



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

May 14, 2015

The Honorable Orrin G. Hatch  
Chairman  
Committee on Finance  
United States Senate  
Washington, D.C. 20510

Dear Chairman Hatch:

I write in response to your recent letter to Secretary Lew requesting documents relating to a notice of proposed rulemaking regarding tax-exempt organizations issued by the Department of the Treasury and the Internal Revenue Service (IRS) in November 2013.

The rulemaking proceeding remains ongoing. To review briefly the history of the rulemaking: In August 2013, consistent with recommendations from the Treasury Inspector General for Tax Administration, the National Taxpayer Advocate, and Congress, Treasury and the IRS listed guidance on how to measure the "primary activity" of social welfare organizations as an item in the 2013-14 Priority Guidance Plan. In November 2013, consistent with standard agency rulemaking procedures, Treasury and the IRS issued a notice of proposed rulemaking, containing a proposed rule and a number of requests for comments. Treasury and the IRS received more than 150,000 written comments on the November 2013 notice, including a number of comments from members of Congress. Treasury and the IRS are carefully considering the issues raised in the comments.

Your letter notes that documents relating to this rulemaking proceeding are the subject of a pending FOIA litigation. Treasury and the Department of Justice are continuing to review and produce documents in connection with that litigation. We would be happy to provide you with copies of those document productions. To the extent your request goes further and seeks deliberations regarding the pending rulemaking (which have been withheld or redacted in the litigation), we note that requests for documents regarding pending rulemaking proceedings implicate well-established Executive Branch confidentiality interests. The public release of agency rulemaking deliberations could inhibit the agency's ability to fulfill its statutory responsibilities. Agency staff and counsel must be able to engage in free, full, and unfettered discussions about policy and legal matters. This is a longstanding principle recognized by Administrations from both parties.

Treasury remains committed to cooperating fully with your Committee's requests for information. We are happy to work with your staff to get you information you need in a way that does not jeopardize the integrity of the ongoing rulemaking process. To the extent you have

additional questions, please do not hesitate to contact me or have your staff contact [REDACTED]  
[REDACTED] Office of Legislative Affairs, at (202) 622-1900.

Sincerely,

*Randall DeValk*

Randall DeValk  
Acting Assistant Secretary for Legislative Affairs