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FEDERAL BUREAU OF INVESTIGATION

Date of entry 07/15/2014

FEDERAL TAXPAYER INFORMATION

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NANCY J. MARKS, also known as NAN MARKS, date of birth [redacted]
[redacted] Social Security account number [redacted] residence address [redacted]
[redacted] was interviewed at the
offices of the Department of Justice (DOJ), located at 1400 New York
Avenue, Washington, D.C. 20005. Present during the interview were DOJ
Attorneys [redacted] and [redacted] MARKS' attorneys [redacted]
[redacted] and Treasury Inspector General for Tax Administration
(TIGTA) Special Agent [redacted]. During the interview, documents were
shown to MARKS and hereafter those documents will be referred to by their
respective bates numbers or other identifying information and copies will
also be maintained in the 1A section of the case file. After being advised
of the identities of the interviewing Agents and the nature of the
interview, MARKS provided the following information:

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MARKS received her Bachelor's degree in Biology and Psychology from Boston State University. She received her Juris Doctor from Suffolk University. MARKS joined the Internal Revenue Service (IRS) in June 1973 and retired from the IRS on August 3, 2013. In 1981 she joined the Office of the Chief Counsel (Counsel) with the Treasury Department. In June or July 2000, that office became part of the IRS. In 1982, MARKS moved to the Civil Rights section of DOJ, but then went back to Counsel in 1985, where she was until late 2011. She then moved from Counsel over to the IRS. While at the IRS, she held positions including auditor, revenue agent and appeals officer. When she left Counsel, she was the Associate Chief Counsel for Tax Exempt and Government Entities (TEGE), a Senior Executive Service (SES) position. When she rejoined the IRS in 2011, she became the Senior Technical Advisor to the TEGE Commissioner, a non-SES position. The TEGE Commissioner at that time was JOSEPH GRANT, who was filling in for SARAH HALL INGRAM, who had been moved over to help on the Affordable Care Act (ACA). INGRAM and STEVE MILLER, Deputy Commissioner of Services and Enforcement, talked to MARKS about her coming over from Counsel. MARKS knew MILLER since the late 1980's when she worked in Employee Plans and Exempt Organizations (EPEO). MILLER was special counsel at that time. MARKS knew GRANT before he joined the IRS, when he worked sporadically with

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by [redacted]

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the IRS in the 1990's in his position with the Pension Benefit Guarantee Corporation.

No one reported to MARKS in her position as Senior Technical Advisor. The biggest area of her work in the advisor position was published guidance in pension work. Occasionally LOIS LERNER would pull MARKS in to help on issues with Counsel. MARKS knew LERNER from when MARKS supported LERNER's programs when MARKS worked in Counsel. MARKS did not have too much interaction with LERNER initially while she was in Counsel, as [REDACTED] [REDACTED] was the attorney who worked with LERNER. However when [REDACTED] moved to work on the ACA, MARKS worked more often with LERNER.

One issue that LERNER brought MARKS, in her role as Senior Technical Advisor, in to help with was when LERNER'S people wrote guidelines on the determinations process. These guidelines had to be reviewed by Counsel since they would be made publicly available. Guidelines were made public so that the public could know about what the IRS was doing. Counsel had stripped out a lot of information from the guidelines that was helpful, and therefore left a lot of questions to be dealt with. LERNER was at a "loggerhead" with Counsel. LERNER wanted MARKS to help on the issue since she had worked in Counsel before. MARKS knew that there were cases in inventory and Exempt Organizations Determinations (EOD) needed guidance. She knew that there was not much guidance on 501(c)(4) organizations. Two questions that surround 501(c)(4) organizations include: what is political activity; and what is the amount of political activity allowed? EOD was trying to treat the term "political" the same as found in other guidance. The problem was that the term "political" could mean different things in different sets of guidance. Counsel's viewpoint was that other information and guidance about the term "political," as found in other guidance and rulings, was not applicable across the board. MARKS attended a meeting with JANINE COOK, [REDACTED] of Counsel on the issue. Counsel could be condescending to LERNER's people, and LERNER protected her people, so MARKS tried to help bridge the gap. LERNER is very volatile. When something upsets LERNER, she flies up into the rafters and yells and targets people, then she settles down and figures it out in a rational manner. She then becomes very reasonable again. MARKS tried to "broker reasonableness" on both sides, however the issue was taken over by the complaints the IRS started receiving regarding the 501(c)(4) groups.

