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**AFTERSHOCKS FROM THE IRS EXEMPT ORGANIZATIONS EARTHQUAKE OF 2013,  
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*THE IRS EO EARTHQUAKE*

## **AFTERSHOCKS FROM THE IRS EXEMPT ORGANIZATIONS EARTHQUAKE OF 2013**

*Three years on, the dust is settling from the tumult of 2013.*

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August 23, 2011, was a beautiful, sunny day in Washington, DC. It was business as usual. Government workers were busy in their offices, tourists filled museums and monuments, and animals roamed in relative peace at the Washington Zoo. But shortly before 1:51 pm, an orangutan let out a guttural holler, red ruffed lemurs began alarm-calling, and flamingos huddled together in the water. At 1:51 pm, the city was struck by a 5.8 magnitude earthquake-the strongest east coast tremor in 67 years. **1** Monuments cracked, plaster fell from ceilings at the Smithsonian, and government employees evacuated their buildings in droves. Among those buildings was the IRS Tax-Exempt and Government Entities (TE/GE) national headquarters office.

In expelling TE/GE employees from their headquarters, the 2011 earthquake foreshadowed a veritable earthquake of even greater magnitude that led to an exodus of IRS leadership out of TE/GE less than two years later, amidst a zoo of investigations, oversight reports, and congressional hearings related to TE/GE's Exempt Organizations (EO) office and its processing of high profile **Section 501(c)(4)**

exemption applications involving political activity. Now, three years after former EO director Lois Lerner's infamous *mea culpa* 2 launched the congressional and media frenzy that shook the foundations of TE/GE and EO, they have emerged from the tumult with a new structure and a new approach to oversight of exempt organizations.

## Background

Until recently, EO had three major tasks: (1) to review applications for exemption and other requests for determinations, like reclassification of public charity status; (2) to conduct examinations of exempt organizations; and (3) to provide guidance and education to the EO sector on federal tax-exempt law. EO headquarters in Washington oversaw all three of these functions. It was a unique blend of enforcement and customer service, the uniting purpose of which was to promote compliance. It did so with one eye on the Code, regulations, and legal guidance, and one eye on the ever-changing, ever-expanding EO sector, so that its projects and guidance would be both consistent with existing law and relevant to the sector.

EO headquarters oversaw formal EO guidance. This included revenue rulings, private

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letter ruling (PLR) requests, notices, and announcements. It also oversaw the EO Exam function, the largest component of EO, and the EO Determinations function, which included review of certain complex applications for exemption in the national EO headquarters by lawyers who had knowledge of the issues involved. For all of these functions, the IRS Chief Counsel's office provided legal consultation and collaboration.

Regulations projects were initiated by Treasury, but Treasury would typically consult with EO and EO Chief Counsel. Treasury valued the input of EO, because EO administers and enforces whatever regulations Treasury ultimately promulgates.

EO was also activity involved in educating the public on tax-exempt law and procedure, and in communicating with and soliciting input from the public, through its now-defunct Customer Education and Outreach office. (A remnant of this office survives in the IRS TE/GE Communications and Liaison office).

In the last decade, EO has conducted several compliance projects involving prominent EO sub-sectors such as hospitals, colleges and universities, and group exemption rulings. These projects were part enforcement, part educational. When the IRS released its report on the compliance activities of 400 colleges and universities on 4/13/13, it stated that it planned to look at unrelated business taxable income reporting by colleges and universities more broadly, focusing on recurring losses and the allocation of expenses. Then, just a month after the release of that college and university report, the Treasury Inspector General of Tax Administration (TIGTA) released a report that put EO's colleges and

universities project on hold, [3](#) and that marked the beginning of the end-at least for the time being-of broad sub-sector compliance projects, replaced by a focus on more efficient use of EO Determinations and EO Examinations and enhanced customer service. This report ultimately led to the reorganization of TE/GE and EO.

## 2013 and 2015 TIGTA reports

In its May 2013 report, TIGTA discussed the Service's process for reviewing exemption applications, and criticized the IRS for selecting certain applications for closer scrutiny based on trigger words (e.g., "Tea Party," "progressive") used to describe their activities. TIGTA reported that, early in 2010, the IRS "began using inappropriate criteria to identify organizations applying for tax-exempt status to review for indications of significant political campaign intervention." [4](#) TIGTA's investigation was prompted by congressional complaints regarding treatment of the applications. TIGTA sought to determine whether the IRS had targeted specific groups, delayed processing of those groups' exemption applications, and requested unnecessary information from any such groups.

