 cases is shown in each of the 17 sections of the report with information for each of these unique criteria.

### WHAT TIGTA RECOMMENDED

TIGTA did not make any recommendations because the procedures in place when the 17 criteria were potentially used by the IRS are no longer in effect.



TREASURY INSPECTOR GENERAL  
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

September 28, 2017

**MEMORANDUM FOR COMMISSIONER OF INTERNAL REVENUE**

**FROM:** Michael E. McKenney  
Deputy Inspector General for Audit

**SUBJECT:** Final Audit Report – Review of Selected Criteria Used to Identify  
Tax-Exempt Applications for Review (Audit # 201310034)

This report presents the results of our review of selected criteria used to identify tax-exempt applications. The overall objective of this audit was to provide a historical account of the Internal Revenue Service's (IRS) development and use of 17 select criteria from 259 criteria used to identify tax-exempt applications for further review. The 17 criteria included 11 suggested by majority and minority staff of various congressional committees,<sup>1</sup> one suggested by the IRS, and five that were included in training documents discussed in a congressional hearing that were not previously provided to the Treasury Inspector General for Tax Administration. This review was initiated based on interest expressed by Members of Congress regarding the IRS's treatment of organizations applying for tax-exempt status. This review is included in our Fiscal Year 2017 Annual Audit Plan and addresses the major management challenge of Tax Compliance Initiatives.

In its response, the IRS provided information on improvements it has made since 2013 as well as technical comments, which we incorporated in the report as appropriate. Management's response to the draft report is included as Appendix XII.

If you have any questions, please contact me or Gregory D. Kutz, Assistant Inspector General for Audit (Management Services and Exempt Organizations).

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<sup>1</sup> We received suggestions from several of the following congressional committees after seeking input from their majority and minority staffs: the House Committee on Ways and Means, the Senate Committee on Finance, the Senate Permanent Subcommittee on Investigations, the House Committee on Oversight and Government Reform, the House and Senate Committees on Appropriations, and the Joint Committee on Taxation.



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*Abbreviations*

ACORN	Association of Community Organizations for Reform Now
BOLO	Be on the Look Out
EO	Exempt Organizations
EODQA	Exempt Organizations Determinations Quality Assurance
FY	Fiscal Year
HCERA	Health Care and Education Reconciliation Act of 2010
I.R.C.	Internal Revenue Code
IRS	Internal Revenue Service
POA	Power of Attorney
PPACA	Patient Protection and Affordable Care Act
TAG	Touch and Go
TIGTA	Treasury Inspector General for Tax Administration



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### *Background*

#### *Prior audit*

During the 2012 election cycle, some Members of Congress raised concerns to the Internal Revenue Service (IRS) about selective enforcement and stated that Federal tax compliance efforts should be pursued without regard to politics of any kind. In addition, several organizations applying for Internal Revenue Code (I.R.C.) Section (§) 501(c)(4) tax-exempt status made allegations that, because of their political leanings, 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. Soon thereafter, we conducted an audit of the process and criteria the IRS informed us it relied on for selecting potential political cases<sup>1</sup> for further review from May 2010 through May 2012.

We found that the IRS used inappropriate criteria that identified for review organizations applying for tax-exempt status based upon their names<sup>2</sup> or policy positions<sup>3</sup> instead of indications of significant potential political campaign intervention. After the IRS responded to the findings in the draft report but prior to the issuance of our final report, the Director, Exempt Organizations, appeared at an American Bar Association meeting on May 10, 2013, and stated that the IRS's use of organization names in the title for the selection of advocacy cases was "...incorrect, insensitive, and inappropriate." We issued the final report on May 14, 2013,<sup>4</sup> and concluded that 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.

We included nine recommendations for improvements to the tax-exempt application process in our report.<sup>5</sup> We also noted in the report that other organization names were included on listings, known as Be On the Look Out (BOLO) listings, that the IRS used to select tax-exempt applications for review. During the prior audit, the IRS did not indicate that the other BOLO criteria were used to process political advocacy cases between May 2010 and May 2012. These

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<sup>1</sup> Until July 11, 2011, the Rulings and Agreements office within the IRS's Exempt Organizations function referred to these cases as "Tea Party" cases. Afterwards, the Exempt Organizations function referred to the cases as "advocacy" cases.

<sup>2</sup> Tea Party, Patriots, and 9/12.

<sup>3</sup> For example, education of the public by advocacy/lobbying to "make America a better place to live."

<sup>4</sup> Treasury Inspector General for Tax Administration, Ref. No. 2013-10-053, *Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review* (May 2013).

<sup>5</sup> We determined during a follow-up audit that the IRS had implemented all nine recommendations and completely revamped the process for reviewing tax-exempt applications, including the elimination of BOLO listings in June 2013.



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other criteria were not the focus of our audit and most involved different issues besides political campaign intervention, such as potential fraud, abuse, and links to terrorism. Shortly after our report was issued, we shared lists of these criteria (some of which appeared to be political in nature) with the IRS's Acting Commissioner as well as staff of the House of Representatives Committee on Ways and Means and the Senate Committee on Finance.

After the issuance of our May 2013 report, several congressional hearings were held and multiple congressional investigations were initiated. During the hearings, Members of Congress raised questions about other criteria from the BOLO listings as well as training materials not previously provided to the Treasury Inspector General for Tax Administration (TIGTA) containing terms such as "Progressive" and "We the People" that were potentially used to identify organizations for further review. During a congressional hearing in July 2013, the Inspector General stated that TIGTA would conduct an additional audit of other criteria used by the IRS to identify tax-exempt applications for further review.

In August 2015, the Senate Committee on Finance concluded a more than two-year investigation into the IRS's actions and issued a bipartisan report.<sup>6</sup> It found that "...from 2010 to 2013, IRS management was delinquent in its responsibility to provide effective control, guidance, and direction over the processing of applications for tax-exempt status filed by Tea Party and other political advocacy organizations." It concluded that "Not only did those organizations have to withstand delays measured in years, but many also were forced to bear a withering barrage of burdensome and inappropriate "development letters" aimed at extracting information the IRS wrongly concluded was necessary to properly process the applications." The Committee also found that:

*While most of the potentially political applications that the IRS set aside for heightened scrutiny were Tea Party and conservative groups, the IRS also flagged some left-leaning tax-exempt applicants for processing. In order to centralize these cases for review and processing, names and descriptions of several left-leaning groups were placed on the BOLO spreadsheet. Some left-leaning applicants experienced lengthy processing delays and inappropriate and burdensome requests for information.*

We did not assess the political leanings of any organizations in our May 2013 report. However, an internal IRS e-mail provided to congressional investigators showed that the IRS had completed an assessment in July 2012 of the political leanings of the political advocacy cases that were the subject of our May 2013 report.<sup>7</sup> The conclusions reached by the IRS were similar

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<sup>6</sup> S. Rept. 114-119, *The Internal Revenue Service's Processing of 501(c)(3) and 501(c)(4) Applications for Tax-Exempt Status Submitted by "Political Advocacy" Organizations from 2010–2013* (2015).

<sup>7</sup> See Appendix IV.



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to the results of the Senate Committee on Finance investigation discussed above. Specifically, the IRS concluded that:

*Of the 84 (c)(3) cases,<sup>8</sup> 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,<sup>9</sup> approximately ¾ appear to be conservative leaning, while fewer than 10 appear to be liberal/progressive-leaning groups based solely on the name.*

**Identification of criteria for the current audit**

According to the IRS, the Exempt Organizations (EO) Determinations Unit began using listings to help ensure consistency in case processing after applications for tax-exempt status with identical information began to be identified in Calendar Year 2004. The listing of identified issues became known as the Touch and Go (TAG) listing. By January 2007, TAG procedures focused on potential fraud, abuse, and links to terrorism. More than 200 issues (hereafter referred to as criteria) were added to the TAG listing through Calendar Year 2009. In January 2010, an updated TAG listing was issued that included only 16 active and 19 historical, or seldom seen, criteria. The Determinations Unit considered the remainder of the more than 200 criteria obsolete and removed them from the TAG listing. Figure 1 includes information from the TAG listings we received from the IRS and the number of criteria included on each listing.<sup>10</sup>

**Figure 1: TAG Listings and Number of Criteria**

Date TAG Listing(s) Issued	Number of Criteria	Number of Archived Criteria	Number of Removed Criteria
February 2004	25	N/A	N/A
June 2004	41	N/A	N/A
August 2004	62	N/A	N/A
December 2004	66	N/A	N/A
February 2005	89	N/A	N/A
May 2005	119	N/A	N/A
October 2005	180	N/A	N/A
April 2007 and June 2008	184	N/A	N/A
January 2010 and February 2010	16	19	119

Source: TAG listings provided by the EO function and the Counselor to the Commissioner.

<sup>8</sup> I.R.C. § 501(c)(3) organizations.

<sup>9</sup> I.R.C. § 501(c)(4) organizations.

<sup>10</sup> The identification numbers for the criteria go as high as 211 on the January 2010 TAG listing; however, it appears some criteria were removed over time, causing the actual number of criteria on the various TAG listings to be less than the number of identified criteria.



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In August 2010, the TAG listings became part of a new document called the BOLO listing. The BOLO listings included separate tabs, or sections, for the TAG, TAG Historical, Emerging Issues, Coordinated Processing, and Watch List<sup>11</sup> issues.<sup>12</sup> In addition, during Calendar Year 2010, the IRS developed training documents<sup>13</sup> identifying specific criteria for employees initially screening applications.<sup>14</sup>

Our May 2013 report focused on how the IRS identified political advocacy cases using the BOLO listings and other sources from May 2010 through May 2012. However, as stated in our prior report, there were other criteria on the BOLO listings. In fact, using BOLO listings, TAG listings, and other documentation provided by the IRS, we identified 259 criteria the IRS potentially used to identify tax-exempt applications for further review from Calendar Year 2004 through the elimination of the BOLO listings in June 2013.<sup>15</sup>

The purpose of this audit was to address congressional interest about the nature and impact of the use of other criteria that were not the focus of our prior audit. Therefore, we reached out to congressional committees of jurisdiction and IRS officials for input to provide reasonable assurance that this audit addressed the criteria with the most congressional interest.<sup>16</sup> We received 11 suggestions to include in our audit from the congressional committees of jurisdiction<sup>17</sup> and one suggestion from the IRS. We also added five criteria from the training materials that were not provided to TIGTA during the prior audit and were disclosed at a congressional hearing after the issuance of our May 2013 report. However, IRS management disagreed with including certain criteria, stating that “if an item never appeared on a TAG or BOLO listing and was only mentioned in one 2010 training slide, then it is not appropriate to consider it as a screening criteria that was ever used/approved and should not be included in this report.” Figure 2 shows the 17 criteria identified for inclusion in this audit.

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<sup>11</sup> The BOLO listing issued on August 12, 2010, referred to a BOLO tab instead of a Watch List tab.

<sup>12</sup> Two of the BOLO criteria were added to the Internal Revenue Manual.

<sup>13</sup> In our initial audit, we requested “All documents and correspondence (including e-mail) concerning the EO function’s response to and decision-making process for addressing the increase in applications for tax-exempt status from organizations involving potential political advocacy issues.” As noted previously, the IRS did not provide these training documents to TIGTA during our initial audit.

<sup>14</sup> This process is now referred to as classifying applications.

<sup>15</sup> We relied on documentation provided by the IRS to identify the 259 criteria. However, because of the limitations discussed in the report section below on the scope of our audit, there could be other criteria of which the IRS was unaware.

<sup>16</sup> Per I.R.C. § 6103, non-tax writing committees do not have the authority to view return information. We provided the non-tax writing committees a listing of the criteria potentially used by the Determinations Unit to identify applications for further review after redacting any criteria we believed constituted return information.

<sup>17</sup> We received suggestions from several of the following congressional committees after seeking input from their majority and minority staffs: the House Committee on Ways and Means, the Senate Committee on Finance, the Senate Permanent Subcommittee on Investigations, the House Committee on Oversight and Government Reform, the House and Senate Committees on Appropriations, and the Joint Committee on Taxation.



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**Figure 2: The 17 IRS Criteria Addressed in This Report**

ACORN <sup>18</sup> Successors ****1*****	Occupied Territory Advocacy
Border Patrol	Occupy
CA Politics	Paying National Debt
Emerge	Pink Slip Program
Green Energy	Progressive
Healthcare Legislation	Rally Patriots
Medical Marijuana ****1*****	*****1*****
	We the People

Source: IRS criteria included on TAG listings, BOLO listings, and screener training documents.

### **Identification of application case files for TIGTA analysis**

During our prior audit, the IRS provided us a listing of all cases identified as potential political cases as of May 2012.<sup>19</sup> However, IRS management stated that case listings such as the one provided in our prior audit were not required but could have been used when there was a large volume of cases with similar issues that required coordination between more than one office. In fact, the IRS only maintained a listing of cases that were identified for further review for one (Healthcare Legislation) of the 17 criteria selected for this audit. Because of the lack of documentation, we could not determine how many total applications were selected by the IRS for further review using 16 of the 17 criteria or which cases were processed based upon them.

We requested 927 applications that the IRS potentially selected for further review based on the organizations' names or our analyses of case files and other IRS documents from the EO function. The EO function was able to locate 918 (99 percent)<sup>20</sup> of 927 cases requested.<sup>21</sup> We eliminated 184 cases because they did not meet our case selection methodology.<sup>22</sup> Because the subject of our prior audit and the questions raised by Members of Congress after the release of our prior report related to organizations that were of a political nature, we eliminated any cases that did not include indications of political activities, such as lobbying, or significant

<sup>18</sup> The acronym ACORN stands for Association of Community Organizations for Reform Now.

<sup>19</sup> The listing included 298 organizations.

<sup>20</sup> In addition to the 918 cases provided in response to our request, the IRS provided an additional case because it was related to a case that we had requested. Furthermore, we already had four case files from a prior audit that were identified for review, so we did not request them again.

<sup>21</sup> See Appendix VI for a listing of the eight cases the IRS was unable to provide.

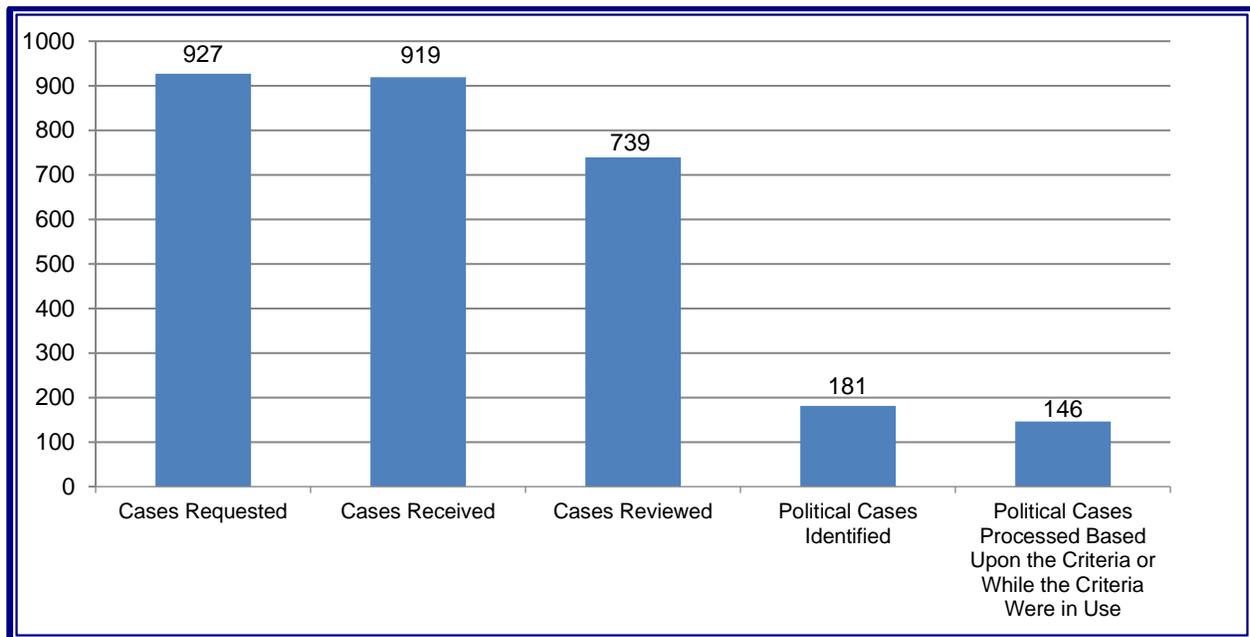
<sup>22</sup> Some cases did not involve a determination decision by the IRS. For example, some case files only involved an organization notifying the IRS of its termination. Additional organization case files that did not include any mention of the organization being related to the applicable criteria were also eliminated.



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potential political campaign intervention (the subject of our prior report). For example, organizations like the \*\*\*\*\*1\*\*\*\*\* and the \*\*\*\*\*1\*\*\*\*\* have one of the 17 criteria in their names, but their applications did not show any involvement in political activities or indications of significant potential political campaign intervention. As a result, we identified 181 political cases. Figure 3 illustrates our case requests, receipts, and reviews.

**Figure 3: Number of Cases Involved in This Audit**



Source: TIGTA case requests, receipts, and reviews.

After reviewing the remaining 181 political cases, we identified 146 cases that were either selected based on the criteria for further review or were processed while the criteria were in use, but we could not confirm were selected based upon the criteria.<sup>23</sup> We confirmed that 83 political cases were processed based upon the selected criteria by identifying a reference to the criteria in the case files or other IRS-provided documentation, such as e-mails. We determined that another 63 political cases were processed while the selected criteria were in use, but we could not confirm that they were selected based upon the criteria from our review of documentation. These 63 political cases may have been processed using the criteria, but we could not identify any documentation confirming this.

<sup>23</sup> The remaining 35 political cases were not processed while the applicable criterion was in use and did not appear to be processed based upon the criteria. As a result, we did not include information about them in this report.



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The 146 cases included 92 applications for I.R.C. § 501(c)(3)<sup>24</sup> status, 48 applications for I.R.C. § 501(c)(4)<sup>25</sup> status, one application for I.R.C. § 501(c)(5)<sup>26</sup> status, three applications for I.R.C. § 501(c)(6)<sup>27</sup> status, and two applications for I.R.C. § 501(c)(7)<sup>28</sup> status. Each type of tax-exempt status has its own requirements that organizations need to adhere to in order to be granted and maintain tax-exempt status. For example, I.R.C. § 501(c)(3) organizations are not allowed to participate in any political campaign intervention, while I.R.C. § 501(c)(4) organizations can conduct such activities as long as they are not their primary activity.

### **Scope of current audit**

This report presents a historical account of the IRS's development and use of 17 select criteria using the information that was available to the audit team. We attempted to obtain relevant information from current and former IRS employees as well as electronic and paper documents in the possession of the IRS. However, due to the amount of time that has passed since some of the 17 criteria were in place, documentation was not always available, personal memories of events had faded, and a significant number of personnel had left the Federal Government and were unavailable for interview. In addition, for 16 of the 17 criteria there were no tracking sheets listing which specific cases, if any, were actually selected based on these criteria. As a result of these limitations, we did not determine the appropriateness for any of the 17 selected criteria. However, as discussed in our prior report, using names and/or policy positions instead of developing criteria based on tax-exempt laws and Treasury Regulations is inappropriate.<sup>29</sup>

We requested that the IRS search for the 17 criteria in readily available information using e-mails and documentation that had been collected from 88 current and former IRS employees. The e-mails and documentation were previously provided to Congress by the IRS in response to requests made after our prior audit. The information we requested generally covered the time period of January 1, 2009, through May 10, 2013. However, since some of the 17 criteria were initiated as far back as Calendar Year 2004, we likely did not have access to all relevant documentation concerning the 17 criteria.

As mentioned previously, we encountered difficulties in identifying relevant tax-exempt application cases for our audit. The EO function maintained a listing of cases that were selected for further review (hereafter referred to as a tracking sheet) based on only one (Healthcare

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<sup>24</sup> Organizations described in section 501(c)(3) are commonly referred to as “charitable organizations.”

<sup>25</sup> I.R.C. § 501(c)(4) organizations are civic leagues, social welfare organizations (including certain war veterans organizations), or local associations of employees.

<sup>26</sup> I.R.C. § 501(c)(5) organizations are labor, agricultural, and horticultural organizations.

<sup>27</sup> I.R.C. § 501(c)(6) organizations are business leagues, chambers of commerce, *etc.*

<sup>28</sup> I.R.C. § 501(c)(7) organizations are social clubs.

<sup>29</sup> As noted previously, the IRS discontinued the use of BOLO and other listings used to identify cases or issues for further review and required employees to screen applications for tax-exempt status without regard to specific labels of any kind.



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Legislation) of the 17 criteria reviewed. The EO function could not provide us with any tracking sheets showing cases identified for further review using the other 16 selected criteria.<sup>30</sup> As a result, we found that the IRS was unable to identify which specific cases, if any, were selected for further review for the 16 criteria. Consequently, we searched the IRS's case inventory system for matches with the criteria, *e.g.*, Progressive, Rally Patriots, in the names of the organizations to identify cases that were potentially selected for further review by the IRS based on the criteria. This does not mean the cases we identified were selected for review based on the criteria or that we identified all relevant cases. Some applicable cases may not have the criteria in the names of the organizations. Due to the lack of tracking sheets for all but one of the selected criteria, we took additional steps to identify cases that may have been selected based on the IRS's criteria and eliminated cases that we determined were unrelated to political activities or did not include indications of significant potential political campaign intervention (the subject of our prior report).

Further, we requested interviews with 83 IRS employees<sup>31</sup> who we believed could provide input on the 17 criteria. However, unlike the prior audit, about one-fourth of these individuals no longer worked for the Federal Government and generally did not respond to or declined our requests for an interview. In addition, due to the passage of time, not all individuals that were interviewed could recall specifics about the 17 criteria.

### **Structure of this audit report**

This report discusses the results of our audit of each of the 17 selected criteria. Each separate criterion section includes the IRS's description of the unique criteria, our analysis of documentation provided by the IRS, information obtained from interviews with current and former IRS employees, and the results of our analyses of applications for tax-exempt status.<sup>32</sup>

We analyzed this information to identify any time periods the criteria were in use, why the criteria were developed, who authorized the criteria, which applications were identified using the criteria, and whether the application case files included indications of political activity or significant potential political campaign intervention (hereafter referred to as political cases).<sup>33</sup>

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<sup>30</sup> EO function management stated that tracking sheets were not required but could have been used when there was a large volume of cases with similar issues that required coordination between the Technical and Determinations Units.

<sup>31</sup> We interviewed 62 current IRS employees and attempted to interview 21 former IRS employees. Three of the former employees agreed to be interviewed.

<sup>32</sup> We did not determine whether specific applications for tax-exempt status should be approved or denied.

<sup>33</sup> We used the same methodology as in the previous review for identifying cases with indications of significant potential political campaign intervention. If cases contained political activities but did not meet the criteria used in the previous review for indications of significant potential political campaign intervention, we categorized them as "political activities" cases. See Appendix V for more details.



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If the political cases were processed based upon the criteria or while the applicable criterion was in use, we also determined how long the IRS took to process the cases and compared them to the processing times of all applications for tax-exempt status.<sup>34</sup> Processing times for tax-exempt applications can vary significantly based on whether the IRS needs additional information from the applicant.

As part of its initial review, the Determinations Unit decides whether the application can be approved on “merit.” The IRS considers a case approved on merit when it determines that the application is complete and meets applicable tax law without contacting the applicant or after obtaining minor additional information from the applicant. If the IRS requires additional information from the applicant prior to making a determination decision on its tax-exempt status, the Determinations Unit sends one or more information request letters to the organization. The IRS refers to cases closed after the issuance of information request letters as “non-merit” closures. For the non-merit cases, the IRS uses requested information to make a decision to either approve or deny the application for tax-exempt status. If the organization does not respond to a request for additional information, the IRS will close the case as Failure to Establish. At any time during the application review process up to the issuance of a proposed denial letter, the organization can withdraw its request for tax-exempt status. See Appendix VII for definitions of case processing and case closure terminology used in this report. IRS management stated that all non-merit cases processed during the time frame under audit, not just the ones that are the subject of this report, experienced delays.

Finally, we compared questions that TIGTA had concluded were unnecessary in our prior audit with information requested of applicants potentially associated with the 17 selected criteria. During our prior audit, we determined that the IRS sent requests for information to organizations on the advocacy tracking sheet that we later determined (in whole or in part) to be unnecessary based on questions that the EO function determined were troubling.<sup>35</sup> In this audit, we used the same seven questions<sup>36</sup> cited in our prior audit for each of the 17 criteria on whether unnecessary questions had been asked.

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<sup>34</sup> IRS management stated that, without providing context as to the complexity of cases, it is not possible to reach a conclusion regarding whether the time taken to process the cases were reasonable. Our analyses compare the length of time it took to process the political cases to the processing times of merit closed and non-merit closed applications for tax-exempt status by fiscal year. We do not reach any conclusions about the appropriateness of how long it took to process the applications.

<sup>35</sup> During our prior audit, we requested agreement to the facts for the cases we identified as including unnecessary questions and received the following response: “We have reviewed TIGTA’s analysis of the appropriateness of development questions asked in the advocacy cases. While the appropriateness of the development questions varies depending upon the facts of the particular cases, in general, the IRS considers the repeated use of these questions as overbroad and nonprobative, and the IRS does not disagree with TIGTA’s concerns about these questions.”

<sup>36</sup> See Appendix VIII for a listing of the seven questions.



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Figure 4 shows selected case statistics from our review of 146 application case files<sup>37</sup> that we confirmed were processed based on the selected criteria or were processed while the selected criteria were in use, but we could not confirm that they were selected based upon the criteria.

