

United States Senate
WASHINGTON, DC 20510

May 19, 2023

VIA ELECTRONIC TRANSMISSION

The Honorable Danny Werfel
Commissioner
Internal Revenue Service

Dear Commissioner Werfel:

The Internal Revenue Service (IRS) Inflation Reduction Act Strategic Operating Plan reports that the IRS plans to use Inflation Reduction Act funds to hire 8,782 new enforcement personnel between FY 2022 and FY 2024.¹ According to the IRS website, it plans to hire additional Criminal Investigation (CI) special agents to investigate potential criminal violations of the Internal Revenue Code. Part of the major duties listed for the position include carrying a firearm, and the IRS CI special agent “must be willing to use force up to and including the use of deadly force.”² The IRS will use their direct hire authority to hire at least 360 additional special agents deployed at duty stations around the country.³

Some of the concerns with hiring newly armed special agents have been captured in multiple past audit reports issued by the Treasury Inspector General for Tax Administration (TIGTA). In 2012, TIGTA issued a report titled, *Criminal Investigation’s Firearms Training and Qualification Policies Need to Be Clarified*. TIGTA found that some CI special agents did not meet all firearms training and qualification requirements, and “Field office management did not always take consistent and appropriate actions when a special agent failed to meet the requirements.”⁴ The report states that there was no national-level review of firearms training records to ensure that all special agents met the qualification requirements.⁵ Unfortunately, in the 2018 report titled, *Criminal Investigation’s Firearms Training and Qualification Oversight*

¹ Internal Revenue Service, *Internal Revenue Service Inflation Reduction Act Strategic Operating Plan, FY2023-2031*, (Apr. 5, 2023) at 131 <https://www.irs.gov/pub/irs-pdf/p3744.pdf>.

² <https://www.jobs.irs.gov/resources/job-descriptions/irs-criminal-investigation-special-agent>.

³ USA Jobs, *Criminal Investigator - Direct Hire*, Internal Revenue Service (Feb. 15, 2023) <https://www.usajobs.gov/job/706868400>; see Eric Revell, *IRS plans to hire gun-carrying special agents in all 50 states*, Fox Business (Apr. 27, 2023) <https://www.foxbusiness.com/politics/irs-plans-hire-gun-carrying-special-agents-all-50-states>.

⁴ Treasury Inspector General for Tax Administration, 2012-30-104, *Criminal Investigation’s Firearms Training and Qualification Oversight Needs to Be Improved*, (Sep. 6, 2012), <https://web.archive.org/web/20121007073234/http://www.treasury.gov/tigta/auditreports/2012reports/201230104fr.pdf>

⁵ *Id.*

Needs to Be Improved, TIGTA once again found that CI special agents failed to maintain documented evidence of which special agents met the firearm standards and could not provide formal support for other firearms-related training, including whether 1,500 special agents received tactical equipment proficiency training.⁶ However, most alarming is that TIGTA, six years removed from the previous audit, found that “Field office management did not always take consistent and appropriate actions when special agents failed to meet the requirements (i.e., take away their weapons), and there is no national level review of firearms training records to ensure that all special agents meet the qualification requirements.”⁷ These last two findings are similar to findings from the 2012 TIGTA report indicating that the IRS CI Unit didn’t learn their lesson right away. If the IRS CI Unit can’t police their own, how can the American people trust its actions towards them?

When it comes to the safety and treatment of taxpayers by the IRS, there needs to be oversight, transparency, and accountability to the American people. Accordingly, I write to better understand what policies are in place to ensure that there is adequate oversight to prevent potential unlawful abuses of taxpayers by the IRS, and appropriate firearms training for armed IRS CI special agents. I also write to urge that you conduct the necessary oversight to root out all IRS employee misconduct which is particularly needed given the scandals that have plagued the IRS in the recent past.⁸

No amount of fraud and abuse of our tax laws should be tolerated. Given the IRS’s history of misconduct, it is understandable that taxpayers are concerned that the hiring of additional IRS employees may lead to an increase in the IRS unfairly targeting certain taxpayers.⁹ For example, in 2013 it was widely reported that the IRS improperly targeted

⁶ Treasury Inspector General for Tax Administration, 2018-30-046, *Criminal Investigation’s Firearms Training and Qualification Oversight Needs to Be Improved*, (Jul. 30, 2018), <https://www.tigta.gov/sites/default/files/reports/2022-02/201830046fr.pdf>