TIGTA found that the IRS had inappropriately selected some exemption applications for additional scrutiny "based upon their names or policy positions instead of indications of potential campaign intervention." [5](#) It concluded that because of ineffective IRS management, these inappropriate criteria were developed and used for more than 18 months, which caused some exemption applications to be unnecessarily delayed and some applicants to be unnecessarily burdened with requests for information. Further, the report stated that no action was taken on some applications that indicated "potential significant campaign intervention" [6](#) because IRS EO headquarters in Washington was slow to respond.

Three months into the TE/GE realignment, in March 2015, TIGTA published a follow-up report. [7](#) Highlighting "significant actions" the IRS has taken "to eliminate the selection of potential political cases based on names and policy positions" and to expedite applications for exemption for social welfare organizations, [8](#) TIGTA noted that IRS EO has:

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- Stopped using of "Be On the Look Out" (BOLO) listings (which had allegedly been used to target exemption applications that contained certain key words).
- Caught up on a backlog of exemption applications that "had been open for lengthy periods," in part by developing an optional expedited self-certification process for [Section 501\(c\)\(4\)](#) applications.
- Instituted a quality review process to ensure applicants are not sent unnecessary information requests.

## Congressional and judicial scrutiny of how the IRS handled 501(c)(4) applications

In October 2015, after an investigation lasting nearly two years, the Department of Justice concluded its investigation into the 501(c)(4) application controversy. It found no criminal wrongdoing, and decided not to bring any criminal charges. It found no evidence that either Lois Lerner or the other IRS personnel involved acted with partisan motives or intentionally concealed e-mails or other documents. Rather, it cited bureaucratic inefficiency and mismanagement. In his letter to the House Judiciary Committee, Assistant Attorney General Peter Kadzik stated: "Our investigation uncovered substantial evidence of mismanagement, poor judgment, and institutional inertia, leading to the belief by many tax-exempt applicants that the IRS targeted them based on their political viewpoints. But poor management is not a crime. We found no evidence that any IRS official acted based on political, discriminatory, corrupt, or other inappropriate motives that would support a criminal prosecution." **9**

Similarly, in a bipartisan report, the Senate Finance Committee concluded that IRS was responsible for mismanagement but not criminal activity. It found that IRS management did not properly oversee processing of applications by political advocacy organizations for recognition of 501(c)(4) exemption, as it "did not take appropriate steps to ensure that the applications were processed expeditiously and accurately." **10** The report did *not* conclude that the IRS used improper methods to screen and process exemption applications, that White House employees had any involvement in the IRS actions, that IRS employees exercised any political bias in processing the applications, or that IRS employees committed any crimes. In a separate report, however, Republican members of the committee concluded that IRS executives had followed a political agenda in processing the applications and had misled Congress. Since the issuance of these reports, congressional inquiries and hearings into the IRS handling of 501(c)(4) applications have abated.

The Oversight and Government Reform Committee of the House of Representatives (Oversight Committee) continued to investigate, however, and has taken a more critical stance than its Senate counterparts and the Department of Justice. Four days after the Department of Justice announced that it had found no criminal wrongdoing by IRS personnel, the

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Oversight Committee issued a resolution to impeach IRS Commissioner John Koskinen for failure to testify truthfully and cooperate with a congressional investigation involving the 501(c)(4) application controversy. **11** Eight months later, with the Commissioner still in office, the Oversight Committee issued a scathing report censuring Commissioner Koskinen for failing to locate and preserve emails to and from Lois Lerner. **12**

Litigation against the IRS related to 501(c)(4) application processing continues in federal courts. The Sixth Circuit has ordered the IRS to produce names of applicants for tax exemption that the IRS had identified on its BOLO list for special scrutiny. **13** The plaintiffs in that case, *NorCal Tea Party Patriots*, claimed that the IRS unconstitutionally targeted them in violation of their political beliefs and requested confidential information in violation of federal law. In a similar case, *Linchpins of Liberty*, **14** the DC Circuit is considering whether the IRS unconstitutionally targeted and delayed plaintiffs' 501(c)(4)

exemption applications.

## IRS TE/GE reorganization

As the furor fades, TE/GE and EO are settling into a new normal, less distracted by the media and congressional inquiries and more focused on enforcing tax-exempt law and serving their customers. This follows a seismic paradigm shift that emphasizes greater efficiency, risk management, customer service, and focused enforcement.

