

**NOMINATIONS OF MARJORIE A. ROLLINSON,
PATRICIA HART NEUMAN, AND
DEMETRIOS L. KOUZOUKAS**

HEARING

BEFORE THE

**COMMITTEE ON FINANCE
UNITED STATES SENATE**

ONE HUNDRED EIGHTEENTH CONGRESS

FIRST SESSION

ON THE

NOMINATIONS OF

MARJORIE A. ROLLINSON, TO BE CHIEF COUNSEL, INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY; PATRICIA HART NEUMAN, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE FEDERAL OLD-AGE AND SURVIVORS INSURANCE TRUST FUND AND THE FEDERAL DISABILITY INSURANCE TRUST FUND, THE BOARD OF TRUSTEES OF THE FEDERAL HOSPITAL INSURANCE TRUST FUND, AND THE BOARD OF TRUSTEES OF THE FEDERAL SUPPLEMENTARY MEDICAL INSURANCE TRUST FUND; AND DEMETRIOS L. KOUZOUKAS, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE FEDERAL OLD-AGE AND SURVIVORS INSURANCE TRUST FUND AND THE FEDERAL DISABILITY INSURANCE TRUST FUND, THE BOARD OF TRUSTEES OF THE FEDERAL HOSPITAL INSURANCE TRUST FUND, AND THE BOARD OF TRUSTEES OF THE FEDERAL SUPPLEMENTARY MEDICAL INSURANCE TRUST FUND

SEPTEMBER 28, 2023



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SUPPLEMENTARY MEDICAL
INSURANCE TRUST FUND**

THURSDAY, SEPTEMBER 28, 2023

**U.S. SENATE,
COMMITTEE ON FINANCE,
*Washington, DC.***

The hearing was convened, pursuant to notice, at 10:05 a.m., in Room SD-215, Dirksen Senate Office Building, Hon. Ron Wyden (chairman of the committee) presiding.

Present: Senators Crapo, Cardin, Bennet, Casey, Whitehouse, Hassan, Cortez Masto, Warren, Crapo, Grassley, Thune, Lankford, Daines, Young, and Blackburn.

Also present: Democratic Staff: Eva DuGoff, Senior Health Advisor; Eric LoPresti, Detailee; Sarah Schaefer, Chief Tax Advisor; Joshua Sheinkman, Staff Director; Tiffany Smith, Deputy Staff Di-

rector and Chief Counsel; and Ryder Tobin, Senior Investigative Counsel and Nominations Advisor. Republican Staff: Becky Cole, Chief Economist; Erin Dempsey, Deputy Health Policy Director; Michael Gould, Tax Counsel; Kellie McConnell, Health Policy Director; Gregg Richard, Staff Director; Lara Rosner, Social Security Policy Advisor; Don Snyder, Senior Tax and Oversight Counsel; and James Williams, Tax and Economic Policy Advisor.

**OPENING STATEMENT OF HON. RON WYDEN, A U.S. SENATOR
FROM OREGON, CHAIRMAN, COMMITTEE ON FINANCE**

The CHAIRMAN. The Finance Committee will come to order. The Finance Committee meets this morning to discuss an important set of nominations that are instrumental to the Federal Government's finances. First will be the nomination of Marjorie Rollinson to be Chief Counsel at the IRS.

The Chief Counsel's Office is responsible for ensuring that the agency is implementing tax law by the books. It is difficult to overstate the importance of this responsibility, but we are very pleased that the President has sent the Finance Committee such a qualified nominee.

Ms. Rollinson has spent decades in tax and management fields in both the public and the private sector, including several years at the Office of Chief Counsel she's been nominated to run. If confirmed, she would be the first woman to serve as Chief Counsel.

As colleagues are aware, the IRS is waist deep in its work to issue guidance related to the Inflation Reduction Act. Having a confirmed Chief Counsel will ensure this work is carried out to the letter of the law. This is particularly important as this committee, for example, spent years and years, Ms. Rollinson, working on the clean energy tax credits and the prescription drug issue in particular.

Now, the Chief Counsel's Office also has an important role in the IRS's effort to move away from auditing low-income and middle-class Americans and towards complex pass-throughs and wealthy individuals. This goes right to the heart of reality in the tax code. Working Americans, mostly low- and middle-income, overwhelmingly comply with the law because their information is automatically passed on to the agency through payroll.