⁷ *Id.*

⁸ See Mark Memmott, ‘Foolish Mistakes Were Made,’ IRS Chief Says, NPR (May 17, 2013) <https://www.npr.org/sections/thetwo-way/2013/05/17/184712231/congress-due-to-grill-ousted-irs-chief>; Chelsea J. Carter, Drew Griffin, and David Fitzpatrick, ‘Angry’ Obama announces IRS leader’s ouster after conservatives targeted, CNN (May 16, 2013) <https://www.cnn.com/2013/05/15/politics/irs-conservative-targeting/index.html>; Nick Sibilla, *How An Obscure Banking Law Let The IRS Seize Bank Accounts From Innocent Americans*, Forbes (July 17, 2015) <https://www.forbes.com/sites/instituteofjustice/2015/07/17/how-an-obscure-banking-law-let-the-irs-seize-bank-accounts-from-innocent-americans/?sh=4233970d5361>; Larry Light, *Feds: IRS seized millions from innocent people and businesses*, CBS News (April 6, 2017) <https://www.cbsnews.com/news/irs-seize-millions-innocent-people/>; Avi Asher-Schapiro, *The IRS has been quietly confiscating millions from small business owners*, WREG Memphis (Apr. 6, 2017) <https://wreg.com/news/the-irs-has-been-quietly-confiscating-millions-from-small-business-owners-tmwsp/>; and Lindsay Kornick, *Matt Taibbi’s visit by IRS after testimony about ‘Twitter Files’ raises eyebrows: ‘Stinks to high heaven’*, Fox News (Mar. 28, 2023) <https://www.foxnews.com/media/matt-taibbis-visit-irs-after-testimony-about-twitter-files-raises-eyebrows-stinks-high-heaven>.

⁹ Jessica Chasmar, *IRS faces online uproar over special agent job posting requiring ability to use deadly force ‘if necessary’*, Fox Business (Aug. 10, 2022) <https://www.foxbusiness.com/politics/irs-faces-online-uproar-special-agent-job-posting-requiring-ability-use-deadly-force-necessary>.

religious groups for increased scrutiny of their tax-exempt status.¹⁰ A 2015 GAO study found that the IRS's Exempt Organization unit procedures to review organizations' tax exempt status with integrity and fairness were not designed or implemented.¹¹ GAO found there was a heightened risk for the IRS to unfairly target organizations for increased scrutiny based on their religious, educational, political, or other views, and made ten recommendations for the IRS to implement to correct this lack of oversight.¹² The GAO findings appear to be substantiated by news reports from 2017 which stated that the IRS had "expressed its sincere apology" in court documents for mistreating conservative groups in their applications for tax exempt status.¹³

In 2014, news reports indicated that due to mounting pressure, the Chief of the IRS CI unit announced that they would no longer use a procedure called "structuring," which was designed to seize the funds of drug dealers and terrorists, to seize the bank accounts of small business owners who were not suspected of criminal activity for making multiple bank deposits under \$10,000.¹⁴ In 2016, it was reported that the IRS CI unit had seized hundreds of millions of dollars from hundreds of Americans through structuring, without ever accusing them of criminal wrongdoing.¹⁵ TIGTA conducted an investigation and released a report in 2017 that randomly selected 306 investigations conducted by the IRS CI unit that involved the seizure of property based on structuring.¹⁶ TIGTA found that of the 252 cases involving legal sources of money seized by the IRS CI unit, only 21 cases involved violations of tax law.¹⁷ In 92% of these cases, the IRS CI unit conducted interviews with the property owner after their assets were seized, and these interviews did not meet all criminal investigation requirements or advise the property owner of their rights.¹⁸ Other reports indicated that on average the IRS took nearly a year to

¹⁰ Jordy Yager, *Complaints of IRS targeting by religious groups on the rise*, The Hill (May 18, 2013) <https://thehill.com/blogs/blog-briefing-room/news/150967-complaints-of-irs-targeting-by-religious-groups-on-the-rise/>; Grassley Press Release, *Top IRS Official Acknowledges Mistakes In Response To Grassley Questions*, Senator Charles E. Grassley (May 21, 2013) <https://www.grassley.senate.gov/news/news-releases/top-irs-official-acknowledges-mistakes-response-grassley-questions>.

¹¹ Government Accountability Office, *Internal Controls for Exempt Organization Selection Should Be Strengthened*, GAO-15-514 (July 2015) <https://www.gao.gov/assets/gao-15-514.pdf>.

¹² *Id.*

¹³ Peter Overby, *IRS Apologizes For Aggressive Scrutiny Of Conservative Groups*, NPR (Oct. 27, 2017) <https://www.npr.org/2017/10/27/560308997/irs-apologizes-for-aggressive-scrutiny-of-conservative-groups>.

¹⁴ Shaila Dewan, *Law Lets I.R.S. Seize Accounts on Suspicion, No Crime Required*, The New York Times (Oct. 25, 2014) <https://www.nytimes.com/2014/10/26/us/law-lets-irs-seize-accounts-on-suspicion-no-crime-required.html>; Shaila Dewan, *Rules Change on I.R.S. Seizures, Too Late for Some*, The New York Times (Apr. 30, 2015) <https://www.nytimes.com/2015/05/01/us/politics/rules-change-on-irs-seizures-too-late-for-some.html>.

