



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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MEMORANDUM FOR EXEMPT ORGANIZATIONS DETERMINATIONS UNIT AND
EXEMPT ORGANIZATIONS TECHNICAL UNIT EMPLOYEES

FROM: Jon Waddell /s/ *Jon Waddell*
Acting Director, Exempt Organizations, Rulings and Agreements

SUBJECT: Interim Guidance on Optional Expedited Process for Section 501(c)(4)
Applicants Issued a Letter 5228 on or after December 23, 2013

This memorandum will modify and clarify the procedures to be followed for processing Internal Revenue Code section 501(c)(4) applications in order to reflect changes in procedures as a result of cases generally being worked in the Exempt Organizations Determinations Unit (EOD).

On December 23, 2013, Exempt Organizations issued Interim Guidance Memo TEGE-07-1213-24 (the "December 23, 2013 memorandum"), which provided interim administrative guidance to the EOD and the Exempt Organizations Technical Unit (EOT) regarding an expanded optional expedited process for applicants for section 501(c)(4) status whose applications indicate the organization could potentially be engaged in political campaign intervention or in providing private benefit to a political party and that otherwise do not present any issues with regard to exempt status. This Interim Guidance was an expansion of the original program that was limited to 501(c)(4) applicants whose applications had been pending for more than 120 days as of May 28, 2013, and that indicated the organization may be involved in political campaign intervention or issue advocacy.

Since the issuance of the December 23, 2013 memorandum, other interim guidance memoranda were released that modified some portions of the process originally described in the December 23, 2013 memorandum. These memoranda included Interim Guidance Memo TEGE-07-0514-0012 (May 19, 2014) (providing for Office of Appeals review of proposed adverse determinations issued by EOT). Additionally, it has become necessary to modify and clarify the procedures due to processing changes that will result in cases generally being worked in EOD and to reflect that all specialists have now received training regarding political campaign intervention activities.

EOD will follow the procedures attached to this Interim Guidance as Attachment A. **Attachment A applies only to applicants for section 501(c)(4) status who are issued a Letter 5228 (9-2013), *Application Notification of Expedited 501(c)(4) Option*, after December 23, 2014.**

For cases previously issued Letter 5228 (9-2013) under the December 23, 2013 memorandum, the processes outlined in that memo will still be followed, with modifications explained herein. Those processes, as modified, are attached to this Interim Guidance, as Attachment B. **Attachment B applies only to applicants for section 501(c)(4) status who were issued a**

Letter 5228 (9-2013), *Application Notification of Expedited 501(c)(4) Option*, between December 23, 2013 and December 23, 2014 pursuant to Interim Guidance Memorandum TEGE-07-1213-24.

Applicants for section 501(c)(4) status who were issued a Letter 5228 (6-2013) before December 23, 2013, are subject to the original optional expedited process described in TEGE-07-0714-0022 (July 28, 2014).

The content of this memorandum will be incorporated in IRM 7.20.2.

Please contact the Director, Rulings and Agreements with any questions regarding the application of this memorandum.

cc: www.IRS.gov

Attachment A

Procedures for EO Determinations for the Optional Expedited Process for Applicants for Section 501(c)(4) Status Who Are Issued a Letter 5228 After December 23, 2014

Outlined below are the steps of a process for achieving expedited and fair processing of certain exemption applications (hereinafter, "pending applications") under section 501(c)(4), specifically, those applications for section 501(c)(4) exemption that indicate the organization could potentially be engaged in political campaign intervention or providing private benefit to a political party (hereinafter, "political issues") and that otherwise do not present any issues with regard to exempt status. These steps specifically apply to those organizations that were issued a Letter 5228, *Application Notification of Expedited 501(c)(4) Option* (9-2013),¹ after December 23, 2014.²

Step 1: IRS Reviews for Issues Other than Political Issues

The IRS will promptly review all pending applications to ensure that the application (1) is complete, (2) does not indicate any private inurement, and (3) does not present any other potential issues other than possible political campaign intervention or private benefit to a political party (hereinafter, collectively, "political issues").

If there are no issues other than possible political issues and a favorable determination cannot yet be issued based on the facts and circumstances currently contained in the application, the pending application will proceed to step 2.

If there are issues other than possible political issues, EOD will prepare and send out a development letter seeking additional information on those other issues. If the applicant sends a response that resolves these other open issues (i.e., the open issues other than the political issues) such that these issues are no longer a bar to granting exemption under section 501(c)(4), the pending application will proceed to step 2.

If any pending applications (including those with possible political issues) are determined ready to be granted favorable status, EOD will proceed to issuing the favorable determination letter and steps 2 through 5 will not apply to such applications.

Step 2: Offering Optional Expedited Process

By letter to the applicant (Letter 5228), EOD will provide an optional expedited process for all pending applications for which there are no issues other than political issues and for which a favorable determination cannot yet be issued. The optional expedited process will permit these applicants to make representations under penalties of perjury regarding their past, current, and anticipated future political campaign intervention and social welfare activity. If the applicant makes the specified representations, EOD will send the applicant a favorable determination letter without further review and within one month of receipt of the signed representations.