**Figure 4: Selected Case Review Statistics**

Criteria	Number of Cases Reviewed	Number of Cases With Unnecessary Questions	Processing Time Frames		
			Less Than 1 Year	1–2 Years	More Than 2 Years
ACORN Successors	14	6	6	4	4
*****1*****	8	0	7	0	1
Border Patrol	7	0	3	4	0
CA Politics	0	0	0	0	0
Emerge	6	2	1	1	4
Green Energy	1	0	0	1	0
Healthcare Legislation	16	1	5	5	6
Medical Marijuana	12	4	3	5	4
*****1*****	0	0	0	0	0
Occupied Territory Advocacy	4	1	0	2	2
Occupy	5	1	0	3	2
Paying National Debt	2	0	0	1	1
Pink Slip Program	1	1	0	1	0
Progressive	61	7	53	7	1
Rally Patriots	0	0	0	0	0
*****1***** *****1*****	0	0	0	0	0
We the People	9	0	2	3	4

Source: TIGTA case reviews.

We conducted this performance audit in accordance with generally accepted government auditing standards. However, we did not assess internal controls or make recommendations because the procedures in place from Fiscal Years (FY)<sup>38</sup> 2004 to 2013 (through June 2013), the time frame when the 17 criteria were potentially used by the IRS, are no longer in effect. Since

<sup>37</sup> As noted previously, the IRS provided us a listing of all cases identified as potential political cases as of May 2012 during our prior audit. This listing included 298 cases. Ten of the 146 cases discussed in this report match the 298 cases reviewed in our prior report. The 10 cases relate to five of the 17 criteria (ACORN Successors, Occupy, Paying National Debt, Progressive, and We the People).

<sup>38</sup> Any yearly accounting period, regardless of its relationship to a calendar year. The Federal Government’s fiscal year begins on October 1 and ends on September 30.



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the issuance of our May 2013 report, the IRS has completely revamped the process for reviewing tax-exempt applications, including the elimination of BOLO listings in June 2013 and ending the screening process in October 2014 by allowing Determinations Unit employees to work any cases that are appropriate for their grade level from receipt to closure. According to the IRS, these changes, among others, have totally eliminated the backlog of applications and reduced processing cycle times for cases.

We performed work related to this audit in the Determinations Unit in Cincinnati, Ohio, and the Tax Exempt and Government Entities Division in Washington, D.C.; Charlotte, North Carolina; and Grand Rapids, Michigan, as well as the IRS Headquarters Office in Washington, D.C., from August 2013 through December 2016. We were initially precluded from conducting interviews of IRS officials until the Department of Justice investigation was completed and its report was issued in October 2015. After coordinating with the IRS and the Department of Justice, we began the majority of interviews in November 2015. Detailed information on our objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.



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*Results of Review*

**ACORN Successors**

Based on our analysis of documentation and interviews, we determined that after receiving allegations from Congress, the EO function identified several areas of \*\*\*\*\*1\*\*\*\*\* by the original ACORN organization and believed that ACORN Successors organizations were outgrowths or still related to the original ACORN organization. As a result, the criterion was added to the BOLO listing to ensure that the new organizations did not continue the questionable activities.

In the latter half of Calendar Year 2009, the IRS received information from Members of Congress alleging that the ACORN organization and other related individuals and organizations may not be operating in compliance with Internal Revenue laws. As a result, the IRS established a team to perform investigative research that identified several areas of \*\*\*\*\*1\*\*\*\*\* \*\*\*\*\*1\*\*\*\*\* over the ACORN organization’s activities. The team concluded that sufficient evidence existed to warrant further investigation and recommended developing an examination strategy and conducting periodic research during any examinations to determine if organizations related to the original ACORN organization were creating new corporations, tax-exempt organizations, and other entities that were involved in the same activities as the original organization. During the investigation, a member of the research team informed a Determinations Unit group manager that it appeared ACORN-related organizations were creating new organizations to replace the original organization. As a result, the Determinations Unit group manager recommended an e-mail alert<sup>39</sup> be issued to the screeners for any ACORN-related applications or applications referencing Communities for Change.<sup>40</sup>

**IRS description of criterion**

The criterion ACORN Successors was used following the breakup of the ACORN organization to describe organizations (local chapters) that re-formed<sup>41</sup> under new names and were requesting

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<sup>39</sup> During an interview with the Senate Permanent Subcommittee on Investigations, a Determinations Unit specialist stated that he searched for ACORN Successors cases after receiving an e-mail alert but prior to the issuance of the first BOLO listing.

<sup>40</sup> The phrase “Communities for Change” refers to organizations applying for tax-exempt status that include the phrase “Communities for Change” in their name. The EO function believed that following the breakup of the ACORN organization, local chapters had been reforming under new names and resubmitting applications with the phrase “Communities for Change.”

<sup>41</sup> The word “re-formed” as used here means to take form again. Although IRS officials used “reforming” and “reformed” in the criterion description (see Figure 5), we believe that based on the context of its use, they meant “re-forming” and “re-formed.”



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exemption under I.R.C. § 501(c)(3). The ACORN Successors criterion description refers to the origins of organizations applying for tax-exempt status. The criterion was included in an e-mail, the BOLO listings, and materials from a screener workshop. Figure 5 shows the development of the ACORN Successors criterion.

**Figure 5: ACORN Successors Criterion Description**

Date Issued <sup>42</sup>	Source	IRS Criterion Description <sup>43</sup>
May 2010	E-Mail	- E-mail mentions a prior e-mail alert <sup>44</sup> issued about possibly receiving successors to ACORN applications.
June 2010	Training	- The training lists "Successors to ACORN" as a "Watch For" example. No explanation of issue included.
August 10, 2010	BOLO (Watch List tab)	- ACORN Successors: Following the breakup of ACORN, local chapters have been reforming under new names and resubmitting applications.  - If you see these cases, they should be sent to the TAG Group.
August 12, 2010	BOLO (BOLO List tab)	- ACORN Successors: Following the breakup of ACORN, local chapters have been reforming under new names and resubmitting applications.  - If you see these cases, they should be sent to the TAG Group.
October 8, 2010	E-Mail	- E-mail sent to screeners by their group manager that refers to factors to look for to identify ACORN-related cases. The factors included:  - The name(s) Neighborhoods for Social Justice or Communities Organizing for Change.  - Activities that mention voter mobilization of the low-income/disenfranchised.  - Advocating for legislation to provide for economic, health care, and housing justice for the poor.  - Educating public policy makers, <i>i.e.</i> , politicians, on the above subjects.

<sup>42</sup> Multiple BOLO listings were issued between August 2010 and March 2012, all with the same ACORN Successors description.

<sup>43</sup> The criterion descriptions for all TAG- and BOLO-sourced entries in this figure and all subsequent figures in this report are copied verbatim from IRS documentation.

<sup>44</sup> The IRS was unable to locate the earlier e-mail alert.



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Date Issued	Source	IRS Criterion Description
November 9, 2010 – December 13, 2010	BOLO (Watch List tab)	<ul style="list-style-type: none"> <li>- ACORN Successors: Following the breakup of ACORN, local chapters have been reforming under new names and resubmitting applications.</li> <li>- If you see these cases, they should be sent to the TAG Group.</li> </ul>
February 2, 2011 – March 26, 2012	BOLO (Watch List tab)	<ul style="list-style-type: none"> <li>- ACORN Successors: Local chapters of the former ACORN organization have reformed under new names and are requesting exemption under section 501(c)(3). Succession indicators include ACORN and Communities for Change in the name and/or throughout the application.</li> <li>- Elevate case to your manager for contact with EO Tech – *****3*****.</li> </ul>
June 15, 2012 <sup>45</sup> – April 19, 2013	BOLO (Emerging Issues tab)	<ul style="list-style-type: none"> <li>- Current Political Issues: 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 do not meet this criteria.</li> </ul>

*Source: IRS-provided BOLO listings as well as e-mails and training materials.*

**Analysis of documentation and results of interviews**

Based on our review of documentation, several external events led to the IRS being informed of concerns about the ACORN organization, which contributed to the creation of the ACORN Successors criteria.

- From FYs 2005 to 2009, the ACORN organization and related organizations were under Federal investigation for voter and election fraud.
- The Government Accountability Office reported that, by 2009, ACORN had expanded into a national network of organizations involved in the development of affordable housing, foreclosure counseling, voter registration, and political mobilization, among other things.<sup>46</sup>

<sup>45</sup> The first BOLO listing we identified without the ACORN Successors criterion was dated June 15, 2012. The ACORN Successors issue was removed from the Watch List tab of the BOLO listing and employees were directed to identify any new cases with the revised Current Political Issues criterion in the Emerging Issues tab.

<sup>46</sup> Government Accountability Office, GAO-10-648R, *ACORN Preliminary Results* (June 2010).



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- In August and September 2009, Members of Congress sent letters to the IRS alleging that the ACORN organization was not in compliance with Internal Revenue laws.
- In September 2009, a video surfaced depicting what appeared to be inappropriate behavior by members of a local ACORN chapter, which spurred calls for legislation to restrict or eliminate Federal funding.
- In December 2009, Congress passed provisions restricting Federal funding of the ACORN organization or any of its affiliates.<sup>47</sup>
- By March 2010, the national ACORN organization announced it was terminating its field operations and closing all of its field offices because of the loss of funding, although some of its related organizations were to remain open.

During the time the IRS was receiving input from external sources, it took several actions related to the ACORN issue. In November 2009, the Commissioner, Tax Exempt and Government Entities Division, requested a research team look into allegations of noncompliance. While this research was underway, an Examinations Unit employee informed EO function management in late February 2010 that it appeared the ACORN organization was creating new organizations. The research team recommended in April 2010 that the IRS adopt an examination strategy and conduct periodic research of ACORN-related chapters that may be changing names and continuing on with activities of concern. In June 2010, the Determinations Unit began training its employees on the upcoming implementation of the BOLO listing and used in its training material the phrase “Successors to ACORN” as an example of what to “Watch For.” In August 2010, the ACORN Successors criterion was included on the first BOLO listing, where it remained until June 2012 when Determinations Unit specialists were informed that ACORN Successors were now included under the Current Political Issues criteria on the Emerging Issues tab.<sup>48</sup>

As noted below, there was ongoing coordination between EO function personnel in Cincinnati, Ohio, and Washington, D.C., and many of the cases experienced substantial delays in processing.

- In June 2010, the Acting Manager, Technical Unit, requested that the Determinations Unit not develop applications identified with the ACORN Successors criterion because of activity in the Office of the Commissioner, Tax Exempt and Government Entities Division, with respect to ACORN.<sup>49</sup> This prohibition was lifted in July 2010.

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<sup>47</sup> Continuing Appropriations Resolution, 2010, Pub. L. No. 111-68, Div. B, § 163, 123 Stat. 2043, 2053 (2009); Further Continuing Appropriations Resolution, 2010, Pub. L. No. 111-88, Div. B, §101, 123 Stat. 2904, 2972 (2009).

<sup>48</sup> Initially, ACORN Successors cases were not considered as meeting the Tea Party criterion on the Emerging Issues tab. If ACORN Successors cases were forwarded to the first Tea Party Coordinator, the Coordinator would send them back to general inventory.

<sup>49</sup> We concluded that this activity related to the cross-divisional team looking into ACORN organizations.



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- In August 2010, the ACORN Successors criterion was included on the first BOLO listing. However, current EO function management could not recall who authorized the criterion.
- In early October 2010, a Determinations Unit group manager suggested to his Area Manager that the ACORN Successors BOLO listing description be updated based on information from additional ACORN Successors cases identified. Around this same time, the Determinations Unit program manager requested a contact from the Technical Unit manager for ACORN Successors cases. The Technical Unit manager provided a contact in November 2010, apologizing for the delay in responding.
- In March 2011, the EO Determinations Quality Assurance (EODQA) Unit manager informed her staff that ACORN-related cases were awaiting guidance from the Technical Unit and could still be developed but that no additional letters requesting information from the applicants should be issued. At that time, a teleconference was held between Determinations and Technical Unit employees to discuss ACORN Successors cases and how to process them.
- At the end of January 2012, the EODQA Unit manager forwarded a draft proposed denial letter for an ACORN Successors case (\*\*\*\*\*1\*\*\*\*\*) received in March 2010 to the Technical Unit for review. The EODQA Unit manager requested several status updates on this case and, in early March 2012, was informed that the review of the proposed denial letter concluded that additional facts were needed to support the denial of the application. The case file was sent to the Technical Unit. In mid-April 2012, the EODQA Unit manager forwarded a second proposed denial letter for another ACORN Successors case (\*\*\*\*\*1\*\*\*\*\*) to the Technical Unit for review. Almost every month from February through September 2012, the EODQA Unit manager requested status updates on all the cases sent to the Technical Unit for review.
- In early September 2012, the Director, Rulings and Agreements Office, made a decision that a third ACORN Successors case (\*\*\*\*\*1\*\*\*\*\*) be processed in the Technical Unit because the Determinations Unit and the EODQA Unit could not reach an agreement on the determination decision. The Director, Rulings and Agreements Office, also decided that the Director, EO, needed to be briefed on any denial cases prior to issuance of the proposed denial letters because they would be the first advocacy denial cases and would “be looked at very carefully by the public.”
- In early January 2013, the EODQA Unit manager decided a way was needed to track open requests to the Technical Unit and developed a list that was forwarded to the Technical Unit manager and the Director, Rulings and Agreements Office. The list included the three ACORN Successors proposed denial cases. As of early April 2013, the Director, Rulings and Agreements Office, apprised the Determinations Unit program manager that three ACORN Successors cases were still being reviewed. The Director also asked that these cases be transferred to another Technical Unit specialist so they



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could be fast tracked.<sup>50</sup> We determined that two of the three proposed ACORN Successors denial cases were eventually approved and one was denied.

**Case review results**

Because the IRS could not provide a tracking sheet related to the ACORN Successors criterion, we reviewed 43 cases identified from the Determinations Unit’s inventory system related to organizations with the criterion ACORN in their names<sup>51</sup> or from various congressional sources, and identified 14 political cases.<sup>52</sup> We also identified three additional political cases from other IRS sources, *e.g.*, case files and e-mails. Some of the identified political cases did not include indications of political campaign intervention but instead included lobbying or general advocacy activities such as attempting to influence specific legislation, influencing public opinion on an issue, or encouraging voter participation.

**Political cases identified by the IRS using the ACORN Successors criterion**

We reviewed case files as well as IRS e-mails and documents to determine if we could confirm whether the IRS identified the 17 political cases using the ACORN Successors criterion. Based upon this review, we confirmed that the IRS identified 13 cases using the ACORN Successors criterion on the BOLO listing. Figure 6 includes information about those 13 cases.

**Figure 6: Political Cases TIGTA Confirmed Were Processed Based Upon the ACORN Successors Criterion**

Organization Name	I.R.C. Subsection Code	Date Case Opened	Days to Close	Current Status	Closure Type	Technical Unit Involved <sup>53</sup>
****1****	501(c)(3)	09/04/2009	208	Closed – Non-Merit	Approved	No
*****1***** *****1***** **1**	501(c)(4)	10/27/2009	342	Closed – Non-Merit	Withdrawn	Yes
*****1***** *****1***** **1**	501(c)(3)	03/10/2010	210	Closed – Non-Merit	Approved	No

<sup>50</sup> We were unable to determine what the fast track process entailed and were told by the former Director, Rulings and Agreements Office, that she did not recall the term “fast track.”

<sup>51</sup> Because the BOLO listing included the “Communities for Change” term in the ACORN Successors criteria description, we also searched for and included cases with this term in the organization’s name.

<sup>52</sup> Some of the confirmed ACORN Successors cases may be actual ACORN organizations that were processed using the ACORN Successors criteria on the BOLO listing, so we included them.

<sup>53</sup> Involvement could include a telephone conversation, an e-mail, providing guidance on a case, or processing a case.



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Organization Name	I.R.C. Subsection Code	Date Case Opened	Days to Close	Current Status	Closure Type	Technical Unit Involved
*****1***** *****1***** *****1*****	501(c)(3)	03/23/2010	1,345	Closed – Non-Merit	Denied	Yes
*****1***** *****1***** *****1*****	501(c)(4)	04/09/2010	360	Closed – Non-Merit	Approved	Yes
*****1***** *****1***** *****1*****	501(c)(3)	07/01/2010	277	Closed – Non-Merit	Approved	Yes
*****1***** *****1***** *****1*****	501(c)(4)	08/24/2010	468	Closed – Non-Merit	Approved	Yes
*****1***** *****1***** *****1*****	501(c)(4)	12/29/2010	387	Closed – Non-Merit	Approved	No
*****1***** *****1***** *****1*****	501(c)(4)	02/14/2011	739	Closed – Non-Merit	Approved	No
*****1***** *****1***** *****1*****	501(c)(3)	02/18/2011	411	Closed – Non-Merit	Denied	Yes
*****1***** *****1***** *****1*****	501(c)(4)	09/12/2011	1,360	Closed – Non-Merit	Approved	Yes
*****1***** *****1***** *****1*****	501(c)(3)	01/20/2012	752	Closed – Non-Merit	Failure to Establish	No
*****1***** *****1***** *****1*****54	501(c)(4)	07/19/2012	700	Closed – Merit	Approved	No

Source: TIGTA case reviews.

The Technical Unit was involved with processing seven of the 13 confirmed cases. Those cases took on average 652 days to process, with a range of 277 to 1,360 days to close.

<sup>54</sup> The organization previously applied for tax-exempt status in October 2009, but the application was closed as Withdrawn.



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Additionally, we compared the time it took to process the 13 confirmed ACORN Successors cases to the overall average time it took the IRS to process all cases that closed during the same fiscal year. Figure 7 shows the results of this comparison.

**Figure 7: Processing Time for the Confirmed ACORN Successors Political Cases Compared to the Processing Time for All Cases**<sup>55</sup>

	Average Days Open					
	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
<b>Confirmed ACORN Successors Cases (Merit)</b>	N/A	N/A	N/A	N/A	700 <sup>56</sup>	N/A
<b>All Merit Cases</b>	71	68	106	185	269	67
<b>Confirmed ACORN Successors Cases (Non-Merit)</b>	208 <sup>57</sup>	297	422	739 <sup>58</sup>	1,049	1,360 <sup>59</sup>
<b>All Non-Merit Cases</b>	154	185	238	340	454	225

*Source: TIGTA case reviews and Determinations Unit cycle time data.*

As illustrated in Figure 7, it took more than twice as long to process the one confirmed merit ACORN Successors case than to process the average merit closure tax-exempt application in FY 2014. Additionally, it took longer than average to process the confirmed non-merit ACORN Successors political cases, particularly from FYs 2012 through 2015. For example, in FY 2014, it took 595 days longer on average to process an ACORN Successors case than it did to process the average non-merit tax-exempt application case.

**Results of unnecessary questions review for confirmed ACORN Successors political cases**

We determined that all 13 organizations whose applications we confirmed were processed based on the ACORN Successors criterion received letters requesting additional information to complete processing of their applications. We reviewed these additional request letters and determined that six organizations received requests for information that TIGTA had concluded

<sup>55</sup> The IRS averages are for all cases closed by the IRS and not limited to just cases potentially related to the ACORN Successors criterion.

<sup>56</sup> We used actual days because there is only one confirmed merit case for FY 2014.

<sup>57</sup> We used actual days because there is only one confirmed non-merit case for FY 2010.

<sup>58</sup> We used actual days because there is only one confirmed non-merit case for FY 2013.

<sup>59</sup> We used actual days because there is only one confirmed non-merit case for FY 2015.



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were unnecessary for processing political advocacy cases in our prior review. One of these questions involved a request for donor names.

**Political cases not confirmed as related to the ACORN Successors criterion**

We could not confirm whether four of the 17 political cases were identified using the ACORN Successors criterion. We determined that one of the remaining four ACORN Successors cases was processed during the time period the ACORN Successors criterion was in use, but we could not confirm the case was identified based upon the ACORN Successors criterion.<sup>60</sup> Figure 8 includes information on the one unconfirmed case processed while the criterion was in use.

**Figure 8: Political Case TIGTA Could Not Confirm As Selected Based Upon the ACORN Successors Criterion**

Organization Name	I.R.C. Subsection Code	Date Case Opened	Days to Close	Current Status	Closure Type	Technical Unit Involved <sup>61</sup>
*****1***** ***1****	501(c)(3)	03/01/2011	273	Closed – Non-Merit	Approved	No

Source: TIGTA case reviews.

The Technical Unit was not involved in processing this unconfirmed case. We compared the time it took to process the one unconfirmed ACORN Successors case to the overall average time it took the IRS to process all non-merit cases that closed during the same fiscal year. Figure 9 shows the results of this comparison.

**Figure 9: Processing Time for the Unconfirmed ACORN Successors Political Case Compared to All Non-Merit Cases<sup>62</sup>**

	Average Days Open
	FY 2011
Unconfirmed ACORN Successors Case (Non-Merit) <sup>63</sup>	273
All Non-Merit Cases	185

Source: TIGTA case reviews and Determinations Unit cycle time data.

<sup>60</sup> The other three unconfirmed cases were processed when the ACORN Successors criterion was not in use.

<sup>61</sup> Involvement could include a telephone conversation, an e-mail, providing guidance on a case, or processing a case.

<sup>62</sup> The IRS averages are for all cases closed by the IRS and not limited to just cases potentially related to the ACORN Successors criterion.

<sup>63</sup> We used actual days because there is only one unconfirmed case for FY 2011.



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The unconfirmed ACORN Successors case took 88 days longer to process than the average non-merit case during FY 2011.

**Results of unnecessary questions review for unconfirmed ACORN Successors political cases**

We determined that the one organization, whose application we could not confirm was selected based on the ACORN Successors criterion, received an additional information request letter. We reviewed this additional request letter and determined that this organization did not receive any requests for information that TIGTA had concluded were unnecessary for processing political advocacy cases in our prior review.



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\*\*\*\*\*1\*\*\*\*\*

Based on our analysis of the TAG listing, the IRS created the \*\*\*\*\*1\*\*\*\*\* criterion due to the lobbying activities included in eight I.R.C. § 501(c)(4) applications for tax-exempt status that were filed by the same Power of Attorney (POA). The criterion \*\*\*\*\*1\*\*\* refers to the last name of the POA who filed applications for tax-exempt status promoting legislative activities in California.

**IRS description of criterion**

The \*\*\*\*\*1\*\*\*\*\* criterion first appeared on a TAG listing in August 2004. According to the TAG listing, the same POA filed eight applications for I.R.C. § 501(c)(4) tax-exempt status on the same day in May 2004. In February 2005, the same POA filed an I.R.C. § 501(c)(7)<sup>64</sup> tax-exempt application for another organization. This information was added to the \*\*\*\*\*1\*\*\*\*\* criterion in October 2005 because the I.R.C. § 501(c)(7) organization’s membership was limited to members of one political party. The criterion was last mentioned on the Removed Issue tab of the January 2010 TAG listing. It was not included on any BOLO listings. Figure 10 provides an explanation over time for the \*\*\*\*\*1\*\*\*\*\* criterion.

**Figure 10: \*\*\*\*\*1\*\*\*\*\* Criterion Description**

Date Issued	Source	IRS Criterion Description
August 13, 2004 – May 18, 2005 <sup>65</sup>	TAG	<ul style="list-style-type: none"> <li>- Issue surfaced June 2004.</li> <li>- TAG Category (Same POA).</li> <li>- Tax Law Issue (Lobbying).</li> <li>- Eight 501(c)(4) applications from the same POA, *****1***** , an attorney. All are in California, all have same control date.</li> <li>- Legislative activities. Organizations will study, analyze, and educate the public regarding reform of the Electoral College system for electing the president and vice-president of the US, vehicle license fees, develop and influence public policies relating to the provision and funding of adequate transportation systems in Marin County, address economic conditions in the San Francisco Peninsula region, amend California’s 3-strikes law, address coastal land issues and legislation affecting property owners, advocating the reduction from a 2/3 vote to 55% of the voting population to allow a California 1/2-cent sales tax to be approve and the proceeds used for improvement of transportation and related traffic systems, and proposing an open primary.</li> </ul>

<sup>64</sup> An I.R.C. § 501(c)(7) tax-exempt organization refers to social and recreation clubs which are supported solely by membership fees, dues, and assessments.

<sup>65</sup> Multiple TAG listings were issued during this time period, all with the same \*\*\*\*\*1\*\*\*\*\* description.



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Date Issued	Source	IRS Criterion Description
October 26, 2005	TAG	<ul style="list-style-type: none"> <li>- TAG Category (Same POA).</li> <li>- Tax Law Issue (Lobbying).</li> <li>- 9/29/05 update: A 501(c)(7) case was also filed. Membership was limited to members of a particular major political party. Applicant will endorse candidates. Consult group manager re referral to EO Technical. Eight 501(c)(4) applications from the same POA, *****1***** , an attorney. All are in California, all have same control date.</li> <li>- Legislative activities. Organizations will study, analyze and educate the public regarding reform of the Electoral College system for electing the president and vice-president of the US, vehicle license fees, develop and influence public policies relating to the provision and funding of adequate transportation systems in Marin County, address economic conditions in the San Francisco Peninsula region, amend California's 3-strikes law, address coastal land issues and legislation affecting property owners, advocating the reduction from a 2/3 vote to 55 percent of the voting population to allow a California 1/2-cent sales tax to be approve and the proceeds used for improvement of transportation and related traffic systems, and proposing an open primary.</li> </ul>
April 2007 – August 2008	TAG	<ul style="list-style-type: none"> <li>- Comments (Lobbying).</li> <li>- TAG Category ID (Consistency).<sup>66</sup></li> <li>- Membership was limited to a political party. Applicant will endorse candidates. Consult group manager re referral to EO Technical. Eight 501(c)(4) applications from the same POA. All are in California.</li> <li>- Legislative activities. Organizations will study, analyze and educate the public regarding reform of the Electoral College, vehicle license fees, develop and influence public policies relating to adequate transportation systems in Marin County, economic conditions in the San Francisco Peninsula region, amend California's 3-strikes law, address coastal land issues and legislation affecting property owners, reducing from a 2/3 vote to 55 percent of the voting population to allow a California 1/2-cent sales tax to be approve and the proceeds used for improvement of transportation and related traffic systems, and proposing an open primary.</li> </ul>

<sup>66</sup> The criterion was labeled as a “consistency” issue on the TAG listing, meaning that it was included on the TAG listing to ensure consistency in processing cases with similar characteristics.



