

United States Senate

WASHINGTON, DC 20510

October 26, 2016

COMMITTEES:

FINANCE

BANKING, HOUSING, AND
URBAN AFFAIRS

COMMERCE, SCIENCE, AND
TRANSPORTATION

VETERANS' AFFAIRS

SPECIAL COMMITTEE ON AGING

The Honorable Shaun Donovan
Director
Office of Management and Budget (OMB)
725 17th Street, N.W.
Washington, DC 20503

Re: Regulations under Internal Revenue Code Section 385 (TD 9790)

Dear Director Donovan:

I am writing to you as a follow up to a letter my Senate Finance Committee colleagues and I sent on October 11, 2016. I look forward to a detailed response from your agency. As you know, the Treasury Department issued final and temporary debt-equity regulations under Internal Revenue Code section 385 on October 13, 2016. Per my recent letter to your agency, I am strongly concerned that a thorough vetting took place from the Treasury in such a short period of time. I am alarmed with your agency taking only 8 working days to approve these complex rules. As a strong supporter of transparency in Congress, I respectfully request that you comply with the disclosure requirements in Executive Order #12866. Specifically, I request a number of documents be made public from the OMB's Office of Information and Regulatory Affairs (OIRA).

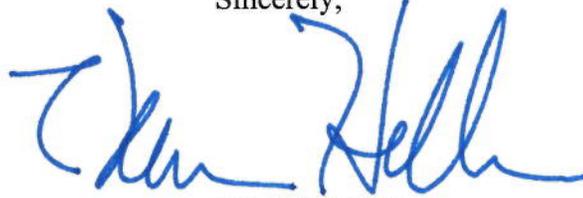
As you know, under Executive Order #12866, the regulatory review process provides public disclosure requirements to your agency "to ensure greater openness, accessibility, and accountability." I hope that you will adhere to this Executive Order and ensure that the public has the opportunity to review these documents, particularly given the potential impact these regulations could have on American businesses. At a minimum, the documents between your agency and the Treasury Department should be released to the public to understand whether your agency rubber-stamped the Treasury's suggestions on section 385 or made substantial changes. As you know, under section 6 of the executive order, "OIRA shall make available to the public all documents exchanged between OIRA and the agency during the review."

Given this, I believe in holding the Treasury Department accountable and respectfully request the following made public:

- As required in section 6(a)(3)(E)(ii), identify in a complete manner the substantive changes between the draft submitted to OIRA for review and the action subsequently announced;
- As required in section 6(a)(3)(E)(iii), identify those changes that were made at the recommendation of OIRA;
- All written correspondence, including emails; and
- All dates and names of individuals involved in substantive oral correspondence, including meetings and telephone conversations.

Thank you for your attention to this matter. I look forward to you complying with this Executive Order, particularly given the short period of time that was taken to approve the section 385 rules. I look forward to reviewing these documents and respectfully request a response to my concerns by **November 9, 2016.**

Sincerely,

A handwritten signature in blue ink, appearing to read "Dean Heller". The signature is fluid and cursive, with the first name "Dean" written in a larger, more prominent script than the last name "Heller".

DEAN HELLER
United States Senator

CC: The Honorable Jacob Lew, Secretary of the Treasury, U.S. Department of the Treasury
The Honorable Mark J. Mazur, Assistant Secretary for Tax Policy, U.S. Department of the Treasury
Mr. Robert B. Stack, Deputy Assistant Secretary (International Tax Affairs), U.S. Department of the Treasury
Ms. Emily S. McMahon, Deputy Assistant Secretary (Tax Policy), U.S. Department of the Treasury