¹ All references to Letter 5228 made in Attachment A are intended to refer to the Letter 5228 approved in September 2013 that was issued to certain applicants after December 23, 2014.

² For applicants who received Letter 5228 (6-2013) before December 23, 2013, the procedural steps for processing the applications are described under the original optional expedited process as described in Interim Guidance Memo TEGE-07-0714-0022 (July 28, 2014). For applicants who were issued Letter 5228 (9-2013) between December 23, 2013 and December 23, 2014, the steps contained in Attachment B to this Interim Guidance apply.

This process is optional; applicants can determine whether they want to provide the representations, assuming they are able to do so, or whether they want the IRS to continue to review their application with regard to the possible political issues.

Letter 5228 will request a response by the applicant within 45 days.

Step 3: IRS Processing of Applications

Optional Expedited Process — EOD will send any applicant that provides the representations under penalties of perjury a favorable determination within one month of receiving the signed representations.

An organization receiving Letter 5228 that provides the representations may be referred to Exempt Organizations Examinations Classification Unit (using Form 5666) for subsequent review.

Regular Process — If an applicant received Letter 5228 and does not provide the additional representations under the optional expedited process within 45 days from the date of the letter, EOD will review and process the pending application under Steps 4 and 5.³

Step 4: Reviewing the Pending Application Under the Regular Process – Documenting Review and Recommendations

Review of the pending applications under the regular process will include review by EOD and EOD Quality Assurance (EODQA).

EOD will review the facts and circumstances in the pending application and any other materials to determine if the organization is operated primarily for social welfare purposes, including by evaluating possible political issues. The issues will be analyzed as quickly as possible under current law, using available resources in applying the law to the facts.

Request for Additional Information: If the specialist determines that the case requires development (e.g., cannot be closed on merit), the specialist will generally prepare Letter 1312, *Request for Additional Information*, using appropriate template development questions, with any modifications as necessary based upon the facts and circumstances. In determining whether the case requires additional development the specialist should review the application keeping in mind the streamlined concepts outlined in Interim Guidance Memorandum TEGE-07-0214-02, *Streamlined Processing Guidelines for All Cases*, dated February 28, 2014.

The specialist will submit the case and the draft of Letter 1312 to his or her manager for review within the timeframes outlined in IRM 7.20.2 for specialist's actions.

Within five days of receipt from the specialist, the group manager will review the case and the letter to ensure the additional information request letter complies with IRM 7.20.2.4.1 and the scope of the request is appropriate. Once the group manager is satisfied the additional information letter is proper, he or she will notify the specialist that the letter can be sent to the applicant.

³ The December 23, 2013 memorandum stated that EOD would “formally transfer the pending application to Exempt Organizations Technical.” Applications will no longer be transferred to EOT and will instead be worked by EOD.

Note: The group manager is no longer required to submit the case and the draft of Letter 1312 to EODQA for additional review prior to issuing the letter to the applicant.

Upon receipt of a complete response from the applicant, the specialist will make a determination on the qualification for exemption under section 501(c)(4) (or another subsection if the application requested consideration under a different subsection following its initial request under section 501(c)(4)) based on the facts and circumstances in the pending application and current law. The specialist will prepare the appropriate determination approval letter or a proposed adverse determination letter.

Adverse Recommendation: If EOD's recommendation is for an adverse determination, the specialist will prepare a proposed adverse determination letter. In accordance with IRM 7.20.5, the proposed closed case will be sent to EODQA as a designated mandatory review case.

Step 5: Appeals Review of Adverse Recommendations

Any applicant issued a proposed adverse determination letter may request review of its application by the Office of Appeals. The process for requesting review by Appeals is described in the proposed adverse determination letter and in the annual revenue procedure that relates to determination letters.

Attachment B

Procedures for EO Technical (or Its Successor) for the Optional Expedited Process for Applicants for Section 501(c)(4) Status Who Were Issued a Letter 5228 Between December 23, 2013 and December 23, 2014

Outlined below are the steps of a process for achieving expedited and fair processing of certain exemption applications under section 501(c)(4), specifically, those applications for section 501(c)(4) exemption that indicate the organization could potentially be engaged in political campaign intervention or providing private benefit to a political party (hereinafter, political issues) and that otherwise do not present any issues with regard to exempt status. These steps specifically apply to those organizations that were issued a Letter 5228, *Application Notification of Expedited 501(c)(4) Option* (9-2013),⁴ between December 23, 2013 and December 23, 2014.

Step 1: IRS Reviews for Issues Other than Political Issues

The IRS will promptly review all pending applications to ensure that the application (1) is complete, (2) does not indicate any private inurement, and (3) does not present any other potential issues other than possible political campaign intervention or private benefit to a political party (hereinafter, collectively, "political issues").

If there are no issues other than possible political issues, the pending application will proceed to step 2.

If there are issues other than possible political issues, EOD will prepare and send out a development letter seeking additional information on those other issues and informing the applicant it is eligible for the optional expedited process if/when such other issues are resolved. If the applicant sends a response that resolves these other open issues (i.e., the open issues other than the political issues) such that these issues are no longer a bar to granting exemption under § 501(c)(4), the pending application will proceed to step 2.