¹⁵ Nick Sibilla, *After Sending Armed Agents To Seize Bank Accounts, IRS Announces New Policy To Return Assets*, Forbes (Jun. 24, 2016) <https://www.forbes.com/sites/instituteforjustice/2016/06/24/irs-structuring-policy/?sh=2ac174f1a871>.

¹⁶ Treasury Inspector General for Tax Administration, *Criminal Investigation Enforced Structuring Laws Primarily Against Legal Source Funds and Compromised the Rights of Some Individuals and Businesses*, 2017-30-025 (Mar. 30, 2017) at 8 <https://www.tigta.gov/sites/default/files/reports/2022-02/201730025fr.pdf>.

¹⁷ *Id.*

¹⁸ *Id.* at 17.

complete its structuring related forfeiture investigation, leaving property owners who were not charged with a crime without access to their funds to operate their business.¹⁹

This misconduct by the IRS further illustrates the need for robust oversight to ensure the IRS is not unfairly targeting small business owners and religious groups, and that the government is using its limited resources to investigate those who are actually violating tax laws. For example, in March of 2023, a TIGTA investigation revealed that the IRS has not adequately prioritized investigating federal employees for not filing their tax returns.²⁰ TIGTA reported that between FY 2015 to FY 2021, the number of federal employees who were delinquent in paying their taxes increased by 32%, and in FY 2021 149,000 federal employees owed approximately \$1.5 billion in unpaid taxes.²¹ In addition, 42,000 federal employees repeatedly failed to file their tax returns for multiple years between FY 2016 and FY 2020, and the IRS knows the identity of these individuals.²² However, IRS disagreed with TIGTA's recommendation that the IRS should work with DOJ to develop a process to refer non-filing federal employees, with multiple years of unfiled tax returns, for investigation and prosecution where warranted.²³

Federal employees have a heightened responsibility to be compliant in paying their tax obligation²⁴, and as TIGTA recommended, the IRS should prioritize cases where federal employees are in brazen noncompliance with tax laws by failing to file their tax returns.²⁵ The federal government must make sure its own house is in order by ensuring federal employees pay their fair share of taxes, rather than targeting innocent small business owners who are trying to support their families.²⁶

So that Congress may conduct objective and independent oversight concerning the IRS's enforcement of tax laws, please provide answers to the following no later than June 1, 2023.

1. What is the estimated 10-year cost to hire the additional 360 IRS CI special agents?
2. How does the IRS CI unit track special agents who have or have not successfully completed firearms training? What actions does the IRS CI unit take when special agents fail this training? Please explain.

¹⁹ Dick M. Carpenter II, Ph.D., *Seize First, Question Later*, Institute for Justice (Feb. 1, 2015) <https://ij.org/report/seize-first-question-later/>.

²⁰ Treasury Inspector General for Tax Administration, *The IRS Has Not Adequately Prioritized Federal Civilian Employee Nonfilers*, 2023-30-011 (Mar. 6, 2023) <https://www.tigta.gov/sites/default/files/reports/2023-03/202330011fr.pdf>.

²¹ *Id.*

²² *Id.* at 2-3.

²³ *Id.* at 13.

²⁴ 5 C.F.R. Part 2635.809.

²⁵ TIGTA, *supra* note 20 at 22.

²⁶ See Ian Smith, *IRS Rarely Punishes Tax Delinquent Federal Employees*, FedSmith (Mar. 15, 2023) <https://www.fedsmith.com/2023/03/15/irs-rarely-punishes-tax-delinquent-federal-employees/>.

3. What documented policies, guidance, and oversight mechanisms does the IRS have in place to prevent the targeting of religious groups for increased scrutiny based on their beliefs? Please provide records.
4. Please provide all policies, guidance and a list of training given to newly armed CI special agents.
5. Has the IRS fully implemented the recommendations from TIGTA's 2012, 2017 and 2018 reports cited in this letter? If yes, please provide the date and the action taken to implement each recommendation. If not, why not?
6. Since the IRS CI unit's announcement of changes to its structuring policy in 2014, please provide all IRS policies, guidance, and related documents on the use of structuring.
7. Has the IRS begun fully implementing the recommendations from TIGTA's March 2023 report? If not, why not?
8. Why did the IRS disagree with TIGTA's 2023 recommendation to develop a process to refer federal employees who have failed to file their taxes to the Justice Department for investigation and prosecution, when warranted, and to hold federal employees accountable?

Thank you for your prompt review and responses. If you have any questions, please contact my Committee staff at (202) 224-0642.

Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Budget