On the other side of the coin are the complicated pass-throughs and other structures often designed by the wealthy especially for tax avoidance. I expect any Chief Counsel to provide support for the agency's effort to put more attention on billion-dollar partnerships rather than low-income individuals, and to ensure that legal strategy is sound, as I have little doubt that those who have made vast sums through tax avoidance schemes will be fighting this fresh approach with a legion, a huge number of lawyers and accountants.

It is no secret, as you know, Ms. Rollinson, that Democrats and Republicans have differing views about how the IRS should operate. The position of the Chief Counsel has historically been one that has received bipartisan support, and it is my hope that that will remain true with Ms. Rollinson's nomination.

The last Chief Counsel, Michael Desmond, was reported out of the Finance Committee with a 26-to-2 vote, and was confirmed by

the Senate 84 to 15. I hope, colleagues, we can maintain this record of bipartisan support.

Now, on to the public trustees. The board of trustees of Social Security and Medicare is responsible for issuing annual reports to Congress on the status of the trust funds that ensure Americans receive their earned benefits now and into the future. The board is made up of six members: the Treasury Secretary, the Secretary of Labor, the Secretary of Health and Human Services, the Commissioner of Social Security, as well as two public trustees.

The board has been without public trustees for over 8 years. Unlike most nominations that come before us, the public trustees do not represent the views of the President or the agencies they will be managing. The public trustees represent the American people, ensuring their voices and their views are represented in the annual reports that are done.

The Finance Committee has long held the view that when the term of a public trustee expires, a new public trustee must be nominated to bring fresh views to the board. That is going to include insight on emerging trends in Medicare, like how to update and strengthen the Medicare guarantee, which has been a special priority of this committee. We were led by the late, and I feel great, Senator Orrin Hatch, who led us in this transformation of Medicare away from acute illness only, to dealing with cancer and diabetes and heart disease, stroke, and all of the chronic illnesses.

So, these are the kinds of issues that the group is going to have to tackle, and seniors are counting on leadership in areas like chronic care, that has its roots in the bipartisan work in this committee, and I was honored to have worked with Senator Hatch on it.

I am glad to see we are going to have two new faces before the committee, although they need little in the way of introduction. Patricia Neuman is basically a household name for all of us who have been toiling on these issues, and for me it goes back to my Gray Panthers days. She has been a household word on Medicare policy and finances, and is a long-time leader at the Kaiser Family Foundation.

She worked in both the House and the Senate, and when Americans read news articles about health-care policy, there is a very high probability that Ms. Neuman will have been interviewed for the article.

Demetrios Kouzoukas has been nominated to fill the Republican slot for the public trustee. He has extensive experience across our Federal health programs, serving at both Health and Human Services and the Centers for Medicare and Medicaid, as well as a variety of roles in the private sector. Both nominees, in my view, have the experience needed to represent the public and ensure the integrity of the board's reports.

I would like to emphasize that this role requires putting the public interest first, not the interest and values of your day job and other financial relationships. The financial future of both Social Security and Medicare are very much on the minds of families across the country, as well as lawmakers.

What we will have to do is chart a course that will protect and strengthen America's earned benefits. So, we thank the trustees for

considering this role, as it is going to require a substantial amount of time, many dozens of hours of work each year, and sweat equity to fulfill this public service.

So, I want to congratulate all three nominees and thank them for joining the committee today. I support all of these choices. And after Senator Crapo makes his opening remarks, we have a few routine questions that we ask nominees, and then we will go forward with our discussion.

Senator Crapo?

[The prepared statement of Chairman Wyden appears in the appendix.]

**OPENING STATEMENT OF HON. MIKE CRAPO,
A U.S. SENATOR FROM IDAHO**

Senator CRAPO. Thank you very much, Mr. Chairman, and welcome to our three nominees: Dr. Neuman and Mr. Kouzoukas, who have been nominated to be the public trustees of Social Security and Medicare; and Ms. Rollinson, who has been nominated to be the IRS Chief Counsel. Thank you all for your willingness to serve.

The trustees are responsible for producing annual reports that equip Congress and the administration with data needed to safeguard the long-term security and financial viability of the Social Security and Medicare trust funds.

Congress added the public trustee positions in 1983 to increase public confidence in the integrity of the trust funds and the objectivity of the trustees' reports. The public trustees are tasked with providing objective, dispassionate accounts of exactly what is happening with the trust funds.

