



FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION

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April 6, 2018

The Honorable Lynn Jenkins
Subcommittee on Oversight
Committee on Ways & Means
United States House of Representatives
Washington D.C. 20515

The Honorable John Lewis
Subcommittee on Oversight
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I am writing on behalf of The Federal Law Enforcement Officers Association (FLEOA) – the nation's largest non-partisan professional association, representing more than 26,000 active and retired federal law enforcement officers from every federal law enforcement agency – including the (CI) Criminal Investigation Division of the IRS.

We applaud your efforts to work in a bipartisan manner to modernize and improve the IRS. Historically, the Committee on Ways & Means has been an outspoken voice for fairness and integrity in the administration of our tax laws and we thank you for these efforts. Over the last several years FLEOA's CI membership, which includes Special Agents in Charge and Senior Executives responsible for running CI, have raised a number of significant and troubling concerns about CI's ability to operate under the IRS umbrella. These concerns directly impact their ability to effectively and efficiently fulfill their mission as a law enforcement agency and sufficiently protect the integrity and fairness of the tax and financial systems.

As the 6th largest federal law enforcement agency, with about 2200 special agents and over 3000 employees. CI special agents are the only "IRS Agents" that conduct criminal investigations and are duly sworn federal law enforcement officers with the authority to investigate, make arrests, execute search warrants, serve subpoenas and summonses, carry firearms, make seizures of property subject to forfeiture and require and receive information. CI special agents are solely responsible for enforcing criminal violations of our nation's tax laws and share jurisdiction over violations of the U.S money laundering and bank secrecy act (BSA) laws.

CI serves a crucial role in supporting national law enforcement priorities and high-impact financial investigations. From protecting Americans against stolen identity refund fraud (SIRF), cybercrime and large-scale tax evasion schemes to dismantling transnational organized crime syndicates, terrorist financing groups, drug cartels and international money laundering schemes. CI performs an important national law enforcement function that supports not only IRS priorities, but U.S Treasury and Department of Justice (DOJ) priorities too. For example, 60 million of the funding appropriated to IRS thru their "Enforcement" appropriation is earmarked for CI to do financial investigative work in support of the Office of National Drug Control Policy's (ONDCP) mission. CI primarily does this through their placement of CI special agents and professional staff on High Intensity Drug Trafficking Area (HIDTA) task forces around the country. This work historically accounts for around 10% of CI's total investigative efforts.

CI special agents are widely considered to be the best financial investigators in law enforcement and their expertise is pivotal to the success of HIDTA and other multi-agency task forces.

Due to the sensitive and high-profile nature of CI's work, CI office space, case management system, and computer network is distinctly separate from civil IRS systems and inaccessible by civil IRS personnel. Prosecution of CI investigations are solely under the jurisdiction of the DOJ and their 93 U.S. Attorneys. CI operations are not intertwined with civil IRS operating divisions. As such, the demands placed on CI are much different from the taxpayer service and tax collection needs of IRS.

In discussions with FLEOA CI membership, former CI leaders (Special Agents in Charge & Senior Executives) and other law enforcement professionals. CI is unable to fulfill its law enforcement mission for the following reasons:

1. Organizational Structure:

In 2003, with the creation of DHS and the removal of the Undersecretary for Enforcement position and the other Law Enforcement (LE) agencies (Secret Service, Customs, ATF), CI lost its voice in main Treasury. Although CI was in IRS, the Undersecretary had policy oversight of CI and acted as a central coordinator for all LE agencies' needs, including CI's. This ensured prioritization of CI's law enforcement mission.

Additionally in 2003 IRS restructured and removed CI as a direct report to the Commissioner, placing CI oversight under a civil IRS executive (Deputy Commissioner for Services & Enforcement). The DCSE is responsible for 9 other offices/divisions at IRS, including the 4 largest operating divisions (LB&I, SBSE, W&I, and TEGE). The DCSE typically has significant taxpayer service and tax collection experience, but no law enforcement experience.