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Date Issued	Source	IRS Criterion Description
January 2010	TAG (Removed Issues tab)	<ul style="list-style-type: none"> <li>- Comments (Lobbying).</li> <li>- Membership was limited to a political party. Applicant will endorse candidates. Consult group manager re referral to EO Technical. Eight 501(c)(4) applications from the same POA. All are in California.</li> <li>- Legislative activities. Organizations will study, analyze and educate the public regarding reform of the Electoral College, vehicle license fees, develop and influence public policies relating to adequate transportation systems in Marin County, economic conditions in the San Francisco Peninsula region, amend California's 3-strikes law, address coastal land issues and legislation affecting property owners, reducing from a 2/3 vote to 55 percent of the voting population to allow a California 1/2-cent sales tax to be approved and the proceeds used for improvement of transportation and related traffic systems, and proposing an open primary.</li> </ul>

Source: IRS-provided TAG listings.

**Analysis of documentation and results of interviews**

We were unable to locate any other information explaining why the [redacted] criterion was created or who authorized its inclusion on the TAG listing. We interviewed two Determinations Unit specialists who processed the [redacted] applications and a Technical Unit specialist who requested one case be transferred to the Technical Unit, but none of them could recall any relevant information or had any documentation related to this TAG criterion.

The [redacted] criterion on the TAG listings only mentioned eight I.R.C. § 501(c)(4) applications filed by Attorney [redacted]. A Determinations Unit specialist identified an application submitted in February 2005 requesting I.R.C. § 501(c)(7) tax-exempt status for [redacted] [redacted] filed by the same attorney. This case was referred to the Determinations Unit's TAG Group in March 2005 even though it was submitted under a different subsection than indicated in the criterion. The Determinations Unit specialist processing the case recommended approving tax-exempt status in July 2005. However, an EODQA Unit specialist reviewed the case and conferred with the Technical Unit to determine if the case should be transferred. The Technical Unit specialist requested the case be transferred because of concerns with the reporting of expenditures to endorse candidates for office and to assure themselves that the organization was not the "devil in disguise." The Technical Unit specialist who requested the transfer could not remember making the request but thought the reason was to ensure that the organization was a social club and not a political organization.

A Technical Unit specialist began reviewing the case in November 2005 and, although the specialist believed the applicant qualified for tax-exempt status under I.R.C. § 501(c)(7), consulted with an EO function Senior Technical Advisor, who recommended requesting additional information in December 2005 to determine if the applicant planned to collect or



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## *Review of Selected Criteria Used to Identify Tax-Exempt Applications for Review*

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expend money in support of political candidates. The applicant responded to the request in February 2006. However, the Technical Unit's case history shows that no significant action was taken on the application until July 2009,<sup>67</sup> when the IRS again requested additional information from the applicant. The applicant responded in September 2009, but the IRS did not approve the organization's application for tax-exempt status until five months later after being reviewed by EO function management. In total, it took more than five years for the IRS to make a determination on this applicant's request for tax-exempt status.

### **Case review results**

The IRS could not provide us with a tracking sheet related to the \*\*1\*\*\*\*\* criterion. As a result, we searched the Determinations Unit's inventory system for applications from organizations with the criterion "\*\*\*\*\*1\*\*\*\*" in their names and did not identify any cases to review. However, because the criterion was the last name of the POA, we searched the Determinations Unit case inventory system for cases with \*\*\*1\*\*\*\*\* as the POA's last name to identify applications for review. Although the TAG listing description referred to eight applications filed on the same day by the same POA, we only identified seven cases that met this description.<sup>68</sup> Subsequently, we determined that all seven were political cases which included indications of significant potential political campaign intervention and lobbying or general advocacy activities such as attempting to influence specific legislation, influencing public opinion on an issue, or encouraging voter participation. We also identified one additional I.R.C. § 501(c)(7) political case from other IRS-provided documentation (*e.g.*, case files and e-mails) with \*\*\*1\*\*\*\*\* as the POA.<sup>69</sup>

### **Political cases identified by the IRS using the \*\*\*\*\*1\*\*\*\*\* criterion**

We reviewed the case files as well as IRS e-mails and documents to determine if we could confirm whether the IRS identified the eight political cases using the \*\*\*1\*\*\*\*\* criterion. Based upon this review, we confirmed that the IRS identified the eight political cases using the \*\*\*1\*\*\*\*\* criterion. Figure 11 includes information about those eight cases.

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<sup>67</sup> A summary of the case indicates that, as of February 24, 2009, the EO Senior Technical Advisor had the case for approximately two years but was working on other issues.

<sup>68</sup> The \*\*1\*\*\*\*\* criterion TAG description stated that eight cases were filed on the same day for I.R.C. § 501(c)(4) tax-exempt status.

<sup>69</sup> This case involved a request for I.R.C. § 501(c)(7) tax-exempt status but was identified by a specialist as related to the TAG listing criterion.



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**Figure 11: Political Cases TIGTA Confirmed Were  
Processed Based Upon the \*\*\*1\*\*\* Criterion**

Organization Name	I.R.C. Subsection Code	Date Case Opened	Days to Close	Current Status	Closure Type	Technical Unit Involved <sup>70</sup>
***1****	501(c)(4)	05/12/2004	119	Closed – Non-Merit	Approved	No
***1**** ****1****	501(c)(4)	05/12/2004	119	Closed – Non-Merit	Approved	No
***1**** ****1****	501(c)(4)	05/12/2004	119	Closed – Non-Merit	Approved	No
***1**** ****1****	501(c)(4)	05/12/2004	119	Closed – Non-Merit	Approved	No
***1**** ****1****	501(c)(4)	05/12/2004	119	Closed – Non-Merit	Approved	No
***1**** ****1****	501(c)(4)	05/12/2004	119	Closed – Non-Merit	Approved	No
***1**** ****1****	501(c)(4)	05/12/2004	119	Closed – Non-Merit	Approved	No
***1**** ****1****	501(c)(7)	02/14/2005	1,836	Closed – Non-Merit	Approved	Yes

Source: TIGTA case reviews.

The Technical Unit was involved in processing one confirmed case. This case took 1,836 days to process.

We compared the time it took to process the eight identified \*\*\*1\*\*\*\* political cases to the overall average time it took the IRS to process all cases that closed during the same fiscal year. Figure 12 shows the results of this comparison.

<sup>70</sup> Involvement could include a telephone conversation, an e-mail, providing guidance on a case, or processing a case.



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**Figure 12: Processing Time for the Confirmed \*\*\*\*1\*\*\*\*  
Political Cases Compared to All Non-Merit Cases**<sup>71</sup>

	Average Days Open	
	FY 2004	FY 2010
<b>Confirmed ****1**** Cases (Non-Merit)</b>	119	1,836 <sup>72</sup>
<b>All Non-Merit Cases</b>	114	154

Source: TIGTA case reviews and Determinations Unit cycle time data.

Seven applications in FY 2004 took approximately the same amount of time to process as the average non-merit application for tax-exempt status during the same fiscal year. However, one case took almost 1,700 days longer than the average non-merit tax-exempt application in FY 2010.

**Results of unnecessary questions review for confirmed \*\*\*1\*\*\*\* political cases**

We determined that one of the eight organizations whose applications we confirmed were processed based on the \*\*\*\*1\*\*\*\* criterion received letters requesting additional information to complete processing of their application. We reviewed these additional request letters and determined that the organization did not receive requests for information that TIGTA had concluded were unnecessary for processing political advocacy cases in our prior review.

<sup>71</sup> The IRS averages are for all non-merit cases closed by the IRS and not limited to just cases potentially related to the \*\*\*\*1\*\*\*\* criterion.

<sup>72</sup> We used actual days because there was only one confirmed case during FY 2010.



## Review of Selected Criteria Used to Identify Tax-Exempt Applications for Review

### **Border Patrol**

Although the TAG listing cited Border Patrol as a potential abusive transaction issue, there was no documentation that indicated why Border Patrol was considered an abusive transaction issue, nor did any interviews with IRS personnel clarify why the Border Patrol criterion was established.

### **IRS description of criterion**

The Border Patrol criterion first appeared on a TAG listing in June 2008, and was listed as an abusive transaction issue. It continued to be on the TAG listing through February 2010, but was not included on the first BOLO listing issued in August 2010. Figure 13 provides a description of the Border Patrol criterion.

**Figure 13: Border Patrol Criterion Description**

<b>Date Issued</b>	<b>Source</b>	<b>IRS Criterion Description</b>
May 17, 2007	E-Mail	<ul style="list-style-type: none"><li>- The EODQA Unit manager suggests a Sensitive Case Report be prepared for border patrol cases, as well as coordination with the TAG and Technical Units.</li><li>- Managers may also want to alert the screening and processing groups just in case there are more cases.</li></ul>
June 18, 2008	TAG (All TAG tab)	<ul style="list-style-type: none"><li>- Stopping illegal immigrant entry into US.</li><li>- Name of the organization (*****1*****)</li></ul>
January 2010 – February 2010	TAG (TAG Issues tab)	<ul style="list-style-type: none"><li>- Stopping illegal immigrant entry into US.</li><li>- Name of the organization (*****1*****).</li></ul>

Source: IRS-provided TAG listings.

### **Analysis of documentation and results of interviews**

Although the earliest TAG listing we were provided containing the Border Patrol criterion was developed in June 2008, we obtained case files and other documents indicating that cases meeting the Border Patrol criterion were identified and forwarded to the TAG group as early as May 2007. Specifically, we identified a Sensitive Case Report prepared in March 2007 for one Border Patrol case (\*\*\*\*\*1\*\*\*\*\*\*) processed in the Determinations Unit. This case involved an application for tax-exempt status from an organization whose board members stated included inaccurate information filed by the organization's former president. The board members provided updated information to the IRS while the application was being processed. According to documentation we reviewed, the assigned Determinations Unit specialist's group manager discussed the case with the TAG group in late May 2007, and it was decided that this case and other similar cases would be transferred to the TAG group for processing.



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## *Review of Selected Criteria Used to Identify Tax-Exempt Applications for Review*

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In addition, the EODQA Unit manager informed her employees via e-mail in May 2007 of the receipt of three “border patrol” cases assigned to three different specialists.<sup>73</sup> The manager suggested a Sensitive Case Report may be appropriate, as well as coordination with the TAG group and the Technical Unit.<sup>74</sup> The manager also suggested an alert be issued to the “screening group and processing” in case other applications were received. However, we did not identify any documentation which confirmed that this suggestion led to the development of the TAG criterion.

Other than the documents previously discussed, the IRS could not provide any documentation that explained the development or implementation of the Border Patrol criterion. A former TAG group manager could not recall why the criterion was included on the TAG listing, if a tracking sheet of cases identified using the Border Patrol criterion was kept, or who authorized the criterion. In addition, the Determinations Unit specialist included as the designated contact on the TAG listing for this criterion did not recall being the designated contact or have any information about the criterion.

### **Case review results**

The IRS could not provide a tracking sheet related to the Border Patrol criterion; however, it did provide the name of one organization, \*\*\*\*\*1\*\*\*\*\*, which was identified from the TAG listing. As a result, we searched the Determinations Unit’s inventory system for applications from organizations with the criterion “Border Patrol” in their names. We identified nine cases and reviewed the associated case files. Subsequently, we determined that three of the nine cases were political cases. We also identified seven additional political cases from other IRS sources, *e.g.*, case files and e-mails. All 10 of the identified political cases included indications of significant potential political campaign intervention.

### **Political cases identified by the IRS using the Border Patrol criterion**

We reviewed the case files as well as IRS e-mails and documents to determine if we could confirm whether the IRS identified the 10 political cases using the Border Patrol criterion. Based upon this review, we confirmed that seven cases were identified using the Border Patrol criterion on the TAG listing.<sup>75</sup> Figure 14 includes information about those seven cases.

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<sup>73</sup> The manager referred to these cases as “Volunteer Border Patrol Applications.” We could not definitively determine which cases the manager was referring to.

<sup>74</sup> We did not identify a Sensitive Case Report dated after this suggestion was made in May 2007.

<sup>75</sup> The remaining three unconfirmed cases were processed when the Border Patrol criterion was not in use.



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**Figure 14: Political Cases TIGTA Confirmed Were  
Processed Based Upon the Border Patrol Criterion**

Organization Name	I.R.C. Subsection Code	Date Case Opened	Days to Close	Current Status	Closure Type	Technical Unit Involved <sup>76</sup>
****1**** ****1****	501(c)(3)	12/13/2006	135	Closed – Non-Merit	Failure to Establish	No
****1**** ****1****	501(c)(3)	06/29/2007	649	Closed – Non-Merit	Withdrawn	No
****1**** ****1****77	501(c)(4)	02/05/2009	62	Closed – Non-Merit	Approved	No
****1**** ****1****	501(c)(4)	07/17/2006	543	Closed – Non-Merit	Failure to Establish	No
****1**** ****1****78	501(c)(4)	04/01/2008	168	Closed – Non-Merit	Approved	No
****1**** ****1**** ****1****	501(c)(4)	06/08/2007	482	Closed – Non-Merit	Approved	No
****1**** ****1**** ****1****	501(c)(4)	07/29/2006	438	Closed – Non-Merit	Approved	No

Source: TIGTA case reviews.

The Technical Unit was not involved in processing any cases.

We compared the time it took to process the seven confirmed Border Patrol cases to the overall average time it took the IRS to process all cases that closed during the same fiscal year.

Figure 15 shows the results of this comparison.

<sup>76</sup> Involvement could include a telephone conversation, an e-mail, providing guidance on a case, or processing a case.

<sup>77</sup> This organization applied for tax-exempt status three times. The first time, the application was closed as Failure to Establish. The second application was withdrawn by the applicant.

<sup>78</sup> This organization applied for tax-exempt status twice. The initial application was closed as Failure to Establish.



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**Figure 15: Processing Time for the Confirmed Border Patrol Political Cases Compared to the Processing Time for All Non-Merit Cases<sup>79</sup>**

	Average Days Open		
	FY 2007	FY 2008	FY 2009
<b>Confirmed Border Patrol Cases (Non-Merit)</b>	135 <sup>80</sup>	383	398
<b>All Non-Merit Cases</b>	122	103	119

*Source: TIGTA case reviews and Determinations Unit data.*

In FY 2007, the one Border Patrol case took only 13 days longer than the average non-merit application in the same fiscal year. However, the cases in FYs 2008 and 2009 took on average more than three times longer to process than the average non-merit application.

**Results of unnecessary questions review for confirmed Border Patrol political cases**

We determined that five of seven organizations whose applications we confirmed were processed based on the Border Patrol criterion received letters requesting additional information to complete processing of their application. We reviewed these letters and determined that none of the organizations received requests for information that TIGTA had concluded were unnecessary for processing political advocacy cases in our prior review.

<sup>79</sup> The IRS averages are for all non-merit cases closed by the IRS and not limited to just cases potentially related to the Border Patrol criterion.

<sup>80</sup> We used actual days because there was only one confirmed case for FY 2007.



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**CA Politics**

We obtained little information about the CA Politics criterion. Specifically, the description of the issue was not detailed enough to provide meaningful information about its development or implementation, and IRS personnel had no recollection of this issue or other documentation related to it. In addition, the criterion does not refer to an organization’s name. Without an organization’s name or any documentation regarding applications that were selected for review, we could not locate or analyze any tax-exempt applications that may have been selected for review based on the CA Politics criterion.

**IRS description of criterion**

The CA Politics criterion first appeared on a TAG listing in August 2004 and was moved to the Removed Issues tab of the TAG listing in January 2010. Figure 16 shows the development of the criterion during this period.

**Figure 16: CA Politics Criterion Description**

Date Issued	Source	IRS Criterion Description
August 13, 2004 – May 18, 2005 <sup>81</sup>	TAG	<ul style="list-style-type: none"> <li>- Issue surfaced June 2004</li> <li>- Applicant seeking 501(c)(4) status. Involved with the inauguration of California’s Lieutenant Governor. California Franchise Tax Board alerted IRS.</li> </ul>
October 26, 2005	TAG	<ul style="list-style-type: none"> <li>- Mandatory Review (Consistency and Other Issues).</li> <li>- Applicant seeking 501(c)(4) status. Involved with the inauguration of California’s Lieutenant Governor. California Franchise Tax Board alerted IRS.</li> </ul>
April 2007	TAG	<ul style="list-style-type: none"> <li>- Applicant seeking 501(c)(4) status. Involved with the inauguration of CA’s Lieutenant Governor. CA Franchise Tax Board alerted IRS.</li> <li>- TAG Category ID (Closed Consistency).</li> </ul>
June 18, 2008	TAG (All TAG tab)	<ul style="list-style-type: none"> <li>- Comment (Not yet determined).</li> <li>- Applicant seeking 501(c)(4) status. Involved with the inauguration of CA’s Lieutenant Governor. CA Franchise Tax Board alerted IRS.</li> <li>- TAG Category ID (Closed Consistency).</li> </ul>

<sup>81</sup> Several TAG listings were issued during this time period, all with the same CA Politics description.



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<b>Date Issued</b>	<b>Source</b>	<b>IRS Criterion Description</b>
January 2010	TAG (Removed Issues tab)	- Applicant seeking 501(c)(4) status. Involved with the inauguration of CA's Lieutenant Governor. CA Franchise Tax Board alerted IRS.

*Source: IRS-provided TAG listings.*

**Analysis of documentation and results of interviews**

Other than the TAG listings, the IRS could not provide any documentation that explained the development or implementation of the CA Politics criterion. The group manager identified as the contact point on the TAG listing could not recall when or why the criterion CA Politics was added or removed from the TAG listing. In fact, the group manager was unaware the criterion was on the TAG listing. Current EO function management could not recall why the criterion was included on the TAG listing or who authorized its inclusion.

**Case review results**

The IRS could not provide us with a tracking sheet related to the CA Politics criterion. As a result, we searched the Determinations Unit's inventory system for applications from organizations with the criterion CA Politics<sup>82</sup> in their names. We did not identify any cases to review on the Determinations Unit's inventory system or in other IRS-provided e-mails and documents.

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<sup>82</sup> We also searched for organizations with the term "California Politics" in their names.



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**Emerge**

Based on our analysis of training materials, case files, and e-mails as well as interviews with employees, we determined that the IRS identified the Emerge network of organizations<sup>83</sup> for further scrutiny because of concerns that they were engaging in activities that were not permissible for an I.R.C. § 501(c)(4) organization under tax-exempt law. The purpose of the Emerge organizations was to train women to run as Democratic candidates for public office. The IRS denied tax-exempt status for these organizations because it found these activities constituted a private benefit<sup>84</sup> that was not permissible under tax-exempt law.

**IRS description of criterion**

The Emerge criterion never appeared on a TAG or BOLO listing but instead was mentioned in e-mails and during screener training. IRS management stated that if an item never appeared on a TAG or BOLO listing and was only mentioned in one 2010 training slide, then it is not appropriate to consider it as a screening criteria that was ever used/approved and it should not be included in this report. Figure 17 provides excerpts from IRS documents describing the Emerge criterion over time.

**Figure 17: Emerge Criterion Description**

Date Issued	Source	IRS Criterion Description
September 8, 2008	E-Mail Alert	<ul style="list-style-type: none"> <li>- E-mail alert issued by the EODQA Unit manager to the Determinations Unit program manager, and the two Determinations Unit Area Managers advising them that a Determinations Unit group manager had identified two cases under review with the criterion Emerge. The EODQA Unit manager also noted that it was discovered that several more organizations had already received exemption and, because of the organization’s structure, additional applications were very likely.</li> <li>- The organizations appear to form based on “State” boundaries.</li> <li>- The purpose of the organizations appear to be similar – train “Democratic” party candidates in areas such as campaigning, fundraising, public speaking, press relations, and leadership skills.</li> <li>- Some earlier cases with the name “Emerge xxxx” had received exemptions and had not been mandatory reviewed. Some of the applications had not been fully developed (merit closed).</li> </ul>

<sup>83</sup> The IRS determined that, along with the main organization (\*\*1\*\*\*\*\*), a network of organizations was formed based on State boundaries, e.g., \*\*\*\*1\*\*\*\*\*and \*\*\*\*1\*\*\*\*\*.

<sup>84</sup> Per the IRS, private benefit occurs when the activities of the organization benefit a political party or an individual rather than furthering its charitable purpose.



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Date Issued	Source	IRS Criterion Description
September 8, 2008	E-Mail Alert	- In response to the e-mail alert cited above, another e-mail alert was issued on the same day by a Determinations Unit Area Manager to her group managers advising that any "political sensitive" case should be sent to EODQA for review. This alert also references a memo from the Director, Rulings and Agreements, dated 12/19/2007 which indicated that "political sensitive" cases should be worked as full development cases (not screened out) and they were to be mandatory reviewed. <sup>85</sup>
July 28, 2010	Screening Workshop	- Screening Workshop Power Point presentation listed "Emerge" under "Current Activities" with no other information. - Workshop presenter indicated that names and/or titles, including Emerge, were of interest and should be flagged for review.

Source: IRS-provided e-mails and training materials.

**Analysis of documentation and results of interviews**

In Calendar Year 2008, the Determinations Unit had concerns with two applications for tax-exempt status from Emerge organizations (\*\*\*\*1\*\*\*\*\*and\*\*\*\*\*1\*\*\*\*\*) and forwarded them to the EODQA Unit for guidance. In addition, the Determinations Unit identified five other Emerge applications with similar activities that had already been approved. The EODQA Unit reviewed the two applications and believed they raised issues of political and private benefit to one political party. In addition, the EODQA Unit questioned whether social welfare was the organizations' primary purpose. In September 2008, the EODQA Unit manager suggested to Determinations Unit management that an e-mail alert be issued regarding Emerge cases as well as a reminder that "sensitive political issue" cases are subject to mandatory review. Subsequently, the Determinations Unit transferred the two Emerge cases to the Technical Unit for review. In August 2008, the Determinations Unit received a third related application (\*\*\*\*\*1\*\*\*\*\*), which was transferred to the Technical Unit in March 2009.

The Technical Unit began processing these cases in early Calendar Year 2009. Because these cases were similar, in March 2009, the assigned specialist began drafting one proposed denial letter to use as a template for the other cases. The proposed denial letter was reviewed by another specialist within the Technical Unit; Technical Unit management; the Senior Technical Advisor to the Director, EO; and the Office of Chief Counsel. The IRS issued proposed denial letters to two of the three organizations in January 2011 and a third proposed denial letter in February 2011, concluding:

<sup>85</sup> Mandatory review cases are required to be forwarded to the EODQA Unit for review prior to closure. These cases are complex, sensitive, or impactful and include potential denials or potential political campaign intervention cases.



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*In summary, you are not operated primarily to promote social welfare because your activities are conducted for the benefit of a political party and a private group of individuals, rather than the community as a whole. Accordingly, you do not qualify for exemption as an organization described in section 501(c)(4) of the Code and you must file federal income tax returns.*

During the 21-month period between the preparation and issuance of the proposed denial letter, the Determinations Unit received two more applications containing similar activities from other organizations affiliated with the Emerge organization (\*\*\*\*\*1\*\*\*\*\*and\*\*\*1\*\*\*\*\*). The application from \*\*\*\*\*1\*\*\*\*\*was received in late December 2009 and transferred to the Technical Unit for processing in April 2010. The EO function issued a proposed denial letter in April 2011. However, the application from \*\*\*\*\*1\*\*\*\*\* was received in June 2010 and initially identified as a Tea Party case. The Tea Party Case Coordinator concluded that Emerge was not related to the Tea Party and returned the case to general inventory for reassignment. The case was mistakenly processed in the Determinations Unit and approved in April 2011 instead of being transferred to the Technical Unit.

After the receipt of the \*\*\*\*\*1\*\*\*\*\* and \*\*\*\*\*1\*\*\*\*\* applications, the Determinations Unit held a screening workshop in July 2010 indicating “that names and/or titles, *e.g.*, Emerge, were of interest and should be flagged for review.” A former EO function group manager stated that he believed the training information was developed by a particular Determinations Unit specialist. When asked about the training, the specialist did not recall why the criterion was included or who authorized it.

### **Revocations of previously approved Emerge organizations**

After the final denial letters were issued for three of the organizations in April 2011, the Technical Unit turned its focus to the Emerge organizations whose tax-exempt applications were approved in error by the Determinations Unit. A Technical Unit specialist sent an e-mail in late May 2011 to the Review of Operations Unit, EO Compliance Area, referring for examination the five Emerge organizations that were previously approved from September 2004 to March 2008 by the Determinations Unit.<sup>86</sup>

On July 20, 2011, a reporter with the New York Times requested information from the EO function regarding the inconsistent treatment of Emerge organizations. The next day, the New York Times published an article disclosing that the IRS denied tax-exempt status to three Emerge organizations, while approving it for others. The Director, EO, questioned why the earlier cases were approved, what was being done about them, and whether they went through

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<sup>86</sup> In July 2011, the Acting Director, Rulings and Agreements Office, e-mailed the Examinations Unit manager informing her that five organizations were mistakenly referred to the Review of Operations Unit instead of the Classification Unit in the Examinations Unit. She asked her to ensure that the referrals were transferred to the Classification Unit.



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quality review. The documentation we were provided did not include a response to the Director’s questions.

