

# United States Senate

WASHINGTON, DC 20510

February 6, 2014

## VIA ELECTRONIC TRANSMISSION

The Honorable John Koskinen  
Commissioner  
Internal Revenue Service  
U.S. Department of the Treasury  
1111 Constitution Avenue, NW  
Washington, DC 20224

Dear Commissioner Koskinen:

It was with great disappointment that we learned of your decision to reinstate bonuses to Internal Revenue Service (IRS) employees for FY 2013. Despite the clear intent of Congress and the Administration that no bonuses be given unless required by law, the IRS announced yesterday that it would pay \$62.5 million in bonuses to its employees. This decision undermines the goals of the Balanced Budget and Emergency Deficit Control Act, commonly referred to as sequestration, and explicit guidance from the Office of Management and Budget (OMB) for FY 2013.

The sequestration required the federal government to cut \$85 billion in spending across the federal government in FY 2013. As a result, in March 2013, the IRS told the National Treasury Employees Union (NTEU) that it intended to reduce the Union's funding for bonuses, which would save \$76 million. NTEU filed a lawsuit against the IRS, arguing that IRS bargaining employees were entitled to a 1.75 percent bonus.

OMB's guidance on sequestration clearly states that bonuses for FY 2013 should be looked at with increased scrutiny, and that no bonuses should be given unless required by law.<sup>1</sup> Furthermore, OMB guidance forbids any bonuses in excess of 1 percent for non-Senior Executive Service employees.<sup>2</sup>

---

<sup>1</sup> Office of Management and Budget (OMB) Memorandum M-13-05 and M-13-11.

<sup>2</sup> OMB Memorandum M-14-02.

In a letter dated July 29, 2013, then-Acting Commissioner Daniel Werfel informed the Senate that “It is my intent that no awards be paid to any IRS employee for performance in 2013 due to the current sequestration reductions.” He added that this decision was consistent with government-wide policy and the IRS’s own legal procedures for dealing with bargaining and non-bargaining employees.<sup>3</sup> The legality of canceling bonuses for all employees, including NTEU members, was upheld by a third-party mediator in September 2013.<sup>4</sup>

Despite the fact that the IRS was winning the lawsuit with NTEU, you made the decision to settle with the union rather than continue the case. As a result of the settlement, the IRS will now pay 1 percent in bonuses to bargaining unit employees. IRS’s “agreement” with NTEU to pay bonuses, using FY 2014 funds, is hardly a compromise. This is effectively a decision to pay out the maximum amount possible under OMB guidance for FY 2014, and it sidesteps OMB’s guidance for FY 2013 that no bonuses should be awarded unless obligated by law. Additionally, even though the IRS was never under any obligation to pay non-bargaining unit employees, it has decided to pay them \$19.1 million in bonuses for FY 2013. In total, the IRS’s decision has cost taxpayers \$62.5 million.

These bonuses are an insult to taxpayers, who are experiencing a “deterioration in performance” due to budget constraints.<sup>5</sup> In FY 2013, 49 percent of calls to the IRS customer assistance line never got through, and the average wait time to talk to a representative was almost 18 minutes. Over half all correspondence sent to the IRS remained unanswered, and the IRS reduced and in some cases eliminated services at walk-in sites. The IRS’s training budget fell to \$22 million in FY 2013, an 87 percent reduction from FY 2010.<sup>6</sup> Despite the severity of these budget cuts, the IRS chose to spend almost *three times* as much on bonuses as it did on employee training. Additionally, NTEU employees at the IRS cost taxpayers approximately \$16 million in wages for work hours that were used solely for union activity in FY 2012 and the first half of 2013.<sup>7</sup> Perhaps the IRS should consider reducing the use of official time for union activities and use the saved money to pay the bonuses that NTEU believes it is owed.

---

<sup>3</sup> Acting Commissioner Werfel to Senator Grassley, July 29, 2013.