This paradigm shift has coincided with a change in leadership at the executive levels of TE/GE and EO. In the wake of the 501(c)(4) application earthquake, most of the leadership responsible for the EO office was replaced due to a combination of resignations, transfers, and retirements. The new EO leadership was drawn largely from other operating divisions of the IRS. One product of new executives and managers at EO being drawn from other operating divisions of the IRS was the realignment, or reorganization, of EO and Employee Plans (EP) within TE/GE to look and function more like the other IRS operating divisions.

This major reorganization, which the IRS announced in March 2014, eventually occurred in January 2015. **15** The IRS realigned TE/GE's structure and function with the other IRS business operating divisions, shifting technical law specialists responsible for published guidance, PLRs, and technical advice from EO and EP to the Office of Associate Chief Counsel (Tax Exempt and Government Entities) (TE/GE Counsel). The reorganization was driven by the desire to operate EO and EP more efficiently, to make processing of applications and guidance consistent across IRS, and secure the foundations of TE/GE to avoid recurrence of the 501(c)(4) application earthquake.

As of January 2015, TE/GE Counsel assumed authority for preparing revenue rulings, revenue procedures, announcements and notices, and for issuing TAMs, PLRs, and information letters on matters involving exempt organizations, qualified retirement plans and IRAs. **16** This reorganization not only involved a shift in responsibilities, but also a shift in resources and personnel. About 20 EO Division Counsel and 20 EP Division Counsel tax law specialists were transferred from TE/GE to TE/GE Counsel. **17** EO retained authority to issue determination letters, including determination letters on the exempt status of organizations under **Sections 501(c)** and **Section 521** , and certain miscellaneous determination letters requested using Form 8940, "Request for Miscellaneous Determinations." **18**

In connection with this reorganization, TE/GE Chief Counsel was divided into Associate Chief Counsel and Division Chief Counsel. The Associate Chief Counsel provides guidance, like PLRs and revenue rulings and procedures, a function formerly within the purview of the now-defunct EO Guidance group that had been overseen by the EO Director. The Division Chief Counsel supports EO agents in EO Examinations and EO Determinations, and conducts litigation. Theoretically, Division Chief Counsel will now provide technical assistance to EO Determinations on complex exemption applications, taking the place of the now-defunct EO Technical group, also formerly overseen by the EO Director.

While the former EO Guidance and EO Technical groups in EO have ceased to exist, about a dozen technical advisors, managers, and tax law specialists who used to serve in those groups remain in EO Headquarters, under the new moniker of "Knowledge Management." The Knowledge Management group is responsible for overseeing the development of knowledge networks, or "K-Nets." K-Nets are a repository of tax law, guidance, and IRS educational material on certain topics. TE/GE has established eleven K-Nets, five of which are EO-specific-private foundations, hospitals and other healthcare entities, [Section 501\(c\)\(3\)](#) issues, other [Section 501\(c\)](#) issues, and unrelated business income tax. [19](#) At this time, the

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K-Nets are confined to use by IRS employees and are not accessible by the general public. The IRS has yet to announce what access practitioners and the tax-exempt community may ultimately have to the K-Nets, if any, though presumably most of the material collected in K-Nets is already available to the public. [20](#)

## **The advent of Lean Six Sigma and streamlined application processing**

Another tectonic shift resulting from the 501(c)(4) application earthquake is how applications for federal tax exemption are processed by EO. When TIGTA released its report in 2013, it raised concerns not only about the criteria the IRS used to scrutinize certain applications, but also about how slowly the agency was processing applications. The greatest problem EO faced at that time was not the 150-plus 501(c)(4) applications involving political activity or lobbying that were stuck in the pipeline; that was just the tip of the iceberg. Rather, EO's greatest problem was the 70,000-plus other exemption applications that were stuck in the pipeline, many of which had been pending for over 270 days, or even more than a year.

When they took office in 2013 and 2014, one of the new EO executives' top priorities became to eliminate the backlog of exemption applications pending with EO Determinations. But before doing so, they brought in a group of business advisors with extensive knowledge of process improvement principles-but little or no knowledge of federal tax-exempt law-to help reform and maximize efficiency within EO Determinations. These process improvement principles are known as Lean Six Sigma, a methodology for driving process improvements by using statistical analysis to control inputs leading to more efficient production of goods and services. Lean Six Sigma was pioneered in Japan, and has been successfully used by large for-profit corporations like Toyota, Ford, GE, and Motorola to minimize waste in production. TE/GE and EO began to function more like a business-not to make money, but to serve their customers and achieve their deliverables more efficiently and effectively.

