

**Senator Cruz Questions for the Record for**  
**John Koskinen, IRS Commissioner**  
**Subcommittee on Oversight, Agency Action, Federal Rights and Federal Courts**  
**Revisiting IRS Targeting: Progress of Agency Reforms and Congressional Options**  
**Wednesday, July 29, 2015**

**I. IRS Targeting Actors, Logistics, and Accountability**

During your testimony, you indicated that you, in your capacity as Commissioner of the Internal Revenue Service (IRS), had had occasion to visit the White House “three or four times,” and by your recollection, solely for the purpose of coordinating Patient Protection and Affordable Care Act implementation with the Secretaries of the Treasury and Health and Human Services. You expressed surprise, however, at the fact that former IRS employee Lois Lerner, who supervised the review of exempt organizations at IRS during her tenure, visited the White House approximately 35 times during her tenure. You also expressed to have no knowledge of a seven-hour White House visit by then and current IRS chief counsel William Wilkins.

1. Please provide the following information regarding former IRS Commissioner Douglas Shulman:
  - a. The number of times Mr. Shulman visited the White House during his recent tenure as IRS Commissioner.
  - b. The dates of each of those visits.
  - c. A brief description of each of those visits.
  - d. An agenda or summary for each of those visits.
  - e. A list of IRS and non-IRS attendees at any meetings that took place during each of those visits.
  
2. Please provide the following information regarding Ms. Lerner:
  - a. The number of times Ms. Lerner visited the White House during her tenure with IRS (which should be either 35 or in the vicinity of 35).
  - b. The dates of each of those visits.
  - c. A brief description of each of those visits.
  - d. An agenda or summary for each of those visits.
  - e. A list of IRS and non-IRS attendees at any meetings that took place during each of those visits.
  
3. Please provide the following information regarding Mr. Wilkins:
  - a. The number of times Mr. Wilkins has visited the White House during his tenure with IRS.
  - b. The dates of each of those visits.
  - c. A brief description of each of those visits.
  - d. An agenda or summary for each of those visits.
  - e. A list of IRS and non-IRS attendees at any meetings that took place during each of those visits.

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Over the course of the last two years, the IRS has provided detailed information to the Treasury Inspector General for Tax Administration (“TIGTA”) and to the four congressional committees that have conducted investigations concerning 26 U.S.C. § 501(c)(4) determinations (hereinafter, the “investigating committees”)<sup>1</sup> concerning contacts and communications between IRS personnel and the Executive Office of the President (“EOP”) – which includes, incidentally, not only the White House Office, but also such other entities as the Council of Economic Advisers and the Office of Management and Budget. The investigators also reviewed records from other sources, such as White House visitor access logs; and they interviewed several IRS employees who appeared on these logs between 2010 and 2013.

The investigators have uncovered no evidence of any White House contact or communication directing IRS personnel to “target” any taxpayer.

The report issued on August 5, 2015 by the Senate Finance Committee (“SFC”) includes a series of detailed findings on this subject, particularly with respect to former Commissioner Douglas Shulman. We refer you to pages 198 through 200 of the report and to the exhibits cited therein. Of note, as stated in the “Additional Republican Views” section of SFC’s report:

- “Shulman indicated that his meetings with White House staff concerned implementation of the Affordable Care Act; issues related to the IRS budget; tax provisions in the American Recovery and Reinvestment Act; economic roundtables and other high-level domestic policy matters involving the IRS; and events open to the general public, such as the Easter Egg Roll.”
- “Shulman described four in-person meetings with President Obama: [1] a press conference with the President and Treasury Secretary Geithner about offshore tax proposals on May 4, 2009; [2] a meeting where Shulman presented the daily economic briefing to the President about general matters of the tax gap on October 21, 2009; [3] a meeting with the President and other heads of agencies about how to improve the government on June 6, 2011; and [4] a photo-op with the President on December 14, 2012 after Shulman’s term as IRS Commissioner expired.”
- “Shulman denied that the targeting of Tea Party organizations was ever discussed at any meeting with White House staff or the President.”<sup>2</sup>

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<sup>1</sup> The investigating committees are: the Senate Finance Committee; the Senate Homeland Security and Government Affairs Committee’s Permanent Subcommittee on Investigations; the House Committee on Ways and Means; and the House Oversight and Government Reform Committee.

<sup>2</sup> In the above quotations, and unless otherwise noted in subsequent quotations from the Senate Finance Committee report, internal citations and quotations are omitted.

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With respect to former Exempt Organizations (“EO”) Director Lois Lerner, we have not identified any internal IRS records or publically available primary documents indicating that she attended any meetings or events at the White House or at other EOP components. We have seen reference in the media to Ms. Lerner having visited the White House “35 times,” but we have seen nothing to substantiate this assertion.

With respect to Chief Counsel William Wilkins, as detailed in several prior submissions to the investigating committees, Mr. Wilkins attended one event at the White House, a meeting on April 23, 2012 that also included various officials from other agencies. The event was coordinated by the Presidential Personnel Office. According to materials sent to participants by the Presidential Personnel Office, the event concerned “improv[ing] the efficiency and effectiveness of the government”; participants were asked “to talk about creative and practical solutions to difficult issues to help your agency work more effectively.” President Obama attended this event for a brief period.

**During your testimony, when I asked you if you had ever asked either former Attorney General Eric Holder or current Attorney General Loretta Lynch to appoint a special prosecutor who was not a donor to the Democratic Party, you stated that you had had “no conversations with either [Eric Holder or Loretta Lynch] *about this*” (emphasis added).**

- 4. Have you ever had a live, telephone, or e-mail-based conversation with Eric Holder about any subject? If the answer is yes, please provide additional information.**
  
- 5. Have you ever had a live, telephone, or e-mail-based conversation with Loretta Lynch about any subject? If the answer is yes, please provide additional information.**

While serving as IRS Commissioner, Commissioner Koskinen has had two communications with Attorney General Holder. Both were in-person communications at events attended by Messrs. Koskinen and Holder. These events were: (1) a press conference concerning a guilty plea in an offshore banking case in May 2014; and (2) a reception for the outgoing Assistant Attorney General for the Tax Division, also in May 2014. Mr. Koskinen had a number of other communications with Mr. Holder prior to becoming IRS Commissioner; many of these also predated Mr. Holder’s tenure as Attorney General.

