

Stop Targeting of Political Beliefs by the IRS Act of 2015

The Flake-Roberts Bill to Prevent Further IRS Targeting of Conservative Groups

SUMMARY

The Stop Targeting of Political Beliefs by the IRS Act of 2015 would prevent further targeting of conservative social welfare organizations by the Internal Revenue Service (IRS) by reverting back to the IRS standards and definitions that were in place on January 1, 2010 – prior to the agency's inappropriate targeting. The bill also suspends any IRS rulemaking until February 2017, including the new candidate-related political activity definition.

BACKGROUND

The Primary Standard: Currently, the IRS determines that a group may qualify as a tax-exempt [social welfare organization](#) under Section 501(c)(4) of the IRC if it is “primarily” engaged in activities that promote the common good and general welfare of the community. For practical purposes, the IRS has judged the primary standard to be 50 percent or more of the organization's activities.

Political Activity: A social welfare organization may engage in political activity as long as it is not its primary activity. The IRS considers intervention in political campaigns on behalf of or in opposition to any candidate for public office to be political activity; as such, it does not count as social welfare activity. The IRS does not have a bright line definition of what else constitutes political activity. Rather, the IRS uses a “facts and circumstances” standard to determine political activity. Unethical behavior and manipulation of this standard at the IRS led to the politically-motivated “Be On the Lookout” (BOLO) list that targeted conservative social welfare organizations.

In the aftermath of the IRS political targeting scandal, many have claimed that a bright line definition of political activity is needed. Some have even called for an outright prohibition of political activity by 501(c)(4)s. The increased attention to the political engagement of social welfare organizations stemmed from the rise of tea-party and other conservative social welfare groups since 2010. It is worth noting, however, that the IRS has also received a significant increase in tax-exempt applications for labor unions in recent years.

Some have also questioned whether the IRS should be involved in defining political activity at all. In a July 2013 [Special Report to Congress](#), National Taxpayer Advocate Nina Olson recommended that the IRS leave the job of defining political activity to the Federal Election Commission or another agency with greater subject-matter expertise.

IRS Rulemaking and Congressional Response: On November 29, 2013, the IRS issued a [proposed rule](#) broadly defining political activity. The IRS [has since announced its intention](#) to revise the proposal, but it is not known what those changes will be. Under the proposed definition, social welfare organizations would face limitations on their participation in voter registration, voter education, communications that mention a candidate or party, grants to 527s, and events in which a candidate participates, among other activities. In a nutshell, the definition was overly broad and would even limit non-partisan activities, like the issuance of non-partisan voter guides, despite their contributions to civic betterment. The regulations would initially apply to only 501(c)(4)s and not charities, labor unions or trade associations. In addition, the rulemaking requested feedback about whether the “primary” standard should be changed. The Administration has announced that they will revise the rule due to the negative feedback they received, thus indicating they still intend to issue regulations to define political activity and otherwise limit the ability of 501(c)(4)s to engage in such activities. While Appropriations language from last year's continuing resolution exists to prevent targeting, that language is one year language that ends on September 30, 2015.