

# **Political Activity Compliance Initiative<sup>i</sup>**

## **Procedures for 501(c)(3) Organizations**

### **Purpose**

These procedures are designed to expeditiously address instances of potential political activity by 501(c)(3) organizations in violation of the Code. The goal is twofold: first, to educate 501(c)(3) organizations of the prohibition on political activity and put them on notice of the enforcement program in order to prevent violations, and second, to address noncompliance while the issue remains prominent, so that there are no reoccurrences and so correction could occur prior to the relevant election.

### **Project Scope**

The Political Activity Compliance Initiative (PACI) addresses all referrals<sup>ii</sup> which allege that a 501(c)(3) organization has participated in, or intervened in, a political campaign on behalf of, or in opposition to, any candidate for public office (referred to hereinafter as “political intervention referrals,” or “referrals”). In addition to acting on referrals, the PACI will leverage available resources to identify other areas of potential noncompliance, and take action to prevent violations.

The Exempt Organizations’ Implementing Guidelines will identify PACI as a program requiring allocation of resources.

### **Program Leader and Team**

The Director, EO Examinations, will designate a manager as the Program Leader by November 1st prior to each new election period (see definition on page 2). The Team Leader will oversee and coordinate all aspects of the initiative, beginning with convening a team and conducting a preliminary planning conference.

The Program team will include members from Area Counsel, Classification, Compliance Strategies & Data Analysis, Customer Education & Outreach, Examinations, Mandatory Review, and Rulings & Agreements. It is the responsibility of the team to schedule, implement and monitor the procedures in this document. This includes but is not limited to:

- Identifying and discussing resource needs, including additional Classification and Review personnel, with the Director, EO Examinations for the purpose of allocating resources in the EO Implementing Guidelines.
- Reviewing the results of prior election period initiatives and identifying necessary changes to procedures.
- Coordinating with EO Examinations Area Managers to identify designated agents for working cases.
- Coordinating mandatory training for all employees involved in the compliance initiative on political activity. Training will emphasize to the agents and managers the sensitive nature of these cases and that we respect taxpayer’s constitutional rights to freedom of speech and religion.
- Coordinating examination activity and ensuring the consistency of our approach and the outcomes on a national basis.

- Measuring results and preparing reports, including a report summarizing findings and recommendations after the election period.
- Coordinating publicity and outreach with CE&O.

## **Election Period**

For purposes of this program, an election period will begin no later than January 1st of even numbered years, and end November 30th of that year. The program may begin earlier than January 1<sup>st</sup> with the concurrence of the Director, EO Examinations, if Classification receives a significant increase of referrals alleging prohibited political activity. Outreach activities should begin prior to the election period.

## **General Case Processing Procedures**

The following case processing procedures apply both during non election periods and election periods. All program cases will be tracked using a special project code, check sheet and other data gathering tools.

## **Classification Procedures**

Classification will treat political intervention referrals separately from other referrals and process them on a priority basis, per the Classification fast track procedures (IRM 4.75.5, *Exempt Organizations Examinations Procedures - Information Items*). The initial classifier of the information should not propose whether or not the referral should be examined.

Classification will forward all referrals involving allegations of political intervention to the Referral Committee. The Committee will independently review the information in the file to decide whether a case is selected for assignment. Decisions will be made by majority vote and will be documented in the case file.

The Committee will categorize referrals as “Type A,” “Type B” or “Type C” as described below:

- **Type A** (single-issue/non-complex) cases are those which are relatively non-complex and are expected to be resolved via correspondence. Such cases typically would involve only the political intervention issue and only one organization.
- **Type B** (multiple issue/complex) cases are more complex and are expected to require a review of the organization’s books and records. Such cases would involve multiple related organizations and/or multiple issues, in addition to the political intervention issue.
- **Type C** (egregious/repetitive) cases are those that involve egregious and/or repetitious violations (generally), during an election period of the political activity prohibition and require immediate action by the IRS. For example:

- situations where the activity was egregious, such as ongoing political contributions that were depleting the charity's assets,
- situations involving continual widespread advertising or supporting named candidates,
- clear and continuing support or opposition of a candidate, etc..