Commissioner Koskinen has not had any communications with Attorney General Lynch.

**During your testimony, when I asked you for additional information about how and why IRS settled with the National Organization for Marriage in the amount of \$50,000 as a result of IRS’s illegal leak of confidential taxpayer information to Matthew Meisel, Joe Solmonese, and/or other employees or associates of the Human Rights Campaign,[] you committed to providing that information after the hearing.**

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6. Please provide the following information regarding IRS's settlement with the National Organization for Marriage:
  - a. The name or names of the IRS employee or employees who provided confidential taxpayer information to Mr. Meisel, Mr. Solmonese, or any other employee or associate of the Human Rights Campaign.
  - b. All e-mail communications between IRS employees and Mr. Meisel, Mr. Solmonese, and/or any other employee or associate of the Human Rights Campaign.
  - c. The details that led to the settlement with the National Organization for Marriage.
  - d. Whether IRS made any criminal referrals to the Department of Justice regarding the conduct of any of its employees, given that that sharing of confidential taxpayer information is a violation of 26 U.S.C. 6103.
  - e. All internal IRS investigation products into the unlawful leak of confidential Schedule B donor information of the National Organization for Marriage in 2012.
  - f. The TIGTA report of the investigation into the unlawful leak of confidential Schedule B donor information of the National Organization for Marriage in 2012.
  - g. All IRS responses to the Freedom of Information Act (FOIA) requests filed by the National Organization for Marriage seeking to learn how its Schedule B donor information was illegally released by IRS.
  - h. All internal memoranda, e-mail communications, and other documents related to the FOIA requests from the National Organization for Marriage seeking to learn how and/or why its confidential donor schedule was released to the Human Rights Campaign.
  - i. An explanation as to why IRS did not turn over to the National Organization for Marriage the responsive documents it had sought to obtain through its FOIA requests, thus forcing the National Organization for Marriage to sue IRS to learn how and/or why its confidential Schedule B donor information was illegally released.
  - j. The name of the current or former IRS employee or employees who were in charge of the decision-making related to investigating the illegal release of the National Organization for Marriage donor schedules.
  - k. Why this Committee should not view the mere fact of the settlement as definitive evidence that IRS believed that one or more IRS employees leaked confidential taxpayer information in violation of federal law.
  - l. An explanation as to why IRS has failed to agree to pay the National Organization for Marriage attorney fees for the litigation that that organization was forced to file against IRS in order to learn the facts about the IRS violation of the taxpayer confidentiality provisions of 26 U.S.C. 6103.

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This has also been a subject of detailed submissions by the IRS to TIGTA and to the investigating committees over the last two years. Indeed, TIGTA conducted a separate investigation concerning the allegations of the National Organization for Marriage (“NOM”) and reported its findings to the Senate Finance Committee (SFC), which in turn addressed them in its August 5, 2015 report. We refer you to pages 136 through 138 of the report and to the exhibits cited therein. In particular, according to the SFC’s bipartisan findings:

- “TIGTA found that the ‘disclosure was probably a work error by the IRS employee’ and that its investigation ‘did not identify any link between [the IRS employee] and the organizations or individuals involved in posting or publishing the unredacted forms.’”
- “In addition, TIGTA did not find any evidence that the disclosure was motivated by political animus.”

As reflected in TIGTA’s submission to the SFC, the Department of Justice (“DOJ”) declined to prosecute the case criminally.

We note that in addition to the Senate Finance Committee’s Report, a federal district court reviewed the evidence submitted by both parties following discovery and concluded that there was no material issue of fact that “[t]he record provides a specific timeline evidencing that NOM’s Schedule B was released inadvertently as part of a single employee’s mistake.” *National Organization for Marriage v. United States*, 24 F.Supp.3d 518, 524 (E.D.Va. 2014), *appeal docketed* (4<sup>th</sup> Cir. No. 14-2363 December 15, 2014).

The IRS has improved its processes to reduce the risk of errant disclosures, like those in the NOM case, from recurring in the future. In particular, as described in the SFC report, Forms 4506-A (Requests for Public Inspection or Copy of Exempt or Political Organization IRS Forms) are processed through the IRS’s Return and Income Verification Services (RAIVS) unit; the IRS has restricted RAIVS unit employees’ access to only redacted Forms 990.

Certain of the questions that you pose – specifically, concerning the settlement of NOM’s civil lawsuit – are best addressed to DOJ, which represents the government in federal courts litigation, makes the ultimate decisions as to the resolution of such lawsuits, and can speak most definitively as to whether the litigation-related material that you request is privileged or protected. The IRS does, however, reject the suggestion that a civil settlement inherently presupposes or reflects intentional misconduct on the part of its employees. As indicated above, and as multiple investigations to date have concluded, there was no such misconduct here.

**During your testimony, when I asked you for additional information about whether Republican Party campaign bundlers from the 2008 and/or 2012 presidential election cycles (whose names are publicly available) were disproportionately targeted for audits when compared to Democratic Party campaign bundlers for the same cycles, you committed to providing that information after the hearing.**

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7. Please provide the aggregate number of **Republican** Party presidential campaign bundlers from the **2008** presidential election cycle who were audited (and the year or years when those audits occurred).
8. Please provide the aggregate number of **Republican** Party presidential campaign bundlers from the **2012** presidential election cycle who were audited, either individually or whose business entities were audited (and the year or years when those audits occurred).
9. Please provide the aggregate number of donors to the general election campaign of Mitt Romney during the 2012 election cycle who were audited, either individually or whose business entities were audited (and the year or years when those audits occurred).
10. Please provide the aggregate number of donors to the Romney SuperPAC “Restore Our Future” during the 2012 election cycle who were audited, either individually or whose business entities were audited (and the year or years when those audits occurred).
11. Please provide the aggregate number of **Democratic** Party presidential campaign bundlers from the **2008** presidential election cycle who were audited (and the year or years when those audits occurred).
12. Please provide the aggregate number of **Democratic** Party presidential campaign bundlers from the **2012** presidential election cycle who were audited (and the year or years when those audits occurred).
13. Please provide the aggregate number of donors to the 2012 Obama campaign who were audited, either individually or whose business entities were audited (and the year or years when those audits occurred).
14. Please provide the aggregate number of donors to the pro-Obama SuperPAC, Priorities USA, who were audited, either individually or whose business entities were audited (and the year or years when those audits occurred).

