



February 21, 2023

Via email – [FOIA@treasury.gov](mailto:FOIA@treasury.gov)

Department of the Treasury  
Departmental Offices (DO)  
Director, FOIA and Transparency  
1500 Pennsylvania Ave NW  
Washington, DC 20220

Internal Revenue Service  
GLDS Support Services  
Stop 211  
PO Box 621506  
Atlanta, GA 30362-3006

## **Freedom of Information Act Request: Racial Equity in Tax Enforcement**

Dear FOIA Officer:

America First Legal Foundation is a national, nonprofit organization working to promote the rule of law in the United States, prevent executive overreach, and ensure due process and equal protection for all Americans, all to promote public knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States. To that end, we file Freedom of Information Act (FOIA) requests on issues of pressing public concern, then disseminate the information we obtain, making documents broadly available to the public, scholars, and the media. Using our editorial skills to turn raw materials into distinct work, we distribute that work to a national audience through traditional and social media platforms. AFL's email list contains over 46,000 unique addresses, our Twitter page has 55,600 followers, the Twitter page of our Founder and President has over 409,000 followers, our Facebook page has 109,000 followers, and we have another approximately 31,600 followers on GETTR.

### **I. Background**

On February 16, 2023, President Biden continued his radical, racist, and fundamentally anti-American overhaul of every federal function under the guise of "equity" by signing a new "Executive Order on Further Advancing Racial Equity and

Support for Underserved Communities Through the Federal Government.”<sup>1</sup> Among other things, agencies were ordered to “prevent and remedy discrimination, including by protecting the public from algorithmic discrimination,” which it defined as “instances when automated systems contribute to unjustified different treatments or impacts disfavoring people based on their actual or perceived race, color, ethnicity ... or any other classification protected by law.”<sup>2</sup> When read in context with the Department of the Treasury’s ongoing efforts to racialize tax policy, the new Executive Order signals that the Biden Administration intends to alter Internal Revenue Service’s (IRS) audit algorithms to target white, Asian, or mixed-race taxpayers.

### **A. Biden racializes tax policy**

The IRS’s National Research Program (NRP) randomly selects tax returns for audit to increase public confidence in the fairness of the tax system. The random sample selection is designed to provide a statistically valid representation of the compliance characteristics of taxpayers.<sup>3</sup> As the Treasury Inspector General for Tax Administration (TIGTA) J. Russell George has explained, “Tax compliance and confidence in the fairness of the tax system could decline if taxpayers believe that the IRS targets specific taxpayers for NRP audits for inappropriate purposes.”<sup>4</sup>

On January 20, 2021, President Biden signed Executive Order 13985, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.”<sup>5</sup> Among other things, President Biden ordered the Secretary of Treasury to conduct an Equity Assessment on whether underserved communities and their members face systemic barriers, produce an Equity Action Plan for addressing those alleged barriers, and participate in the newly established Interagency Working Group on Equitable Data through the Assistant Secretary of the Treasury for Tax Policy.<sup>6</sup>

On May 18, 2021, Deputy Secretary of the Treasury Wally Adeyemo “met with racial equity experts, economists, and civil rights organizations to discuss the Biden-Harris Administration’s tax policies,” and he “reiterated the Treasury Department’s commitment to racial equity [sic] as a key factor in the design of tax compliance[.]”<sup>7</sup>

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<sup>1</sup> Press Release, WHITE HOUSE, *Executive Order on Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* (Feb. 16, 2023), <http://bit.ly/3EmxYbQ>.

<sup>2</sup> *Id.*

<sup>3</sup> U.S. TREASURY INSPECTOR GEN. FOR TAX ADMIN., *National Research Program Tax Return Selection Process for Tax Years 2017 and 2019*, 2023-IE-R002 (Nov. 29, 2022), <https://bit.ly/3Z9BvCB>.

<sup>4</sup> Press Release, U.S. TREASURY INSPECTOR GEN. FOR TAX ADMIN., *National Research Program Tax Return Selection Process for Tax Years 2017 and 2019* (Dec. 1, 2022), <http://bit.ly/3XFIV40>.

<sup>5</sup> 86 Fed. Reg. 7,009 (Jan. 25, 2021).

<sup>6</sup> 86 Fed. Reg. at 7,010-11.

<sup>7</sup> Press Release, U.S. DEP’T TREASURY, *READOUT: Deputy Secretary of the Treasury Wally Adeyemo’s Meeting with Racial Equity Experts and Civil Rights Organizations on Biden Administration Tax Policies* (May 18, 2021), <http://bit.ly/3Kn8oA>.