During non election periods, the regular Classification referral committee will review political referrals, and will identify the ones selected for assignment as Type A, B, or C. During non election periods Classification will process Type A and Type B political intervention referrals within the standard Classification timeframes; however, for Type C referrals, Classification and the groups will follow the *Election Period Expedited Procedures*. Referrals identified for assignment will be established with a skeletal account on AIMS/EOIC as appropriate.

If Classification receives a referral on any previously examined program case they will provide the name of the organization to the Review of Operations (ROO) group manager so ROO does not conduct duplicative research on that entity. (See section on Researching Compliance by Organizations Examined in Previous Election Periods).

Immediately upon identification of a Type C referral by the referral committee, Classification will coordinate with the Area Manager and the Team Leader for coordination of assignment. The Director, EO Examinations will be notified of the basis of the case and why it is a Type C case, and that the letter 3934-C will be used on the case. The Area Manager will identify an available agent with experience in political activity compliance issues and respond to Classification within 4 calendar days. Classification will convert Type C referrals to electronic format for electronic transfer of the file to the assigned agent as appropriate.

Type A and Type B referrals will be assigned to Type A and Type B designated agents as appropriate. If a Type A or B case is identified as a Type C case after assignment to the field, the group manager will immediately contact the PACI team leader.

### **Churches**

When a referral selected by the referral committee for assignment to an agent involves a church, Classification will notify the Area Manager and the Counsel project manager. Additional review by Classification will ensure that the rules of section 7611 are met.

## **Group Procedures**

Examinations resulting from political intervention referrals will be processed as priority cases.

The scope of Type A and (generally) Type C PACI-initiated examinations are single issue exams and will be limited to the political intervention issue(s) identified by Classification and/or the agent. Agents should still look for large, unusual, and questionable items and pursue as appropriate and after consulting the Team Leader.

However, these examinations are exempt from the requirements of limited scope examinations (IRM section 4.75.11.4.2), which require the agent to review the organizing documents to determine the exempt purpose, and to establish that the organization filed all other required Federal returns.

Revenue agents will follow normal procedures during non-election periods. However, the agent will not wait for a return to be filed or the tax year to end in order to initiate an examination of the organization and its activities. [IRC Section 7602(a)] In instances where no return has been filed or the tax year has not ended since the alleged violation occurred, the initial contact letter will list only the relevant tax period, and not the form number.

### **Initial Contact Letters (Non churches)**

The agent will send an initial contact letter (Letter 3934 for Type A and B cases, Letter 3934-C for Type C cases) with an Information Document Request (IDR) attachment to the organization. (Examples attached) The IDR, tailored to fit the facts of the particular case, will provide the details of the alleged conduct/activity of the organization and request that the organization provide an explanation of the conduct/activity. The agent will also enclose copies of referral information from publicly available sources (e.g., newspaper articles), if available, along with an IRS notice explaining the rules regarding political activity by tax-exempt organizations.<sup>iii</sup> Type A cases are correspondence examinations and Type B cases are expected to require field contact.

### **Type C Cases (Non churches)**

Type C cases will have expedited procedures even during non election cycles. Type C letters (Letter 3934-C) will be sent within 5 calendar days of receipt in the group of the referral from Classification. The letter will be sent either by certified mail, or overnight mail with signature required for delivery, with a seven calendar day response period.

Just because a case is determined to be a Type C case does it mean that Section 6852 or 7409 will be used or even considered. Special procedures apply if termination assessment or injunctive relief is warranted, and these provisions are extraordinary. See I.R.C. § 6852 and/or 7409. In those cases, the agent should immediately contact the Team Leader, their Area Manager, and the Counsel project manager for assistance. Uses of the provisions in sections 6852 and/or 7409 require elevated approvals prior to taking any action.

### **Churches**

Agents must follow Section 7611 inquiry/examination procedures and the Director, EO Examinations must personally review the complete case file to determine if a reasonable belief exists, and must personally approve and sign church inquiry and examination letters involving churches.