The IRS does not maintain information as to the political affiliations or preferences of individual taxpayers; nor does it track information showing to whom individual taxpayers donate funds or for whom they “bundle” funds. To the extent you are asking us to collect such information, we do not believe it would be proper to do so, and therefore we respectfully decline.

As indicated at the Subcommittee’s hearing, if provided with lists of taxpayers, the IRS may be able to provide the aggregate audit rates pertaining to these taxpayer groups – provided that the

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groups are large enough that the aggregation does not amount to a disclosure of confidential information pertaining to any particular taxpayers, which would violate 26 U.S.C. § 6103.

**15. Please answer the following question yes or no: Has the IRS at any time reviewed publicly disclosed campaign finance reports required by state or federal law to be filed and used donor information reflected in such campaign finance reports as one of the factors used by the IRS for purposes of selecting individuals, business entities, or other related entities for audit?**

**a. If the answer to the previous question is yes, please describe the process and procedures whereby such donor information is used to select such donors for IRS audits.**

**16. Please answer the following question yes or no: Has the IRS at any time reviewed an exempt organization's Schedule B donor information required by law to be filed as part of an exempt organization's Form 990 as one of the factors used by the IRS for purposes of selecting individuals, business entities, or other related entities for audit?**

**a. If the answer to the previous question is yes, please describe the process and procedures whereby such donor information is used to select such donors for IRS audits.**

The IRS does not, and ought not, care who a taxpayer votes for, contributes money to, or otherwise supports politically. However, for various reasons, the basic fact that a political contribution is made, and the amount of such a contribution, may be of significance to tax compliance. To begin with, tax-exempt organizations of various kinds must make representations as to their prior or prospective political activities, and a political contribution may bear upon the veracity of such representations. In addition, a contribution is ultimately a type of expenditure, and if a taxpayer spends a lot and yet reports very little income over time, that may be an indication of income tax evasion or other misconduct. As another example, there are specific rules regarding the deductibility of different types of expenditures – personal expenditures, general business expenditures, and gifts are all treated differently. Thus, the fact that an expenditure is political in nature may bear upon whether it was properly treated on a tax return, *i.e.*, whether a deduction was properly claimed.

In all events where it is called upon to assess tax compliance, the IRS must diligently review available and lawfully accessible information. This includes public records of various sorts, running the gamut from real estate records to business websites to securities filings. Of course, the IRS also routinely reviews information submitted on tax returns. When called upon, for reasons such as those described above, to determine whether or in what amount a political contribution was made, campaign finance reports are among the public records that may be consulted; and Schedule B donor information is among the tax information that may be

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reviewed. As a practical matter, this information may not often be accessed at the audit selection phase; but there are circumstances where it may be relevant, for instance in the course of assessing the veracity of whistleblower claims or external audit referrals.

Ultimately, it is critical to ensure that this information is properly used – to assess the economics of a political contribution transaction and its tax implications – without regard for the manner in which the taxpayer(s) at issue exercise their political rights. In that regard, the IRS welcomed and supported the recent Government Accountability Office review of our EO audit selection processes. We were pleased to see that, in its thorough review of EO operations, the GAO found no evidence that any taxpayers were selected for audit in an unfair or biased manner. The GAO did, however, make recommendations for us to strengthen our internal controls to ensure that such abuse does not ever occur in the future. We have accepted and are working to implement the GAO’s recommendations and similar measures throughout the agency.

Further, with respect in particular to tax forms and returns eliciting donor information, we are continually reviewing – as we do with all tax forms – whether our tax administration needs justify the reporting burdens imposed on taxpayers. As Commissioner Koskinen testified at the July 29, 2015 hearing, we are presently studying whether to revise or eliminate Form 990 Schedule B.

We wish to take this occasion to clarify two statements, on related subject matters, made at the July 29, 2015 hearing. First, Senators Sessions and Cruz inquired whether the IRS asks applicants for tax-exempt status for lists of members or donors. Commissioner Koskinen replied that we do not. This is correct – although as Commissioner Koskinen also noted, and as discussed above, there are tax forms that elicit information regarding donors and financial supporters. In addition, while the IRS will not request lists of *organization* members, it may, and often does, request information regarding *board* members and other persons who govern or exert control over organizations. We do so in the course of assessing whether there is any potentially improper private inurement or misappropriation of an organization’s resources by the individuals who run it. For the same reasons, we may inquire as to whether and to what extent the organization provides payments or benefits to members.

Second, in an exchange with Senator Whitehouse, Commissioner Koskinen testified that he was not aware of any organization for which the IRS has revoked its tax-exempt status in the last two years. To clarify a point which may have been implicit in the questioning: There are a number of exempt organizations whose status was revoked in Fiscal Years 2014 or 2015, but none of these revocations was based on direct campaign activities.<sup>3</sup>

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<sup>3</sup> With respect to one of these organizations, the revocation was based on the auditors’ conclusion that the organization benefited a political party and its members, rather than the community as a whole. However, the activity at issue was not directly in the context of a campaign.

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- 17. What is the IRS's Large Business and International Division, which purportedly "monitors" high wealth individuals and the networks of enterprises and entities they control?**
- 18. Does "monitoring" high wealth individuals and networks of enterprises and entities they control include researching campaign finance reports of donors and Schedule B donor lists to track contributions to candidates, committees, and/or exempt organizations?**
- 19. What other activities and research is involved in the IRS "monitoring" of high wealth individuals and networks of enterprises and entities they control?**

The IRS's Large Business and International Division ("LB&I") handles taxpayer services and enforcement initiatives focused on corporations, S-corporations, and partnerships with assets greater than \$10 million, high-wealth individuals affiliated with such entities, and individuals with international attributes such as offshore sources of income. These are businesses that typically have certain attributes – they tend to employ large numbers of employees, deal with issues involving complicated tax law and accounting principles, and operate in a global environment – and LB&I personnel are specialized in working with such large organizations.