The Lean Six Sigma group has helped the IRS to identify inefficiencies in exemption application processing and take steps to make the process more efficient, including an online interactive Form 1023 to help organizations file complete and accurate applications, greater use of standardized language in

information document requests, a new process to return incomplete applications, and a new process to identify and prevent erroneous auto-revocations. **21**

Lean Six Sigma also encouraged streamlined processing of exemption applications. Heightened scrutiny of the IRS exemption application process in 2013 raised concerns not only about criteria the IRS used to scrutinize certain applications, but also about how slowly the agency was processing applications. To speed up the application process for small organizations and make processing of these applications easier, the IRS developed a new exemption application form: Form 1023-EZ.

Released in July 2014, Form 1023-EZ limits eligibility for streamlined filing to entities that (1) have not had, and do not expect to have,

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gross receipts exceeding \$50,000 in the preceding two years or the following three years, and (2) do not have assets exceeding \$250,000. It asks organizations to identify data and basic information on organizational structure, specific activities and foundation classification, and attest that their organizing documents (e.g., articles of incorporation) meet certain requirements and that they do not conduct certain prohibited activities. The Form does not contain questions on compensation, transactions with insiders, conflict of interest policy, and use of assets found in the full Form 1023, and does not require filers to attach their organizing documents. Form 1023-EZ can only be filed electronically, and requires a \$250 user fee (recently reduced from \$400). **22**

Approximately 25 tax examiners in EO Determinations review Forms 1023-EZ to ensure all questions have been answered and that the filing fee is attached. Approximately 97% of the applications receive no substantive review. The other approximately 3% have been randomly selected for some level of substantive "pre-determination review." **23** Because Form 1023-EZ does not contain any narrative description of activities, organizing documents, or other attachments, the extent of possible substantive IRS review is limited.

Since Form 1023-EZ was introduced, more than 50% of applicants for federal tax exemption have filed using Form 1023-EZ. Most of those applications have received their determination letters within ten to 14 days after filing. **24** Beginning this year, EO is selecting for "post-determination review" a statistical sampling of Form 1023-EZ filers whose applications were approved. EO Examinations agents will conduct these reviews, which may lead to correspondence exams. **25**

In addition to streamlining application processing through Form 1023-EZ, the IRS has also streamlined processing of standard Form 1023 applications, including some applications that are more complex, often granting exemption within several months after filing. EO cites the decrease in average processing time of exemption applications as a significant accomplishment. Its streamlined process has reduced average processing time for exemption applications in the past two years from over 270 days to less than 100 days. EO's customer satisfaction surveys show that satisfaction with the EO Determinations process among Form 1023 "customers" has improved from 44% in mid-2014 to 77% in 2015. **26**

This streamlined processing reflects a new IRS focus on shifting resources away from reviewing organizations' aspirational activities, focusing more on their actual activities. Accordingly, EO has transferred 30 EO Determinations agents to EO Examinations, [27](#) leaving EO Determinations to process an increasing influx of exemption applications (more than 70,000 a year, according to the IRS [28](#) ) with approximately 100 remaining agents.

## **Tectonic shifts in EO Examinations' resources, priorities, and processes**

In October 2015, TE/GE Commissioner Sunita Lough issued "TE/GE Priorities for FY 2016" ("Priorities Report"), [29](#) which describes TE/GE's accomplishments in FY 2015 and priorities for FY 2016. It includes a high level, philosophical outline of TE/GE's focus areas for its 2016 fiscal year, but doesn't contain any specific plans or timelines. It is more robust than the TE/GE Commissioner's three-page program letter issued for FY 2015, but is considerably less detailed than the annual work plans that EO had released in prior years.

The Priorities Report reflects TE/GE's major pivot from a project-focused, market-segment-oriented enforcement approach to a more issue-focused, data-driven approach, to "foster a culture of data-driven decision-making." To that end, EO is relying more on data from Form 990, "Return of Organization Exempt From Income Tax," in selecting exempt organizations for exam. The IRS has developed over 150 analytic search queries of Form 990 responses to identify noncompliant or potentially noncompliant organizations. EO Examinations Director Margaret Von Lienen has stated that after two years of testing, the IRS selects most of the organizations it examines based on these search queries. Rather than select an organization for exam based on a single answer to a single Form 990 question, she stated that returns are selected based on multiple answers to multiple questions on Form 990 that could suggest noncompliance. To date, the queries have proven successful. The IRS reports a change rate of over 90% for organizations selected for exam through Form 990 search queries. [30](#)