### **Special Procedures for TEP Cases**

If the referral committee selects a case for examination, Classification will determine if the taxpayer meets the Team Examination Program (TEP) criteria and if so, TEP project code 8012 should be used and TEP procedures must be followed, including:

- (1) Classification should advise the TEP EPP Analyst of the selection and inclusion of case in the project, the Type of case (A, B, or C), as well as any project assumptions (i.e. required start dates and estimated time for the examination).
- (2) The TEP Analyst will add the case to the Area Running Workplan using the known information about the case (taxpayer name, EIN, group/Area assigned, estimated start date and estimated planned staff days).
- (3) A TEP Case Selection Worksheet should be prepared and sent to the Manager receiving the case as the case is assigned. The worksheet will be pre-completed with the identified items, including the estimated start date and estimated staff days.
- (4) The Manager must complete and submit the Case Selection Worksheet within 14 days of the receipt of the case in the group and, as necessary, update any of the information pre-completed on the worksheet. The normal ninety day processing period for Case Selection Worksheets does not apply to this critical initiative.
- (5) Once the Case Selection Worksheet has been approved, EPP will update, as necessary the Running Workplan to reflect any revised information.
- (6) The Manager must prepare and submit the TEP Quarterly Open Case and the Closed Case reports to EPP.

A case may be a large church that may meet the criteria for classification as a TEP case. If an examination letter has been issued on a large church, the manager should contact the TEP Program Manager to discuss whether it should be included in the TEP universe, which would require preparation and submission of a TEP identification worksheet along with updating the case to the TEP project code, and the preparation of a TEP Case Selection Worksheet.

### **Agreed Cases**

A PACI case may be resolved with a written advisory if the taxpayer exhibits an understanding of the IRS's position that a prohibited activity occurred, the violation was a one time, isolated, unintentional event, the organization corrected the violation (e.g. recovered the funds), and the organization is **not likely to violate the prohibition again.**

Taxpayers are not required to admit wrongdoing, just an understanding of the service's position that prohibited activity occurred. The written advisory must state the facts and law and include a warning that the organization risks possible revocation of tax-exempt status should it become involved in political activities in the future. These cases should be closed using disposal code 52 – Written Advisory – No 5666 required. Sample advisory letters have been developed for use in these agreed situations.

### **Unagreed Cases**

Situations may arise in which taxpayers do not agree a violation of the prohibition occurred. In these situations, depending on the nature of the violation, if it is clear the organization intends to continue the activity, revocation and/or excise tax under section 4955 should be considered. However, if the organization does not agree a violation occurred, the violation was minimal, or no excise tax is calculable, but it is possible a violation may reoccur, the agent should consult with the PACI team and Counsel on how to resolve the case.

If these cases result in a written advisory, they should be closed using disposal code 08 – Written Advisory – Form 5666 required. Sample advisory letters have been developed for use in these situations. In addition, please refer to the section on “Researching Compliance by Organizations Examined in Previous Election Periods”. The 5666s will be directed to the Review of Operations (ROO) group for public record searches in order to determine if a future violation occurs. With respect to churches, the Section 7611(f) rules relating to “Limitations on additional inquiries and examinations” must be considered.

### **Proposed Revocations**

In any case in which revocation is an issue, prior to any discussions of revocation with the taxpayer, the Director EO and Director EO Exams must be briefed by the Project Leader and Area Manager. Division Counsel must be included in those conversations if the organization is a church.

### **Mandatory Review Procedures**

All cases are subject to Mandatory Review. Cases involving revocation or assertion of tax liability must have immediate coordination with the Team Leader. In all cases, the closing letter should include an explanation of the alleged political intervention issue, the taxpayer’s explanation, corrective action taken by the taxpayer, when applicable, and resolution. To ensure consistency, Mandatory Review will designate specific Reviewer(s) to handle all cases. Mandatory Review will close all cases and mail the closing letter.