Beginning in 2009, LB&I began to take an enterprise examination approach to high-wealth individual taxpayers' examinations. Generally, these taxpayers have complex structures to manage business and investment activities, including interests in partnerships, trusts, S-corporations, private foundations, gifts, and other such arrangements. Tax return information is reviewed by revenue agents, along with industry data and other available public data, in order to ensure tax compliance.

Political activity does not factor into the selection or conduct of audits. LB&I does not ordinarily review campaign finance reports or Form 990 Schedule B donor lists,<sup>4</sup> nor are these organizations' or individuals' political contributions or activities tracked.

**During your testimony, when I asked you if IRS fired anyone who was involved in the targeting effort, you initially stated that five individuals were "dismissed." You subsequently, however, clarified that some "retired." It is unclear who, if anyone, was terminated for their involvement in the targeting effort.**

- 20. Of the five unnamed individuals mentioned at the hearing, please provide the following:**

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<sup>4</sup> As discussed above, in the rare instances where such information might be reviewed, it would be with an eye to the underlying transactions and their tax implications, without regard for the taxpayer's political preferences.

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- a. The number of individuals who were involuntarily terminated from IRS employment (and their names).
- b. The number of individuals who were permitted to retire from IRS employment (and their names).
- c. The number of individuals who were transferred, or allowed to transfer, from IRS to another office within the Department of the Treasury (and their names).
- d. The number of individuals who were transferred, or allowed to transfer, from IRS to another federal agency (and their names).

Holly Paz has been identified in other congressional investigative work into IRS's targeting efforts as the Acting Manager of the Exempt Organizations Technical Unit in Washington, D.C., at several key points during the scandal, and was the IRS employee in 2010 who was among the first, if not *the* first, to insist that IRS field offices send information about Tea Party groups applying for non-profit status to Washington for review.

21. Does Ms. Paz still work for IRS? If the answer is yes, please provide additional information about her title, office, and current salary (if higher than it was in 2010).

Judy Kindell has been identified in other congressional investigative work into IRS's targeting efforts as Ms. Lerner's senior technical advisor and *de facto* right hand throughout the latter's shepherding of the Tea Party targeting. Ms. Kindell appears in IRS communications about Tea Party targeting in 2011, as a result of specific instructions from Ms. Lerner to keep Ms. Kindell involved in updates about the targeting effort.

22. Does Ms. Kindell still work for IRS? If the answer is yes, please provide additional information about her title, office, and current salary (if higher than it was in 2011).

Carter Hull has been identified in other congressional investigative work into IRS's targeting efforts as one of the first IRS employees to be involved in the Tea Party application screening process.

23. Does Mr. Hull still work for IRS? If the answer is yes, please provide additional information about his title, office, and current salary (if higher than it was in 2010).

Although the Privacy Act, 5 U.S.C. § 552a, precludes us from discussing personnel matters regarding particular employees in a public context, we can brief you or your staff on these matters in private, pursuant to § 552a(b)(9), as we have already done with the four investigating committees. However, prior to such a briefing, we would respectfully request a statement explaining the Subcommittee's jurisdiction underlying this line of inquiry, as subsection (b)(9)

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provides that we may disclose personnel information to congressional (sub-)committees only “to the extent of matter within [their] jurisdiction.”

## **II. Details Regarding IRS Records Destruction**

During your testimony, you used several different terms to explain what had happened to Ms. Lerner’s hard drive. At different points in your testimony, you stated that her hard drive had “collapsed,” “self-destructed,” and “crash[ed]”.

Recent congressional testimony indicates that Ms. Lerner’s hard drive was rendered inoperable as a result of intentional, physical damage by unknown actors. On June 25, 2015, Treasury Inspector General for Tax Administration J. Russell George and Deputy Inspector General Timothy P. Camus testified before the House Committee on Oversight and Government Reform regarding the effort to recover Ms. Lerner’s e-mail. In their joint written testimony,[] Messrs. George and Camus wrote the following:

On Monday, June 13, 2011, Ms. Lerner reported that she found her computer inoperable when she entered her office, and the malfunction was reported to the IRS Information Technology (IT) staff. The assigned IT specialist determined the hard drive had crashed, and following standard protocol, he placed a new hard drive in Ms. Lerner’s laptop. In addition to the hard drive, a Hewlett Packard (HP) contractor replaced the laptop’s keyboard, track pad, heat sink, and fan. When interviewed, both the IRS IT technician and the HP technician reported that they did not note any visible damage to the laptop computer itself. When asked about the possible cause of the hard drive failure, the HP [presumably, Hewlett Packard] technician opined that heat-related failures are not seen often, and *based on the information provided to him, the hard drive more than likely crashed due to an impact of some sort*. However, because *the HP technician did not examine the hard drive* as part of his work on the laptop, it could not be determined why it crashed. (Emphasis added)

1. Please provide the following documents and information:
  - a. All paperwork associated with the reporting of the damage to Ms. Lerner’s laptop hard drive on or about June 13, 2011, including any e-mail communications (from Ms. Lerner or anyone else) specifically requesting assistance with the laptop hard drive.
  - b. All written and/or photographic damage assessments of Ms. Lerner’s laptop hard drive, as written or produced on, about, or after June 13, 2011, by

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either IRS personnel, Hewlett Packard technicians, or any other federal or non-federal personnel or entities.

- c. **All forensic analysis conducted or reports** that were written or produced after June 13, 2011, by either IRS personnel, Hewlett Packard technicians, or any other federal or non-federal personnel or entities.
- d. **The name of the Hewlett Packard technician** who inspected Ms. Lerner's laptop hard drive on or about June 13, 2011.
- e. **The whereabouts of Ms. Lerner's laptop** prior to June 13, 2011 (i.e., whether it was in Ms. Lerner's office, or whether Ms. Lerner had it in her possession outside of IRS office space).
- f. **The justification for the destruction** of Ms. Lerner's laptop hard drive after June 13, 2011.
- g. Whether IRS procedure has since changed regarding the destruction of employee hard drives.