The only recollection that MARKS had regarding the 501(c)(4) cases while she was at Counsel was a status meeting where her notes reflected that she was told that HOLLY PAZ was [REDACTED] and [REDACTED] was acting in her place. [REDACTED] stated that people in Cincinnati in Exempt Organizations Determinations (EOD) were seeing 501(c)(4) applications with political activity and there might be a request for assistance on the matter.

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In March 2012, MILLER called a meeting about the 501(c)(4) area. He had two objectives for the meeting. The first objective related to discussing the increased allegations in the press and Congressional inquiries about the IRS' handling of these cases. The second objective was to discuss who would go to a Congressional hearing about the IRS' handling of 501(c)(4) applications, since it was probably not going to be IRS Commissioner DOUGLAS SHULMAN. It was probably going to be MILLER or INGRAM. MARKS attended several meetings over the course of the next couple of weeks regarding the hearing and these cases. The first meeting was with MILLER at the IRS office located at 1111 Pennsylvania Avenue. LERNER was not at this meeting. NIKOLE FLAX was either at the meeting or MARKS spoke to her shortly after the meeting. She is not sure who else was at this meeting. MILLER wanted her to look into the issue of how these 501(c)(4) cases were handled and find out what the problems were. MARKS also attended meetings with GRANT at the IRS office located at 999 North Capitol Street, as well as meetings with LERNER and PAZ.

There was a letter directed to TIGTA that was reported in the press and included allegations about the IRS. JOE URBAN flagged the issue and sent it out to people in the IRS. MARKS reached out to GRANT and told him she thought TIGTA should look into the allegations. GRANT agreed and flagged it for either FLAX or MILLER. MARKS was told that TIGTA had already been asked to look into it.

The issue of the handling of these 501(c)(4) applications overtook the guidance issue that Exempt Organizations (EO) had with Counsel. The guidance would no longer be effective enough to get the issue back on track. MARKS told LERNER and PAZ she would need their people to help her. PAZ seemed thrilled. LERNER offered MARKS assistance. LERNER was already frustrated about Counsel and the guidelines, and she was on leave the first week in April 2012. MARKS asked LERNER to have her people review the development letters that went out to these organizations to determine if they were "out of line," which was being reported in the press. [REDACTED] [REDACTED] came up with a list of eight questions from the letters they thought were an issue.

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MARKS was able to get access to TEDS, the IRS case management system, however it was not helpful because the files in TEDS were not complete. The most helpful information was probably going to be in the physical files. At this point, it became apparent that MARKS needed to go to Cincinnati. INGRAM told MARKS that MILLER really wanted this done and she helped MARKS with suggestions for people to go with MARKS. MARKS talked to INGRAM and ROBERT CHOI about using Employee Plans (EP) people for this review, however they really were too far removed from the issue. [REDACTED] who did not have much previous experience, URBAN, [REDACTED] and PAZ were

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selected to help MARKS. PAZ would help with logistics in Cincinnati. MARKS had met with [REDACTED] a few times in Washington, D.C. (DC), and MARKS asked [REDACTED] to get all the case files sent to Cincinnati. [REDACTED] walked them through the procedures of how cases were worked, and now some procedures, like the ones related to the BOLO, were being updated.

One objective for going to Cincinnati was to become familiar with the operation from beginning to end so that they did not craft a solution that did not fix the problem. Another objective was to talk to people in the Cincinnati office to get an idea of what they were doing, why they were doing it, what were they worrying about, and what was the history of the issue. A third objective was to review the files and find out where the problems were. They wanted to see if there was anything to worry about in the files. Lastly, they wanted to accomplish all of this without "pissing off TIGTA." Sometimes when TIGTA looks into a problem, they don't want people to know they are doing it. MARKS did not want it to appear like they were cleaning up the problem and coaching people on what their answer to TIGTA should be. So [REDACTED]

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[REDACTED] called TIGTA to tell them this was what MARKS' group was doing. MARKS stated they accomplished the objectives laid out for the trip.