## **Election Period Expedited Procedures**

During an election period, the following expedited processing procedures will apply. The Director, EO Examinations, will notify the Area and Group managers, via memorandum, of the timeframe for the expedited procedures. Expedited processing procedures begin with the receipt of a referral and end with a closed case. All cases and referrals in process at the beginning of an election period will become subject to the expedited procedures.

Prior to initiation of the program for the election period, the Director, EO Examinations will consider assigning additional staffing if needed to meet the expedited Classification and Mandatory Review processing goals, including assigning one or more revenue agents to conduct initial technical review of incoming referrals, in order to identify political intervention referrals for immediate review by the PACI Classification Committee (as described below).

## **Training**

Training for designated agents and managers will be conducted as needed no later than February 1, of the election year. The team will hold a preliminary conference call with designated agents<sup>iv</sup> and managers approximately 30 days prior to the beginning of the election period and will schedule routine conference calls throughout the election period to ensure consistency and quality.

## **Publicity**

Prior to the beginning of an election period, the Team Leader will work with CE&O to plan the programs education and outreach efforts. Before the start of the election period, CE&O will publicize the program's expedited processing procedures.

## **Classification Procedures**

A PACI Classification Committee, comprised of three experienced Exempt Organizations agents and/or front-line managers, will screen all political intervention referrals at least weekly. If a possible Type C case is identified before the referral committee meets, the Classification manager should convene a referral committee meeting immediately.

During an election period, the goal will be to complete classification processing of Type A and Type B political intervention referrals within 14 calendar days of receipt, and Type C referrals within 10 calendar days of receipt.

## **Group Procedures – Non Church Cases**

Revenue agents will follow expedited procedures during election periods, even if a return is not yet due, and/or the tax year has not closed. The agent will not wait for a return to be filed or the tax year to end in order to initiate an examination of the organization and its activities. [See IRC section 7602(a)] In instances where no return has been filed or the tax year has not ended since the alleged violation occurred, the initial contact letter will list only the relevant tax period, and not the form number.

### **Timeframes:**

- Group manager assigns case to agent – within 1 workday of receipt
- Agent sends initial contact letter (Letter 3934 for Type A & B cases, Letter 3934-C for Type C cases) to organization – within 14 calendar days of assignment of Type A & B cases, and within 5 calendar days for Type C cases.
- Letter sent either by certified mail, or overnight mail with signature required for delivery, with a response period of between 7 to 15 calendar days for Type A & B cases (depending upon the volume of information requested), and with a 7 calendar day response period for Type C. Agents may entertain requests for extension of the response time after consulting their manager.

## Group Procedures - Church Cases

Agents must follow Section 7611 inquiry/examination procedures and the Director, EO Examinations must personally approve and sign church inquiry and examination letters involving churches. The scope of these cases is generally limited to the information in the referral.

### **Timeframes:**

- Agent provides the initial case referral information to the assigned Area Counsel attorney and the Counsel project manager – within 4 calendar days of assignment to group (Type C – next business day), allowing Counsel to provide the agent with advice and assistance while drafting the inquiry letter.
- Agent provides the draft inquiry letter to the assigned Counsel attorney in electronic format – within 10 calendar days (5 calendar days for Type C) of assignment
  - Inquiry letter will include two attachments:
    - specific inquiry questions designed to elicit the details of the allegedly prohibited church activity and the church’s explanation of that activity;
    - copy of the IRS notice regarding political activity by tax-exempt organizations.
- Counsel provides comments, in electronic format, - within 20 calendar days (20 days for Type C) of receipt of the draft inquiry:
  - opinion regarding whether the “reasonable belief” requirements of §7611 are met
  - any corrections needed on the draft letter or questions
- Agent makes the necessary corrections to the inquiry letter and forwards the complete case file (including the inquiry letter, the Counsel opinion, the referral information and other documentation) to Mandatory Review by overnight mail within 6 calendar days (4 calendar days for Type C) of receiving the memo from Area Counsel with the recommended changes (if any)
  - (Agent may receive necessary approval on the §7611 cover sheet from the Counsel project manager and the Area Manager by email or facsimile.)
- Mandatory Review reviews case and forwards inquiry letter package to Director, EO Examinations, for issuance of the inquiry letter - within 8 calendar days of receipt (4 calendar days for Type C).
- Director, EO Examinations reviews the complete case file and if the Director EO Examinations personally believes that a reasonable belief exists, will sign the inquiry letter - within 6 calendar days of receipt (4 calendar days for Type C).