**In April 2010, former head of the Office of Special Counsel (OSC) Scott J. Bloch was convicted in federal court of withholding information from congressional investigators by hiring a private computer service to erase the contents his office hard drive. Bloch was ultimately sentenced to prison time and community service for this violation of federal criminal law.**

2. **Would you agree that Ms. Lerner should be held criminally liable if it can be determined that she personally damaged her laptop hard drive in order to prevent the extraction of information from that hard drive?**
3. **Would you agree that Ms. Lerner should be held criminally liable if it can be determined that she asked someone to damage her laptop hard drive in order to prevent the extraction of information from that hard drive?**
4. **If your answer is no to either questions 2. or 3., please explain in detail how you would distinguish Ms. Lerner's case from Mr. Bloch's case.**

TIGTA, not the IRS, conducted a forensic investigation into the circumstances of Ms. Lerner's hard drive crash and the data loss arising therefrom. Once TIGTA began this investigation, in deference to TIGTA and per the requests of TIGTA and other law enforcement agencies, the IRS specifically refrained from interviewing certain of its employees, so as not to prompt or affect these employees' prospective testimony or otherwise interfere with or complicate the ongoing law enforcement efforts.

TIGTA produced an extensive report of investigation ("ROI") setting forth its findings on these data loss issues. TIGTA did not publish its ROI, but it did brief and provide the report to the IRS and to the four investigating committees, including the SFC. The SFC included the ROI and certain of the ROI exhibits in the appendix to its own August 5, 2015 report. We refer you to

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these documents, which may be found in pages 4041 through 4111 of the SFC appendix. We also refer you to pages 19 through 21 of the SFC report, which summarize and discuss the evidence concerning Ms. Lerner's hard drive crash.

As you note, TIGTA could not, on the basis of this evidence, conclude that Ms. Lerner tampered with her hard drive. To the contrary, TIGTA reported that:

- The IRS IT specialist who initially responded to Ms. Lerner's complaint of a failed computer "did not observe any indications of tampering or physical damage to Lerner's laptop."
- The Hewlett-Packard employee referenced in your question, who also worked on Ms. Lerner's laptop, "did not recall, or note in his records, any damage to the laptop."

Your hypothetical questions regarding Ms. Lerner therefore assume facts well beyond those evidenced.

**During your testimony, you also indicated that the destruction of 422 backup tapes that contained as many as 24,000 archived e-mail messages sent to or from Ms. Lerner were magnetically erased by IRS employees at the IRS record storage facility in Martinsburg, West Virginia, on or about March 4, 2014. You specifically indicated that the erasure of these tapes was a "mistake," that it occurred despite the existence of instructions to not erase those tapes, that the erasure was conducted by "two [IRS] employees on the midnight shift in Martinsburg, West Virginia," and that you sincerely did not know about the erasure of these tapes until "almost a year later."**

- 5. Please provide the names and contact information of the two "midnight shift" IRS employees at the Martinsburg facility so that Committee staff may interview them.[]**

As noted above, 5 U.S.C. § 552a precludes us from providing information regarding specific employees in this context; and pursuant to § 552a(b)(9), in advance of any non-public briefing, we would respectfully request a statement explaining the Subcommittee's jurisdiction underlying this inquiry. We also note that TIGTA has conducted multiple interviews of the employees in question, detailed its findings with respect to the degaussing of the tapes in its report of investigation (including in the parts of the report cited above), and briefed the four investigating committees on the matter.

Among TIGTA's findings: "Interviews of IRS employees... provided no evidence that the IRS employees involved intended to destroy data on the tapes or hard drives in order to keep this information from Congress, the DOJ or TIGTA. No evidence was uncovered that any IRS employees had been directed to destroy or hide evidence from Congress, the DOJ, or TIGTA."

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6. What specific steps did you personally initiate upon receipt of Chairman Darrell Issa's House Committee on Oversight and Government Reform subpoena on February 14, 2014, in order to ensure that Ms. Lerner's e-mails were not destroyed?[]
7. On what specific date were you specifically told that the 422 backup tapes in question were erased?
8. What was the name of the individual who told you that the 422 backup tapes in question were erased?
9. Prior to the date on which you were affirmatively told that the 422 backup tapes in question had been erased, had you ever made any inquiries either about the status of the tapes or about ensuring production of the tapes to the House Committee on Oversight and Government Reform? If the answer is yes, please provide the date or dates of such inquiries and the name or names of the individuals with whom you spoke about these tapes.
  - a. If you did not make any inquiries either about the status of the tapes or about ensuring production of the tapes to the House Committee on Oversight and Government Reform prior to the date you were affirmatively told that the 422 backup tapes in question had been erased, please explain how it can reasonably be said that you were working to ensure production of these tapes or the information on these tapes to the House Committee on Oversight and Government Reform?

Again, this matter was thoroughly investigated by TIGTA, and it has been thoroughly documented in TIGTA's report of investigation, including in the portions of the ROI appended to the Senate Finance Committee report. We refer you to those documents, which may be found in pages 4041 through 4111 of the SFC report appendix.

The SFC also documented the IRS's efforts to preserve documents in light of the congressional and law enforcement investigations. In particular, as noted on page 29 of the SFC's bipartisan findings:

- "The IRS issued litigation holds in May and June 2013 for records related to this matter."
- "In May 2013, IRS Chief Technology Officer Terrence Milholland sent an e-mail to his senior managers responsible for destroying media and asked them to preserve media that might contain e-mail or data related to 'investigations' that were occurring."
- "On February 3, 2014, [Counselor to the Commissioner Catherine] Duval sent a message to Deputy CIO [Steven] Manning confirming a previous conversation with him about an

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apparent lack of Lois Lerner email from before May 9, 2011. Per their earlier discussion, Duval asked Manning to take several steps, including to ‘ensure that the earliest possible network back-up tapes are available for review’ and ‘confirm that no back-up tapes have been recycled since the hold on recycling was instituted last spring.’”

As TIGTA found in its ROI, notwithstanding these document retention directives, IRS personnel degaussed the disaster recovery tapes at issue: “Interviews of the IRS employees at Martinsburg and review of e-mails between employees revealed confusion relating to the CTO [document retention] policy,” which “led to a staggered implementation of the [document holds] until June 2014, when [the degaussing of media] ceased at Martinsburg.” Although, as discussed above, TIGTA found that this document destruction was not intentional, the IRS’s failure to promptly implement a litigation hold is clearly unacceptable. With the benefit of TIGTA’s report, which meticulously documents the communications breakdown among records management personnel, the IRS is implementing records management improvements, including those discussed at the Subcommittee’s hearing.