MARKS' group traveled to Cincinnati on April 23, 2012. They toured the Covington office and then went to the processing office in Cincinnati. MARKS asked [REDACTED] to gather personnel who had worked on these cases. MARKS and her team met with most of the personnel in a meeting, and then met some additional personnel in a second meeting. What MARKS took away from her meetings with personnel in Cincinnati was that those people cared about their jobs and doing the right thing. They received these cases that had fair amounts of political activity and they were not sure how to work them; specifically they were not sure as to the threshold for the amount of political activity that was acceptable. Cincinnati seemed "hyper active" to the presence of political activity. Cincinnati was used to working 501(c)(3) applications, however they were not as familiar with working 501(c)(4) applications.

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A manager named [REDACTED] told his people to search for 501(c)(4), 501(c)(5), and 501(c)(6) applications with political activity. The first case brought to [REDACTED] attention was a Tea Party case. He wanted his people to find other cases with similar behavior, and the behavior he wanted was political activity. However, during one of the meetings with MARKS' team, it became clear that other people took this to mean they should look for certain terms like "Tea Party." Some people thought all "Tea Party" cases were the same, much like how all cases associated with the [REDACTED] are the same. [REDACTED] screeners had group

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meetings where they discussed that if they saw cases with political activity, they would send them to [REDACTED] felt like she was not getting the right cases sent to her; that it was an imperfect capture of cases. It was not until much later that MARKS saw information that [REDACTED] was only looking for Tea Party cases. This was not conveyed at the meetings MARKS held in Cincinnati. [REDACTED] appeared to have asked for political behavior. After the meetings, MARKS received copies of the BOLOs. The BOLO showed that at various points the criteria called for "Tea Party" name, and then later the ideology.

MARKS heard enough from the people in Cincinnati to realize that there was a problem with screening the cases and working the cases. She went back and met with MILLER on May 3, 2012. She told him that Cincinnati was categorizing cases based on name and ideology, not just activity. Cincinnati did not understand that using this shortcut was a problem. When MARKS told MILLER this, he threw his pencil across the room and said, "Oh, shit." FLAX was possibly there, but MARKS is not sure who else may have been there. It was a small group. LERNER and PAZ were not there. MARKS identified four problems from her trip. The first problem was that the criteria for selecting cases was wrong, but it was nothing animus. Secondly, taxpayers had been asked questions that were burdensome, which was a function of the IRS revenue agent, not the taxpayer. Thirdly, Cincinnati had asked for help from DC repeatedly, and not received it for over two years. Cincinnati was fearful of "doing it wrong." This was not unprecedented. While the legal issue was not new, the volume of cases was. Lastly, there was a lack of management oversight on these cases.

MARKS' team found that when they looked at the cases, about a third of the cases had the names used to categorize, but two-thirds did not. Those two-thirds, however, did have the behavior of the issue, which was political advocacy. MARKS did not know if this was due to the change in the criteria of the BOLO over time, or not. MARKS' team looked for bias, a belief that the taxpayers were bad, or discrimination. MARKS did not hear any of this in her meetings in Cincinnati. After looking at the files, it appeared that the problems were more indicative of who worked the cases, as opposed to who the taxpayers were. PAZ appeared shocked by the extent of what MARKS' team found, but MARKS is not sure how surprised PAZ was by the terms used to describe the cases. MARKS would not have expected for MILLER to be told about these cases by LERNER. LERNER "ran her shop" in a way that if she found a problem, she would fix it. As to whether the issue should have been raised up the management chain; that would be up to the person. Personally, MARKS would have wanted LERNER to raise it. However, EO is a small piece of Services and Enforcement.

When [REDACTED] moved to a different group, the cases went to [REDACTED]

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For whatever reason, he just held the cases instead of working them. [redacted] headed up a group to work the cases. His prior experience included credit counseling, which helped make sense as to why the development letters were filled with everything for large sophisticated cases, despite the fact these cases were smaller, not as sophisticated, and were very different from each other. When Cincinnati originally sent the cases to DC, they told DC that they had issues and sent sample cases to get DC familiar with the cases so DC could help Cincinnati sort out the issues. Cincinnati had hoped that this would lead to templates they could use. The cases were assigned to [redacted] worked the cases. [redacted] was not the fastest worker, but MARKS was unsure of what else he was working on. When she interviewed [redacted] he felt templates would not work because the cases were too disparate. These cases had to be crafted around the facts and circumstances. It was unclear if this was communicated up the chain. The prevailing thought had seemed to be that a template would be produced. However, in June or July of 2011, Cincinnati was told that a template would not work. One year seemed like a long time to MARKS for this to be decided. While some of the delay was understandable, it just took too long. Around that same time, Counsel was brought in and they wanted more development on the cases.