In early September 2011, the Technical Unit identified a Delegation Order<sup>87</sup> that would allow the Technical Unit to revoke the tax-exempt status of the Emerge organizations without the need for an examination. By mid-October 2011, the Director, EO, had approved a revocation letter for one of the six erroneously approved Emerge organizations that was used as a template for the other revocations. The Technical Unit also notified the Examinations Unit that it was rescinding the referrals made for the previously approved Emerge organizations because it had the delegated authority to revoke the tax-exempt status of the organizations itself. Five of the six proposed revocation letters were issued by the Technical Unit on October 21, 2011. On November 29, 2011, the final organization’s proposed revocation letter was issued. All six organizations received their final revocation letters on March 2, 2012. Figure 18 includes information about these six Emerge organizations with revoked tax-exempt statuses.

**Figure 18: Emerge Organizations Whose Applications for Tax-Exempt Status Were Initially Approved and Later Revoked**

Organization Name	I.R.C. Subsection Code	Date Initially Approved	Date Subsequently Revoked
*****1***** *****1*****	501(c)(4)	09/02/2004	03/02/2012
*****1*****	501(c)(4)	03/16/2006	03/02/2012
*****1*****	501(c)(4)	03/30/2007	03/02/2012
*****1***** *****1*****	501(c)(4)	03/12/2008	03/02/2012
*****1*****	501(c)(4)	03/06/2008	03/02/2012
*****1*****	501(c)(4)	04/27/2011	03/02/2012

Source: TIGTA case reviews.

**Case review results**

The IRS could not provide a tracking sheet related to the Emerge criterion. As a result, we searched the Determinations Unit’s inventory system for applications from organizations with the criterion Emerge in their names. We identified 33 cases<sup>88</sup> and reviewed the associated case

<sup>87</sup> Delegation Order 7-2 allows the Director, EO, to issue modifications or revocations of rulings or determination letters in accordance with current applicable appeal procedures.

<sup>88</sup> There were two cases on the Determinations Unit inventory system for the same Emerge organization, but we only included it once because the second case was established solely for correcting the initial file.



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files. Subsequently, we determined that 11 of the 33 cases were political cases. We also identified one additional political case from other IRS-provided documentation (e.g., case files and e-mails) that did not have the criterion Emerge in its name but may have been related to the criterion. Some of the identified political cases did not include indications of political campaign intervention but instead involved private benefit to a political party.

**Political cases identified by the IRS using the Emerge criterion**

For the 12 political cases we identified, we determined that five were approved prior to the implementation of the Emerge criterion and one was received after the implementation of the Emerge criterion but was not processed based upon the criterion.<sup>89</sup> For the remaining six cases, we reviewed the case files as well as IRS e-mails and documents to determine if we could confirm whether the IRS identified the cases using the Emerge criterion. Based upon our review of the six remaining cases, we confirmed that the IRS selected five cases for further review using the Emerge criterion. Figure 19 includes information about these five cases.

**Figure 19: Political Cases TIGTA Confirmed Were  
Processed Based Upon the Emerge Criterion**

Organization Name	I.R.C. Subsection Code	Date Case Opened	Days to Close	Current Status	Closure Type	Technical Unit Involved <sup>90</sup>
*****1*****	501(c)(4)	12/28/2007	1,349	Closed – Non-Merit	Denied	Yes
*****1*****	501(c)(4)	01/07/2008	1,339	Closed – Non-Merit	Denied	Yes
*****1*****	501(c)(4)	08/12/2008	1,121	Closed – Non-Merit	Denied	Yes
*****1*****	501(c)(4)	12/29/2009	573	Closed – Non-Merit	Denied	Yes
*****1***** *****1****g1	501(c)(3)	04/24/2012	731	Closed – Non-Merit	Approved	Yes

Source: TIGTA case reviews.

<sup>89</sup> See Figure 18 for the six revoked cases that were not processed based upon the Emerge criterion.

<sup>90</sup> Involvement could include a telephone conversation, an e-mail, providing guidance on a case, or processing a case.

<sup>91</sup> Although this organization is not a typical Emerge-type organization, its activities were similar to Emerge and processed using the Emerge criterion.



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The Technical Unit was involved in processing all of the confirmed cases. Those cases took on average 1,023 days to process, with a range from 573 to 1,349 days to close. Much of this time was spent by another Technical Unit employee; Technical Unit management; the Senior Technical Advisor to the Director, EO; and the Office of Chief Counsel reviewing the proposed denial letter prior to issuance.

We compared the time it took to process the five identified Emerge cases to the overall average time it took the IRS to process all non-merit cases that closed during the same fiscal year. Figure 20 shows the results of this comparison.

**Figure 20: Processing Time for the Confirmed Emerge Political Cases Compared to the Processing Time for All Non-Merit Cases**<sup>92</sup>

	Average Days Open		
	FY 2011	FY 2012	FY 2013
<b>Confirmed Emerge Cases (Non-Merit)</b>	1,096	N/A	731 <sup>93</sup>
<b>All Non-Merit Cases</b>	185	N/A	340

*Source: TIGTA case reviews and Determinations Unit cycle time data.*

The Emerge cases took on average more than five times longer to process than the average non-merit application in FY 2011 and more than two times longer to process than the average non-merit application in FY 2013.

**Results of unnecessary questions review for confirmed Emerge political cases**

We determined that four of the five organizations whose applications we confirmed were processed based on the Emerge criterion received letters requesting additional information to complete processing of their application. We reviewed these additional request letters and determined that two organizations received a request for information that TIGTA had concluded was unnecessary for processing political advocacy cases in our prior review. Neither of these requests was for donor information.

**Political cases not confirmed as related to the Emerge criterion**

We could not confirm whether one of the six political cases was identified using the Emerge criterion. We determined that this application was processed during the time period the Emerge criterion was in use, but we could not confirm that the case was identified based upon

<sup>92</sup> The IRS averages are for all non-merit cases closed by the IRS and not limited to just cases potentially related to the Emerge criterion.

<sup>93</sup> We used actual days because there was only one confirmed case for FY 2013.



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the Emerge criterion. As shown in Figure 21, the Technical Unit was not involved in processing this case.

**Figure 21: Political Case TIGTA Could Not Confirm  
Was Selected Based Upon the Emerge Criterion**

Organization Name	I.R.C. Subsection Code	Date Case Opened	Days to Close	Current Status	Closure Type	Technical Unit Involved <sup>94</sup>
*****1***** *****1***** *****1***** *****1****	501(c)(6)	05/04/2009	33	Closed – Merit	Approved	No

Source: TIGTA case reviews.

We compared the time it took to process this case to the overall average time it took the IRS to process all merit cases that closed during the same fiscal year. Figure 22 shows the results of this comparison.

**Figure 22: Processing Time for the  
Unconfirmed Emerge Political Case Compared  
to the Processing Time for All Merit Cases<sup>95</sup>**

	Average Days Open
	FY 2009
<b>Unconfirmed Emerge Case (Merit)<sup>96</sup></b>	33
<b>All Merit Cases</b>	81

Source: TIGTA case reviews and Determinations Unit cycle time data.

As shown above, it took less time to process this case than the average merit case during the same fiscal year.

**Results of unnecessary questions review for unconfirmed Emerge political cases**

This organization did not receive any additional information request letters.

<sup>94</sup> Involvement could include a telephone conversation, an e-mail, providing guidance on a case, or processing a case.

<sup>95</sup> The IRS averages are for all merit cases closed by the IRS and not limited to just cases potentially related to the Emerge criterion.

<sup>96</sup> We used actual days because there was only one unconfirmed case for FY 2009.



## Review of Selected Criteria Used to Identify Tax-Exempt Applications for Review

### Green Energy

The Green Energy criterion does not focus on any particular names but instead focuses on a specific type of activity. More importantly, while the BOLO listing only provided a description of Green Energy organizations, we determined that the IRS created the criterion based on concerns that these organizations would not meet the requirements of tax-exempt law. Specifically, documentation showed that the IRS created this criterion because, in general, the IRS's technical position was that providing electricity/power was not an activity allowed under tax-exempt law.

### IRS description of criterion

The Green Energy criterion was only included on the BOLO listing and never included on the TAG listing. Figure 23 describes the Green Energy criterion.

**Figure 23: Green Energy Criterion Description**

Date Issued	Source	IRS Criterion Description
July 11, 2011 – April 19, 2013 <sup>97</sup>	BOLO (Watch List tab)	- Green Energy Organizations: Organizations applying for § 501(c)(3) status by providing green energy (electricity/power) to other organizations.

Source: IRS-provided BOLO listings.

### Analysis of documentation and results of interviews

In July 2011, the Technical Unit acting manager notified the Determinations Unit program manager that a tip from a practitioner indicated that the Determinations Unit granted I.R.C. § 501(c)(3) tax-exempt status to an organization providing “green energy” to other organizations.<sup>98</sup> The Technical Unit acting manager indicated that, in general, providing electricity/power is not an exempt activity in itself and suggested that, if it sees this issue in an application, the Determinations Unit should not grant exemption but instead should develop the case and, if necessary, seek technical assistance from the Technical Unit. The Determinations Unit program manager requested that the BOLO Coordinator update the BOLO “watch for” list to include organizations involved in “green” energy by providing electricity/power.

These types of cases were forwarded for processing to a Determinations Unit specialist who was considered the subject matter expert related to weatherization and carbon and electricity credits. According to the subject matter expert, he received no formal training or guidance on green

<sup>97</sup> Many BOLO listings were issued from July 11, 2011, through April 19, 2013, all with the same description of the Green Energy criterion and always listed on the Watch List tab.

<sup>98</sup> The practitioner did not provide the name of the organization to the IRS.



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energy issues. This individual speculated that he was assigned this role because he was also designated responsibility for carbon credit cases. There was no specific procedure to follow when screening or processing cases involving the Green Energy criterion. However, the subject matter expert developed standardized questions to request additional information from applicants about their green energy activities.

**Case review results**

The IRS could not provide a tracking sheet related to the Green Energy criterion. As a result, we searched the Determinations Unit’s inventory system for applications from organizations with the criterion “Green Energy” in their names. We identified 16 cases and reviewed the associated case files. Subsequently, we determined that one of the 16 cases was a political case. We also identified one additional political case from other IRS sources (*e.g.*, case files and e-mails). Both of the identified political cases did not involve indications of political campaign intervention but instead included lobbying or general advocacy activities such as attempting to influence specific legislation or influencing public opinion on an issue.

**Political cases identified by the IRS using the Green Energy criterion**

We reviewed case files as well as IRS e-mails and documents to determine if we could confirm whether the IRS identified the two political cases using the Green Energy criterion. Based upon this review, we confirmed that the IRS identified one I.R.C. § 501(c)(3) case using the Green Energy criterion on the BOLO listing.<sup>99</sup> Figure 24 includes information about this one case.

***Figure 24: Political Case TIGTA Confirmed Was Processed Based Upon the Green Energy Criterion***

Organization Name	I.R.C. Subsection Code	Date Case Opened	Days to Close	Current Status	Closure Type	Technical Unit Involved <sup>100</sup>
*****1***** *****1***** *****1*****	501(c)(3)	11/08/2012	441	Closed – Non-Merit	Approved	No

*Source: TIGTA case reviews.*

The Technical Unit was not involved in processing the one confirmed Green Energy case. We compared the time it took to process this case to the overall average time it took the IRS to

<sup>99</sup> The remaining case was processed when the Green Energy criterion was not in use.

<sup>100</sup> Involvement could include a telephone conversation, an e-mail, providing guidance on a case, or processing a case.



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process all cases that closed during the same fiscal year. Figure 25 shows the results of this comparison.

**Figure 25: Processing Time for the Confirmed Green Energy Political Case Compared to the Processing Time for All Non-Merit Cases**<sup>101</sup>

	Average Days Open
	FY 2014
<b>Confirmed Green Energy Case (Non-Merit)</b> <sup>102</sup>	441
<b>All Non-Merit Cases</b>	454

*Source: TIGTA case reviews and Determinations Unit cycle time data.*

The one confirmed political case took approximately the same average number of days to process as all non-merit cases during the same fiscal year.

**Results of unnecessary questions review for confirmed Green Energy political cases**

We determined that the one organization whose application was processed based on the Green Energy criterion received no additional information request letters.

<sup>101</sup> The IRS averages are for all non-merit cases closed by the IRS and not limited to just cases potentially related to the Green Energy criterion.

<sup>102</sup> We used actual days because there was only one confirmed case during this fiscal year.



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**Healthcare Legislation**

Based upon review of training materials, case files, and other documentation as well as interviews with IRS officials, the Healthcare Legislation criterion focused on the activities of organizations potentially affected by the Patient Protection and Affordable Care Act (PPACA)<sup>103</sup> and the Health Care and Education Reconciliation Act of 2010 (HCERA)<sup>104</sup> legislation. Specifically, the legislation created new requirements for tax-exempt organizations that the IRS had never before dealt with when processing applications for tax-exempt status. As a result, the IRS developed criteria to identify and review organizations applying for tax-exempt status whose activities might be affected by the recently enacted healthcare legislation.

**IRS description of criterion**

The Healthcare Legislation criterion description refers to the activities of organizations applying for tax-exempt status. The Healthcare Legislation criterion remained on the BOLO listing for only a few months even though cases were being identified for several years. The Healthcare Case Coordinator was uncertain why the criterion remained on the BOLO listing for only a short duration. Figure 26 describes the Healthcare Legislation criterion over time.

**Figure 26: Healthcare Legislation Criterion Description**

Date Issued	Source	IRS Criterion Description
April 2010	Screening Workshop	<ul style="list-style-type: none"> <li>- The EO function held a Screening Workshop for Determinations Unit staff primarily for cases associated with the PPACA and the HCERA.</li> <li>- PPACA and HCERA issues:               <ol style="list-style-type: none"> <li>1. High Risk Health Insurance Pools.</li> <li>2. Promoting Uniformity of Standards in Electronic Transactions.</li> <li>3. Health Benefit Exchanges.</li> <li>4. Qualified Non-Profit Health Insurance Issuers.</li> <li>5. Community Health Insurance Advisory Councils.</li> <li>6. Reinsurance Entities.</li> <li>7. Health Care Sharing Ministries.</li> <li>8. Freestanding Birth Centers.</li> <li>9. Family Planning Services.</li> </ol> </li> </ul>

<sup>103</sup> Pub. L. No. 111-148, 124 Stat. 119 (2010) (codified as amended in scattered sections of the I.R.C. and 42 U.S.C.), as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029.

<sup>104</sup> Pub. L. No. 111-152, 124 Stat. 1029. (See Patient Protection and Affordable Care Act, *infra*).



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Date Issued	Source	IRS Criterion Description
		10. Early Childhood Home Visitation Programs. 11. Community Health Grant Recipients. 12. Key National Indicator System. 13. Requirements of Hospitals. 14. Multi-State Plans in Exchanges. 15. Community Service Centers for Pregnant and Parenting Teens. 16. Sick and Accident Benefits Provided to Members of a Voluntary Employees' Beneficiary Association. 17. Certain Organizations Providing Health Insurance.
April 20, 2010	Memorandum from Director, Rulings and Agreements Office	<ul style="list-style-type: none"> <li>- Determinations Unit employees were instructed in the memorandum to contact particular individuals in the Technical Unit if an application could be impacted by the new requirements for tax-exempt hospitals or by any of the Acts' provisions detailed in the memorandum. The same 17 health care issues noted in the April 1, 2010, Screening Workshop were mentioned in the memorandum.</li> </ul>
July 28, 2010	Screening Workshop	<ul style="list-style-type: none"> <li>- The Workshop included a Power Point presentation that included the same 17 health care terms/provisions mentioned in the April 1, 2010, Screening Workshop.</li> <li>- Two new health care issues were also raised in the Power Point presentation: 1) Accountable Care Organizations and 2) Medicare payments to physicians' practices based on quality of care, cost-effectiveness or services, <i>etc.</i></li> </ul>
August 10, 2010	BOLO (Watch List tab)	<ul style="list-style-type: none"> <li>- Per Director, Rulings and Agreements Office, memo dated April 20, 2010, cases impacted by the Patient Protection and Affordable Care Act (Public Law 111-148) (PPACA) and the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152) (HCERA) are being coordinated with the Technical Unit.</li> </ul>
August 12, 2010	BOLO (BOLO List tab)	<ul style="list-style-type: none"> <li>- Per Director, Rulings and Agreements Office, memo dated April 20, 2010, cases impacted by the Patient Protection and Affordable Care Act (Public Law 111-148) (PPACA) and the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152) (HCERA) are being coordinated with the Technical Unit.</li> </ul>



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Date Issued	Source	IRS Criterion Description
November 9, 2010 – December 13, 2010 <sup>105</sup>	BOLO (Watch List tab)	- Per Director, Rulings and Agreements Office, memo dated April 20, 2010, cases impacted by the Patient Protection and Affordable Care Act (Public Law 111-148) (PPACA) and the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152) (HCERA) are being coordinated with the Technical Unit.

*Source: IRS-provided memorandum, training materials, and BOLO listings.*

**Analysis of documentation and results of interviews**

In March 2010, the Director, EO, requested that a Technical Unit manager review the recently passed PPACA legislation and determine how it affected tax-exempt organizations. In April 2010, the Director, Rulings and Agreements Office, issued a memorandum requiring that the EO Determinations and Technical Units coordinate work on applications for tax-exempt status from healthcare organizations. The EO Determinations Unit assigned responsibility for these applications to a specific group for coordination with the Technical Unit, and a Determinations Unit specialist in this group was responsible for maintaining a tracking sheet of Healthcare Legislation cases received. However, current EO function management could not recall who authorized the inclusion of the Healthcare Legislation criterion on the BOLO listing.

The Determinations Unit specialist coordinating these cases stated that he sent a spreadsheet of Healthcare Legislation cases to a group of Technical Unit employees and held weekly conference calls with them so they could determine if the applications should be transferred to the Technical Unit using the guidance from the April 2010 memorandum.

IRS procedures in place at the time required that the Technical Unit process cases for which issues cannot be resolved by established precedent and thus require interpretation of the tax law. As noted previously, both the PPACA and HCERA created new requirements for tax-exempt organizations that the IRS had never before dealt with when processing applications for tax-exempt status. The Healthcare Case Coordinator indicated that Determinations Unit staff had not received training on the new healthcare legislation<sup>106</sup> and that he or she thought this was the reason the cases had to be coordinated with the Technical Unit. In addition, the Director, Rulings and Agreements Office, indicated that these cases were tracked and processed in the

<sup>105</sup> Many BOLO listings were issued from November 9, 2010, through December 13, 2010, all with the same description of the Healthcare Legislation criterion on the Watch List tab.

<sup>106</sup> While we did not identify training for the entire Determinations Unit staff, we did identify screener training documents from April and July 2010 that discussed the new healthcare legislation and its effect on the determinations process.



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Technical Unit to ensure consistent processing because of the lack of guidance provided to the Determinations Unit.

The Healthcare Case Coordinator stated that, after the release of our prior report in May 2013,<sup>107</sup> all Technical Unit coordination stopped. The Determinations Unit was left with many cases to process and no guidance or feedback from the Technical Unit on how to proceed. None of the Technical Unit employees interviewed knew why the Technical Unit stopped providing guidance to the Determinations Unit on Healthcare Legislation cases.<sup>108</sup>

### **Case review results**

The IRS provided a Determinations Unit tracking sheet of Healthcare Legislation cases identified for coordination between the Determinations and Technical Units. IRS management stated that a tracking sheet was maintained for Healthcare Legislation cases as a result of the April 2010 memorandum from the Director, Rulings and Agreements Office, which included instructions at the bottom requiring coordination with EO Technical Unit staff.

We reviewed 164 cases<sup>109</sup> affected by the PPACA from this case tracking sheet. We also reviewed an additional seven Healthcare Legislation cases identified on a listing maintained by a Technical Unit employee involved in processing the cases. Because these cases were included on IRS tracking sheets, we concluded that they were all identified based upon the criteria.

### **Political cases identified by the IRS using the Healthcare Legislation criterion**

We identified 16 political cases from the Healthcare Legislation tracking sheet.<sup>110</sup> We did not identify any additional political cases from other IRS-provided documentation, *e.g.*, case files and e-mails.

Figure 27 includes information about those 16 political cases. With the exception of one case, none of the identified political cases included indications of political campaign intervention but instead included lobbying or general advocacy activities, such as attempting to influence specific legislation or influencing public opinion on an issue.

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<sup>107</sup> TIGTA, Ref. No. 2013-10-053, *Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review* (May 2013).

<sup>108</sup> EO function management stated that they issued guidance in July 2013 in response to our prior report regarding the process for requesting technical assistance from the Technical Unit. The new guidance required all requests for technical assistance from the Technical Unit to be in writing.

<sup>109</sup> There were two additional cases on the tracking sheet that were not reviewed because the EO function could not provide one case file and the other case did not involve a determination decision.

<sup>110</sup> Because the cases originated from an IRS tracking sheet of cases affected by the PPACA and HCERA provisions, we did not restrict our review to cases that were processed during the time period that the Healthcare Legislation criterion was in effect on the BOLO listing.



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**Figure 27: Political Cases TIGTA Confirmed Were  
Processed Based Upon the Healthcare Legislation Criterion**

Organization Name	I.R.C. Subsection Code	Date Case Opened	Days to Close	Current Status	Closure Type	Technical Unit Involved <sup>111</sup>
*****1*****	501(c)(3)	04/23/2010	434	Closed – Non-Merit	Approved	Yes
*****1***** *****1*****	501(c)(3)	05/06/2010	294	Closed – Non-Merit	Approved	Yes
*****1***** *****1*****	501(c)(3)	08/06/2010	1,178	Closed – Non-Merit	Denied	Yes
*****1***** *****1*****	501(c)(3)	09/07/2010	959	Closed – Non-Merit	Failure to Establish	Yes
*****1***** *****1*****	501(c)(3)	09/07/2010	947	Closed – Non-Merit	Failure to Establish	Yes
*****1***** *****1*****	501(c)(3)	06/16/2011	1,009	Closed – Non-Merit	Failure to Establish	Yes
*****1***** *****1*****	501(c)(3)	07/22/2011	934	Closed – Non-Merit	Approved	Yes
*****1***** *****1*****	501(c)(3)	09/28/2011	642	Closed – Non-Merit	Approved	Yes
*****1***** *****1*****	501(c)(3)	12/16/2011	209	Closed – Non-Merit	Approved	Yes
*****1***** *****1*****	501(c)(3)	01/28/2012	853	Closed – Non-Merit	Approved	Yes
*****1***** *****1*****	501(c)(3)	02/02/2012	461	Closed – Non-Merit	Approved	Yes
*****1***** *****1*****	501(c)(3)	01/08/2013	472	Closed – Non-Merit	Approved	Yes
*****1***** *****1*****	501(c)(3)	02/01/2013	299	Closed – Non-Merit	Approved	Yes
*****1***** *****1***** *****1*****	501(c)(3)	02/04/2013	576	Closed – Non-Merit	Failure to Establish	Yes

<sup>111</sup> Involvement could include a telephone conversation, an e-mail, providing guidance on a case, or processing a case.



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Organization Name	I.R.C. Subsection Code	Date Case Opened	Days to Close	Current Status	Closure Type	Technical Unit Involved
*****1***** *****1*****	501(c)(3)	03/07/2013	287	Closed – Non-Merit	Approved	Yes
*****1***** *****1*****	501(c)(3)	05/24/2013	195	Closed – Non-Merit	Approved	Yes

Source: TIGTA case reviews.

The Technical Unit was involved in processing all 16 confirmed cases. These cases took on average 609 days to process, with a range from 195 to 1,178 days to close.

We compared the time it took to process the 16 identified Healthcare Legislation cases to the overall average time it took the IRS to process all non-merit cases that closed during the same fiscal year. Figure 28 shows the results of this comparison.

**Figure 28: Processing Time for the Confirmed Healthcare Legislation Political Cases Compared to the Processing Time for All Non-Merit Cases**<sup>112</sup>

	Average Days Open			
	FY 2011	FY 2012	FY 2013	FY 2014
<b>Confirmed Healthcare Legislation Cases (Non-Merit)</b>	364	209 <sup>113</sup>	752	645
<b>All Non-Merit Cases</b>	185	238	340	454

Source: TIGTA case reviews and Determinations Unit cycle time data.

With the exception of FY 2012, the Healthcare Legislation political cases took longer to process than the average non-merit application. In FYs 2011 and 2014, it took almost 200 days longer to process an application identified using the Healthcare Legislation criterion than the average non-merit application. In FY 2013, it took more than a year longer to process a Healthcare Legislation criterion application than the average non-merit application.

**Results of unnecessary questions review for confirmed Healthcare Legislation political cases**

We determined that 15 of the 16 organizations whose applications we confirmed were processed based on the Healthcare Legislation criterion received letters requesting additional information.

<sup>112</sup> The IRS averages are for all non-merit cases closed by the IRS and not limited to just cases potentially related to the Healthcare Legislation criterion.

<sup>113</sup> We used actual days because there was only one confirmed case for FY 2012.



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We reviewed these additional request letters and determined that one organization received a request for information that TIGTA had concluded was unnecessary for processing political advocacy cases in our prior review. None of these questions involved a request for donor information.



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**Medical Marijuana**

Based on our analysis of documentation as well as interviews, the IRS identified the Medical Marijuana organizations for further scrutiny because of concerns that they were engaging in activities that were not permissible under tax-exempt law. Specifically, some States were legalizing the use of medical marijuana, but it was illegal under Federal law<sup>114</sup> so the organizations did not meet the requirements for Federal tax exemption.

**IRS description of criterion**

The Medical Marijuana criterion appeared on the BOLO listings. Figure 29 provides excerpts from IRS documents describing the Medical Marijuana criterion over time.<sup>115</sup>

**Figure 29: Medical Marijuana Criterion Description**

<b>Date Issued</b>	<b>Source</b>	<b>IRS Criterion Description</b>
December 2009	E-Mail	- All medical marijuana cases should be forwarded to the Technical Unit because it is a high impact issue.
July 15, 2010	E-Mail	- Medical marijuana cases would be worked by one specialist in the Determinations Unit, and coordinated with a specialist in the Technical Unit.
August 10, 2010	BOLO (Watch List tab)	- Medical Marijuana: Memo dated 7/15/10. Look for cases involving Medical Marijuana.
August 12, 2010	BOLO (BOLO List Tab)	- Medical Marijuana: E-mail dated 7/15/10. Look for cases involving Medical Marijuana.
November 9, 2010 – December 6, 2010 <sup>116</sup>	BOLO (Watch List tab)	- Medical Marijuana: E-mail dated 7/15/10. Look for cases involving Medical Marijuana.