**10. During your tenure as IRS Commissioner, have you ever e-mailed any IRS employee or contractor who works or worked at the IRS record storage center in Martinsburg, West Virginia, for any reason? If the answer is yes, please explain and provide those e-mail communications.**

With the exception of agency-wide messages and similar communications directed to broad groups of employees, and correspondence exchanged through the “Commissioner’s Mailbox” (described below), Commissioner Koskinen has not emailed any employees or contractors at the Martinsburg, West Virginia facility.

The Commissioner’s Mailbox is an account to which any IRS employee may submit a message, question, or idea, to which the Commissioner’s Office ordinarily responds. We have identified five Commissioner’s Mailbox submissions from Martinsburg employees, and in each instance the Commissioner responded. These include: (1) an August/September 2014 email exchange concerning processes for filling IRS vacancies; (2) a December 2014 email exchange concerning processes for filling IRS vacancies; (3) a January/February 2015 email exchange concerning IRS budget cuts and potential furloughs; (4) a February 2015 email exchange concerning IRS budget cuts and the early release of seasonal employees; and (5) a February 2015 email exchange concerning IRS budget cuts and potential furloughs.

**During your testimony, you also confirmed that you had told Congress on June 20, 2014, that all of Ms. Lerner’s “email has been preserved. Nothing has been lost. Nothing has been destroyed.” This statement during congressional testimony was made seven days after IRS sent Congress formal notification that the agency had destroyed e-mail communications sent and received by Ms. Lerner between January 2009 and April 2011, and four days after TIGTA launched a formal investigation into the lost or destroyed Lerner e-mail.**

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- 11. Did you testify before Congress in June 20, 2014, without first verifying that Ms. Lerner's e-mail communications had in fact been preserved?**
- 12. Did you personally approve the notification to Congress on or about June 13, 2014, regarding the destruction of Ms. Lerner's January 2009-April 2011 e-mail communications?**
- 13. Were you personally notified about the launch of TIGTA's formal investigation into the lost or destroyed Lerner e-mail on or about June 16, 2014?**

Again, this matter has been thoroughly investigated and documented by TIGTA, and we refer you to the portions of the TIGTA ROI reproduced in the SFC report and appendix, cited above.

With respect to document preservation, we discussed above the various efforts undertaken through mid-2014 to retain potentially relevant records. We regret that these efforts failed with respect to the 422 disaster recovery tapes referenced in your prior questions, which pertained to an email server that the IRS had decommissioned years earlier. But TIGTA's investigation has made clear that these tapes were not erased in bad faith. As stated above, with the benefit of TIGTA's findings, and with additional input from the investigating committees and from the National Archives and Records Administration, we are implementing records management improvements.

Moreover, through the spring of 2014, the IRS undertook an expansive search for Lois Lerner emails in the locations where we believed such emails were most likely to be found – namely, within the email accounts of the IRS employees whom Ms. Lerner supervised and worked with.<sup>5</sup> In the course of several months, we were able through this process to locate approximately 24,000 emails from the period effected by Ms. Lerner's hard drive crash, and we promptly produced these materials to TIGTA and to the investigating committees. We also produced various additional documents requested by Congress, ultimately responding to over 80 separate congressional inquiries, and we made available over 50 employees for interviews. And when we reached the limits of what we could do on our own – for example, due to our IT department's limited ability to access disaster recovery tape data – we cooperated with the efforts of TIGTA and the other investigators. In fact, TIGTA's June 2015 congressional testimony (which you cite above) notes the cooperation provided by IRS personnel, including for instance the manager at the Martinsburg records facility who helped TIGTA investigators understand the disposition of media associated with the decommissioned email server.

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<sup>5</sup> In particular, we searched the custodial accounts of 88 employees whom the investigating committee staffs deemed most relevant to their investigations. We periodically reviewed our custodian list and search methodology with the investigators, and over the course of the investigations, we added several additional custodians, including Ms. Lerner's secretaries and executive assistants, pursuant to the investigating committees' requests.

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Ultimately, our document collection and production efforts were not perfect, and we accept responsibility for our shortcomings described above. But the IRS stands by our June 2014 assertions to Congress that we conducted a broad and thorough search, in good faith, for Lois Lerner emails and for other records pertaining to 26 U.S.C. § 501(c)(4) determinations.

**Despite your recent testimony and the full sweep of publicly available information on the IRS targeting scandal, it is arguably still unclear how much targeting-related information, including e-mail communications and other electronic documents, has been lost or destroyed. It is also unclear if the e-mail communications or documents of other IRS employees, other than Ms. Lerner, have been lost or destroyed. Absent additional information, it appears that most, if not all, of the lost or destroyed information occurred during your tenure as IRS Commissioner.**

- 14. What is the total volume of IRS e-mail communications and other documents that might have shed light on this investigation but have been lost or destroyed?**
- 15. Please confirm that the e-mail communications of the following IRS employees from the time period January 2009 to the present have been preserved and will continue to be preserved until such time as this Committee waives this preservation order: []**
  - a. Douglas Shulman.**
  - b. William Wilkins.**
  - c. Holly Paz.**
  - d. Judy Kindell.**
  - e. Carter Hull.**
- 16. Can you explain how most if not all of the lost or destroyed IRS e-mail communications that might have shed light on this investigation were lost or destroyed during your tenure as IRS Commissioner?**

We refer you to TIGTA's analysis of the data loss relating to the above hard drive crashes, which is reproduced in the SFC report appendix, beginning at page 4090.

Our existing document holds on this matter remain in effect, including with respect to the individuals referenced in your question. We implemented these holds in response to requests from the investigating committees and agencies. To date, we have not received a separate preservation request from the Senate Judiciary Committee.

**III. IRS Prioritization of Taxpayer Resources**

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During your testimony, you indicated several times that the Internal Revenue Services [*sic*] generally lacked the resources to properly collect tax revenues and conduct audits of individuals who were potentially not paying taxes. At different points in your testimony, you commented that IRS was faced with “declining resources,” and how its budget had declined by \$1.2 billion over the last five years.[] You also implied at several points that IRS has poor information technology infrastructure, and that IRS’s budget situation was to blame.