An appendix to the TE/GE Priorities report indicates that through this data-driven approach to exam case selection, EO Examinations is focusing its resources in 2016 on five areas:

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- (1) *Threats to tax-exempt status*, such as non-exempt purpose activity and private inurement, will be enforced primarily through field examinations.
- (2) *Threats to exempt organizations' assets-from*, for example, self-dealing, excess benefit transactions, and loans to disqualified persons-will be accomplished through correspondence audits and field examinations.
- (3) *Oversight of the tax gap* between exempt and for-profit entities, particularly with regard to employment tax and unrelated business income tax, will be enforced through compliance checks, correspondence audits and field exams.

(4) *International issues*, including how exempt organizations oversee funds spent outside the United States (e.g., whether funds are spent on potential terrorist activities), whether exempt organizations are operating as foreign conduits, and compliance with the Report of Foreign Bank and Financial Accounts (FBAR) requirements, will be accomplished through compliance reviews, compliance checks, correspondence audits, and field exams.

(5) *New "emerging" issues*, including non-exempt charitable trusts and exempt hospital systems' compliance with [Section 501\(r\)](#), will be enforced through compliance reviews, correspondence audits, and field examinations.

The Priorities Report emphasizes a renewed focus on risk management within TE/GE. Commissioner Lough explains that managers are being trained by a Chief Risk Officer, and that they have completed "risk registers," identifying "risks within their offices and ways to mitigate existing and potential risks." Business decisions by senior TE/GE management pertaining to risk are now being substantiated on a tool that documents these decisions "in the context of [TE/GE's] risk appetite and acceptance." It is not clear from the Priorities Report how this risk assessment will practically affect EO's exam program or other operations.

Finally, the Priorities Report emphasizes TE/GE's renewed emphasis on customer service. It includes 18 references to "customers," "customer service," and "customer satisfaction." By "customers," the report is referring to the exempt organizations that EO is responsible for regulating. EO Examinations continues to regulate those customers, but more selectively. Through its data-driven approach to exam case selection, it seeks to focus its resources on the "next best case" of "aggressive noncompliance" through more narrow, focused exams. [31](#) In the meantime, EO Examinations is revising its information document requests (IDRs) to be more clear and concise, and tailored to the organization that is being examined, while emphasizing the need for clear communication between revenue agents and examined organizations. [32](#)

## Navigating the new EO normal

In the short term, the IRS EO reorganization is not likely to have any immediate impact on most tax-exempt organizations, except those that submit applications for tax exemption or seek PLRs or pre-submission conferences. In the long term, the IRS believes that the realignment will result in more efficient and consistent processing of PLRs and other legal guidance, freeing up resources for more, and more focused, examinations.

With its emphasis on streamlining, EO Determinations is processing applications for tax exemption and for reclassification of public foundation status with speed and efficiency, though with much less substantive review. Processing time is considerably shorter, especially for well-prepared applications.

One encouraging implication of the reorganization is that EO-related guidance the IRS issues likely will be processed more expeditiously, due to fewer layers of review involved and tighter EO Chief Counsel timelines. For instance, Chief Counsel works under a self-imposed six-month deadline for processing

private letter ruling requests. Also, Chief Counsel encourages pre-submission conferences for organizations that plan to submit PLR requests.

To request a pre-submission conference, an organization's representative would contact

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Chief Counsel, by phone or in writing, to request and schedule the conference. **33** The organization would submit a brief summary of the issue, the ruling requested, and authority in support of the ruling requested. Then it would meet with Chief Counsel for an informal discussion on the ruling request. It would attempt to determine whether Chief Counsel was likely to issue the ruling, or would likely issue it in a revised form or on revised facts. It then would craft the PLR request accordingly. This enables organizations to test the proverbial PLR waters.

The reorganization initially coincided with a dearth of published guidance from TE/GE Chief Counsel and Treasury, but over the past year they have issued a steady stream of guidance, much of which was co-written by attorneys and tax law specialists who were transferred from EO to TE/GE Chief Counsel in the reorganization. This guidance includes a **Section 501(r)**-related notice and revenue procedure, a mission-related investment notice, proposed and final regulations on supporting organizations, final regulations on foreign NGO equivalency determinations for private foundations, and final regulations on program-related investments. It is not clear whether or how TE/GE Associate Chief Counsel is coordinating with EO on educating EO Determinations or EO Examinations agents on this new guidance or advising on how the related laws and regulations should be enforced.