<sup>114</sup> Medical marijuana continues to be illegal under Federal law.

<sup>115</sup> The TAG listings included another criterion called “Compassion-Marijuana” that appeared on the TAG listings from June 2004 through February 2010. This issue involved one organization planning to educate people on the newly passed Oregon Medical Marijuana Act, which allowed the use of marijuana for medical purposes. Per the TAG listing, there was only one case and it was approved prior to our scope period. During this review, we did not identify any employees who recalled this criterion or any related cases. Therefore, we are not including any further details about this early criterion.

<sup>116</sup> Many BOLO listings were issued from November 9, 2010, through December 13, 2010, with the Medical Marijuana criterion on the Watch List tab.



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Date Issued	Source	IRS Criterion Description
December 6, 2010	BOLO (Watch List tab)	<ul style="list-style-type: none"> <li>- Medical Marijuana: E-mail dated 7/15/10. Look for cases involving Medical Marijuana.</li> <li>- Forward cases to processing who will forward the cases to ****3****, Group 7888.</li> </ul> <p style="text-align: center;">****Update 12/6/10 Guidance from EOT [EO Technical] ****</p> <ul style="list-style-type: none"> <li>- Organizations that are NOT involved with growing, selling, or distributing marijuana can be worked as normal. Continue to forward other cases to ****3****, Group 7888.</li> </ul>
December 13, 2010	BOLO (Watch List tab)	<ul style="list-style-type: none"> <li>- Medical Marijuana: E-mail dated 7/15/10. Look for cases involving Medical Marijuana.</li> <li>- Forward cases to processing who will forward the cases to ****3****, Group 7888.</li> </ul>
February 2, 2011 – September 13, 2012	BOLO (Watch List tab)	<ul style="list-style-type: none"> <li>- Medical Marijuana: Cases involving Medical Marijuana.</li> <li>- Forward cases to Group 7888. *****3***** (coordinator). <b>Note:</b> the coordinator has permission to close “exclusively educational” organizations.</li> </ul>

Source: IRS-provided BOLO listings.

**Analysis of documentation and results of interviews**

In December 2009, the Director, EO, received a request for advice from a POA for a client in Colorado who wanted to start a tax-exempt clinic for medical marijuana. The Director asked several EO function managers if the issue of activities being legal at the State level but not at the Federal level ever arose before. Based upon this inquiry, the Determinations Unit program manager decided that all Medical Marijuana cases should be forwarded to the Technical Unit because they involve “high-impact issues.”

In July 2010, the Determinations Unit program manager and the Technical Unit acting manager agreed that Medical Marijuana cases would be coordinated between the two offices. The Determinations Unit program manager assigned the Medical Marijuana cases being worked at the time to a particular Determinations Unit specialist. She also requested a “Watch For” alert be issued so the groups would know who to forward a case to for processing.<sup>117</sup>

According to a Sensitive Case Report prepared by a Technical Unit specialist in July 2010, the Technical Unit was processing five Medical Marijuana cases. A denial letter was under review by another Technical Unit specialist for one of the organizations based upon the organization violating Federal law by selling marijuana. In September 2010, engaging in a non-exempt

<sup>117</sup> Prior to the BOLO listing, e-mail alerts were sent out to specialists regarding cases to watch for, potentially abusive cases, cases requiring special processing, and emerging issues.



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commercial activity was added to the denial letter as another reason for denying tax-exempt status.

According to an e-mail we reviewed, in late November 2010, the Determinations Unit specialist assigned Medical Marijuana cases requested an update on the status of the Technical Unit's decision for how to process the cases. The specialist was informed that the Technical Unit was formulating a comprehensive approach to marijuana cases and that all cases needed to be put on hold. Per the e-mail, the Determinations Unit specialist only had one case remaining and the organization appeared to be involved in educational activities. All other organizations withdrew their applications once the specialist explained that growing or dispensing marijuana is illegal under Federal law.<sup>118</sup> In early December 2010, the Technical Unit manager informed the Determinations Unit program manager that cases involving purely educational activities and not involving any growing, selling, or distributing of marijuana could be approved. The BOLO listing was updated with this information.

In March 2011, the EO Guidance Unit and the Office of Chief Counsel began reviewing the initial denial letter prepared in July 2010. The Office of Chief Counsel approved the denial letter in November 2011 after changing the reason for the denial to the illegality of the activities instead of commerciality. The proposed denial letter was issued on December 5, 2011. On March 19, 2012, the final denial letter was issued to the organization. This letter was used as a template for the other Medical Marijuana cases. Two other Technical Unit specialists also processed Medical Marijuana cases. Based upon available documentation, Sensitive Case Reports continued to be prepared through April 2013 in the Technical Unit.

### **Case review results**

The IRS could not provide a tracking sheet related to the Medical Marijuana criterion. As a result, we searched the Determinations Unit's inventory system for applications from organizations with the criterion "Medical Marijuana" in their names. We identified three cases and reviewed the associated case files. Subsequently, we determined that all three were political cases. We also identified nine additional political cases from other IRS-provided documentation, *e.g.*, case files and e-mails.

### **Political cases identified by the IRS using the Medical Marijuana criterion**

We reviewed the case files as well as IRS e-mails and documents to determine if we could confirm whether the IRS identified the 12 political cases using the Medical Marijuana criterion. Based upon this review, we confirmed that the IRS identified 10 cases using the Medical Marijuana criterion on the BOLO listings. As mentioned previously, the IRS concluded that it could approve cases involving educational activities but could not approve applications

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<sup>118</sup> The e-mail did not identify the organizations that withdrew their applications for tax-exempt status.



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involving the growing, selling, or distribution of marijuana. Figure 30 includes information about those 10 cases.

**Figure 30: Political Cases TIGTA Confirmed Were  
Processed Based Upon the Medical Marijuana Criterion**

Organization Name	I.R.C. Subsection Code	Date Case Opened	Days to Close	Current Status	Closure Type	Technical Unit Involved <sup>119</sup>
*****1***** *****1*****	501(c)(3)	12/31/2009	629	Closed – Non-Merit	Failure to Establish	Yes
*****1***** *****1*****	501(c)(3)	02/18/2010	1,427	Closed – Non-Merit	Approved	Yes
*****1***** *****1*****	501(c)(3)	03/15/2010	1,256	Closed – Non-Merit	Approved	Yes
*****1***** *****1*****	501(c)(3)	11/29/2010	898	Closed – Non-Merit	Approved	Yes
*****1***** *****1*****	501(c)(3)	12/03/2010	651	Closed – Non-Merit	Withdrawn	No
*****1***** *****1*****	501(c)(4)	03/02/2011	485	Closed – Non-Merit	Approved	Yes
*****1***** *****1***** *****1*****	501(c)(3)	03/02/2011	485	Closed – Non-Merit	Approved	Yes
*****1***** *****1*****	501(c)(6)	11/12/2011	319	Closed – Non-Merit	Approved	No
*****1***** *****1***** *****1*****	501(c)(4)	12/06/2011	553	Closed – Non-Merit	Approved	No
*****1***** *****1***** *****1***** *****1***** *****1*****	501(c)(4)	06/29/2012	818	Closed – Non-Merit	Approved	No

Source: TIGTA case reviews.

The Technical Unit was involved in processing six of the confirmed cases. These cases took on average 863 days to process, with a range from 485 to 1,427 days to close. Much of this time

<sup>119</sup> Involvement could include a telephone conversation, an e-mail, providing guidance on a case, or processing a case.



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was spent by a Technical Unit specialist and the Office of Chief Counsel reviewing a proposed denial letter for one case that was delaying the processing of other cases, but the case was eventually approved for tax-exempt status.

We compared the time it took to process the 10 confirmed Medical Marijuana cases to the overall average time it took the IRS to process all non-merit cases that closed during the same fiscal year. Figure 31 shows the results of this comparison.

**Figure 31: Processing Time for the Confirmed Medical Marijuana Political Cases Compared to the Processing Time for All Non-Merit Cases**<sup>120</sup>

	Average Days Open			
	FY 2011	FY 2012	FY 2013	FY 2014
<b>Confirmed Medical Marijuana (Non-Merit Closed)</b>	629 <sup>121</sup>	485	902	1,123
<b>All Non-Merit Cases</b>	185	238	340	454

*Source: TIGTA case reviews.*

All of the Medical Marijuana cases took longer than average to process compared to the IRS’s overall average for non-merit cases in each fiscal year.

**Results of unnecessary questions review for confirmed Medical Marijuana political cases**

We determined that all 10 organizations whose applications we confirmed were processed based on the Medical Marijuana criterion received letters requesting additional information to complete processing of their application. We reviewed these additional request letters and determined that four of the organizations received a request for information that TIGTA had concluded was unnecessary for processing political advocacy cases in our prior review.

**Political cases not confirmed as related to the Medical Marijuana criterion**

We could not confirm whether two of the 12 political cases were identified using the Medical Marijuana criterion. We determined that both applications with “Medical Marijuana” in the names of the organizations were processed during the time period the Medical Marijuana criterion was in use, but we could not confirm that the cases were identified based upon the Medical Marijuana criterion. Figure 32 includes information about those two cases.

<sup>120</sup> The IRS averages are for all non-merit cases closed by the IRS and not limited to just cases potentially related to the Medical Marijuana criterion.

<sup>121</sup> We used actual days because there was only one confirmed case for FY 2011.



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**Figure 32: Political Cases TIGTA Could Not Confirm Were Selected Based Upon the Medical Marijuana Criterion**

Organization Name	I.R.C. Subsection Code	Date Case Opened	Days to Close	Current Status	Closure Type	Technical Unit Involved <sup>122</sup>
*****1***** *****1***** *****1*****	501(c)(3)	06/26/2007	92	Closed – Non-Merit	Failure to Establish	No
*****1***** *****1***** *****1***** <sup>123</sup>	501(c)(3)	10/30/2007	38	Closed – Non-Merit	Approved	No

Source: TIGTA case reviews.

We compared the time it took to process these cases to the overall average time it took the IRS to process all cases that closed during the same fiscal year. Figure 33 shows the results of this comparison.

**Figure 33: Processing Time for the Unconfirmed Medical Marijuana Political Cases Compared to the Processing Time for All Non-Merit Cases<sup>124</sup>**

	Average Days Open	
	FY 2007	FY 2008
<b>Unconfirmed Medical Marijuana Case (Non-Merit)<sup>125</sup></b>	92	38
<b>All Non-Merit Cases</b>	122	103

Source: TIGTA case reviews and Determinations Unit cycle time data.

Both cases were processed in less time than the average non-merit case during the same fiscal year.

<sup>122</sup> Involvement could include a telephone conversation, an e-mail, providing guidance on a case, or processing a case.

<sup>123</sup> The initial case was closed Failure to Establish, and a second case was created on the Determinations Unit inventory system for the same organization to complete the processing of the case.

<sup>124</sup> The IRS averages are for all non-merit cases closed by the IRS and not limited to just cases potentially related to the Medical Marijuana criterion.

<sup>125</sup> We used actual days for FYs 2007 and 2008 because there was only one unconfirmed case per fiscal year.



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**Results of unnecessary questions review for unconfirmed Medical Marijuana political cases**

We determined that one organization whose application we could not confirm was processed based on the Medical Marijuana criterion received letters requesting additional information to complete processing of its application. We reviewed these additional request letters and determined that the organization did not receive any requests for information that TIGTA had concluded were unnecessary for processing political advocacy cases in our prior review.



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\*\*\*\*\*1\*\*\*\*\*

Based on our review of IRS documentation and interviews with employees, the \*\*\*\*\*1\*\*\*  
\*\*\*\*\*1\*\*\*\*\*<sup>126</sup> criterion focused on the potential abusive activities of organizations set  
up as charities that involved a scheme using donor-advised funds.<sup>127</sup> It was added to the  
TAG listing so the EO function could identify related organizations as potentially abusive  
charities.

**IRS description of criterion**

Figure 34 provides an explanation over time for the \*\*\*\*\*1\*\*\*\*\* criterion.

**Figure 34: \*\*\*\*\*1\*\*\*\*\* Criterion Description**

Date Issued	Source	IRS Criterion Description
June 18, 2008 – February 2010	TAG	<ul style="list-style-type: none"> <li>- Break up of a donor-advised fund.</li> <li>- *****1***** sub-accounts are submitting their own applications for exemption. If affiliation with *****1***** is not revealed in the application, check web sites for evidence.</li> <li>- Some applicants mix their “charity” activities with their personal/business activities.</li> </ul>
August 10, 2010	BOLO (TAG tab)	<ul style="list-style-type: none"> <li>- Break up of a donor-advised fund.</li> <li>- *****1***** sub-accounts are submitting their own applications for exemption. If affiliation with *****1***** is not revealed in the application, check web sites for evidence.</li> <li>- Some applicants mix their “charity” activities with their personal/business activities.</li> </ul>

<sup>126</sup> Not to be confused with the \*\*\*\*\*1\*\*\*\*\* which, according to its website, is a tax-exempt organization that conducts conservative policy research and analysis, the \*\*\*\*\*1\*\*\*\*\* is a donor-advised fund.

<sup>127</sup> Per the Internal Revenue Manual, a donor-advised fund must be a fund or account owned and controlled by a sponsoring organization, which is separately identified by reference to contributions of the donor or donors, and where the donor (or a person appointed or designated by the donor) has or reasonably expects to have advisory privileges over the distribution or investments of the assets.



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Date Issued	Source	IRS Criterion Description
February 8, 2012 – April 19, 2013 <sup>128</sup>	BOLO (TAG tab)	- *****1***** is a donor-advised fund, whose sub-accounts are submitting their own applications for exemption. Affiliation with *****1***** is not revealed in the application but may be present on the applicants website. Applicants mix charitable activities with personal/business activities. May be promoted by ****3**** or ****3****.

*Source: IRS-provided TAG and BOLO listings.*

**Analysis of documentation and results of interviews**

The \*\*\*\*\*1\*\*\*\*\* was initially identified in November 2006 as a possible abusive scheme subsequent to the passage of the Pension Protection Act of 2006<sup>129</sup> and the resulting scrutiny of supporting organizations<sup>130</sup> and donor-advised funds. \*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*. This promoter had set up as many as 400 other charities that could subsequently apply for tax-exempt status \*\*\*\*1\*\*  
\*\*\*\*1\*\*\*\*. The \*\*\*\*\*1\*\*\*\*\* was added to the TAG listing so the EO function could identify related organizations as potentially abusive charities. EO function management could not recall who authorized the addition of the \*\*\*\*\*1\*\*\*\*\* criterion to the TAG listing.

**Case review results**

The IRS could not provide a tracking sheet related to the \*\*\*\*\*1\*\*\*\*\* criterion. As a result, we searched the Determinations Unit’s inventory system for applications from organizations with the criterion \*\*\*\*\*1\*\*\*\*\* in their names. We identified three cases and reviewed the associated case files. One case was removed from our review because it did not involve a determination decision. We concluded that neither of the two remaining cases included indications of political activity or significant potential political campaign intervention.

<sup>128</sup> Multiple BOLO listings were issued during this time period, all with the same \*\*\*\*\*1\*\*\*\*\* description.

<sup>129</sup> Pub. L. No. 109-280, 120 Stat. 780 (2006).

<sup>130</sup> Per the IRS’s webpage, a supporting organization is a charity that carries out its tax-exempt purposes by supporting other tax-exempt organizations, usually other public charities.



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**Occupied Territory Advocacy**

Based upon our analysis of e-mails and interviews with employees, we determined that the Occupied Territory Advocacy criterion was added to the BOLO listing because of the activities of the organizations as well as the potential to receive additional applications. According to IRS officials, the criterion was included on the BOLO listing \*\*\*\*\*2\*\*\*\*\*  
 \*\*\*\*\*2\*\*\*\*\*  
 \*\*\*\*\*2\*\*\*\*\*. In addition, IRS personnel believed that additional applications could be received because the names of the organizations included a geographical component, e.g., \*\*\*\*1\*\*\*\*\*  
 \*\*\*\*1\*\*\*\*\*

**IRS description of criterion**

The Occupied Territory Advocacy criterion description refers to the activities of the organizations but also includes the names of particular organizations. Figure 35 provides an explanation of the Occupied Territory Advocacy criterion.

**Figure 35: Occupied Territory Advocacy Criterion Description**

Date Issued	Source	IRS Criterion Description
August 10, 2010	BOLO (Watch List tab)	- Memo dated 8/6/10. Applications deal with disputed territories in the Middle East. Examples may be organizations named or connected with*****1*****– XXXX (XXXX = a particular city), *****1*****, or *****1*****. Applications may be inflammatory, advocate a one sided point of view and promotional materials may signify propaganda.
August 12, 2010	BOLO (BOLO List tab)	- Memo dated 8/6/10. Applications deal with disputed territories in the Middle East. Examples may be organizations named or connected with*****1*****– XXXX (XXXX = a particular city), *****1*****, or *****1*****. Applications may be inflammatory, advocate a one sided point of view and promotional materials may signify propaganda.
November 9, 2010 – December 13, 2010 <sup>131</sup>	BOLO (Watch List tab)	- Memo dated 8/6/10. Applications deal with disputed territories in the Middle East. Examples may be organizations named or connected with*****1*****– XXXX (XXXX = a particular city), *****1*****, or *****1*****. Applications may be inflammatory, advocate a one sided point of view and promotional materials may signify propaganda.

Source: IRS-provided BOLO listings.

<sup>131</sup> Many BOLO listings were issued from November 9, 2010, through December 13, 2010, all with the same description of the Occupied Territory Advocacy criterion on the Watch List tab.



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**Analysis of documentation and results of interviews**

The EO function could not locate the memorandum dated August 6, 2010, referenced in the BOLO listing for the Occupied Territory Advocacy criterion. However, we located an e-mail dated October 20, 2010, in a case file explaining the rationale for transferring three cases matching the description in the criterion to the EO Technical Unit.<sup>132</sup> According to the e-mail, the cases had been transferred to \*\*\*\*\*2\*\*\*\*\* in the Determinations Unit and the TAG group manager suggested transferring the cases to the Technical Unit because the cases (1) involved anti-Israeli sentiment claiming, among many items, violation of international law as well as ethnic cleansing by Israel; (2) mentioned activities and funding going to Israel and related areas such as the Gaza Strip as well as West Bank areas, which could involve settlement issues; (3) mentioned support [in two of the three applications] for various hospitals in the Gaza Strip, \*\*\*\*\*2\*\*\*\*\*;<sup>133</sup> (4) involved elevated rhetoric that would likely draw media attention if the applicants ultimately disagree with the IRS's decision; and (5) involved high-impact or sensitive issues that could generate publicity.

We also located a Sensitive Case Report citing concerns with potential excessive lobbying \*\*2\*\* \*\*\*\*\*2\*\*\*\*\* and multiple organizations with common directors carrying out similar activities. EO function management explained that the criterion was added to the BOLO listing because these applications appeared to be organized based upon geographic location and IRS officials expected that similar applications from other cities could be received. Ultimately, in late 2010, a former Director, Rulings and Agreements Office, agreed that all three cases should be transferred to the Technical Unit based on established procedures for applications for tax-exempt status involved \*\*\*\*\*2\*\*\*\*\* activities.

We reviewed the three applications noted in the description of the Occupied Territory Advocacy criterion and they each included descriptions of activities in Israel and Palestine; two of the applications noted that the applicants would provide grants to specific peacemaking projects in Palestine and Israel, including the \*\*\*\*\*1\*\*\*\*\*.<sup>134</sup> IRS procedures used at the time indicated that cases for which the facts and circumstances suggest a \*\*\*2\*\*\* \*\*\*\*\*2\*\*\*\*\*. For example, specialists were instructed to select applications for further review if the cases involved \*\*\*\*\*2\*\*\*\*\* \*\*\*\*\*2\*\*\*\*\* \*\*\*\*\*2\*\*\*\*\*. A Determinations Unit manager stated that the criterion was developed based upon the

<sup>132</sup> IRS officials stated that the referenced e-mail included additional important information, e.g., Internal Revenue Manual citations. For the full text of the e-mail, see Appendix XI.

<sup>133</sup> According to the \*\*\*\*\*2\*\*\*\*\*.

<sup>134</sup> According to the \*\*\*\*\*2\*\*\*\*\*



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three cases we identified and, to his knowledge, no other cases were received that related to the criterion.

**Case review results**

The IRS could not provide a tracking sheet related to the Occupied Territory Advocacy criterion. As a result, we searched the Determinations Unit’s inventory system for applications from organizations with the criterion Occupied Territory Advocacy<sup>135</sup> in their names and did not identify any cases. However, we requested three cases for organizations named in the BOLO listing criterion description and identified three political cases. We also identified one additional political case from other IRS-provided documentation, *e.g.*, case files, with similar activities.<sup>136</sup>

**Political cases identified by the IRS using the Occupied Territory Advocacy criterion**

We reviewed the case files to determine if we could confirm whether the IRS identified the four political cases using the Occupied Territory Advocacy criterion. Based upon this review, we confirmed that three political cases were processed using the Occupied Territory Advocacy criterion on the BOLO listing. Figure 36 includes information about those three cases.

**Figure 36: Political Cases TIGTA Confirmed Were Processed  
Based Upon the Occupied Territory Advocacy Criterion**

Organization Name	I.R.C. Subsection Code	Date Case Opened	Days to Close	Current Status	Closure Type	Technical Unit Involved <sup>137</sup>
*****1*****	501(c)(3)	04/16/2010	608	Closed – Non-Merit	Failure to Establish	Yes
*****1***** *****1*****	501(c)(3)	06/07/2010	599	Closed – Non-Merit	Failure to Establish	Yes
*****1*****	501(c)(3)	06/17/2010	875	Closed – Non-Merit	Approved	Yes

Source: TIGTA case reviews.

<sup>135</sup> We also searched for organizations with the term “Occupied Territory” in their names.

<sup>136</sup> According to documentation we reviewed, an IRS reviewer for one of the three cases named in the BOLO listing criterion description commented that the case reviewed was similar to this additional case, so we included it in our review.

<sup>137</sup> Involvement could include a telephone conversation, an e-mail, providing guidance on a case, or processing a case.



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The Technical Unit was involved in processing all three confirmed cases. Those cases took on average 694 days to process, with a range from 599 to 875 days to close.

We compared the time it took to process the three confirmed Occupied Territory Advocacy cases to the overall average time it took the IRS to process all non-merit cases that closed during the same fiscal year. Figure 37 shows the results of this comparison.

**Figure 37: Processing Time for the Confirmed Occupied Territory Advocacy Political Cases Compared to All Non-Merit Cases**<sup>138</sup>

	Average Days Open	
	FY 2012	FY 2013
<b>Confirmed Occupied Territory Advocacy Cases (Non-Merit)</b>	604	875 <sup>139</sup>
<b>All Non-Merit Cases</b>	238	340

*Source: TIGTA case reviews and Determinations Unit cycle time data.*

All three confirmed cases took longer to process than the average non-merit application received during the same fiscal year. In FYs 2012 and 2013, it took more than a year longer to process the Occupied Territory Advocacy applications than the average non-merit application.

**Results of unnecessary questions review for confirmed Occupied Territory Advocacy political cases**

We determined that all three organizations whose applications we confirmed were processed based on the Occupied Territory Advocacy criterion received letters requesting additional information to complete processing of their application. We reviewed these additional request letters and determined that no organizations received a request for information that TIGTA had concluded was unnecessary for processing political advocacy cases in our prior review.

**Political cases not confirmed as related to the Occupied Territory Advocacy criterion**

We could not confirm whether one of the four political cases was identified using the Occupied Territory Advocacy criterion. We determined that the political case identified from other IRS-provided documentation, *e.g.*, case files, was processed during the time period the Occupied Territory Advocacy criterion was in use, but we could not confirm the case was processed based

<sup>138</sup> The IRS averages are for all non-merit cases closed by the IRS and not limited to just cases potentially related to the Occupied Territory Advocacy criterion.

<sup>139</sup> We used actual days because there was only one case in FY 2013.



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upon the criterion. As shown in Figure 38, the Technical Unit was not involved in processing this case.

**Figure 38: Political Case TIGTA Could Not Confirm Was Selected Based Upon the Occupied Territory Advocacy Criterion**

Organization Name	I.R.C. Subsection Code	Date Case Opened	Days to Close	Current Status	Closure Type	Technical Unit Involved <sup>140</sup>
***1**** 141	501(c)(3)	12/28/2009	2,488 <sup>142</sup>	Closed – Non-Merit	Approved	No

Source: TIGTA case reviews.

**Results of unnecessary questions review for the unconfirmed Occupied Territory Advocacy political case**

We determined that the one organization whose application we could not confirm was processed based on the Occupied Territory Advocacy criterion received letters requesting additional information to complete processing of its application. We reviewed these additional request letters and determined that the organization received a request for information that TIGTA had concluded was unnecessary for processing political advocacy cases in our prior review. There were no requests for donor information.

<sup>140</sup> Involvement could include a telephone conversation, an e-mail, providing guidance on a case, or processing a case.

<sup>141</sup> We did not complete a comparison of the time it took to process this case to the average days it took to process all non-merit cases because FY 2017 data were not available at the end of our fieldwork.

<sup>142</sup> Processing of this case was suspended for many years due to ongoing litigation.



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**Occupy**

Based on our analysis of case files and e-mails as well as interviews with employees, we determined that the Occupy criterion was included on two different tabs of the BOLO listings at the same time from January 26, 2012, through June 15, 2012.<sup>143</sup> It was included on the BOLO listing after news articles surfaced stating that Occupy organizations were starting to file for I.R.C. § 501(c)(3) tax-exempt status. In June 2012, the Determinations Unit issued new criteria for identifying current political issues and removed references to Occupy from the Watch List tab of the BOLO listing.