- Sends case file back to Mandatory Review for dating and mailing of letter.

### **Reclassifying a Type A Case to a Type B Case**

If a designated agent determines, either before or after initial contact with the organization, that the case is more complex and/or involves more than a single issue (and possibly requires a field examination), the agent will consult with the Group Manager. The decision to convert will be made at the discretion of the Group Manager, with the concurrence of the Area Manager(s), in coordination with the Team Leader. All involved will consider whether reclassifying the case is in the best interest of the government and will consider taxpayer burden.

### **Reclassifying a Type A or Type B Case to a Type C Case**

If, after assignment, a Type A or B case is identified as a Type C case, the Group Manager will immediately contact the Team Leader. The Team Leader will determine, based upon the definition of Type C cases, whether it should be converted to a Type C case. If it is converted to a Type C case, the Team Leader will immediately determine which Area should handle the case and will coordinate with that Area Manager, and immediately notify the Counsel project manager and the Director, EO Examinations.

### **Retention of Information on Closed Cases**

Closed PACI cases in which the organization was issued an advisory, assessed a \$4955 tax, or revocation proposed, should be retained in Classification for five years. This deviation from the normal three year period specified in IRM 4.75.5.9 *Exempt Organizations Examinations – Information Items, Record Keeping System*, will ensure that previous violations are considered on current referrals.

### **Researching Compliance by Organizations Examined in Previous Election Periods**

The Review of Operations (ROO) Group will establish a system to research compliance of designated organizations examined during the past two years under the PACI project.

EO Classification will provide ROO the list of the organizations and EINs, along with a copy of the closing letter. The ROO will research the organizations' website, state political contribution records (where available) and media databases (such as Lexis-Nexis, Westlaw, and Google) approximately every three months during an election period, (March 1, June 1, September 1, October 1, December 1). If research reveals evidence of an organization's participation in prohibited political activities, ROO will prepare Form 5666, Information Report, and submit the referral along with the previous closing letter and research to the manager of Classification. This referral will then be reviewed by the referral committee.

If the referral committee selects the case for examination, Classification will assign the case to a field group after determining whether it is a Type A, B, or C case. Special approval may be required under section 7611(f) with respect to beginning future inquiries of churches, and Area Counsel must be consulted in these instances.

If Classification receives a referral on an organization which was previously examined as part of the PACI Classification will provide the name of the organization to ROO so new research is not conducted on that entity.

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<sup>i</sup> These procedures supersede procedures issued March 31, 2005, titled “Political Intervention Project Procedures.”

<sup>ii</sup> A referral is an information item received from the public or from within the Service alleging a violation of the Internal Revenue Code by an exempt organization. Referrals received from the Executive Branch will be immediately reported to TIGTA (Treasury Inspector General for Tax Administration) in accordance with IRC §7217, which prohibits Executive Branch influence over taxpayer audits and investigations, in accordance with IRM 4.75.5.3(1).

<sup>iii</sup> Information which might reveal the identity of a confidential informant will not be disclosed. If an individual who refers information does not indicate with the referral that he/she wishes to remain anonymous, the agent and Group Manager will decide whether to contact the individual to verify his/her wishes. If contact is made, the agent will ask whether the individual fears reprisal.

<sup>iv</sup> A limited number of revenue agents with experience in political intervention cases and the ability to allocate their time to PACI cases quickly will be identified as “designated agents” for the PACI. This will: help to ensure consistency in application of the law; allow agents to develop a level of expertise in resolving political activity compliance issues; and, decrease taxpayer burden through efficiency gains.