EO Examinations has taken a more data-driven approach, relying more on Form 990 data to select organizations for examination. This underscores the importance of careful, accurate, timely, and compliant Form 990 reporting, and for viewing Form 990 not just as a financial report but also as a compliance barometer and guide.

TE/GE's public outreach function, like other reorganized segments of TE/GE, has become more focused, streamlined, and aligned with other IRS operating divisions. For instance, the EO Customer Education and Outreach division is now defunct, its personnel absorbed into the TE/GE Communications and Liaison (C&L) office. C&L continues to maintain the EO Web site and provide other public education and outreach. Similarly, the Advisory Committee on Tax Exempt and Government Entities (ACT) no longer has a separate, distinctive EO membership. Rather, the ACT's remaining 15 members (diminished from 21 by attrition) have been directed to "focus on a more integrated TE/GE" and address TE/GE-wide tax administration issues, rather than any EO-specific issues. **34** With its renewed emphasis on customer service, TE/GE and EO are open to communicating with tax-exempt groups and receiving comments. EO executives regularly meet with groups such as the AICPA Tax Exempt Technical Resource Panel, the TE/GE Joint Council, and the American Bar Association, and speak at multiple tax-exempt organization conferences.

Despite their reorganization and narrower focus, TE/GE and EO are still ultimately responsible for

enforcing provisions of federal laws governing tax-exempt organizations, in consultation with TE/GE Chief Counsel. So, for instance, they continue to devote resources to [Section 501\(r\)](#) and other Affordable Care Act-related enforcement. And although EO is not likely to make as many Form changes in the near future, it is likely to update Form 990 (and other forms) to reflect changes in tax law and regulations, as needed.

Given Congress's current antipathy toward the IRS, it is unlikely that EO will enjoy any significant funding increase, or be able to significantly increase its hiring or enforcement activity, in the near future. In light of these funding limitations, IRS Commissioner John Koskinen recently stated that "after five years of budget cuts, and a hiring freeze that has lasted four years, people need to understand that the IRS is going to have to do less with less. This means that both enforcement and taxpayer service will suffer." [35](#)

## Seeking clarity in the settling dust

In the aftermath of the 501(c)(4) application earthquake, IRS TE/GE and EO are seeking to increase customer satisfaction while striving for more efficient and effective oversight of those customers. EO's challenge will be to balance these competing agendas while navigating a more challenging oversight environment with fewer resources. As EO evolves in this environment, its reorganization continues to be a work in progress as certain questions linger:

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- (1) Will EO Determinations' streamlined review process compromise the quality of its review of applications, and/or result in recognition of exemption for abusive tax shelters?
- (2) Will EO Examinations' more focused, data-driven approach to exam case selection continue to result in more exams? In more revocations of tax exemption?
- (3) To what extent will TE/GE Associate Chief Counsel provide technical assistance to EO Determinations regarding applications for exemption and requests for reclassification?
- (4) To what extent will TE/GE Associate Chief Counsel coordinate with EO on educating EO Determinations or EO Examinations agents on new guidance and how it should be enforced?
- (5) To what extent will taxpayers be able to communicate with TE/GE Associate Chief Counsel on complex requests for determinations and technical assistance?
- (6) How will the Service's broader Strategic Plan, [36](#) CONOPS, [37](#) and Future State [38](#) initiatives, which encourage greater use of technology in tax administration, taxpayer service and filing, and exam selection, affect EO and its administration of the tax law?
- (7) What role will TE/GE and EO play in implementing legislation and educating the EO community on new legislation and regulations?
- (8) To what extent will Treasury seek input from EO in the regulations process, to ensure that regulations are administrable and not overly burdensome on the sector?
- (9) How will continuing budget cuts and attrition affect TE/GE's and EO's enforcement and

public outreach activities?

(10) To what extent will the IRS be able to replace the loss of institutional history and expertise that has left TE/GE in the last several years through transfers, retirements, and resignations?

## Conclusion

As the aftershocks fade and the dust settles, TE/GE is emerging from the 501(c)(4) application controversy with a more mission-focused and data-driven approach to oversight, which it hopes will enable it to exercise more effective oversight despite diminishing resources. Although its general structure is in place, the cement for its foundations is not fully dry, as the IRS continues to refine TE/GE's examinations and determinations processes. It remains to be seen whether the reorganized TE/GE will be able to both enhance customer satisfaction and strengthen its oversight of those customers.