The BOLO terms, which were wrong, had been fixed, but then they reverted back to unacceptable criteria. No one was checking it. LERNER was working on auto revocation at the time instead of following up on the backlog of advocacy cases. PAZ wrote a procedure that required management approval to make changes to the BOLO. MILLER thought that was a good. MILLER knew the management challenges of working in EO. EO was overwhelmed and under a lot of scrutiny.

MARKS met with PAZ, GRANT and LERNER after her initial visit to Cincinnati. GRANT had seemed surprised when MARKS told MILLER about the issues in Cincinnati. MARKS was cynical that regular training would help Cincinnati. PAZ felt the same way, and they both felt like they needed to "hand hold" Cincinnati on this issue and conduct a workshop. The training entailed working through sample cases. LERNER did not think Cincinnati could handle the cases, and she wanted them moved to DC. GRANT and MILLER agreed with MARKS that with more than 300 cases, DC might become overwhelmed. Cincinnati had the people to handle the cases. MARKS recommended to MILLER that she and her team go back to Cincinnati, conduct training and review files. Cincinnati was confused on how to work the cases and the people there had many different viewpoints on how to work them. MARKS wanted to get the cases "unstuck." She and her team went back to Cincinnati, conducted training, and began "bucketing" the cases. [redacted] led the bucketing exercise after the training. MILLER got involved with regard to who was involved in the bucketing. MILLER did not want [redacted]

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involved. MILLER felt that despite [redacted] background in credit counseling, that [redacted] did not use good judgment in handling the cases. MILLER also wanted [redacted] counseled regarding the criteria that was used to select cases. MARKS later learned that [redacted] was not counseled the way MILLER wanted it to happen. [redacted] counseled all the managers, not just [redacted] because she did not think he was to blame for it. MILLER asked for weekly reports on the bucketing, particularly on how many approvals were made. MARKS stated applications were getting approved. SHULMAN was "all over this" issue when the bucketing began.

There is a culture in the IRS regarding how to handle EO applications. That culture emphasizes that DC should be walled off from EO applications because the IRS does not want the appearance of political involvement from DC in these types of applications. MARKS remembered that when she started in 1973, the IRS had targeted taxpayers, and as a result the IRS was reorganized and divided into regional groups thereafter. A tough question that IRS management was dealing with was how much does DC stay involved in these cases to make sure the issue was fixed without creating the appearance of involvement for political reasons. MARKS was not very involved in the day to day operations surrounding these cases after the training was conducted.

The next time MARKS really got involved with the cases was when she received the draft TIGTA report. She worked with PAZ and [redacted] to evaluate whether TIGTA had found things they had missed or whether they agreed or disagreed with items in the report. Overall, MARKS felt like the report found the same stuff she and her team found. They did go back and forth with TIGTA on a few things. An example of something they went back and forth on was whether the IRS asked TIGTA to look into the issue and conduct an audit. The report did not mention this, but it was MARKS' understanding that there was a conversation between TIGTA and MILLER, but it was not documented anywhere. A couple of times during the review of the draft report, LERNER expressed her view that this was a Cincinnati problem, and she wished that was made clearer in the report. PAZ and MARKS did not think that view was right, rather they both felt it was more a systemic problem. MARKS did not view LERNER's attitude as one that was "scape goating" Cincinnati, but rather it was how LERNER really felt.

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While the American Bar Association (ABA) meeting was a good place to get guidance out and receive feedback, MARKS was surprised at LERNER's comments. MARKS did not know LERNER was making the comments, and she was surprised because the TIGTA report had not been released yet. MARKS did not feel that language should be used that distanced the IRS from the issue. LERNER told MARKS that she was misquoted about some part of her comments. A lot of people felt that LERNER orchestrated the ABA comments.

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MARKS later got the impression that LERNER and MILLER may have had conversations about the ABA comments. MARKS did not have any discussions with MILLER about LERNER's comments after the fact. LERNER's comments showed "spectacularly bad judgment." MARKS stated that hindsight being 20/20, it was a "dreadful" idea for LERNER to make the ABA comments.