On December 14, 2021, at the Freedman’s Bank Forum, Deputy Secretary Adeyemo and Assistant Secretary for Tax Policy Lily Batchelder detailed their work in carrying out Executive Order 13985. As part of an Interagency Working Group on Equitable Data, they announced they were “examining the tax system through a racial equity [sic] lens.”<sup>8</sup> Although Congress has prohibited the IRS from both collecting data on taxpayer race and ethnicity directly and from acquiring such data indirectly from other agencies, Treasury simply overran these legal boundaries to “estimat[e] equity impacts” of tax policy by “estimate[ing] race and ethnicity and other demographic characteristics.”<sup>9</sup> Adeyemo and Batchelder described how the Census Bureau, the IRS Research, Applied Analytics and Statistics (RAAS) Division, and “other data producers” were working to support Treasury’s Office of Tax Policy (OTP) to “obtain microdata on race and ethnicity” or otherwise “impute race and ethnicity for tax data.”<sup>10</sup>

In March 2022, Janis Bowdler, the Department’s first Counselor for Racial Equity,<sup>11</sup> led the establishment of the Treasury Advisory Committee on Racial Equity (TACRE).<sup>12</sup> The Biden Treasury Department reemphasized its focus on racial equity in tax policy when it published its first Equity Action Plan in April 2022.<sup>13</sup> In January 2023, using “imputed” racial data, Treasury released a working paper which found some disparities in the benefits of some expenditures among White, Black and Hispanic families, but which also found that “Black and Hispanic families, which make up a disproportionate share of low-wage workers, disproportionately benefit from the Earned Income Tax Credit” and “Hispanic families ... also disproportionately benefit from the Premium Tax Credit [and] the Child Tax Credit.”<sup>14</sup>

## **B. The clear and present danger of race-based audits**

The Biden Administration is amassing a legion of IRS agents to audit American taxpayers.<sup>15</sup> During TACRE’s first meeting, advisory committee members exclaimed

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<sup>8</sup> Wally Adeyemo, Deputy Sec’y & Lily Batchelder, Assistant Sec’y for Tax Pol’y, U.S. DEP’T TREASURY, *FEATURED STORIES: Advancing Equity Analysis in Tax Policy* (Dec. 14, 2021), <http://bit.ly/3KmgwrS>

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Press Release, U.S. DEP’T TREASURY, *U.S. Department of the Treasury Appoints First Counselor for Racial Equity* (Oct. 25, 2021), <http://bit.ly/3XHke2l>.

<sup>12</sup> Notice of establishment of the Treasury Advisory Committee on Racial Equity, 87 Fed. Reg. 12,549 (Mar. 4, 2022).

<sup>13</sup> U.S. DEP’T TREASURY, *Equity Action Plan: One Year Progress Report* (Apr., 2021), <https://bit.ly/3k9ZRgH>.

<sup>14</sup> Lily Batchelder, Assistant Sec’y for Tax Pol’y & Greg Leiserson, Deputy Assistant Sec’y for Tax Analysis, U.S. DEP’T TREASURY, *FEATURED STORIES: Disparities in the Benefits of Tax Expenditures by Race and Ethnicity* (Oct. 25, 2021), <http://bit.ly/3XHke2l>.

<sup>15</sup> Despite Secretary Yellen’s and IRS Commissioner Charles P. Rettig’s promises not to increase audit scrutiny on small businesses and households making under \$400,000,<sup>15</sup> data from Syracuse University’s Transactional Records Access Clearinghouse showed that in fiscal year 2022, the IRS

that “tax policy disadvantages Black Americans while Advantaging White Americans,” and “It is not enough to say ‘tax people making over \$400,000’ if those people who get audited are Black and Brown.”<sup>16</sup> Given the Biden Administration’s deep-seated racial fixations, there is a clear and present danger that Biden’s Treasury Department and IRS plan to use at least some of their new army of IRS agents to conduct race-based audits and enforcement actions against white, Asian, and mixed-race taxpayers.<sup>17</sup>

## II. Requested Records

AFL requests the following records under the Freedom of Information Act (FOIA), 5 U.S.C. § 552(a).

- A. For the custodians listed below, all records of communications referring to “discrimination,” “discriminatory,” “race,” “racial,” “ethnicity,” “color,” “BIPOC,” “Asian” “Indigenous,” “Black,” “Brown,” or “White” on the one hand, and “audit,” “enforcement,” “NRP,” “RAAS,” “algorithmic,” “selection,” “sampling,” or “strata,” on the other. The time period for this request is January 20, 2021 to the date this request is processed. Please exclude news articles, press clippings, listserv items, or forwards of the same without substantive commentary.
- B. All records regarding the processing of this request.