**IRS description of criterion**

As shown in Figure 39, specific references to the Occupy criterion appeared on both the Watch List and Emerging Issues tabs of the BOLO listing from January 26, 2012, through June 15, 2012.

**Figure 39: Occupy Criterion Description**

Date Issued <sup>144</sup>	Source	IRS Criterion Description
January 26, 2012 – March 26, 2012	BOLO (Watch List tab)	- “Occupy” Organizations: Involve organizations occupying public space protesting in various cities, call people to assemble (people’s assemblies) claiming social injustices due to “big-money” influence, claim the democratic process is controlled by wall street/banks/multinational corporations, could be linked globally. Claim to represent the 99 percent of the public that are interested in separating money from politics and improving the infrastructure to fix everything from healthcare to the economy.
January 26, 2012 – March 26, 2012	BOLO (Emerging Issues tab)	- Current Political Issues: Political action type organizations involved in limiting/expanding government, educating on the constitution, \$ocial economic reform/movement. <sup>145</sup>

<sup>143</sup> An entry for Occupy was included on the Watch List tab of the BOLO listing as well as the Emerging Issues tab using an IRS “code word” for Occupy cases.

<sup>144</sup> Several BOLO listings were issued from January 26, 2012 through March 26, 2012, all with the same description of the Occupy criterion on the Watch List tab and the Current Political Issues criterion on the Emerging Issues tab.

<sup>145</sup> IRS documentation shows that the IRS used “\$ocial economic reform/movement” as a “code word” for Occupy on the BOLO listing.



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Date Issued <sup>144</sup>	Source	IRS Criterion Description
June 15, 2012 – April 19, 2013	BOLO (Emerging Issues tab)	- Current Political Issues: 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.

Source: IRS-provided BOLO listings.

**Analysis of documentation and results of interviews**

In January 2012, a Determinations Unit group manager forwarded a news article discussing Occupy organizations applying for tax-exempt status to the Determinations Unit program manager and requested that she consider adding the Occupy organizations to the BOLO listing. The program manager forwarded the e-mail to the advocacy group manager and suggested the cases be worked in his group and asked for his thoughts. The group manager agreed and recommended updating the BOLO listing to capture the Occupy cases.

The group manager presented two options for updating the BOLO listing:

*Option 1: Current Political Issues: Political action type organizations involved in limiting/expanding government, educating on the constitution and bill of rights, Social economic reform/movement.*

*Note: typical advocacy type issues that are currently listed on the Case Assignment Guide (CAG) do not meet these criteria unless they are also involved in activities described above.*

*Option 2: Tea Parties: Typically involved in the tea party movement, further the principles of the constitution and bill of rights, promote voter registration, may refer to governmental reform, and/or 912 projects.*

*“Occupy” orgs: Involve organizations occupying public space protesting in various cities, call people to assemble (people’s assemblies) claiming social injustices due to “big-money” influence, claim the democratic process is controlled by wall street/banks/multinational corporations, could be linked globally. Claim to represent the 99% of the public that are interested in separating money from politics and improving the infrastructure to fix everything from healthcare to the economy.*

The Determinations Unit program manager indicated that she wanted to compromise and revise the entry for current political issues on the Emerging Issues tab of the BOLO listing using the wording in Option 1 and include the description of Occupy under Option 2 in the Watch List tab of the BOLO listing. Prior to issuing the revised BOLO listing, the BOLO Coordinator questioned the need for a separate Occupy entry when the updated current political issues



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description included the “code word” “Social economic reform” for Occupy organizations. The group manager responded that it should be left in because other organizations were “pushing” the same issue. The updated BOLO listing was issued on January 26, 2012.

In May 2012, the Director, Rulings and Agreements Office, reviewed the BOLO listing, drafted a revision to the description of the Current Political Issues entry on the Emerging Issues tab of the BOLO listing, and directed that entries related to Occupy groups be removed from the Watch List tab of the BOLO listing. When the new BOLO listing was issued in June 2012, Determinations Unit specialists were informed that Occupy was now included under the Current Political Issues criteria on the Emerging Issues tab.

After the BOLO listing was revised in May 2012, all advocacy case additional information request letters were to be reviewed by the Technical Unit prior to issuance. Many letters written for various Occupy cases were forwarded for this review, but after several months of complying with this procedure, the Determinations Unit program manager informed EO function management in December 2012 that the response times were too long and wasting resources. However, based upon a review of documentation, this process continued until at least May 2013.

### **Case review results**

The IRS could not provide a tracking sheet related to the Occupy criterion. As a result, we searched the Determinations Unit’s inventory system for applications from organizations with the criterion “Occupy” in their names. In addition, we searched the Determinations Unit’s inventory system for applications from organizations that congressional staff provided to us related to the Occupy movement. We identified 11 cases and reviewed the associated case files. Subsequently, we determined that five of the 11 cases were political cases. We also identified one additional political case from our review of e-mails provided by the IRS.<sup>146</sup>

### **Political cases identified by the IRS using the Occupy criterion**

We reviewed the case files as well as IRS e-mails and documents to determine if we could confirm whether the IRS identified the six political cases using the Occupy criterion. Based upon this review, we confirmed that the IRS identified five of the six political cases using the Occupy criterion on the BOLO listing.<sup>147</sup> Figure 40 includes information about these cases.

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<sup>146</sup> Because the Occupy criterion was included in two places at the same time on the BOLO listing, unless the Determinations Unit specialist specifically documented how a case was identified for further review, we could not determine which version of the criterion was used to identify it.

<sup>147</sup> The remaining case was processed after the IRS stopped using BOLO listings.



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**Figure 40: Political Cases TIGTA Confirmed Were  
Processed Based Upon the Occupy Criterion**

Organization Name	I.R.C. Subsection Code	Date Case Opened	Days to Close	Current Status	Closure Type	Technical Unit Involved <sup>148</sup>
***1***** *****1***** *****1***** *****1**** 149	501(c)(3)	08/23/2011	1,064	Closed – Non-Merit	Approved	Yes
*****1*****	501(c)(3)	04/03/2012	626	Closed – Non-Merit	Failure to Establish	Yes
*****1*****	501(c)(3)	04/19/2012	855	Closed – Non-Merit	Approved	Yes
*****1*****	501(c)(4)	07/09/2012	387	Closed – Non-Merit	Approved	Yes
*****1*****	501(c)(3)	08/13/2012	618	Closed – Non-Merit	Approved	No

Source: TIGTA case reviews.

The Technical Unit was involved with processing four of the five confirmed cases. These cases took on average 733 days to process, with a range of 387 to 1,064 days to close. Technical Unit specialists reviewed additional information request letters prior to issuance. Additionally, we compared the time it took to process the five confirmed Occupy cases to the overall average time it took the IRS to process all non-merit cases that closed during the same fiscal year. Figure 41 shows the results of this comparison.

<sup>148</sup> Involvement could include a telephone conversation, an e-mail, providing guidance on a case, or processing a case.

<sup>149</sup> The IRS processed this case based upon the Occupy criterion; however, the organization stated that it does not have a direct relationship with Occupy Wall Street.



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**Figure 41: Processing Time for the Confirmed Occupy Political Cases Compared to the Processing Time for All Non-Merit Cases<sup>150</sup>**

	Average Days Open	
	FY 2013	FY 2014
<b>Confirmed Occupy Cases (Non-Merit Closed)</b>	387 <sup>151</sup>	791
<b>All Non-Merit Cases</b>	340	454

*Source: TIGTA case reviews and Determinations Unit cycle time data.*

**Results of unnecessary questions review for confirmed Occupy political cases**

We determined that all five organizations identified with potential political activity whose applications were processed based on the Occupy criterion received additional information request letters. We reviewed these additional request letters and determined that one of the organizations received requests for information that TIGTA had concluded were unnecessary for processing political advocacy cases in our prior review. None of the questions involved a request for donor information.

<sup>150</sup> The IRS averages are for all non-merit cases closed by the IRS and not limited to just cases potentially related to the Occupy criterion.

<sup>151</sup> We used actual days because there was only one confirmed case for FY 2013.



## Review of Selected Criteria Used to Identify Tax-Exempt Applications for Review

### **Paying National Debt**

Based on our analysis of documents as well as interviews with employees, we determined that the IRS developed the Paying National Debt criterion to ensure that the organizations applying for tax-exempt status were fulfilling the requirements of the law. The EO function had never before considered if paying down the national debt was a charitable purpose.

### **IRS description of criterion**

The Paying National Debt criterion description refers to the activities of organizations applying for tax-exempt status. Figure 42 provides an explanation over time of the Paying National Debt criterion.

**Figure 42: Paying National Debt Criterion Description**

Date Issued	Source	IRS Criterion Description
July 11, 2012 – April 19, 2013 <sup>152</sup>	BOLO (Watch List tab)	- Organizations formed to pay down the national debt.

Source: IRS-provided BOLO listings.

### **Analysis of documentation and results of interviews**

In late June 2012, a Senior Technical Advisor to the Director, EO, informed the Director, Rulings and Agreements Office, that two cases related to paying down the national debt needed to be reviewed by the Technical Unit because the EO function had never before considered if paying down the national debt was a tax-exempt activity. The Senior Technical Advisor also suggested an entry be added to the BOLO listing so no additional cases would be approved before the Technical Unit determined whether paying down the national debt was a tax-exempt activity. In July 2012, the Determinations Unit forwarded both cases to the Technical Unit for technical assistance.<sup>153</sup> In August 2012, the Technical Unit specialist who processed both cases sent them to another specialist for review. While waiting for the reviewer's comments on the first two cases, two more Paying National Debt cases were received by the Determinations Unit in September 2012 and January 2013; both were transferred to the Technical Unit.<sup>154</sup>

<sup>152</sup> Many BOLO listings were issued from July 11, 2012, through April 19, 2013, all with the same description of the Paying National Debt criterion on the Watch List tab.

<sup>153</sup> Technical assistance is requested when guidance is needed in order to make a determination decision. The case is not transferred to the Technical Unit.

<sup>154</sup> A different Technical Unit specialist processed this fourth Paying National Debt case. The applicant withdrew the application and the case was closed without a determination decision being made.



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## *Review of Selected Criteria Used to Identify Tax-Exempt Applications for Review*

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In February 2013, the reviewer returned the first two cases to the assigned Technical Unit specialist, suggesting that additional information was needed. The assigned specialist discussed with his manager that the cases were technical assistance cases and should be changed to transfers if he was going to continue processing them. The manager agreed, but the status of the cases was never updated on the Technical Unit's inventory system.

The Technical Unit specialist prepared a briefing memorandum in March 2013 providing legal analysis which concluded that paying down the national debt is a tax-exempt activity under I.R.C. § 501(c)(3). He processed the three cases assigned to him and made determinations on whether to grant tax-exempt status. However, before determination letters were issued to the taxpayers, the Director, EO, and the Office of Chief Counsel decided in March 2014 that the Office of Chief Counsel should review the cases because of a lack of case precedence.

Meanwhile, the Determinations Unit was never informed that the two initial cases sent to the Technical Unit as technical assistance requests should be considered as transfer cases. In May 2014, the Determinations Unit approved one of the cases without informing the Technical Unit. This case had already been sent to the Office of Chief Counsel for review. In July 2014, the Office of Chief Counsel agreed with the approval of tax-exempt status.

### **Case review results**

The IRS could not provide a tracking sheet related to the Paying National Debt criterion. As a result, we searched the Determinations Unit's inventory system for applications from organizations with the criterion "Paying National Debt" in their names and did not identify any cases. However, we reviewed one case processed as a Paying National Debt case that we identified from the Determinations Unit's inventory system using a different criterion.<sup>155</sup> We determined that this case included indications of political activity. We also identified one additional political case from other IRS-provided documentation, *e.g.*, case files and e-mails. The identified political cases did not include indications of political campaign intervention but instead included lobbying or general advocacy activities, such as attempting to influence specific legislation or influencing public opinion on an issue.

### **Political cases identified by the IRS using the Paying National Debt criterion**

We reviewed the case files as well as IRS e-mails and documents to determine if we could confirm whether the IRS identified the two cases with indications of political activity using the Paying National Debt criterion. Based upon this review, we confirmed that the IRS identified both cases using the criterion on the BOLO listing. Figure 43 includes information about these two cases.

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<sup>155</sup> The organization had the phrase We the People in its name, but the IRS identified it as a Paying National Debt case based upon its activities. A discussion of the We the People criterion can be found later in this report.



*Review of Selected Criteria Used to Identify  
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**Figure 43: Political Cases TIGTA Confirmed Were  
Processed Based Upon the Paying National Debt Criterion**

Organization Name	I.R.C. Subsection Code	Date Case Opened	Days to Close	Current Status	Closure Type	Technical Unit Involved <sup>156</sup>
*****1***** *****1****157	501(c)(3)	06/10/2011	1,076	Closed – Non-Merit	Approved	Yes
*****1***** ***1***	501(c)(3)	10/30/2012	560	Closed – Non-Merit	Withdrawn	Yes

Source: TIGTA case reviews.

The Technical Unit was involved in processing both confirmed cases regarding the Paying National Debt criterion. These cases took on average 818 days to process, with a range of 560 to 1,076 days to close.

We also compared the time it took to process these two confirmed Paying National Debt cases to the overall average time it took the IRS to process all non-merit cases that closed during the same fiscal year. Figure 44 shows the results of this comparison.

**Figure 44: Processing Time for the Confirmed Paying National Debt  
Political Cases Compared to the Processing Time for All Non-Merit Cases<sup>158</sup>**

	Average Days Open
	FY 2014
<b>Confirmed Paying National Debt Cases (Non-Merit)</b>	818
<b>All Non-Merit Cases</b>	454

Source: TIGTA case reviews and Determinations Unit cycle time data.

The Paying National Debt cases took on average nearly twice as long to process than the average non-merit application in FY 2014.

<sup>156</sup> Involvement could include a telephone conversation, an e-mail, providing guidance on a case, or processing a case.

<sup>157</sup> This case was initially included on the advocacy case tracking sheet but was removed prior to it being forwarded to the Technical Unit.

<sup>158</sup> The IRS averages are for all cases closed by the IRS and not limited to just cases potentially related to the Paying National Debt criterion.



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**Results of unnecessary questions review for confirmed Paying National Debt political cases**

Based on our review of the case files, neither of the organizations associated with the two political cases received additional information request letters.



## Review of Selected Criteria Used to Identify Tax-Exempt Applications for Review

### **Pink Slip Program**

Based on our review of IRS documentation and interviews, the Pink Slip Program criterion was implemented as a means to identify applications submitted by Tea Party organizations.

#### **IRS description of criterion**

The criterion Pink Slip Program never appeared on a TAG or BOLO listing, but instead was mentioned in a screening workshop. IRS management stated that if an item never appeared on a TAG or BOLO listing and was only mentioned in one 2010 training slide, then it is not appropriate to consider it as a screening criteria that was ever used/approved and it should not be included in this report. Figure 45 provides an explanation of the Pink Slip Program criterion.

**Figure 45: Pink Slip Program Criterion Description**

Date Issued	Source	IRS Criterion Description
July 28, 2010	Screening Workshop	- Workshop presenter indicated that names and/or titles (Pink Slip Program) were of interest and should be flagged for review.

Source: IRS-provided training materials.

#### **Analysis of documentation and results of interviews**

The Pink Slip Program criterion originated as a means to identify applications submitted by Tea Party organizations. The initiation of this criterion corresponds to when, as stated in our prior report, the Determinations Unit requested specialists to be on the lookout for Tea Party applications in July 2010.

According to the first Tea Party Case Coordinator, this criterion arose from several Tea Party cases that mentioned a Pink Slip Program as one of their activities. Specifically, the applicants suggested that supporters send their congressmen a pink slip.<sup>159</sup> We confirmed that the criterion Pink Slip was used in applications from Tea Party groups based on an e-mail from the Tea Party Case Coordinator to a Technical Unit specialist and by identifying a Tea Party case that included references to a Pink Slip Program. The first Tea Party Case Coordinator suggested including it in the July 2010 screening workshop to make screeners aware that Tea Party groups used this language so they could better identify their applications. As previously noted, the criterion was included in a list of criteria mentioned as being of interest that should be flagged for review and transferred to a designated group. However, it was not included in the presentation documents provided to the workshop participants.

<sup>159</sup> A pink slip is a notification of dismissal from one's employment.



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**Case review results**

The EO function could not provide a tracking sheet related to the Pink Slip Program criterion. As a result, we searched the Determinations Unit’s inventory system for applications from organizations with the criterion Pink Slip in their names. We did not identify any cases to review on the Determinations Unit’s inventory system but did identify one political case in other IRS-provided e-mails and documentation.

**Political case identified by the IRS using the Pink Slip Program criterion**

We reviewed the case file as well as IRS e-mails and documents to determine if we could confirm whether the IRS identified the one political case using the Pink Slip Program criterion. Based upon this review, we confirmed that the IRS identified the case using the criterion. Figure 46 includes information about this case.

**Figure 46: Political Case TIGTA Confirmed Was  
Processed Based Upon the Pink Slip Program Criterion**

Organization Name	I.R.C. Subsection Code	Date Case Opened	Days to Close	Current Status	Closure Type	Technical Unit Involved <sup>160</sup>
*****1****.161	501(c)(4)	11/25/2009	433	Closed – Non-Merit	Failure to Establish	Yes

Source: TIGTA case reviews.

The Technical Unit was involved in processing the confirmed case and it took 433 days to complete.

We compared the time it took to process the one identified Pink Slip Program case to the overall average time it took the IRS to process all non-merit cases during the same fiscal year. Figure 47 shows the results of this comparison.

<sup>160</sup> Involvement could include a telephone conversation, an e-mail, providing guidance on a case, or processing a case.

<sup>161</sup> \*\*\*\*1\*\*\*\*\*



*Review of Selected Criteria Used to Identify  
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**Figure 47: Processing Time for the Confirmed Pink Slip Program  
Political Case Compared to the Processing Time for All Non-Merit Cases**<sup>162</sup>

	Average Days Open
	FY 2009
<b>Confirmed Pink Slip Program (Non-Merit)</b> <sup>163</sup>	433
<b>All Non-Merit Closed</b>	119

*Source: TIGTA case reviews and Determinations Unit cycle time data.*

The identified Pink Slip Program case took more than three times longer than the average non-merit case to process in FY 2009.

**Results of unnecessary questions review for Confirmed Pink Slip Program  
political case**

We determined that the one organization whose application was processed based on the Pink Slip Program criterion received one additional information request letter. We reviewed this additional request letter and determined that this organization received a request for information that TIGTA had concluded was unnecessary for processing political advocacy cases in our prior review. None of the questions asked by the IRS involved a request for donor information.

<sup>162</sup> The IRS averages are for all non-merit cases closed by the IRS and not limited to just cases potentially related to the Pink Slip Program criterion.

<sup>163</sup> We used actual days because there was only one confirmed case for FY 2009.



*Review of Selected Criteria Used to Identify  
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**Progressive**

Based on our analysis of training materials and available documentation as well as interviews with employees, we identified four versions of the Progressive criterion used from October 2005 through April 2013. Specifically, the available evidence indicates that the IRS thought a new political party was being formed and wanted to process the cases consistently. It was concerned that the organizations were applying for I.R.C. § 501(c)(3) status and were engaging in partisan political activity, which is inconsistent with tax-exempt law.

**IRS description of criterion**

The Progressive criterion appeared on the TAG and BOLO listings and was included in materials from a screening workshop. Figure 48 shows the development of the Progressive criterion.

**Figure 48: Progressive Criterion Description**

Date Issued	Source	IRS Criterion Description
October 26, 2005	TAG	Progressive: <ul style="list-style-type: none"> <li>- Similar Activities (TAG Category).</li> <li>- <u>Consistency</u> and Other Issues (Mandatory Review).</li> <li>- Common thread is the word “progressive.” Activities appear to lean toward a new political party.</li> </ul>
April 2007	TAG	Progressive: <ul style="list-style-type: none"> <li>- Political activities.</li> <li>- Common thread is the word “progressive.” Activities appear to lean toward a new political party. Activities are partisan and appear as anti-Republican. You see references to “blue” as being “progressive.”</li> <li>- Applicants submit Form 1023.<sup>164</sup> Their “progressive” activities appear to show that § 501(c)(3) may not be appropriate.</li> <li>- 4-11-07 – one case open; 2006 – one referral to the Technical Unit from the TAG.</li> <li>- <u>Consistency Category</u>.</li> </ul>

<sup>164</sup> Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code.



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Date Issued	Source	IRS Criterion Description
June 18, 2008	TAG (All TAG tab)	<p>Progressive:</p> <ul style="list-style-type: none"> <li>- Political activities.</li> <li>- Common thread is the word “progressive.” Activities appear to lean toward a new political party. Activities are partisan and appear as anti-Republican. You see references to “blue” as being “progressive.”</li> <li>- Applicants submit Form 1023. Their “progressive” activities appear to show that § 501(c)(3) may not be appropriate.</li> <li>- 4-11-07 – one case open; 2006 – one referral to the Technical Unit from the TAG.</li> <li>- <i>ATAT [Abusive Tax Avoidance Transaction] Category.</i></li> </ul>
January 2010 – February 2010	TAG (Archived Issues tab)	<p>Progressive:</p> <ul style="list-style-type: none"> <li>- Political activities.</li> <li>- Common thread is the word “progressive.” Activities appear to lean toward a new political party. Activities are partisan and appear as anti-Republican. You see references to “blue” as being “progressive.”</li> <li>- Applicants submit Form 1023. Their “progressive” activities appear to show that (c)(3) may not be appropriate.</li> </ul>
July 28, 2010	Screening Workshop	<ul style="list-style-type: none"> <li>- Screening Workshop Power Point presentation listed “Progressive” under Current Activities with no other information.</li> <li>- Workshop presenter indicated that names and/or titles (Progressive) were of interest and should be flagged for review. “Progressive” applications were not considered “Tea Parties.”</li> </ul>
August 10, 2010 – September 13, 2012 <sup>165</sup>	BOLO (Historical tab)	<p>Progressive:</p> <ul style="list-style-type: none"> <li>- Political activities.</li> <li>- Common thread is the word “progressive.” Activities appear to lean toward a new political party. Activities are partisan and appear as anti-Republican. You see references to “blue” as being “progressive.”</li> <li>- Applicants submit Form 1023. Their “progressive” activities appear to show that § 501(c)(3) may not be appropriate.</li> </ul>

*Source: IRS-provided TAG and BOLO listings as well as training materials.*

<sup>165</sup> Multiple BOLO listings were issued during this time period; all with the same Progressive description.



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**Analysis of documentation and results of interviews**

The first version of the Progressive criterion appeared on the TAG listing from October 2005 to April 2007 and included a general description of “activities appear to lean toward a new political party.”<sup>166</sup> The TAG Coordinator was listed as the contact person for the Progressive issue and stated that she probably put the issue on the listing but did not process the cases. She stated that it was added to the TAG listing because all of the applications were for I.R.C. § 501(c)(3) status and included political activities, and I.R.C. § 501(c)(3) organizations cannot participate in any political activity.<sup>167</sup> Although we did not identify any documentation corroborating her explanation, it is consistent with the changes made to subsequent versions of the Progressive criterion on the TAG and BOLO listings referring to applicants applying for I.R.C. § 501(c)(3) status with partisan activities leaning toward a new political party.

The second version of the Progressive criterion appeared on the April 2007 TAG listing and included a more detailed description of the activities as well as a specific reference that the activities may not be appropriate for I.R.C. § 501(c)(3) organizations applying for tax-exempt status. The April 2007 TAG listing indicated that one Progressive case was forwarded to the Technical Unit for processing, but the former TAG Case Coordinator could not recall why this particular case was forwarded.<sup>168</sup> In January 2010, this second version of the criterion was moved to a new Archived tab<sup>169</sup> on the TAG listing. The Progressive criterion was moved, along with many other criteria, to an Archived listing by a Determinations Unit TAG group manager because applications meeting these criteria were seen very infrequently by the TAG group.

A third version of the criterion was included in a July 2010 screening workshop, which listed the Progressive criterion but did not include a description for it. Instead, it was included under a Current Activities section which stated “Look for names like...” and listed various criteria, including “Progressive.” However, we do not know if further instructions were given during the workshop that detailed the activities and tax-exempt law issues when discussing this criterion. We asked several participants of this workshop how they interpreted this information and received varying responses. Some employees considered Progressive cases similar to Tea Party/political activity cases. Others did not recall using the specific criteria from the workshop when processing cases. A former EO function group manager stated that he believed the training information was developed by a particular Determinations Unit specialist. When asked about the training, the specialist did not recall why the criterion was included or who authorized it.

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<sup>166</sup> Political parties are tax-exempt under I.R.C. § 527. Section 527 organizations do not apply for tax-exempt status.

<sup>167</sup> I.R.C. § 501(c)(3) organizations cannot participate in any political campaign intervention but can perform limited lobbying activities.

<sup>168</sup> We were unable to determine which case the TAG listing referenced.

<sup>169</sup> This Archived tab was later called the TAG Historical tab on the BOLO listing.



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## *Review of Selected Criteria Used to Identify Tax-Exempt Applications for Review*

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The Progressive criterion from the TAG Archived tab was included on the BOLO listing in August 2010 on the Historical tab.<sup>170</sup> Many BOLO listings were issued from August 10, 2010, through September 13, 2012, all with the same description of the Progressive criterion listed on the Historical tab. The first BOLO listing we identified without the Progressive criterion on the Historical tab was dated April 4, 2013. The Progressive criterion was removed from the Historical tab of the BOLO listing because a Determinations Unit area manager believed Progressive cases should be lumped into political campaign intervention issues and should have been added to the advocacy case tracking sheet.<sup>171</sup> The criteria<sup>172</sup> used to identify cases with political issues in April 2013 was identical to the version drafted by the Director, Rulings and Agreements Office, in May 2012.