IRS and main Treasury operate completely independently from each other. CI's placement in the U.S Treasury organizational structure needs to ensure close coordination with all Treasury Bureaus, including IRS, that hold vital financial intelligence for optimal criminal enforcement of all financial crimes under CI's jurisdiction.

2. Role of Internal Counsel

IRS Office of Chief Counsel Attorneys serve as internal counsel (a.k.a. Criminal Tax (CT) Counsel) for CI and are not directly accountable to the Chief/Director of CI. They report through a separate organizational structure to the Chief Counsel of IRS. This allows CT Counsel to focus on priorities and agendas that run contrary to the Chief/Director of CI, who is responsible for delivering a variety of tax and non-tax investigative priorities.

CT Counsel attorneys are hired by IRS Office of Chief Counsel and lack the necessary criminal litigation experience. CI internal counsel should contain a mix of attorneys with diverse areas of expertise, including former federal prosecutors. The CI Chief/Director should have the authority to hire and prioritize CI internal counsel's work, to optimize the investigative strategy and priorities of CI.

CT Counsel's overwhelming involvement in every step of the investigative process is contrary to the role of other federal law enforcement's internal counsel and causes significant inefficiencies in the investigation and prosecution of cases under CI's jurisdiction. This also causes significant strain on the relationship between CI special agents/leadership and DOJ Attorneys responsible for prosecuting CI investigations.

3. Access to Technology

CI is the only division in IRS with a separate computer network. With that said, CI's network sits on the back of IRS network. Therefore, any access CI needs outside the IRS must be approved by IRS' Information Technology (IT).

IRS holds in trust over 1 billion tax records. IRS' number one IT priority is to protect taxpayer records. IRS' IT accomplishes this by reducing access outside the IRS network. CI's need to enhance accessibility in and out of the IRS network reduces the security of the network, therefore putting CI's IT needs in direct conflict with IRS'.

Any CI computer network access needs must be approved by IRS' IT. This puts CI in direct competition for IT resources with other divisions/offices whose taxpayer service and tax collection functions are prioritized above CI's law enforcement mission.

4. Funding:

CI is the only major law enforcement agency who does not have a separately appropriated budget from Congress. CI receives their funding through the IRS "Enforcement" appropriation, which includes both IRS' Audit and Collection functions. This puts the discretion to fund CI in the hands of tax collection focused IRS leadership and eliminates Congress' ability to allocate funding directly to CI for the priority national law enforcement initiatives detailed above.

Given the sensitive and high-profile nature of CI's work, any redesign of the IRS should include addressing the above concerns and promoting transparency to the American people regarding CI operations. To date, IRS has been unable to address these issues. In our discussions with senior staff members and legislators alike there is not only a genuine lack of awareness regarding CI's law enforcement mission, but more alarmingly their existence as a law enforcement agency.

It is because of these concerns that FLEOA endorsed the CI Realignment Act (H.R 5296), which would transfer CI into main Treasury. This bill would both enhance transparency regarding CI operations by enacting semiannual reporting requirements to the Congress and remove the need for IRS to carry out the challenging task of overseeing a federal law enforcement agency. As a result, IRS' ability to dedicate their attention to important taxpayer service and tax collection responsibilities would be significantly enhanced. Simultaneously, CI's ability to carry out their law enforcement mission would be optimized by their increased coordination with all Treasury bureaus, including IRS, that hold vital financial intelligence for optimal enforcement of all crimes under CI's jurisdiction.

The concept of transferring CI into main Treasury has also been discussed and supported by former high-level Treasury officials. Most recently, former Treasury Official Chip Poncy discussed realigning CI as part of a broader proposal to counter terrorism and illicit finance. Mr. Poncy's November 29, 2017 testimony before both the House Financial Services Subcommittees on Terrorism & Illicit Finance and Financial Institutions and Consumer Credit contained a written statement that details the justification for repositioning CI (<https://financialservices.house.gov/uploadedfiles/hhrg-115-ba15-wstate-cponcy-20171129.pdf>).

In closing, we would like to thank you for your efforts to reform the IRS. Please do not hesitate to contact me to further discuss FLEOA's concerns and insights related to this important topic.

Respectfully yours,

Nathan R. Catura

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National President