## III. Custodians

- A. Janet Yellen, Secretary of the Treasury
- B. Wally Adeyemo, Deputy Secretary
- C. Janis Bowdler, Counselor for Racial Equity
- D. Lily Batchelder, Assistant Secretary for Tax Policy

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“continued its history trends of hassling primarily low-income taxpayers, with relatively few millionaires and billionaires getting caught up in the audit sweep.” Liz Wolfe, *In 2022, the IRS Went After the Very Poorest Taxpayers*, REASON (Jan. 6, 2023), <http://bit.ly/3IDF66n>; AMAC Newslines, *Biden’s 87,000 IRS Agents Set to Become Woke Army of “Equity” Enforcers*, AMAC (Aug. 24, 2022), <https://bit.ly/3IDYOyP>.

<sup>16</sup> See Meeting of the Treasury Advisory Committee on Racial Equity, 87 Fed. Reg. 69,078 (Nov. 17, 2022); U.S. DEP’T TREASURY, *TACRE Meeting Materials*, <http://bit.ly/418s1cv> (last visited Feb. 20, 2023).

<sup>17</sup> See Press Release, WHITE HOUSE, *Executive Order on Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* (Feb. 16, 2023), <http://bit.ly/3EmxYbQ>.

- E. Greg Leiserson, Deputy Assistant Secretary for Tax Analysis
- F. All political appointees assigned to the Office of the Secretary, the Office of the Deputy Secretary, the Office of Tax Policy (OTP), the Office of Tax Analysis (OTA), and the Office of the Tax Legislative Counsel (TLC).
- G. All employees at or equivalent to grade GS-14 and above the Office of the Secretary, the Office of the Deputy Secretary, the Office of Tax Policy (OTP), the Office of Tax Analysis (OTA), and the Office of the Tax Legislative Counsel (TLC).
- H. Charles P. Rettig, Commissioner of Internal Revenue
- I. Douglas O'Donnell, Acting Commissioner
- J. Heather Maloy, Acting Chief of Staff
- K. All political appointees assigned to the IRS
- L. All employees and contractors at or equivalent to grade GS-14 and above assigned to IRS's Research and Applied Analytics and Statistics (RAAS) organization.

#### **IV. Processing**

Processing should occur in strict compliance with the processing guidance in the Attorney General's Memorandum on Freedom of Information Act Guidelines.<sup>18</sup> If you have any questions or believe further discussions regarding search and processing will facilitate a more efficient production of records of interest to AFL, please do not hesitate to contact me at FOIA@aflegal.org.

#### **V. Fee Waiver Request**

Per 5 U.S.C. § 552(a)(4)(A)(iii), 31 C.F.R. § 1.7(k), and 26 C.F.R. § 601.702(f)(2), AFL requests a waiver of all search and duplication fees associated with this request. The requested information specifically concerns identifiable operations and activities of the Federal Government, including how the Department of the Treasury and the IRS are implementing President Biden's executive orders on racial equity, and whether those efforts would implicate the randomized integrity of the NRP sampling plan for tax return selection for audits. Because it has not been made public how racial equity would be applied to tax enforcement, disclosure of the requested information would contribute significantly to public understanding. Furthermore, AFL has a demonstrated ability and intention to effectively convey the information broadly to the public; AFL's status as a representative of the news media has been recognized by other agencies for granting fee waivers, including the Departments of Defense,

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<sup>18</sup> U.S. DEP'T JUST. (Mar. 15, 2022), <https://bit.ly/3zvpzb6>.

Education, Energy, Health and Human Services, Justice, Interior, and Homeland Security. Finally, as a non-profit organization, AFL has no identifiable commercial interest, and the request is made entirely to serve the public interest. We are, of course, available to provide additional information in writing or offline in support of this request. If AFL's request for a fee waiver is not granted in full, please contact us immediately upon making that determination.

## **VI. Production**

To accelerate the release of responsive records, AFL welcomes production on an agreed rolling basis. If possible, please provide responsive records in an electronic format by email. Alternatively, please provide responsive records in native format or in PDF format on a USB drive to America First Legal Foundation, 611 Pennsylvania Ave SE #231, Washington, DC 20003.

Thank you in advance for your cooperation.

Sincerely,  
/s/ Michael Ding  
Michael Ding  
America First Legal Foundation