If confirmed, you must ensure the public has a balanced, pragmatic understanding of the opportunities and the challenges that face the two programs, and I look forward to hearing from both of you today.

Ms. Rollinson, the IRS Chief Counsel is responsible for fairly and impartially interpreting and enforcing our tax laws, while also ensuring taxpayer rights are strictly protected. Given recent IRS controversies and the push for enhanced enforcement, Americans are rightly concerned with the potential erosion of their rights and privacy.

The IRS Chief Counsel must have the highest level of skill, judgment, and integrity above all, and must not let political pressures affect policy outcomes. Unfortunately, the agencies to which you have been nominated for key posts have recently made repeated practice of putting politics first.

My colleagues and I have raised a number of concerns with recent IRS and Treasury actions that will fall under your remit. Interpreting the so-called Inflation Reduction Act is squarely within the IRS Chief Counsel's purview. The IRA created complexity that has proven unworkable in implementation, putting many American businesses and consumers at a significant disadvantage, and has supercharged IRS enforcement while shortchanging taxpayer service.

Since the bill's rushed and strictly partisan passage, the Biden administration has resorted to unilaterally walking back and diluting a number of its own key provisions. The IRS has simply dis-

regarded statutory deadlines for implementing new Democrat-led provisions, including enhanced information reporting and EV tax credits.

Further, Treasury and the IRS's expansive interpretation of IRA's energy tax provisions has provoked significant criticism from both sides of the aisle. Other provisions have gone into effect without necessary guidance, leaving taxpayers without information needed to comply. I look forward to hearing how you will address these concerns and use your expertise to put adherence to the law over desired political outcomes.

If confirmed, you will also have a significant role in addressing a number of other recent concerning IRS actions: use of IRA funds to increase enforcement in areas with a long history of burdensome and low-utility, or "no change" audits; leaks of confidential taxpayer information; destruction of 30 million information returns, which reportedly led to additional audits of Earned Income Tax Credit claimants; and the ongoing attempt to stand up and divert resources to an IRS-run tax preparation program without statutory authority.

The administration's practice of putting politics before sound policy extends to its failure to protect U.S. interests in the OECD international tax negotiations. Rather than focus on fighting discriminatory taxes against U.S. companies and defending current U.S. law, Treasury has placed the administration's political agenda first, without regard to the potential effect on U.S. taxpayers.

This administration failed to halt discriminatory digital services taxes against U.S. companies, but instead invited foreign governments to pursue new discriminatory taxes against our companies in the form of the Under-Taxed Profits Rule, a surtax which also violates our existing bilateral tax treaties.

As a collateral consequence, Treasury must now exhaust precious resources, issuing regulations to attempt to mitigate the double taxation it has created by unilaterally committing to a global tax deal that undermines U.S. interests. To avoid these outcomes, I stress the importance of engaging this committee with transparency and responsiveness.

Too often in recent years, the administration's nominees have committed to working with us, but have failed to follow through. On behalf of all American taxpayers, I strongly urge our nominees here today to commit to timely and thorough communication with this committee.

Again, I congratulate you on your nominations. And, Ms. Rollinson, I know you were not there when all the things I just described happened, but you are going there now, probably. So I hope that we can have a constructive conversation about how to deal with these issues during the hearing today and as we move forward.

Thank you, Mr. Chairman.

[The prepared statement of Senator Crapo appears in the appendix.]

The CHAIRMAN. Thank you, Senator Crapo. And I just want to say as we begin this hearing, certainly we know that Democrats and Republicans have some differing views on a number of these tax issues. Senator Crapo and I always say we are going to work

to try to find common ground wherever possible, and I appreciate my colleague doing it.

Okay. We are going to introduce our first two nominees. I will take care of that, and then we are going to have Senator Cardin introduce our friend, Ms. Neuman.

Ms. Rollinson has decades of tax management experience in both the public and private sector, including several years at the Office of the Chief Counsel that she has been nominated to run.

Demetrios Kouzoukas has been nominated to fill the Republican slot for the public trustee position. He has extensive experience across our Federal health programs, serving both Health and Human Services and the Centers for Medicare and Medicaid Services, as well as a variety of roles in the private sector.

Now I am going to turn it over to Senator Cardin to introduce our final nominee, and he is a lucky fellow to do it, because we are all people who have worked closely with Ms. Neuman over the years.

Senator Cardin?

