

United States Senate
WASHINGTON, DC 20510

June 6, 2023

VIA ELECTRONIC TRANSMISSION

The Honorable Daniel Werfel
Commissioner
Internal Revenue Service

Dear Commissioner Werfel:

We have been made aware of an email transmitted by Deputy Internal Revenue Service (IRS) Commissioner for Services and Enforcement, Doug O'Donnell, to IRS employees regarding the lawful reporting of allegations of wrongdoing and protected whistleblower disclosures. In this email, the Deputy Commissioner states that he is writing because of concerns related to the reporting of allegations of wrongdoing and the lawful reporting of misconduct under 26 U.S.C. § 6103. While the email states the "IRS is deeply committed to protecting the role of whistleblowers," it fails to inform IRS employees of their Constitutional and statutory right to make protected disclosures to Congress and fails to include the "anti-gag" provision which informs federal employees of their right to make protected disclosures.

Under 26 U.S.C. § 6103(f), IRS employees have the right to make lawful disclosures to Congress if they believe a tax return or return information "may relate to possible misconduct, maladministration, or taxpayer abuse."¹ All federal employees also have the right to make lawful disclosures to Congress under 5 U.S.C. § 7211 which provides that an employee's right "to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied."² However, the Deputy Commissioner's email states IRS employees may make disclosures to a supervisor, management, the DOJ Office of the Inspector General, or the Treasury Inspector General for Tax Administration but blatantly fails to provide that IRS employees have the right to make lawful disclosures to Congress.

The anti-gag provision included in the Consolidated Appropriations Act prohibits the use of appropriated funds to enforce a nondisclosure agreement or other restrictive policy, form, or agreement that does not specifically allow for lawful, protected disclosures and that each policy, form, or agreement must use specific language apprising the employee of their rights to make such disclosures.³ Specifically, the anti-gag provision prohibits the use of government funds to

¹ 26 U.S.C. § 6103(f)(5).

² 5 U.S.C. § 7211.

³ Pub. L. No. 117-328; *see also* 5 USC § 2302(b)(13).

implement or enforce any nondisclosure policy, form, or agreement if it does not contain the following statement:

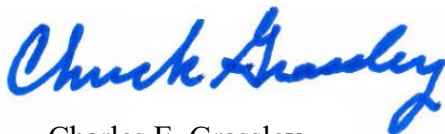
These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General or the Office of Special Counsel of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.⁴

The Deputy Commissioner's email fails to include the specific anti-gag provision language to fully inform IRS employees about their rights to make protected disclosures of misconduct as required by law. The importance of whistleblowers knowing their rights under the law cannot be understated. The anti-gag provision has been included in almost every appropriations law since 1988 and was permanently codified in federal law by the Whistleblower Protection and Enhancement Act of 2012.⁵

These accountability measures are critically important because they ensure whistleblowers know they have the right to disclose government fraud, waste, and abuse to Congress and Inspectors General. Accordingly, we demand that you immediately transmit an updated guidance informing IRS employees of their Constitutional and statutory rights to make protected disclosures to Congress. Please notify our offices when the IRS has transmitted the updated guidance with a copy of the message no later than June 20, 2023.

Thank you for your prompt attention to this matter.

Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Budget



Ron Johnson
Ranking Member
Permanent Subcommittee
on Investigations

⁴ *Id.*

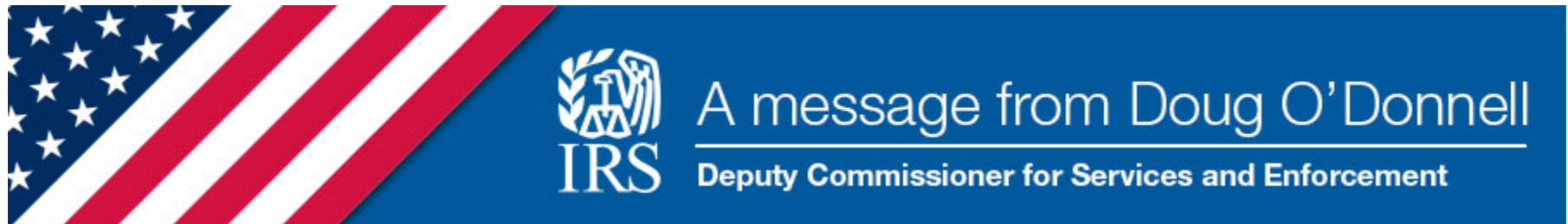
⁵ 5 USC § 2302(b)(13).

Enclosure

cc: The Honorable Sheldon Whitehouse
Chairman
Committee on the Budget

The Honorable Richard Blumenthal
Chairman
Permanent Subcommittee on Investigations

From: *Deputy Commissioner Services & Enforcement [REDACTED]
Sent: Thursday, May 25, 2023 4:53 PM
To: &&ALL DCSE Employees [REDACTED]
Subject: IRS Employees Working with Taxpayer Information in Grand Jury and non-Grand Jury Matters



Good evening IRS Services & Enforcement colleagues,

I am writing to you all given concerns related to reporting of and reports of allegations of wrongdoing. The IRS is deeply committed to protecting the role of whistleblowers, and there are robust processes and procedures in place to protect them. We take any issue involving whistleblowers seriously.

IRS employees may be entrusted with access to information that includes materials subject to protection under the Federal Tax laws, e.g., Section 6103, and Federal Rule of Criminal Procedure 6(e). As such, if you become aware of potential wrongdoing involving activities where information is subject to protection under either or both Section 6103 and/or 6(e), you have options for reporting this wrongdoing.

Employees who reasonably believe, with respect to a **grand jury matter**, that there is evidence of a (1) violation of law, rule, or regulation; (2) gross mismanagement; (3) a gross waste of funds; (4) an abuse of authority; or (5) a substantial and specific danger to public health or safety, should: (i) report such evidence to their supervisor; (ii) report such evidence to any management official; **or** (iii) report such evidence to the Department of Justice Inspector General (DOJ IG) and notify Treasury Inspector General for Tax Administration (TIGTA) that a referral of a grand jury matter has been made to DOJ IG. Such employees are authorized to disclose return and return information, as necessary, in such communications with the DOJ IG.

Employees who reasonably believe, with respect to a ***non-grand jury matter***, that there is evidence of a (1) violation of law, rule, or regulation; (2) gross mismanagement; (3) a gross waste of funds; (4) an abuse of authority; or (5) a substantial and specific danger to public health or safety, should: (i) report such evidence to their supervisor; (ii) report such evidence to any management official; ***or*** (iii) report such evidence to TIGTA.

Notwithstanding the above, with respect to any matter involving classified information, you are reminded that you must follow classified information protocols.

Sincerely,

Doug

Douglas W. O'Donnell (he/him/his)

Deputy Commissioner, Services & Enforcement

A solid black rectangular box used to redact the signature of Douglas W. O'Donnell.