A recent House Committee on Ways and Means report[] demonstrates, however, that IRS has made strategic, internal spending decisions that have actually led to the availability of *less* funding for agency use, and that modest reforms could make approximately an additional \$200 million available each year for agency purposes.[] The report also notes that IRS collects approximately \$500 million in revenue a year, and that this revenue is deposited in an offsetting account called the User-Fee Account.[]<sup>6</sup>

1. Please review pages 5-7 the specific recommendations made by the cited House Committee Ways and Means report and explain why IRS has not opted to implement any or all of these suggestions (particularly given how making all of these changes could result in an additional \$200 million for agency use).
2. Given that it is within IRS’s capacity to reform its spending habits in order to generate more revenue, do you think it is accurate for you to claim in your recent testimony that IRS does not have the resources to do its job?
3. Given your refusal as IRS Commissioner to voluntarily pursue these wise spending reforms, should Congress mandate these spending reforms via legislation?

The report that you reference was released on April 22, 2015. On that same day, Commissioner Koskinen testified before the Oversight Subcommittee of the Ways and Means Committee, and he explained that these recommendations were unlikely to create any efficiencies with respect to the IRS’s budget. For example, the Way and Means Committee recommended outsourcing the collection of tax debts to private collections agencies. The IRS attempted this at various points in the past. It found that any increased revenue collected by the private agencies was offset – sometimes more than offset – by the costs IRS incurred to oversee and regulate the private collectors, including to ensure that they did not mislead or improperly coerce taxpayers. In the

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<sup>6</sup> This is incorrect. The Ways and Means Committee report states that the IRS planned to *allocate* \$481 million from the user-fee account for Fiscal Year 2015. This is greater than the amount of fees collected this year, because it includes carryover funds from previous years. We estimate the amount of user fees collected for Fiscal Year 2015 to be approximately \$300 million, which is consistent with the average annual user fee collections over the last five years. Our use of user-fee account funds is discussed in response to your question below.

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present day, with the unfortunate prevalence of scam artists pretending to be IRS agents in order to defraud taxpayers, overseeing private debt-collectors would be all the more challenging and resource-intensive. The IRS would have to be deeply engaged in helping taxpayers to distinguish between fraudsters and private collectors, and as Commissioner Koskinen explained to the Oversight Subcommittee, we believe that the costs associated with these efforts would render our tax collection operations *less* efficient, not more.

The Oversight Subcommittee also criticized the IRS's expenditure to retain outside legal counsel to assist in a large and complex tax controversy (which is further discussed in response to your questions below). But as Commissioner Koskinen explained at the April 22, 2015 hearing, this was a very small outlay relative to the tax amount in controversy, and we believe this expenditure is justified in light of the fact that it may help the IRS recover a large amount of additional tax revenue through the corporate audit in question.

We refer you to the transcript of the April 22, 2015 hearing, which details the IRS's responses to these and other recommendations made by the Ways and Means Committee.

**4. Please provide the following information regarding IRS's User-Fee Account:**

- a. The total amount of funding currently available to IRS via the User-Fee Account.**
- b. The sources of the funding in the User-Fee Account (i.e., penalties, fines, non-punitive fees, etc.).**
- c. The spending limitations on the funding in the User-Fee Account.**
- d. Line-item accounting for IRS use of User-Fee Account funding (broken down by Fiscal Year going back to Fiscal Year 2011).**
- e. An explanation as to why the funding available via the User-Fee Account cannot be used to improve customer service, information technology infrastructure, or any of IRS's other asserted needs.**
- f. An explanation why the User-Fee Account should not be statutorily eliminated, and all fee revenue that currently goes into that account be instead sent to the general fund of the Treasury.**

This issue was also discussed in detail at the April 22, 2015 hearing of the House Ways and Means Oversight Subcommittee, and we refer you to the transcript of that hearing.

As Commissioner Koskinen explained at that hearing, in the past, when Congress has underfunded taxpayer services, the IRS has attempted to fill that gap using funds from the user-fee account. This included spending: \$168 million from the user-fee account on customer service for Fiscal Year 2012; \$185 million for Fiscal Year 2013; and \$179 million for Fiscal Year 2014. By contrast, for the Fiscal Year ending September 30, 2015, the IRS estimates that it will only have spent \$45 million from the user-fee account on taxpayer services. This is in part because Congress directed the IRS to implement the Affordable Care Act ("ACA") and Foreign

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Account Tax Compliance Act (“FATCA”), but did not allocate funds required to support ACA and FATCA implementation. In addition, Congress sharply reduced appropriations for IRS operations support for Fiscal Year 2015, including for such critical agency functions as sustaining the IT infrastructure that supports the filing and processing of tax returns. The original intent of the user-fee account was to fund critical needs and statutory mandates, and accordingly, the IRS directed a substantial portion of the user-fee account funds for Fiscal Year 2015 to fulfill these operational requirements and statutory mandates. As a result, regrettably, taxpayer service suffered. However, had we not allocated the user-fee account funds as described above, last year’s tax-filing season would have been jeopardized.

Ultimately, as discussed at the April 22, 2015 hearing, we agree with the Ways and Means Committee’s central premise – that customer service should not have to suffer in order to keep the filing season running smoothly. It is for this reason that we have respectfully asked Congress to fully fund all of the IRS’s services and enforcement operations, as well as its information technology and other required operations support expenditures.

