

**Congress of the United States**  
**Washington, DC 20515**

June 27, 2013

The Honorable Daniel I. Werfel  
Acting Commissioner  
Internal Revenue Service  
1111 Constitution Avenue N.W.  
Washington, D.C. 20224

Dear Acting Commissioner Werfel:

Founding father Alexander Hamilton wrote in Federalist Paper number 21, “How is it possible that a government half supplied and always necessitous, can fulfill the purposes of its institution, can provide for the security, advance the prosperity, or support the reputation of the commonwealth?”<sup>1</sup> This is still just as true today. While collecting revenue is not always a popular job, we know it is a tough one to administer fairly and effectively. Given the enormous reach of the Internal Revenue Service (IRS) and the sensitive information it possesses, it is critical that it functions in a transparent and efficient manner.

Recently, it has come to our attention that the IRS pays a number of employees full time salaries, funded by taxpayer dollars, for work they do not perform. Instead, these employees spend their time working for government employee unions. Known as “official time,” in this arrangement (permitted under Title V of the U.S. Code, section 7131, enacted under the 1978 Civil Service Reform Act) federal employees are paid to perform union duties instead of the jobs they were actually hired to do. While the IRS continues to request more funding to further close the more than 14.5 percent tax gap, especially under the current budget crunch and sequestration, it makes little sense to use taxpayer resources to pay for union work.<sup>2</sup> This kind of practice takes place only in the government – in the private sector, union work and staff are paid for by union dues.

Documents from your department list more than 200 IRS employees serving in 100 percent official time capacity from January 20, 2012 through the date of response, June 6<sup>th</sup> of 2012.<sup>3</sup> The IRS has shut down on certain days, and required employees to take unpaid furloughs, due supposedly to the effects of sequestration. However, the IRS is also planning to pay out \$70 million in employee bonuses, and pays more than 200 employees to work for the union, instead of fulfilling the duties described in their positions of record.<sup>4</sup> Rather than aggressively pursuing the estimated 311,566 federal government employees who owe more than \$3.5 billion in

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<sup>1</sup> “Federalist No. 21: Other Defects of the Present Confederation,” Alexander Hamilton, *Independent Journal*. December 12, 1787. [http://thomas.loc.gov/home/histdox/fed\\_21.html](http://thomas.loc.gov/home/histdox/fed_21.html)

<sup>2</sup> “IRS Releases New Tax Gap Estimates,” Internal Revenue Service. January 6, 2012. <http://www.irs.gov/uac/IRS-Releases-New-Tax-Gap-Estimates-Compliance-Rates-Remain-Statistically-Unchanged-From-Previous-Study>

<sup>3</sup> Americans for Limited Government (ALG), “Treasury Department Full Time Official Time Personnel” [http://alfoiafiles.com/index.php?title=Treasury\\_Department\\_Full\\_Time\\_Official\\_Time\\_Personnel](http://alfoiafiles.com/index.php?title=Treasury_Department_Full_Time_Official_Time_Personnel), accessed June 24, 2013.

<sup>4</sup> “IRS may pay \$70 million in employee bonuses,” Josh Hicks, *The Washington Post*. June 19, 2013. [http://articles.washingtonpost.com/2013-06-19/politics/40070615\\_1\\_daniel-werfel-irs-statement-group-awards](http://articles.washingtonpost.com/2013-06-19/politics/40070615_1_daniel-werfel-irs-statement-group-awards)

delinquent taxes,<sup>5</sup> or stopping the identity thieves who stole about \$3.9 billion from taxpayers last year,<sup>6</sup> IRS is instead furloughing employees to give them a longer July 4<sup>th</sup> weekend.<sup>7</sup>

More than 40 of these employees, who do no work for the taxpayers and spend 100 percent of their time serving union interests, are paid over \$100,000 a year.<sup>8</sup> Americans are nervous about the IRS' new responsibilities next year under the Patient Protection and Affordable Care Act (PPACA), and are wary of the new resources IRS will require to undertake them. There have also been a number of recent concerns raised about IRS targeting of conservative and other groups.<sup>9</sup> As such, it is now more important than ever that IRS show it is a good steward of taxpayer funds, and prioritizes its mission and the interests of hardworking taxpayers.