If any pending applications are determined ready to be granted favorable status, EOD will proceed to issuing the favorable determination letter and steps 2 through 4 will not apply to such applications.

Step 2: Offering Optional Expedited Process

By letter to the applicant (Letter 5228), EOD will provide an optional expedited process for all pending applications for which there are no issues other than possible political issues. The optional expedited process will permit these applicants to make representations under penalties of perjury regarding their past, current, and anticipated future political campaign intervention and social welfare activity. If the applicant makes the specified representations, EOD will send the applicant a favorable determination letter without further review and within one month of receipt of the signed representations.

This process is optional; applicants can determine whether they want to provide the representations, assuming they are able to do so, or whether they want the IRS to continue to

⁴ All references to Letter 5228 made in Attachment B are intended to refer to the Letter 5228 approved in September 2013 that was issued to certain applicants between December 23, 2013 and December 23, 2014.

review their application with regard to the possible political issues. Letter 5228 will request a response by the applicant within 45 days.

Step 3: IRS Processing of Applications

Optional Expedited Process — EOD will send any applicant that provides the representations under penalties of perjury a favorable determination within one month of receiving the signed representations.

An organization receiving Letter 5228 that provides the representations may be referred to Exempt Organizations Examinations Classification Unit (using Form 5666) for subsequent review.

Regular Process — If an applicant received Letter 5228 and does not provide the additional representations under the optional expedited process within 45 days from the date of the letter, EOD will formally transfer the pending application to EOT, and EOT will review and process the pending application under Step 4.

Step 4: Reviewing the Pending Application Under the Regular Process – Documenting Review and Recommendations

Review of the pending applications under the regular process will include review by EOT and (in some cases, as explained below) Chief Counsel attorneys and a second layer of review by supervisory personnel in Chief Counsel and Exempt Organizations.⁵

EOT will review the facts and circumstances in the pending application and any other materials to determine if the organization is operated primary for social welfare purposes, including by evaluating the possible political issues. The issues will be analyzed as quickly as possible under current law, using available resources in applying the law to the facts.

Under the regular process, EOT will document⁶ its review of the pending application and its recommendation regarding a favorable or adverse determination.

Favorable Recommendation: If EOT determines the applicant is ready to be recognized as described in section 501(c)(4), EOT will issue the applicant a favorable determination.

Request for Additional Information: If EOT determines that it needs to request additional information regarding the possible political issues, EOT will prepare and send a letter requesting additional information.

Adverse Recommendation: If EOT's recommendation (either initially or after receiving a response to a request for additional information) is for an adverse determination, Chief Counsel

⁵ The December 23, 2013 memorandum said that review of pending applications would include, in some cases, review by a new Advocacy Application Review Committee (the "Review Committee"), which was to be "comprised of 3 career executives from the IRS and the Office of Chief Counsel," which were identified in a footnote as the "Director, EO; Commissioner (TE/GE); and Division Counsel/Associate Chief Counsel (TEGE), or their delegates." As discussed further in footnote 8, the process of referring cases to the Review Committee was superseded by Interim Guidance Memorandum TEGE-07-0514-0012 (May 19, 2014).

⁶ Documentation will be done consistently through a template; reviewer will be noted by an identifying number rather than by name.

attorneys will review the application and documentation of the recommendation. If Chief Counsel attorneys agree with the recommendation, they will assist EOT in preparing the proposed adverse determination letter and EOT will follow normal processes in issuing the letter and notifying the applicant that it may file a protest and request a conference with EOT (which would be provided on an expedited basis). Pursuant to Interim Guidance Memorandum TEGE-07-0514-0012 (May 19, 2014), applicants receiving a proposed adverse determination letter from EOT may also request review of their application by the IRS Office of Appeals.

If the organization files a protest and/or has a conference with EOT, and that protest and/or conference results in a changed recommendation to a favorable determination, EOT will issue the favorable determination.

If the protest and/or adverse conference does not result in a changed recommendation and the applicant timely requests review by the Appeals Office, EOT will forward the case to the Appeals Office.⁷

If the applicant does not timely file a protest or if the applicant files a protest but the protest and/or adverse conference does not result in a changed recommendation and the applicant does not timely request Appeals Office review, EOT will issue a final adverse determination.

Disagreement Between Exempt Organization Technical and Chief Counsel Attorneys: If EOT and Chief Counsel attorneys disagree on their recommendation, the application will be discussed with supervisory personnel to reach resolution on the recommendation.⁸

⁷ The December 23, 2013 memo states that if an “adverse conference is held and does not result in a changed recommendation, the pending application will be sent to the Review Committee in Step 5.” That process was superseded by IGM TEGE-07-0514-0012 (May 19, 2014).

⁸ The December 23, 2013 memorandum stated that “[i]f Chief Counsel attorneys disagree with the recommendation, they will provide a brief explanation of their views and send the application to the Review Committee.” That process was superseded by IGM TEGE-07-0514-0012 (May 19, 2014).