<sup>1</sup> "5.8 Virginia earthquake shakes east coast, rattles residents," Washington Post, 8/23.11), available at [www.washingtonpost.com/earthquake-rattles-washington-area/2011/08/23/glQATMOGZJ\\_story.html](http://www.washingtonpost.com/earthquake-rattles-washington-area/2011/08/23/glQATMOGZJ_story.html).

<sup>2</sup> Staff of the Senate Committee on Finance, "The Internal Revenue Service's Processing of 501(c)(3) and 501(c)(4) Applications for Tax-Exempt Status Submitted by 'Political Advocacy' Organizations from 2010-2013," S. Rept No 114-119, 114th Cong., 1st Sess (2016), pages 172-173.

<sup>3</sup> Treasury Inspector General for Tax Administration, "Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review," Reference No. 2013-10-053, 5/14/13, available at [www.treasury.gov/tigta/auditreports/2013reports/201310053fr.pdf](http://www.treasury.gov/tigta/auditreports/2013reports/201310053fr.pdf).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Treasury Inspector General for Tax Administration, "Status of Actions Taken to Improve the Processing of Tax-Exempt Applications Involving Political Campaign Intervention," Reference No. 2015-10-015, 3/27/15, available at [www.treasury.gov/tigta/auditreports/2015reports/201510025fr.pdf](http://www.treasury.gov/tigta/auditreports/2015reports/201510025fr.pdf).

<sup>8</sup> *Id.*

**9** October 23, 2015 Letter from Assistant Attorney General Peter Kadzik to U.S. House of Representatives Judiciary Committee Chairman Bob Goodlatte and U.S. House of Representatives Judiciary Committee member John Conyers, dated 10/23/15.

**10** Senate Finance Committee, "IRS Processing of 501(c)(3) and 501(c)(4) Applications for Tax-Exempt Status Submitted by 'Political Advocacy' Organizations From 2010-2013," S. Rept. 114-119, 8/5/15, available at [www.congress.gov/congressional-report/114th-congress/senate-report/119/1](http://www.congress.gov/congressional-report/114th-congress/senate-report/119/1).

**11** H. Res. 494, 10/27/15.

**12** See H. Rept. 114-635, 6/1/16; H. Res. 737, 6/15/16.

**13** *NorCal Tea Party Patriots*, 817 F.3d 953 **117 AFTR2d 2016-1034** (CA-6, 2016).

**14** No. 15-5013, U.S. Court of Appeals, D.C. Circuit.

**15** The IRS formalized this reorganization in **Announcement 2014-34, 2014-51 IRB 949** .

**16** The transfer of authority from the TE/GE Division to TE/GE Counsel is reflected in the annual updates to these revenue procedures: Rev. Procs. 2016-1 and 2016-2, 2016-1 IRB 1 and 102, respectively (Associate Chief Counsel offices issue PLRs, information letters, and TAMs on matters within their jurisdiction); **Rev. Proc. 2016-3, 2016-1 IRB 126** (areas under the jurisdiction of the Associate Chief Counsel offices on which the IRS will not issue rulings); **Rev. Proc. 2016-4, 2016-1 IRB 142** (procedures for PLRs on issues under jurisdiction of TE/GE Division); **Rev. Proc. 2016-8, 2016-1 IRB 243** (user fees for determinations under jurisdiction of TE/GE Division). However, the realignment did not significantly affect the annual updates of **Rev. Proc. 2016-6, 2016-1 IRB 200** (Employee Plans determination letters); **Rev. Proc. 2016-5, 2016-1 IRB 188** (determination letters on exempt status of organizations under **Sections 501** and 522); and **Rev. Proc. 2016-10, 2016-2 IRB 270** (determination letters with respect to private foundation status and certain other areas under TE/GE Division jurisdiction).

**17** Chief Counsel inherited, and has largely finished processing, 15-20 "legacy" PLR requests, and is now processing PLR requests submitted since realignment.

**18** These miscellaneous determinations include (1) exemption from Form 990 filing requirements; (2) change in type (or initial determination of type) of **Section 509(a)(3)** organization; (3) reclassification

of foundation status, including a voluntary request from a public charity for private foundation status; (4) termination of private foundation status under **Section 507(b)(1)(B)** by an advance ruling request or after the 60-month period has ended; (5) advance approval that a potential grant or contribution constitutes an "unusual grant"; (6) advance approval of certain set-asides described in **Section 4942(g)(2)** ; (7) Advance approval of voter registration activities described in **Section 4945(f)** ; (8) advance approval of scholarship procedures described in **Section 4945(g)** .