After the report came out, [REDACTED] Legislative Affairs, scheduled a series of meetings. Although MARKS was not part of the planning of these meetings, she was supposed to go to Capitol Hill (Hill) to attend them with FLAX and [REDACTED] had met with several committees and offices just prior to the report being released. MARKS read the report in order to prepare for the meetings. She was not given any talking points. MARKS had a meeting with FLAX in the car on the way to the Hill. The purpose of the meetings was to get people up to speed on what happened. FLAX and MARKS kept changing their approach with each meeting. When MARKS got back to her office that night, it was clear that people were very upset. She met with IRS media people, [REDACTED] MILLER and FLAX to discuss how they could explain the issue. They talked about what "Q&A" sessions they could do to help people understand.

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MARKS was not sure if it was that night or the next day that MILLER told her he would be leaving the IRS. MARKS had one conversation with MILLER when the press reports about "rogue agents" came out. MILLER said he absolutely did not say that, and he was very adamant about it. That was after he met with someone's staff in Congress. [REDACTED] received a letter from Congressman DARRELL ISSA that wanted LERNER to appear at a hearing almost immediately. LERNER was in Montreal, Canada for her anniversary. MILLER asked MARKS to call LERNER. MARKS called LERNER and read her ISSA's letter over the telephone. The letter suggested that LERNER lied to Congress and it stated that was a crime. LERNER cried on the telephone and asked MARKS what she should do. MARKS suggested that she contact Legislative Affairs and talk to them. GRANT went into a severe depression after everything happened. He could only cry when something came up regarding this situation. He was asked to leave the IRS. When he left he was very "despairing" in his departure, not because he had done something wrong, but because his position and status were very important to him and now they were gone.

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SHULMAN testified in 2012, but MARKS was not involved in the briefings leading up to it. In fact, MARKS did not know that SHULMAN had spoken about the 501(c)(4) issue until after he and MILLER testified together in May 2013. SHULMAN's Chief of Staff was [REDACTED] Last Name Unknown (MARKS did not remember his last name.) MARKS did not know if MILLER briefed up the chain after the May 2012 meeting where MARKS laid out the issues in Cincinnati.

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There was a press report that the [REDACTED] was approved on a very fast basis. While a very fast approval is not impossible, it is uncommon. Someone brought this to MARKS' attention, and since there was no real leadership left since everyone had left, she asked someone to review it. If it seemed accurate then she would forward it to TIGTA. [REDACTED] helped reach out to TIGTA for MARKS on this issue. There was another case, based on the facts of the case, that should have gone to the 501(c)(4) political activity group for development but did not. Instead it sailed through and got approved. This case was brought to MARKS' attention by [REDACTED] MARKS could not remember the name of the group. There was also concern in EO about newspapers and media outlets applying for 501(c)(3) status, but MARKS had no knowledge about it.

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PAZ was present during MARKS' TIGTA interview. PAZ's presence during her interview seemed fine at the time, and in fact was helpful to MARKS as PAZ helped her remember names. It did not seem unusual at the time for PAZ to be there.

MARKS was shown an e-mail dated May 16, 2013 from "Marks Nancy J" to "Marks Nancy J" with the subject "You keep saying this is Cinn. Why." MARKS wrote e-mails to herself to remind herself about stuff. She could not remember this e-mail or why she wrote it.

MARKS was shown an e-mail chain dated May 15, 2013 between MARKS and [REDACTED] This address belongs to a personal friend of MARKS, [REDACTED] (ph), who was the Acting Director of [REDACTED] This e-mail exchange was after MILLER had been asked to resign. [REDACTED] was friends with MILLER and she had previously worked for him. In the e-mail [REDACTED] states, regarding LERNER, that "they'd better fire her because she doesn't deserve to resign." MARKS stated this sentiment was not the common view after what happened.

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MARKS noted that after everything had happened [REDACTED] was followed home from the school bus stop one day and a process server tried to break into PAZ's house. MARKS received death threats and MILLER had people protecting his family.

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MARKS was shown a set of handwritten notes (GRANT00000030-37). The notes were not hers.

MARKS had no knowledge of targeting at the IRS based on political viewpoint. She had no knowledge of anyone not observing the litigation hold or preserving documents. She did not know of anyone trying to obstruct investigations into the matter. At time the litigation hold was

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put into effect, GRANT was not focused on it and had not searched his documents on the matter. MARKS urged him to search his documents and then GRANT did do it.

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