**During your testimony, you also indicated that the cost of IRS’s response to both the TIGTA and congressional investigations was in the vicinity of \$20 million. During a colloquy with Senator Richard Durbin (D-Illinois), you specified that the \$20 million price tag was a result of resource use and employee costs (meaning in terms of lost productivity).**

- 5. Please break down that \$20 million federal investigation price tag, according to:**
  - a. How much was spent on material or resource support for IRS’s investigation response (broken down by Fiscal Year going back to Fiscal Year 2011).**
  - b. How much was spent on the salaries or other compensation provided to federal IRS employees who have played a role in IRS’s investigation response (broken down by Fiscal Year going back to Fiscal Year 2011).**
  - c. How much was spent on the salaries or other compensation provided to non-federal IRS contractors who have played a role in IRS’s investigation response (broken down by Fiscal Year going back to Fiscal Year 2011).**

Of the approximately \$20 million the IRS has spent on its efforts to comply with congressional and law enforcement requests and cooperate in the § 501(c)(4) determinations investigations, approximately \$7 million was for IT-related expenditures, such as the development and maintenance of the database that we have used to store, search, review, and produce documents. The remaining sum – at this point, well over \$13 million – is for labor costs, including for the attorneys and support personnel who have searched, reviewed, and produced documents, as well as for the IT personnel who have worked on the document collection and production. These are IRS and Office of Chief Counsel employees; contractor costs are not included in this “labor

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costs” tabulation but rather in the above estimate for IT-related expenditures.<sup>7</sup> We reached this labor costs figure by pro-rating an hourly rate based on the annual salaries of the employees involved and multiplying the employees’ rates by the hours they logged to the project.

- 6. Has IRS calculated the cost to taxpayers for the multi-year IRS targeting effort by an unknown number of IRS employees? If the answer is yes, please provide that dollar figure.**

We acknowledge that taxpayers were burdened, unacceptably, as a result of the management failures documented by TIGTA and the investigating committees. We regret in particular the delays that many organizations experienced as they waited for their applications for tax-exemption to be processed. We do not minimize these burdens in the least, although we are unable to quantify them with a dollar figure. However, respectfully, we do not agree with your characterization of these events (“the multi-year IRS targeting effort...”).<sup>8</sup>

- 7. It has been documented in the above-cited House Committee on Ways and Means report that IRS has hired outside law firms to support ongoing litigation.[] Please inform the Committee if IRS has hired one or more law firms to assist IRS with its investigation response, providing the following details:**
- a. If one or more law firms was retained, the name or names of those law firms.**
  - b. The amount of money spent on law firm(s) (broken down by Fiscal Year going back to Fiscal Year 2011).**
  - c. Why the hiring of law firm(s) was needed, given the number of attorneys employed by IRS.**
  - d. The IRS account or fund from which funding was drawn to cover the costs of law firm(s) (i.e., the User-Fee Account or a different account).**
  - e. The amounts paid to each of the private law firm(s) to defend the litigation filed against the IRS and individual IRS employees related to the IRS Targeting Scandal.**
- 8. Please also inform the Committee if IRS has hired one or more outside consulting or public relations firms to assist IRS with its investigation response, providing the following details:**
- a. If one or more consulting or public relations firms was retained, the name or names of those firms.**

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<sup>7</sup> These costs pertained to the development and maintenance of the aforementioned database.

<sup>8</sup> Incidentally, we have not pointed out in this submission every instance where we disagree with your characterization of the facts. Please do not take our failure to object as acquiescence that we necessarily agree with the facts as you have stated them.

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- b. The amount of money spent on consulting or public relations firm(s) (broken down by Fiscal Year going back to Fiscal Year 2011).**
- c. Why the hiring of consulting or public relations firm(s) was needed, given the number of individuals employed by IRS.**
- d. The IRS account or fund from which funding was drawn to cover the costs of consulting or public relations firm(s) (i.e., the User-Fee Account or a different account).**

To begin with, we refer you to the transcript of the hearing conducted by the House Ways and Means Oversight Subcommittee on April 22, 2015, when the law firm expenditure that you reference was discussed. As noted at that hearing, the amount of this expenditure is far eclipsed by the tax amount in controversy in that case; and for the reasons stated at the hearing and in subsequent congressional briefings, we determined that this expenditure was: (a) legally authorized; and (b) justified from a tax administration standpoint, in that it advances the public's interest in assisting the IRS to recover a potentially very large amount of tax due.

With respect to the IRS's efforts in responding to the congressional and law enforcement investigations, no outside law firm, consulting firm, or public relations firm has been retained or consulted.

**During your testimony, you indicated that IRS was unable to properly retain and/or store [sic]**

- 9. Please provide detailed information regarding IRS's expenditures on information technology, including:**
  - a. IRS's information technology budget (broken down by Fiscal Year going back to Fiscal Year 2011).**
  - b. Specific information technology contracts and/or equipment purchases that were made with information technology budget funds.**
  - c. An explanation as to why these contracts and/or equipment purchases were prioritized over e-mail archiving and digital storage improvement.**
  - d. A justification for current information technology budget levels if this funding is not being used for e-mail archiving and digital storage.**

We welcome the opportunity to brief you on our IT operations, on the growing list of challenges that we are facing in this arena, and on our efforts to efficiently provide high-quality services to taxpayers. We discussed these issues at length in a July 2, 2015 submission to the Senate Finance Committee, which we are ~~enclosing separately~~ delivering to you for your reference.

As detailed in that ~~the enclosed~~ correspondence, our IT operations have performed commendably in managing ever more complex tax-filing seasons, processing a growing number of tax returns and delivering refunds in a timely manner. As discussed above, this effort has included the

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implementation of various new provisions of law, including those contained within FATCA, the ACA, and biannual tax extenders, even where Congress has declined to allocate funds for such implementation. Through all of this, we are entrusted with the obligation to keep taxpayer information secure. As detailed in the ~~attached~~ above-referenced submission, this too has become ever more challenging, in light of the growing sophistication of criminal elements attempting to exploit our systems, and in light of the proliferation of data breaches in the public and private sectors, which have rendered personal information more vulnerable across the digital economy. Yet securing taxpayer data ranks among our highest priorities, and our efforts in this regard require the resources and attention of divisions throughout the Service. Finally, as discussed above, we are committed to improving our capacities to respond to requests for information from Congress, Freedom of Information Act requests, and discovery requests in civil litigation.

All of this, in turn, has required continuing our efforts to modernize our antiquated IT systems. Modernization will enable us not only to maintain, but to continue to improve, the services that we can offer our customers. As Commissioner Koskinen has testified on numerous occasions, our ultimate objective is to provide taxpayers with the sort of secure online services that they have come to expect from financial institutions in the digital age. Ultimately, this will not only improve the taxpayer experience, but also create efficiencies within our operations that will enable us to stretch our future budgets further. Accordingly, we have asked, and continue to ask, Congress to assist us by making the investments that will allow us to make these improvements.