It should be noted that when the Determinations Unit began identifying cases with political issues in Calendar Year 2010, the Tea Party case coordinators did not accept “progressive” cases for review. Instead, they sent them back to general inventory or the person who referred them because they did not meet the Tea Party criterion. Progressive cases did not appear on the political issues tracking sheet until the advocacy criteria on the Emerging Issues tab of the BOLO listing were changed to a broader definition in July 2011 at the request of the former Director, EO.

### **Case review results**

The IRS could not provide a tracking sheet related to the Progressive criterion. As a result, we searched the Determinations Unit’s inventory system for applications from organizations with the criterion “Progressive” in their names. We identified 381 cases and reviewed the associated case files. Subsequently, we determined that 73 of the 381 cases were political cases. We also identified one additional political case from other IRS-provided documentation, *e.g.*, case files and e-mails.

### **Political cases identified by the IRS using the Progressive criterion**

We reviewed case files as well as IRS e-mails and documents to determine if we could confirm whether the IRS identified the 74 political cases using the Progressive criterion. Based upon this review, we confirmed that the IRS identified four cases in Calendar Years 2005 and 2006 using the Progressive criterion on the TAG listing. Figure 49 includes information about those four cases.

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<sup>170</sup> According to the IRS, the Historical tab on the BOLO listing included criteria for seldom-seen issues. When we interviewed Determinations Unit specialists, we received various responses on whether the Historical tab was used when processing cases.

<sup>171</sup> We reviewed all cases on the advocacy case tracking sheet as of May 2012 in our prior audit.

<sup>172</sup> “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 do not meet this criteria.”



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**Figure 49: Confirmed Progressive Political Cases  
Processed Based Upon the Criterion**

Organization Name	I.R.C. Subsection Code	Date Case Opened	Days to Close	Current Status	Closure Type	Technical Unit Involved <sup>173</sup>
*****1***** *****1*****	501(c)(4)	08/31/2005	281	Closed – Non-Merit	Failure to Establish	No
*****1***** *****1*****174	501(c)(4)	06/07/2006	62	Closed – Non-Merit	Approved	No
*****1***** *****1*****	501(c)(3)	06/10/2006	355	Closed – Non-Merit	Failure to Establish	No
*****1***** *****1*****	501(c)(4)	03/23/2005	1,213	Closed – Non-Merit	Approved	Yes

Source: TIGTA case reviews.

The Technical Unit was involved in processing one confirmed case. This case took 1,213 days to close.

We compared the time it took to process the four confirmed Progressive cases to the overall average time it took the IRS to process all non-merit cases that closed during the same fiscal year. Figure 50 shows the results of this comparison.

**Figure 50: Processing Time for the Confirmed Progressive Political Cases Compared to the Processing Time for All Non-Merit Cases<sup>175</sup>**

	Average Days Open		
	FY 2006	FY 2007	FY 2008
<b>Confirmed Progressive Cases (Non-Merit)</b>	172	355 <sup>176</sup>	1,213 <sup>177</sup>
<b>All Non-Merit Cases</b>	131	122	103

Source: TIGTA case reviews and Determinations Unit cycle time data.

As illustrated in Figure 50, it took longer than the average non-merit case to process the four confirmed Progressive political cases. For example, in FY 2008, it took more than

<sup>173</sup> Involvement could include a telephone conversation, an e-mail, providing guidance on a case, or processing a case.

<sup>174</sup> The applicant submitted an earlier application that was closed Failure to Establish.

<sup>175</sup> The IRS averages are for all non-merit cases closed by the IRS and not limited to just cases potentially related to the Progressive criterion.

<sup>176</sup> We used actual days because there was only one confirmed case for FY 2007.

<sup>177</sup> We used actual days because there was only one confirmed case for FY 2008.



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1,100 days longer to process the Progressive case than it did to process the average non-merit tax-exempt application.

**Results of unnecessary questions review for confirmed Progressive political cases**

We determined that all four organizations whose applications were processed based on the Progressive criterion received additional information request letters. We reviewed these additional request letters and determined that three organizations received requests for information that TIGTA had concluded were unnecessary for processing political advocacy cases in our prior review. None of these questions involved a request for donor information.

**Political cases not confirmed as related to the Progressive criterion**

We could not confirm whether 70 of the 74 political cases were identified using the Progressive criterion. We determined that 57 of the remaining 70 Progressive cases were processed during the time period the Progressive criterion may have been in use, including when the criterion was on the Historical tab of the BOLO listing, but we could not confirm that the cases were processed based upon the Progressive criterion. Of the 57 cases, 51 were approved, five were closed Failure to Establish, and one was withdrawn by the taxpayer. The 57 cases included 42 applications for I.R.C. § 501(c)(3) status, 12 applications for I.R.C. § 501(c)(4) status, one application for I.R.C. § 501(c)(5) status, one application for I.R.C. § 501(c)(6) status, and one application for I.R.C. § 501(c)(7) status.<sup>178</sup> Figure 51 includes information related to the 57 unconfirmed cases processed while the criterion was in use.

**Figure 51: Political Cases TIGTA Could Not Confirm  
Were Selected Based Upon the Progressive Criterion**

Organization Name	I.R.C. Subsection Code	Date Case Opened	Days to Close	Current Status	Closure Type	Technical Unit Involved <sup>179</sup>
*****1***** *****1*****	501(c)(3)	02/09/2004	646	Closed – Non-Merit	Withdrawn	Yes
*****1***** *****1*****	501(c)(3)	03/24/2005	264	Closed – Non-Merit	Failure to Establish	No
*****1***** *****1*****	501(c)(3)	03/29/2005	315	Closed – Non-Merit	Approved	No

<sup>178</sup> The remaining 13 unconfirmed cases were processed when the Progressive criterion was not in use.

<sup>179</sup> Involvement could include a telephone conversation, an e-mail, providing guidance on a case, or processing a case.



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Organization Name	I.R.C. Subsection Code	Date Case Opened	Days to Close	Current Status	Closure Type	Technical Unit Involved
*****1***** *****1*****	501(c)(3)	04/14/2005	216	Closed – Non-Merit	Approved	No
*****1***** *****1*****	501(c)(3)	06/29/2005	250	Closed – Non-Merit	Approved	No
*****1***** *****1*****	501(c)(3)	11/16/2005	65	Closed – Non-Merit	Approved	No
*****1***** *****1*****	501(c)(3)	11/28/2005	305	Closed – Non-Merit	Approved	No
*****1***** *****1*****	501(c)(3)	01/05/2006	47	Closed – Merit	Approved	No
*****1***** *****1*****	501(c)(4)	01/05/2006	48	Closed – Merit	Approved	No
*****1***** *****1*****180	501(c)(3)	03/09/2006	14	Closed – Non-Merit	Approved	No
*****1***** *****1*****	501(c)(7)	03/29/2006	296	Closed – Non-Merit	Failure to Establish	No
*****1***** *****1*****	501(c)(3)	05/25/2006	31	Closed – Merit	Approved	No
*****1***** *****1*****	501(c)(4)	06/16/2006	26	Closed – Merit	Approved	No
*****1***** *****1*****	501(c)(4)	09/08/2006	44	Closed – Merit	Approved	No
*****1***** *****1*****	501(c)(3)	10/20/2006	47	Closed – Merit	Approved	No
*****1***** *****1*****	501(c)(6)	11/15/2006	120	Closed – Non-Merit	Approved	No
*****1***** *****1*****	501(c)(3)	04/02/2007	38	Closed – Merit	Approved	No
*****1***** *****1***** *****1*****	501(c)(3)	08/31/2007	28	Closed – Merit	Approved	No
*****1*****	501(c)(3)	11/08/2007	39	Closed – Merit	Approved	No

<sup>180</sup> This organization submitted an earlier application in March 2005, but the application was closed Failure to Establish.



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Organization Name	I.R.C. Subsection Code	Date Case Opened	Days to Close	Current Status	Closure Type	Technical Unit Involved
*****1***** *****1*****	501(c)(3)	02/19/2008	86	Closed – Merit	Approved	No
*****1***** *****1*****	501(c)(3)	03/04/2008	220	Closed – Non-Merit	Approved	No
*****1***** *****1***** *****1*****	501(c)(3)	04/11/2008	221	Closed – Non-Merit	Approved	No
*****1***** *****1***** *****1*****	501(c)(3)	04/17/2008	330	Closed – Non-Merit	Approved	No
*****1***** *****1*****	501(c)(3)	05/05/2008	154	Closed – Non-Merit	Approved	No
*****1***** *****1***** *****1*****	501(c)(3)	05/06/2008	101	Closed – Merit	Approved	No
*****1***** *****1***** *****1*****	501(c)(3)	05/29/2008	133	Closed – Non-Merit	Failure to Establish	No
*****1***** *****1***** *****1*****	501(c)(3)	06/23/2008	220	Closed – Non-Merit	Approved	No
*****1***** *****1*****	501(c)(3)	10/07/2008	142	Closed – Non-Merit	Approved	No
*****1***** *****1***** *****1***** *****1*****	501(c)(3)	10/30/2008	216	Closed – Non-Merit	Approved	No
*****1***** *****1***** *****1*****	501(c)(3)	12/19/2008	74	Closed – Merit	Approved	No
*****1***** *****1*****	501(c)(3)	07/30/2009	179	Closed – Non-Merit	Approved	No
*****1***** *****1***** *****1*****	501(c)(3)	11/17/2009	153	Closed – Non-Merit	Approved	No
*****1*****	501(c)(3)	01/22/2010	153	Closed – Non-Merit	Approved	No



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Organization Name	I.R.C. Subsection Code	Date Case Opened	Days to Close	Current Status	Closure Type	Technical Unit Involved
*****1***** *****1*****	501(c)(3)	02/05/2010	126	Closed – Non-Merit	Approved	No
*****1***** *****1*****	501(c)(3)	02/20/2010	139	Closed – Non-Merit	Failure to Establish	No
*****1***** *****1*****	501(c)(3)	02/23/2010	503	Closed – Non-Merit	Approved	No
*****1***** *****1*****	501(c)(3)	05/03/2010	227	Closed – Non-Merit	Approved	No
*****1***** *****1*****	501(c)(3)	05/20/2010	253	Closed – Non-Merit	Approved	No
*****1***** *****1***** *****1*****	501(c)(4)	06/24/2010	546	Closed – Non-Merit	Approved	No
*****1***** *****1*****	501(c)(4)	08/03/2010	77	Closed – Non-Merit	Approved	No
*****1***** *****1***** 181	501(c)(3)	08/09/2010	71	Closed – Merit	Approved	No
*****1***** *****1*****	501(c)(3)	04/22/2011	272	Closed – Non-Merit	Approved	No
*****1***** *****1*****	501(c)(4)	07/01/2011	355	Closed – Non-Merit	Approved	No
*****1***** *****1***** *****1*****	501(c)(3)	07/07/2011	124	Closed – Non-Merit	Approved	No
*****1***** *****1*****	501(c)(3)	07/19/2011	73	Closed – Merit	Approved	No
*****1***** *****1***** *****1*****	501(c)(3)	08/16/2011	204	Closed – Non-Merit	Approved	No
*****1***** *****1***** *****1*****	501(c)(4)	10/19/2011	233	Closed – Non-Merit	Approved	No

<sup>181</sup> This organization submitted an earlier application in February 2010, but the application was closed Failure to Establish.



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Organization Name	I.R.C. Subsection Code	Date Case Opened	Days to Close	Current Status	Closure Type	Technical Unit Involved
*****1***** *****1***** *****1*****	501(c)(4)	10/26/2011	247	Closed – Non-Merit	Approved	No
*****1***** *****1***** *****1*****	501(c)(3)	11/14/2011	61	Closed – Merit	Approved	No
*****1***** *****1***** *****1*****	501(c)(4)	11/26/2011	229	Closed – Non-Merit	Approved	No
*****1***** *****1***** *****1*****	501(c)(3)	03/05/2012	270	Closed – Merit	Approved	No
*****1***** *****1***** *****1*****	501(c)(4)	03/23/2012	298	Closed – Merit	Approved	No
*****1***** *****1***** *****1*****	501(c)(3)	03/26/2012	658	Closed – Non-Merit	Failure to Establish	No
*****1***** *****1***** *****1*****	501(c)(4)	07/09/2012	625	Closed – Non-Merit	Approved	Yes
*****1***** *****1***** *****1*****	501(c)(4)	10/19/2012	518	Closed – Merit	Approved	No
*****1***** *****1***** *****1*****	501(c)(3)	10/19/2012	545	Closed – Merit	Approved	No
*****1***** *****1***** *****1*****	501(c)(5)	02/09/2013	165	Closed – Merit	Approved	No

Source: TIGTA case reviews.

The Technical Unit was involved in processing two unconfirmed cases. These cases took on average 636 days to process, with a range from 625 to 646 days to close.

We compared the time it took to process the 57 unconfirmed Progressive political cases to the overall average time it took the IRS to process all merit and non-merit cases that closed during the same fiscal year. Figure 52 shows the results of this comparison.



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**Figure 52: Processing Time for the Unconfirmed Progressive Political Cases Compared to the Processing Time for All Cases**<sup>182</sup>

	Average Days Open								
	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
<b>Unconfirmed Progressive Cases (Merit)</b>	38	39	75	74 <sup>183</sup>	N/A	72	61 <sup>184</sup>	244	532
<b>All Merit Cases</b>	52	56	59	81	71	68	106	185	269
<b>Unconfirmed Progressive Cases (Non-Merit)</b>	259	208	N/A	205	150	265	276	N/A	642
<b>All Non-Merit Cases</b>	131	122	103	119	154	185	238	340	454

Source: TIGTA case reviews and Determinations Unit cycle time data.

As illustrated in Figure 52, it took longer than the average non-merit case to process most of the unconfirmed non-merit Progressive political cases. For example, in all but FY 2010, it took longer on average to process a non-merit Progressive political case than it did to process, on average, all non-merit tax-exempt applications.

**Results of unnecessary questions review for unconfirmed Progressive political cases**

We determined that 35 of 57 organizations whose applications we could not confirm were processed based on the Progressive criterion received additional information request letters. We reviewed these additional request letters and determined that four organizations received requests for information that TIGTA had concluded were unnecessary for processing political advocacy cases in our prior review. One of these questions involved a request for donor information.

<sup>182</sup> The IRS averages are for all cases closed by the IRS and not limited to just cases potentially related to the Progressive criterion.

<sup>183</sup> We used actual days because there was only one unconfirmed case for FY 2009.

<sup>184</sup> We used actual days because there was only one unconfirmed case for FY 2012.



## Review of Selected Criteria Used to Identify Tax-Exempt Applications for Review

### **Rally Patriots**

The Rally Patriots criterion was discussed during a screening workshop in July 2010, indicating it was of interest and should be flagged for review. Other than one Determinations Unit specialist, IRS personnel had no recollection or documentation explaining why this criterion was of interest. Although the specialist stated that Rally Patriots was another name for Tea Party, we could not find any corroborating documentation to support this assertion.

### **IRS description of criterion**

The Rally Patriots criterion never appeared on a TAG or BOLO listing but instead was mentioned during screener training. IRS management stated that if an item never appeared on a TAG or BOLO listing and was only mentioned in one 2010 training slide, then it is not appropriate to consider it as a screening criteria that was ever used/approved and it should not be included in this report. Figure 53 describes the Rally Patriots criterion.

**Figure 53: Rally Patriots Criterion Description**

Date Issued	Source	IRS Criterion Description
July 28, 2010	Screening Workshop	- Workshop presenter indicated that names and/or titles (Rally Patriots) were of interest and should be flagged for review.

Source: IRS-provided training materials.

### **Analysis of documentation and results of interviews**

IRS management could not provide any documentation that explained the development or implementation of the Rally Patriots criterion or confirm whether it appeared elsewhere besides the notes from the July 2010 screening workshop. In the screening workshop notes, it was included in a list of criteria mentioned as being of interest that should be flagged for review and transferred to a designated group. However, it was not included in the presentation documents provided to the workshop participants. Those who developed the training materials had no recollection as to why this criterion was discussed at the workshop or who authorized it. However, a former EO function group manager stated that he believed the training information was developed by a particular Determinations Unit specialist. One of the specialists we interviewed believed that the criterion Rally Patriots was a “buzz word” for Tea Party. However, we did not identify any documentation that confirms this assertion.

### **Case review results**

The EO function could not provide a tracking sheet related to the Rally Patriots criterion. As a result, we searched the Determinations Unit’s inventory system for applications from organizations with the criterion Rally Patriots in their names. We did not identify any cases to review on the Determinations Unit’s inventory system or in other IRS e-mails and documents.



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\*\*\*\*\*1\*\*\*\*\*

We obtained little information about the \*\*\*\*\*1\*\*\*\*\* criterion. Specifically, the description of the issue was not detailed enough to provide meaningful information about its development and implementation, and IRS personnel had no recollection of or other documentation related to the issue.

**IRS description of criterion**

The \*\*\*\*\*1\*\*\*\*\* is trustee to numerous small testamentary trusts.<sup>185</sup> The Foundation filed a trust amendment with the court in order for trusts to qualify for an I.R.C. § 509(a)(3) Type II foundation status.<sup>186</sup> Figure 54 provides details of the criterion.

**Figure 54: \*\*\*\*\*1\*\*\*\*\* Criterion Description**

Date Issued	Source	IRS Criterion Description
August 10, 2010 – December 13, 2010	BOLO (Coordinated Processing tab)	- *****1*****: The *****1***** *****1***** is trustee to numerous small testamentary trusts. The Foundation filed an trust amendment with the court in order for the trusts to qualify for a 509(a)(3) type II foundation status.

Source: IRS-provided BOLO listings.

**Analysis of documentation and results of interviews**

The \*\*\*\*\*1\*\*\*\*\* criterion first appeared on the BOLO listing in August 2010 under the Coordinated Processing<sup>187</sup> tab. This criterion last appeared on the BOLO listing in December 12, 2010. Many BOLO listings were issued from August 10, 2010, through December 13, 2010, all with the same description of the \*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\* criterion and always listed on the Coordinated Processing tab.

<sup>185</sup> Per the Internal Revenue Manual, a testamentary trust is created by a will, which begins its existence upon the death of the person making the will, when property is transferred from the decedent’s estate. Testamentary trusts are generally simple or complex trusts. A testamentary trust is irrevocable by definition, as it comes into being at the death of the grantor. It is also known as a “trust under the will.”

<sup>186</sup> Per the IRS’s webpage, a Type II supporting organization must be supervised or controlled in connection with its supported organization(s), typically by having a majority of the directors or trustees of the supported organization(s) serve as a majority of the trustees or directors of the supporting organization. The relationship between the supported organization(s) and the supporting organization is sometimes described as similar to a brother-sister relationship.

<sup>187</sup> According to IRS officials, coordinated processing involves processing multiple cases with similar issues in a consistent manner using existing precedent or guidance.



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The IRS could not provide any documentation that explained the development or implementation of the \*\*\*\*\*1\*\*\*\*\* criterion. Per the BOLO listing, there were 12 cases related to this criterion, and they were all assigned to one Determinations Unit specialist. However, when we spoke with this Determinations Unit specialist, she did not recall them and did not have any documentation related to them. In addition, current EO function management could not recall who authorized the inclusion of this criterion on the BOLO listing.

**Case review results**

The IRS could not provide a tracking sheet related to the \*\*\*\*\*1\*\*\*\*\* criterion. As a result, we searched the Determinations Unit’s inventory system for applications from organizations with the criterion “\*\*\*\*\*1\*\*\*\*\*” in their names. We did not identify any cases to review on the Determinations Unit’s inventory system or in other IRS-provided e-mails and documents.



## Review of Selected Criteria Used to Identify Tax-Exempt Applications for Review

### We the People

Based on our review of IRS documentation and interviews with employees, the We the People criterion was implemented as a means to identify applications with potential political activities, including campaign intervention. Two Determinations Unit specialists stated that We the People was a “buzz word” for potential political activities. One of these specialists also considered the criterion similar to the Tea Party criterion. Another Determinations Unit specialist stated that he considered the two criteria to be similar and processed both We the People and Tea Party cases the same way.

### IRS description of criterion

The criterion We the People never appeared on a TAG or BOLO listing, but instead was mentioned in a screening workshop. IRS management stated that if an item never appeared on a TAG or BOLO listing and was only mentioned in one 2010 training slide, then it is not appropriate to consider it as a screening criteria that was ever used/approved and it should not be included in this report. Figure 55 provides details for the We the People criterion.

**Figure 55: We the People Criterion Description**

Date Issued	Source	IRS Criterion Description
July 28, 2010	Screening Workshop	- Screening Workshop Power Point presentation listed We the People under Current Activities with no other information. Workshop presenter indicated that certain names and/or titles (We the People) were of interest and should be flagged for review.

Source: IRS-provided training materials.

### Analysis of documentation and results of interviews

IRS management could not provide any documentation that explained the development or implementation of the We the People criterion or confirm whether it appeared elsewhere besides the July 2010 screening workshop materials. However, after the initial Tea Party case was identified in February 2010, the Determinations Unit began searching for requests for tax exemption in March and April 2010 involving the Tea Party, Patriots, 9/12, and I.R.C. § 501(c)(4) applications involving political-sounding names, *e.g.*, We the People. One organization was found when a Determinations Unit employee performed this search using the term “We the People.”

In July 2010, a screening workshop was held, and We the People was listed as a selection criterion for scrutinizing applicants involved with political activity. Four individuals whom IRS management contacted, including three former screeners, had no recollection as to why this criterion was included in the workshop presentation or who authorized its inclusion. Two of the former screeners indicated that the criterion was used during the training as a “buzz word” for



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potential political activity cases. Also, we identified an additional employee during our interviews who indicated that the We the People criterion was similar to the Tea Party criterion.

**Case review results**

The IRS could not provide a tracking sheet related to the We the People criterion. As a result, we searched the Determinations Unit’s inventory system for applications from organizations with the criterion We the People in their names. We identified 27 cases and reviewed the associated case files. Subsequently, we determined that 16 of the 27 were political cases.<sup>188</sup> We did not identify any additional political cases from other IRS-provided documentation, *e.g.*, case files and e-mails. Almost one-half of the identified political cases did not include indications of political campaign intervention but instead included lobbying or general advocacy activities, such as attempting to influence specific legislation or influencing public opinion on an issue.

**Political cases identified by the IRS using the We the People criterion**

We reviewed the case files as well as IRS e-mails and documents to determine if we could confirm whether the IRS identified the 16 political cases using the We the People criterion. Based upon this review, we confirmed that the IRS identified eight cases using the We the People criterion in the screening workshop training materials. Figure 56 includes information about those eight cases.

**Figure 56: Political Cases TIGTA Confirmed Were  
Processed Based Upon the We the People Criterion**

Organization Name	I.R.C. Subsection Code	Date Case Opened	Days to Close	Current Status	Closure Type	Technical Unit Involved <sup>189</sup>
****1***** *****1*****	501(c)(3)	02/16/2010	357	Closed – Non-Merit	Failure to Establish	Yes
****1***** *****1*****	501(c)(4)	06/15/2011	796	Closed – Non-Merit	Approved	Yes
****1***** *****1*****	501(c)(4)	07/27/2011	698	Closed – Non-Merit	Approved	No
****1***** *****1*****	501(c)(4)	10/03/2011	897	Closed – Non-Merit	Approved	Yes

<sup>188</sup> One case identified from the We the People criterion was actually processed using the Paying National Debt criterion. We did not include this case in our We the People analysis. A discussion of the Paying National Debt criterion can be found earlier in this report.

<sup>189</sup> Involvement could include a telephone conversation, an e-mail, providing guidance on a case, or processing a case.



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Organization Name	I.R.C. Subsection Code	Date Case Opened	Days to Close	Current Status	Closure Type	Technical Unit Involved
*****1***** *****1*****	501(c)(3)	04/26/2012	796	Closed – Non-Merit	Approved	Yes
*****1***** *****1*****	501(c)(3)	05/08/2012	429	Closed – Non-Merit	Approved	Yes
*****1***** *****1*****190	501(c)(4)	06/14/2012	N/A	Open – Non-Merit	In Litigation	Yes
*****1***** *****1*****	501(c)(4)	09/14/2012	213	Closed – Non-Merit	Approved	Yes

Source: TIGTA case reviews.

The Technical Unit was involved in processing seven of the eight confirmed cases. The six closed cases (one of the seven cases was open at the conclusion of our review) with Technical Unit involvement took on average 581 days to process, with a range from 213 to 897 days to close.

We compared the time it took to process the seven closed We the People cases to the overall average time it took the IRS to process all non-merit cases that closed during the same fiscal year. Figure 57 shows the results of this comparison.

**Figure 57: Processing Time for the Confirmed We the People Political Cases Compared to the Processing Time for All Non-Merit Cases<sup>191</sup>**

	Average Days Open			
	FY 2011	FY 2012	FY 2013	FY 2014
<b>Confirmed “We the People” Cases (Non-Merit Closed)</b>	357 <sup>192</sup>	N/A	534	847
<b>All Non-Merit Cases</b>	185	238	340	454

Source: TIGTA case reviews and Determinations Unit cycle time data.

<sup>190</sup> This case is currently open and is in litigation. Therefore, we did not include it in our processing time comparison.

<sup>191</sup> The IRS averages are for all non-merit cases closed by the IRS and not limited to just cases potentially related to the We the People criterion.

<sup>192</sup> We used actual days because there was only one confirmed case for FY 2011.



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As illustrated in Figure 57, it took longer than average to process the confirmed We the People political cases. For example, in FY 2014, it took almost twice as long to process a non-merit We the People political case than it did to process, on average, all non-merit tax-exempt applications.