So that we may better understand how the money collected by IRS can best serve our nation's taxpayers, please provide our offices with answers to the following questions, labeling answers as to the corresponding question number:

- 1) How many IRS employees work official time 100 percent of the time? Please provide figures over the last ten years— as well as any comments or context you might have as to why the numbers have fluctuated. Please also include the employees' title, salary, and duty station.
- 2) Please describe and provide the job descriptions of what these 100 percent official time employees do in a given day for the IRS. How do these activities relate to the mission of the IRS?
- 3) If an employee is on official time 100 percent of the time, does IRS have to hire and compensate another employee to perform the duties the person would otherwise perform in their position of record? If so, how much did this cost the IRS last year? Please estimate both the cost of additional employees' salaries, and the costs involved in hiring, providing office space for, or other costs associated with taking on more employees.
- 4) What is the process for putting an IRS employee on official time 100 percent of the time? Does such an employee go through competitive hiring practices as do other federal employees?
- 5) How does your agency evaluate such employees for performance? Were any of the employees who spent 100 percent of their time on official time eligible for pay raises or performance bonuses? If so, please provide the amount of annual increases (including

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<sup>5</sup> "Tax Day Vote: Should Tax Delinquent IRS Employees Be Fired?" Robert W. Wood, *Forbes*.

<http://www.forbes.com/sites/robertwood/2013/04/13/tax-day-vote-should-tax-delinquent-irs-employees-be-fired/>

<sup>6</sup> "There Are Billions of Dollars in Undetected Tax Refund Fraud Resulting From Identity Theft," Treasury Inspector General for Tax Administration, Audit Report No. 2012-42-080, July 19, 2012, p. 11. Available at

<http://www.treasury.gov/tigta/auditreports/2012reports/201242080fr.pdf>, accessed June 25, 2013.

<sup>7</sup> "Second IRS furlough day scheduled for Friday," Bernie Becker, *The Hill*. June 12, 2013. <http://thehill.com/blogs/on-the-money/domestic-taxes/305085-second-irs-furlough-day-scheduled-for-friday>

<sup>8</sup> ALG, "Treasury Department".

<sup>9</sup> "A Partisan Union at the IRS," Andrew Stiles, *National Review*. May 20, 2013. <http://www.nationalreview.com/article/348811/partisan-union-irs>

step increases, bonuses, incentive payments, awards, or other money in addition to base salary), broken down by year over the last 10 years, given to employees on official time. Please also explain the process for determining pay raises for employees on 100 percent official time.

- 6) If an employee is on 100 percent official time, is this employee expected to report to his or her work station on a daily basis? How many of these employees work at IRS facilities and how many do not? Can employees on official time work from home? If so, please report the number of hours employees on official time worked from home or away from their primary duty station.
- 7) Of the employees who are on 100 percent official time, do any of their positions of record reflect positions the IRS is currently seeking to fill, "hard to fill" positions, or positions which the IRS has a critical need to fill?
- 8) Has the IRS agreed to any current collective bargaining agreements that include language on official time? If so, what did IRS agree to? Who approved these provisions? Does IRS plan to agree to increased amounts of official time in future negotiations?
- 9) How many new employees will IRS need to implement its new responsibilities under PPACA? Will this result in an increased use of official time?
- 10) For IRS officials on 100 percent official time, to which divisions within the IRS were they assigned? Please break this down numerically.
- 11) Are any employees on 100 percent official time involved in the processing of refunds? How many taxpayer refunds for the 2012 tax year were late?
- 12) Please calculate the total number of hours of official time that IRS paid for over the past 10 years. How many such hours did IRS pay for, at what cost?

We would appreciate a response by July 19<sup>th</sup> of this year. Thank you for your efforts, and if you have any questions about this request, please contact James Gelfand on Doctor Coburn's staff at (202) 224-4751, or Sally Rose Larson on Doctor Gingrey's staff at (202) 225-2931.

Sincerely,



Tom A. Coburn, M.D.

Ranking Member

Senate Committee on Homeland Security and Governmental Affairs



Phil Gingrey, M.D.

Member of Congress