<sup>4</sup> Government Executive, “IRS Moves Forward With Plan to Cancel \$70 Million in Employee Bonuses,” September 20, 2013.

<sup>5</sup> Internal Revenue Service, “Some IRS Assistance and Taxpayer Services Shift to Automated Resources.”

<sup>6</sup> Taxpayer Advocate Service, 2013 Annual Report to Congress.

<sup>7</sup> Acting Commissioner Werfel to Chairman Boustany, July 29, 2013.

The IRS's decision to issue bonuses is foolhardy and wasteful in such a challenging fiscal climate; further, it is particularly upsetting given the IRS's targeting of conservative groups applying for tax-exempt status. The Treasury Inspector General for Tax Administration (TIGTA) reported in May 2013 that the IRS improperly targeted conservative groups, requested unnecessary information from them, and deprived them of their legal rights by significantly delaying the processing of their applications.<sup>8</sup> The IRS's handling of these applications is, in the words of President Obama, "inexcusable," and has led to the resignation of IRS officials, including then-Acting Commissioner Steven Miller.<sup>9</sup> In light of this scandal and the improper conduct of IRS employees, it is shocking that the IRS still chose to give out bonuses for FY 2013 at the absolute maximum level permitted by OMB's guidance for FY 2014.

Sequestration has forced everyone to make difficult decisions when it comes to spending. The American people are looking to the government to make responsible fiscal choices and use their taxpayer dollars in the most effective way. The IRS's decision to spend \$62.5 million on bonuses is a violation of the public's trust. We strongly urge you to reconsider your decision.

In order to understand the IRS's reasoning and the terms of its agreement with NTEU, we ask that you provide the following information:

- (1) The complete terms of the IRS's agreement with NTEU.
- (2) All concessions the IRS received and/or requested in return for its settlement with NTEU.
- (3) All information concerning the amount of bonuses the IRS plans to pay for FY 2014 and/or future years.
- (4) A written justification, including any written opinions by the Office of the Chief Counsel, explaining why the IRS believes the FY 2013 bonus payments are permissible under the guidance contained in OMB Memorandum M-13-11.

We ask that you provide the requested information as soon as possible, but no later than February 20, 2013. If you have any questions regarding this letter, please contact Tegan Millspaw of Ranking Member Grassley's staff at (202) 224-5225, Jim Lyons of Ranking Member Hatch's staff at (202) 224-4515, Ryan Hart of Ranking Member Burr's staff at (202) 224-3154, Andrew Siracuse of Senator Cornyn's staff at (202) 224-2934,

---

<sup>8</sup> Treasury Inspector General for Tax Administration (TIGTA) Report 2013-10-053.

<sup>9</sup> Statement of the President, May 15, 2013.

and Chris Allen of Senator Roberts' staff at (202) 224-6144. Thank you for your attention to this matter.

Sincerely,



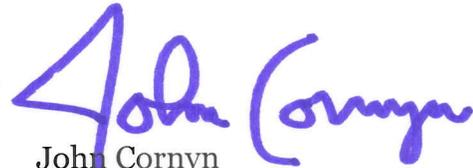
Charles E. Grassley  
Ranking Member  
Committee on the Judiciary



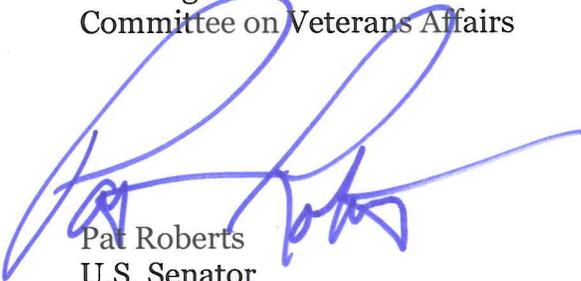
Orrin G. Hatch  
Ranking Member  
Committee on Finance



Richard Burr  
Ranking Member  
Committee on Veterans Affairs



John Cornyn  
U.S. Senator



Pat Roberts  
U.S. Senator