**Results of unnecessary questions review for confirmed We the People political cases**

We determined seven out of eight organizations whose applications we confirmed were processed based on the We the People criterion received letters requesting additional information to complete processing of their application. We reviewed these additional request letters and determined that no organizations received requests for information that TIGTA had concluded were unnecessary for processing political advocacy cases in our prior review.

**Political cases not confirmed as related to the We the People criterion**

We could not confirm whether eight of the 16 political cases were identified using the We the People criterion. We determined that one of the remaining eight We the People cases was processed during the time period the We the People criterion was in use, but we could not confirm that the case was identified based upon the We the People criterion.<sup>193</sup> Figure 58 includes information related to the one unconfirmed case processed while the criterion was in use.

***Figure 58: Political Case TIGTA Could Not Confirm  
Was Selected Based Upon the We the People Criterion***

Organization Name	I.R.C. Subsection Code	Date Case Opened	Days to Close	Current Status	Closure Type	Technical Unit Involved <sup>194</sup>
*****1***** *****1*****	501(c)(3)	03/12/2013	556	Closed – Merit	Approved	No

Source: TIGTA case reviews.

The Technical Unit was not involved in processing the unconfirmed case. We compared the time it took to process the unconfirmed We the People case to the overall average time it took the IRS to process all merit cases that closed during the same fiscal year. Figure 59 shows the results of this comparison.

<sup>193</sup> The remaining seven unconfirmed cases were processed when the We the People criterion was not in use.

<sup>194</sup> Involvement could include a telephone conversation, an e-mail, providing guidance on a case, or processing a case.



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**Figure 59: Processing Time for the Unconfirmed We the People Political Case Compared to the Processing Time for All Merit Cases**<sup>195</sup>

	Average Days Open
	FY 2014
<b>Unconfirmed We the People Case (Merit Closed)</b> <sup>196</sup>	556
<b>All Merit Closed Cases</b>	269

Source: TIGTA case reviews and Determinations Unit cycle time data.

As illustrated in Figure 59, it took more than two times longer than average to process the unconfirmed We the People political case.

**Results of unnecessary questions review for unconfirmed We the People political cases**

We determined that the one organization whose application we could not confirm was selected based on the We the People criterion received a letter requesting additional information to complete the processing of its application. We reviewed the additional request letter and determined that the organization received no requests for information that TIGTA had concluded were unnecessary for processing political advocacy cases in our prior review.

<sup>195</sup> The IRS average is for all merit cases closed by the IRS and not limited to just cases potentially related to the We the People criterion.

<sup>196</sup> We used actual days because there was only one unconfirmed case for FY 2014.



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## **Appendix I**

### *Detailed Objective, Scope, and Methodology*

The overall objective of this review was to provide a historical account of the IRS's development and use of 17 select criteria from 259 criteria used to identify tax-exempt applications for further review. To accomplish this objective, we:

- I. Evaluated selected criteria used by the IRS to identify tax-exempt applications for review.
  - A. Identified 17 criteria for inclusion in this review.
    1. Reviewed BOLO and TAG listings as well as screener training documents dated July 28, 2010, and developed a consolidated list of 259 criteria potentially used by the IRS to select applications for further review. We selected five criteria from this consolidated list based on concerns raised during a congressional hearing and criteria from the screener training that the IRS did not provide during our prior review.
    2. Requested that the IRS identify any criteria to include in this review that it believed may involve political activities. We selected one criterion based on input from the IRS.
    3. Obtained input from various congressional committees on the criteria selected and considered any suggested changes or the inclusion of additional specific organizations identified by the various congressional committees. We selected 11 criteria based on input from majority and minority staff of congressional committees.<sup>1</sup>
  - B. Interviewed 62 current EO function personnel and three former employees to determine why the 17 selected criteria were highlighted in the screener training or included on the BOLO or TAG listings.<sup>2</sup>

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<sup>1</sup> We received suggestions from several of the following congressional committees after seeking input from their majority and minority staffs: the House Committee on Ways and Means, the Senate Committee on Finance, the Senate Permanent Subcommittee on Investigations, the House Committee on Oversight and Government Reform, the House and Senate Committees on Appropriations, and the Joint Committee on Taxation.

<sup>2</sup> We contacted 21 former employees for interviews; however, only three agreed to speak with us. TIGTA does not have the authority to compel former employees no longer working in the Federal Government to cooperate with us.



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- C. Requested documentation, including e-mails, related to the 17 selected criteria.
  - 1. Reviewed IRS-provided e-mails and documents<sup>3</sup> related to the selected criteria and identified any additional organizations potentially involved in political activities (*e.g.*, lobbying or advocacy) or significant potential political campaign intervention.
  - 2. Requested the Determinations Unit case files related to cases identified from the IRS e-mails and documents for each selected criterion if we did not already have them from prior audits.
  - 3. Reviewed and identified cases that included indications of political activities or significant potential political campaign intervention.
- II. Determined whether applications for tax-exempt status included political activities (*e.g.*, lobbying or advocacy) or significant potential political campaign intervention<sup>4</sup> and why they were selected for review.
  - A. Identified applications for tax-exempt status selected for review using criteria from Objective I and requested documentation from the IRS identifying all cases processed based upon each of the selected criteria.
  - B. Obtained and reviewed all case files identified by the Determinations Unit in Step II.A using the selected criteria.
    - 1. Obtained case files associated with documentation from Step II.A and determined whether each case included political activities (*e.g.*, lobbying or advocacy) or indications of significant potential political campaign intervention.
    - 2. For each case that included political activities or indications of significant potential political campaign intervention, determined whether the Technical Unit was involved in the determination decision.
  - C. Because adequate documentation was not available from Step II.A, obtained Determinations Unit inventory system data of cases closed between August 13, 2004,<sup>5</sup> and June 30, 2013,<sup>6</sup> or open as of June 30, 2013. We validated the

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<sup>3</sup> See Appendix X for the IRS's search methodology for documents and e-mails provided for this review.

<sup>4</sup> We used the same methodology as in the previous review for identifying cases with indications of significant potential political campaign intervention. If cases contained political activities but did not meet the criteria used in the previous review for significant potential political campaign intervention, we categorized them as "political activities" cases. See Appendix V for more details.

<sup>5</sup> We selected this date because it was the first date from a TAG listing that the IRS identified as having an organization with a "political reference" in its name.

<sup>6</sup> We selected this date because the IRS stopped using BOLO listings in June 2013.



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- data to provide reasonable assurance that the data met our parameters and found no issues that affected our review.
1. Searched the Determinations Unit inventory system and identified organizations whose names included any of the 17 selected criteria or whose names exactly matched the names of organizations provided by various congressional committees.
  2. Requested all Determinations Unit case files related to cases identified from the Determinations Unit inventory system search.
  3. Reviewed each case to determine if the case files included political activities (*e.g.*, lobbying or advocacy) or indications of significant potential political campaign intervention.
  4. For each case file that included political activities (*e.g.*, lobbying or advocacy) or indications of significant potential political campaign intervention, determined whether the Technical Unit was involved in the determination decision.
  5. From each case file that included political activities (*e.g.*, lobbying or advocacy) or indications of significant potential political campaign intervention, identified additional organizations mentioned in the case file for possible review.
- III. For the selected criteria, analyzed case data for those applications for tax-exempt status identified with political activities (*e.g.*, lobbying or advocacy) or indications of significant potential political campaign intervention.
- A. Requested cycle time data from the EO function for processing applications for tax-exempt status during FYs 2004 through 2015. (Note: We obtained cycle time data for FYs 2011 and 2012 during our prior review.)
  - B. For each of the identified criteria in Objective I, compared the time it took to process the identified political cases to the time it took to process all cases during the same time period.
- IV. Reviewed additional information request letters issued for the applications for tax-exempt status that included political activities (*e.g.*, lobbying or advocacy) or indications of significant potential political campaign intervention to determine if any requests included questions that the EO function found troubling and that TIGTA had concluded were unnecessary for processing political advocacy cases in our prior review.<sup>7</sup>

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<sup>7</sup> In our prior review, the EO function reviewed additional information request letters issued for political advocacy cases and developed a list of seven questions it deemed troubling.



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### **Internal controls methodology**

We conducted this performance audit in accordance with generally accepted government auditing standards. However, we did not assess internal controls or make recommendations because the procedures in place from Calendar Years 2004 through 2013 (as of June 2013), the time frame when the 17 criteria were potentially used by the IRS, are no longer in effect. Since the issuance of our May 2013 report, the IRS completely revamped the process for reviewing tax-exempt applications, including the elimination of BOLO listings in June 2013 and ending the screening process in October 2014 by allowing Determinations Unit employees to work any cases that are appropriate for their grade level from receipt to closure. Cases are now assigned to any specialist, who will work them from beginning through closure unless they require upgrade and reassignment based on case assignment guidelines or due to technical issues.

In addition, we encountered several difficulties in identifying relevant tax-exempt applications for our review. For example, the EO function only maintained a tracking sheet of cases that were selected for review of one (Healthcare Legislation) of the 17 criteria reviewed. The EO function could not provide us with any tracking sheets showing cases identified for further review using the other 16 selected criteria.<sup>8</sup> As a result, we found that the IRS was unable to identify which specific cases, if any, were selected for further review for these 16 criteria. Consequently, we searched the IRS's case inventory system for matches with the criteria (e.g., Progressive or Rally Patriots) in the names of the organizations to identify cases that were potentially selected for further review by the IRS based on these criteria. This does not mean the cases we identified were selected for review based on the criteria or that we identified all related cases. Some applicable cases may not have the criteria in the names of the organizations. Furthermore, due to the amount of time that has passed since some of the 17 criteria were in place, documentation was not always available, personal memories of events had faded, and a significant number of personnel had left the Federal Government and were unavailable for interview. This report presents a historical account of the IRS's development and use of 17 select criteria using the information that was available to the audit team.

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<sup>8</sup> EO function management stated that tracking sheets could have been used when there was a large volume of cases with similar issues that required coordination between the Technical and Determinations Units.



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**Appendix II**

*Major Contributors to This Report*

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Michael A. McGovern, Auditor



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**Appendix III**

*Report Distribution List*

Commissioner  
Office of the Commissioner – Attn: Chief of Staff  
Deputy Commissioner for Services and Enforcement  
Commissioner, Tax Exempt and Government Entities Division  
Director, Exempt Organizations, Tax Exempt and Government Entities Division  
Director, Office of Audit Coordination



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**Appendix IV**

*IRS Analysis of the Political Leanings  
of Advocacy Groups<sup>1</sup>*

**From:** [Kindell, Judith E](#)  
**To:** [Lemer, Lois G](#)  
**Cc:** [Light, Sharon P](#)  
**Subject:** Bucketed cases  
**Date:** Wednesday, July 18, 2012 11:53:00 AM

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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.

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<sup>1</sup> E-mail showing that the IRS had completed an assessment in July 2012 of the political leanings of the political cases (bucketed cases) that were the subject of our May 2013 report.



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## **Appendix V**

### *IRS Descriptions of Political Activities and Political Campaign Intervention*

During our review of cases, we used the Draft Advocacy Organizations Guide Sheet to determine if the organizations' activities involved political activities or indications of significant potential political campaign intervention.<sup>1</sup> We also reviewed a 2014 training document to determine what the IRS considers to be political activities and political campaign intervention.<sup>2</sup> The following outlines how the IRS defines each type of activity.

#### **Political campaign intervention**

Per the Draft Advocacy Organizations Guide Sheet, political campaign intervention occurs when an organization participates or intervenes in (including the publishing or distributing of statements) any political campaign on behalf of (or in opposition to) any candidate for public office. This includes attempts to influence political campaigns through both direct and indirect support of, or opposition to, a candidate. The Guide Sheet includes a chart of indicators of political campaign intervention.

The Calendar Year 2014 training document includes more detailed guidance on what activities the IRS considers to be political campaign intervention.

- Any and all activities that favor or oppose one or more candidates for public office.
- Contributions to political campaign funds or public statements of position (verbal or written) made by or on behalf of an organization in favor of or in opposition to any candidate for public office.
- Distributing statements prepared by others that favor or oppose any candidate for public office.
- Allowing a candidate to use an organization's assets or facilities if other candidates are not given an equivalent opportunity.
- Promoting voter registration, encouraging voter participation, and providing voter education, if the activities favor or oppose any candidate for public office.

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<sup>1</sup> We used this same draft guidance during our prior review of political advocacy cases.

<sup>2</sup> *Political Campaign Intervention and Other Advocacy, Exempt Organizations, Student Guide* (1-2014).



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### **Political activities**

Per the Draft Advocacy Organizations Guide Sheet, an organization engages in lobbying or legislative activities when it:

- Attempts to influence specific legislation by directly contacting members of a legislative body (Federal, State, or local); or
- Encourages the public to contact those members regarding that legislation or encourages the public to take a position on a referendum.

Lobbying is distinguished from political campaign intervention because lobbying does not involve attempts to influence the election of candidates for public office.

An organization engages in general advocacy when it attempts to:

- Influence public opinion on issues germane to the organization's tax-exempt purposes;
- Influence nonlegislative governing bodies, (*e.g.*, the Executive Branch or regulatory agencies); or
- Encourage voter participation through "get out the vote" drives, voter guides, and candidate debates in a nonpartisan, neutral manner. General advocacy basically includes all types of advocacy other than political campaign intervention and lobbying.

The Calendar Year 2014 training document defines legislative activities (*e.g.*, lobbying) as:

- Contacting, or urging the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation.
- Advocating the adoption or rejection of legislation.
- Attempting to influence the Senate's confirmation of a Federal judicial nominee.

The Calendar Year 2014 training document also discusses the following general advocacy activities:

- Conducting nonpartisan analysis, study, and research and publishing the results for the benefit of the general public.
- Conducting educational activities or otherwise promoting social welfare or the organization's exempt purposes.
- Voter education and voter registration.
- Individual activity by organization leaders.<sup>3</sup>

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<sup>3</sup> Activities include an organization leader speaking as an individual about public policy issues or support of legislation.



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- Candidate appearances.
- Advocacy communications.
- Websites.<sup>4</sup>
- Business activity.<sup>5</sup>

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<sup>4</sup> Websites can contain the same nonpartisan information an organization includes in other forms of communication, such as voter education.

<sup>5</sup> An organization can conduct business activity on a nonpartisan basis, such as renting facilities to all candidates in an election.



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**Appendix VI**

*Application Case Files That the Exempt  
Organizations Function Could Not Provide*

Below is a list of the eight tax-exempt application case files that the IRS could not provide. Record retention guidelines at the time these cases were processed dictated that approved case files should be retained indefinitely, denied case files should be retained for three years after the end of the calendar year in which the denial of tax-exempt status is final, and Failure to Establish case files should be retained for three years after the end of the calendar year in which the Failure to Establish exemption occurred.

***Application Case Files That the Exempt  
Organizations Function Could Not Provide***

Organization Name	Related Criterion	Current Status Per the IRS	Date Application Was Filed
*****1***** *****1*****	ACORN Successors	Returned to Taxpayer Incomplete	02/25/2012
*****1***** *****1*****	ACORN Successors	Returned to Taxpayer Incomplete	02/28/2013
*****1***** *****1*****	Healthcare Legislation	Approved – Non-Merit	10/12/2012
*****1***** *****1*****	Progressive	Failure to Establish	08/16/2005
*****1***** *****1*****	Progressive	Approved – Non-Merit	12/12/2006
*****1***** *****1*****	Progressive	Approved – Merit	11/17/2007
*****1***** *****1*****	Progressive	Approved – Non-Merit	04/07/2010
*****1***** *****1*****	We the People	Approved – Non-Merit	12/31/2008

Source: TIGTA case requests.



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**Appendix VII**

*Case Processing and Case Closure Terminology*

Below is a glossary of terms used throughout this report when discussing case processing and case closures.

***Terminology Used in Case Processing and Case Closures***

<b>Term</b>	<b>Definition</b>
Approved	Request for tax-exempt status granted.
Denied	Request for tax-exempt status not granted.
Failure to Establish	The IRS closed the case because requests for additional information went unanswered by the organization applying for tax-exempt status.
Merit Closed	The IRS approved the case without contacting the applicant or after obtaining minor additional information from the applicant.
Non-Merit Closed	The IRS closed the case after obtaining additional information from the organization applying for tax-exempt status. Non-merit cases can be closed several ways, including approved, denied, withdrawn, <i>etc.</i>
Withdrawn	The IRS closed the case after the applicant withdrew its request for tax-exempt status.

*Source: Internal Revenue Manual.*



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**Appendix VIII**

*Seven Questions From a Prior Review That  
TIGTA Had Concluded Were Unnecessary  
for Processing Political Advocacy Cases*

During our prior review, we identified seven questions that the EO function found troubling and TIGTA concluded were unnecessary for political advocacy cases during a review of additional information request letters. We used this information to determine if questions that corresponded to this list were asked of organizations on the advocacy case tracking sheet.

In this review, we used these same seven questions to determine if additional information request letters included questions that TIGTA had concluded were unnecessary for processing political advocacy cases in our prior review.

***Questions From a Prior Review That TIGTA Had Concluded  
Were Unnecessary for Processing Political Advocacy Cases***

<b>Number</b>	<b>Question</b>
1	Requests the names of donors.
2	Requests a list of all issues that are important to the organization and asks that the organization indicate its position regarding such issues.
3	Requests: 1) the roles and activities of the audience and participants other than members in the activity and 2) the type of conversations and discussions members and participants had during the activity.
4	Asks whether the officer, director, <i>etc.</i> , has run or will run for public office.
5	Requests the political affiliation of the officer, director, speakers, candidates supported, <i>etc.</i> , or otherwise refers to the relationship with identified political party–related organizations.
6	Requests information regarding employment, other than for the organization, including hours worked.
7	Requests information regarding activities of another organization – not just the relationship of the other organization to the applicant.

*Source: EO function review of additional information request letters.*



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**Appendix IX**

*Organizations That Received Questions That TIGTA  
Had Concluded in a Prior Review Were Unnecessary  
for Processing Political Advocacy Cases*

Below is a list of the 23 organizations that received questions that the EO function found troubling and that TIGTA had concluded were unnecessary for political advocacy cases in our prior review.

***Organizations That Received Questions That TIGTA Had Concluded in a  
Prior Review Were Unnecessary for Processing Political Advocacy Cases***

Organization Name <sup>1</sup>	Section of This Report Where Additional Information Can Be Located	Date Question(s) Asked
*****1***** *****1*****	ACORN Successors	August 2010
*****1***** *****1*****	ACORN Successors	November 2010
*****1***** *****1*****	ACORN Successors	January 2011 September 2011
*****1***** *****1*****	ACORN Successors	July 2011
*****1***** *****1*****	ACORN Successors	February 2012
*****1***** *****1*****	ACORN Successors	August 2012
*****1***** *****1*****	Emerge	July 2008
*****1***** *****1*****	Emerge	October 2012
*****1***** *****1*****	Healthcare Legislation	September 2013

<sup>1</sup> We could not confirm whether some of these cases were selected based upon the criteria. See the relevant sections of the report for more information.



*Review of Selected Criteria Used to Identify  
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Organization Name	Section of This Report Where Additional Information Can Be Located	Date Question(s) Asked
*****1***** *****1*****	Medical Marijuana	June 2011
*****1***** *****1*****	Medical Marijuana	June 2011
*****1***** *****1*****	Medical Marijuana	June 2011
*****1***** *****1*****	Medical Marijuana	November 2012
*****1***** *****1*****	Occupied Territory Advocacy	May 2010
*****1***** *****1*****	Occupy	March 2012
***1***2***	Pink Slip Program	July 2010
*****1***** *****1*****	Progressive	January 2006
*****1***** *****1*****	Progressive	February 2006
*****1***** *****1*****	Progressive	March 2007
*****1***** *****1*****	Progressive	April 2007
*****1***** *****1*****	Progressive	November 2008
*****1***** *****1*****	Progressive	May 2010
*****1***** *****1*****	Progressive	January 2011

Source: TIGTA case reviews.

\*This organization received a request for donor information.



*Review of Selected Criteria Used to Identify  
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**Appendix X**

*Search Methodology for Documents  
and E-Mails Provided for This Review*

We initially provided the IRS a list of the 17 criteria and requested all e-mails and documents containing them.<sup>1</sup> The IRS responded to this request by conducting searches against electronically stored information (e-mails and documents) already collected from 88 current and former IRS employees and provided to Congress in response to requests made after our prior review. These searches were limited to documents the IRS categorized as “relevant to (c)(4) determinations.”<sup>2</sup> The information searched generally covered the time period of January 1, 2009, through May 10, 2013.<sup>3</sup> The IRS also provided scanned images of hard-copy documents it had obtained and provided to Congress. Furthermore, we obtained additional e-mails which had been provided to Congress for the former Director, EO, from the TIGTA Office of Investigations after it had concluded its investigation into lost IRS e-mails. The additional e-mails covered the time period February 1, 2010, through May 7, 2013.

Lastly, we gave the IRS a list of organization names related to the 17 criteria and asked the IRS to search for them in the e-mails and documents it provided to Congress. The additional organizations came from: 1) descriptions on the BOLO listings and 2) a congressional report and e-mails provided to us by congressional staff.

Below is a summary of the documentation and e-mails we obtained from the IRS and the TIGTA Office of Investigations.

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<sup>1</sup> The IRS stated that it altered several of our search criteria to ensure that we received all possible matches.

<sup>2</sup> We could not verify that the IRS provided all documents and e-mails relevant to our request because there was no independent source to validate the completeness of the documentation obtained.

<sup>3</sup> Some documents were provided that did not fit this general time period because they were older documents that were attached to e-mails that were sent during the January 1, 2009, to May 10, 2013, time period. In addition, some documents and e-mails beyond May 10, 2013, were provided for the former Director, EO, and former Director, Rulings and Agreements Office. As a result, some of the documents and e-mails we received were dated as far back as February 11, 2004, and as late as July 4, 2013.



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***Sources of Document and E-Mail Information for This Review***

<b>Source</b>	<b>Number of Electronic Files Obtained</b>
IRS search results for electronically stored information containing the 17 criteria.	16,655
Hard-copy documents the IRS obtained from employees, converted to electronic files, and provided to Congress.	68 <sup>4</sup>
Additional e-mails for the former Director, EO, obtained from the TIGTA Office of Investigations.	1,626
IRS search results for electronically stored information containing organization names related to the 17 criteria.	308
<b>Total</b>	<b>18,657</b>

*Source: TIGTA analysis of documentation and e-mails provided by the IRS and the TIGTA Office of Investigations.*

The IRS's searches were limited to a specific time period and to certain employees based upon congressional requests, so we may not have received all available documentation related to our criteria.

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<sup>4</sup> This includes more than 12,000 pages that the IRS scanned into 68 files containing one or more documents.





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**Appendix XII**

*Management's Response to the Draft Report*



COMMISSIONER  
TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

August 04, 2017

MEMORANDUM FOR MICHAEL E. McKENNEY  
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Sunita B. Lough *Sunita Lough*  
Commissioner, Tax-Exempt/Government Entities Division

SUBJECT: Draft Audit Report – Congressional Request – Review of  
Additional Criteria Used to Identify Tax-Exempt Applications for  
Review (Audit # 2013-10-034)

Thank you for the opportunity to review the draft audit report entitled: "Congressional Request – Review of Additional Criteria Used to Identify Tax-Exempt Applications for Review (Audit # 2013-10-034)." The draft report presents a historical account of 17 criteria from 259 criteria that were potentially used to identify tax-exempt applications for further review from 2004 through June 2013.<sup>1</sup> As noted in this draft, most of these criteria involved issues besides political campaign intervention (PCI), such as potential fraud, abuse, and links to terrorism.

Since the time period covered by the report, the IRS has made significant changes in the way we handle the review process for tax-exempt applications. There have been dramatic improvements in this area since 2013. The IRS remains committed to processing tax-exempt applications in a timely manner using a fair process guided by the tax law and nothing else.

For example, the IRS discontinued using all 259 criteria by June 2013. As such, TIGTA did not make any recommendations for changes in this audit and does note that, since the timeframes covered in the report, we have completely revamped the review process to improve the handling of all applications for tax-exempt status. As confirmed by TIGTA, we addressed all nine (9) recommendations from the previous 2013 audit. Further, we also implemented all of the recommendations in the Senate Finance Committee's report that are within our tax administration jurisdiction (*i.e.*, other than tax policy or legislative matters), and we hope that these efforts contribute to bringing this matter to a close.

In 2014, we conducted a thorough review of our workflow for processing tax-exempt applications, looking to improve timeliness while maintaining quality. As a result of

<sup>1</sup> On May 17, 2012, we provided TIGTA with lists including criteria discussed in this report.



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this review, we modified several procedures for all applications, including those with potential PCI. For instance, we adopted streamlined case processing and introduced Form 1023-EZ to simplify the process for smaller applicants. These actions complemented measures already adopted in response to the 2013 TIGTA report mentioned above, including an optional expedited process for 501(c)(4) organizations with potential PCI. These process changes have improved timeliness and reduced pending inventory. From April 2014 to December 2016, the average age of applications submitted on Forms 1023 (not including Forms 1023-EZ) dropped from 256 days to 79 days, while the average age of applications submitted on Forms 1024 went from 256 days to 93 days. As of December 2016, the average age of open Form 1023-EZ applications was 31 days. For those cases that were 270 days or older, we dramatically reduced our inventory from 32,713 applications as of April 2014 to 205 applications as of December 2016.

Additionally, we implemented steps to ensure an impartial review of applicants for tax-exempt status. In general, when reviewing a Form 1023 (or 1024), we no longer request donor information. Following the release of the 2013 TIGTA report, we provided guidance to our employees to improve the overall processing of applications for tax-exempt status, particularly when the information submitted on the Form 1023 (or Form 1024) is insufficient to substantiate a conclusion regarding exempt status.

We appreciate the opportunity to review and comment on the draft report.

If you have any questions, please contact me, or a member of your staff may contact Margaret Von Lienen, Director, Exempt Organizations, at (214) 413-5500.