**19** Speech by Margaret Von Lienen, Acting Director of IRS TE/GE Exempt Organizations (Georgetown Law Conference on Representing and Managing Tax-Exempt Organizations, 4/28/16).

**20** In the meantime, TE/GE has made available on its Web site several "Issue Snapshots" that address particular tax questions involving issues such as lessening the burdens of government, private foundations' qualifying distributions, and the qualified parking fringe benefit. See [www.irs.gov/Government-Entities/Tax-Exempt-and-Government-Entities-Issue-Snapshots](http://www.irs.gov/Government-Entities/Tax-Exempt-and-Government-Entities-Issue-Snapshots).

**21** Von Lienen, *supra* note 19.

**22** The IRS released several items of guidance concurrently with the final Form 1023-EZ. **Rev. Proc. 2014-40, 2014-30 IRB 229** . includes additional details on eligibility for filing the form, application procedures, standards for issuing determination letters, and more information. Temporary, final and proposed regulations ( **TD 9674, 2014-30 IRB 225** , and REG-110948-14, 2014-30 IRB 239) authorized the IRS to create the streamlined application process and issue Form 1023-EZ. An internal document entitled "Memorandum for Exempt Organizations (EO) Determinations Unit and EP/EO Determinations Processing Unit Employees" [Control No: TEGE-07-0714-0017 SUBJECT: Interim Guidance on Processing Form 1023-EZ] describes the processes to be used by trained IRS tax examiners in reviewing and processing the simplified application, and by IRS specialists to review cases that are randomly selected for a pre-determination review process.

**23** IRS Form 1023-EZ First Year Report, Executive Summary, available at [www.irs.gov/pub/irs-tege/Form\\_1023\\_EZ\\_First\\_Year\\_Report.pdf](http://www.irs.gov/pub/irs-tege/Form_1023_EZ_First_Year_Report.pdf).

**24** Speech by Vicky Judson, IRS TE/GE Associate Chief Counsel (Georgetown Law Conference on Representing and Managing Tax-Exempt Organizations, 4/28/16)

**25** Von Lienen, *supra* note 19.

**26** *Id.*

**27** "TE/GE Priorities for FY 2016," available at [www.irs.gov/pub/irs-tege/TEGE\\_Priorities\\_for\\_FY2016.pdf](http://www.irs.gov/pub/irs-tege/TEGE_Priorities_for_FY2016.pdf).

**28** See "Where's My Exemption Application?", available at [www.irs.gov/charities-non-profits/charitable-organizations/wheres-my-application](http://www.irs.gov/charities-non-profits/charitable-organizations/wheres-my-application).

**29** *Id.*

**30** Von Lienen, *supra* note 19.

**31** Speech by Sunita Lough, Director of IRS TE/GE, Washington Nonprofit Legal and Tax Conference, 3/18/16).

**32** Speech by Margaret Von Lienen, Director of IRS TE/GE Exempt Organizations, EO Examinations, TE/GE Joint Council meeting, 2/26/16.

**33** See Rev. Proc, 2016-1, *supra* note 16, section 10.07.

**34** Speech by Donna Hansberry, TE/GE Deputy Commissioner, TE/GE Joint Council meeting, 2/26/16).

**35** Prepared Remarks of IRS Commissioner John Koskinen before the Tax Policy Center, 2/24/16), available at [www.irs.gov/uac/Newsroom/Commissioner-Koskinen-Remarks-to-the-Tax-Policy-Center](http://www.irs.gov/uac/Newsroom/Commissioner-Koskinen-Remarks-to-the-Tax-Policy-Center).

**36** Internal Revenue Service Strategic Plan, FY 2014-2017, available at [www.irs.gov/pub/irs-pdf/p3744.pdf](http://www.irs.gov/pub/irs-pdf/p3744.pdf).

**37** "IRS Enterprise Concept of Operations (CONOPS): Overview of SB/SE and W&I, LB&I, and TE/GE CONOPS," available at [www.eetax.org/images/EETAX/CEETA\\_IRS\\_conops\\_20160115.pdf](http://www.eetax.org/images/EETAX/CEETA_IRS_conops_20160115.pdf).

**38** "Future State Initiative," available at [www.irs.gov/uac/Newsroom/Future-State-Initiative](http://www.irs.gov/uac/Newsroom/Future-State-Initiative).