Senator CARDIN. Well, thank you, Mr. Chairman, for recognizing that. You might ask why am I asked to introduce Ms. Neuman? She is a resident of the District of Columbia, but Senator Van Hollen and I have sort of adopted the people of the District, until we do the right thing and give them their own representatives here in the United States Senate.

But there is another reason I asked to introduce Ms. Neuman. She has deep roots in Baltimore and my State. It was her great great grandfather who started the Haas Tailoring Company, and I mention that because Baltimore, if you go back about 100 years ago, one of its leading sectors was the garment and tailoring sector. It was a major part of our economy, and Haas Tailoring was a high-end tailoring and added to the richness of Baltimore and its history. So for all those reasons, it is really my pleasure.

And then the last reason I wanted to take this time, as the chairman pointed out, is Ms. Neuman served on the Ways and Means Committee as staff for the Health Subcommittee.

I had the honor of serving on the Ways and Means Health Subcommittee. I know personally of her dedication, experience, and work there, and we could not have a stronger candidate nominee for this particular position. She also served on the staff of the Senate Committee on Aging.

So she comes with broad, broad experience, and as you pointed out, she is a nationally recognized Medicare expert with extensive knowledge on issues associated with coverage, affordability, spending, and financing care of older Americans and people with disabilities—proposals to sustain Medicare for the future.

Dr. Neuman has testified before our committees on numerous occasions, and she has written extensively in this area. So, we have a real expert.

I will just give you one last point. Senator Bennet asked that I acknowledge the fact that she went to the right undergraduate school, Wesleyan, the same school that Senator Bennet went to.

For all those reasons, I would urge this committee to promptly confirm her nomination.

The CHAIRMAN. Well said, Senator Cardin.

Let's have our nominees' opening statements. Then we've got some procedural issues to take care of really quickly, and I know Senators have questions. Let us begin in terms of openers with you, Ms. Rollinson.

**STATEMENT OF MARJORIE A. ROLLINSON, NOMINATED TO BE
CHIEF COUNSEL, INTERNAL REVENUE SERVICE, DEPART-
MENT OF THE TREASURY, WASHINGTON, DC**

Ms. ROLLINSON. Thank you so much, Chairman Wyden, Ranking Member Crapo, and members of the committee. I am honored to be here today as the nominee for Chief Counsel for the Internal Revenue Service. I want to thank the committee for considering my nomination, and also the President for placing his confidence in me.

I would not be here today without the support and encouragement of my entire family, most especially my husband Harry of 36 years, my daughters Emma and Claire, and my mother. My mother Barbara Rollinson, my daughter Claire Oxford, my sister Barbara Rollinson, and my sister Amy Rubrill are here with me today. They always inspire me to be and do my best.

I grew up in the DC area surrounded by dedicated public servants. From a young age, I learned the importance and dignity of hard work done well. My mother, who raised me and my three sisters, founded a nursery school. I was in her first class. She worked there until she retired almost 40 years later, and helped hundreds of children during the most critical phase of their development.

My husband Harry spent over half his career teaching in Virginia public schools. Knowing just how wonderful he is as a father, I can appreciate the tremendous impact he had on the lives of his students.

The example of my many friends and family in public service is what is calling me out of retirement today, in hopes of becoming IRS Chief Counsel. This is a critical time for the IRS. The agency has lacked adequate resources for decades, but with increased funding the IRS can develop into a world-class organization and promote a fairer tax system.

The IRS also is at the forefront of implementing a substantial number of recent tax law changes. These efforts require tireless work from the Office of Chief Counsel, and I am eager to lead those efforts. My tax technical experience and leadership experience from time in both the private and public sectors have prepared me to help the IRS meet these challenges.

I have spent most of my career at Ernst and Young, where I had many wonderful mentors who taught me valuable lessons about leadership, collaboration, and serving with integrity. I also had the privilege of spending more than 5 years at the Office of Chief Counsel. There I saw employees who exhibited a deep commitment to integrity, and a profound dedication to the mission.

Treating taxpayers fairly was the core of everything Chief Counsel employees did, and it would be the capstone of my career to serve alongside them again, if I am privileged enough to be confirmed. Throughout my career, I have learned that being a successful leader means drawing on the expertise of my staff, making sure

everyone understands the mission, and always celebrating successes.

I deeply enjoy technical tax work, but what I find most rewarding is motivating staff to produce exceptional results and reach their goals.

I look forward to answering your questions and, if confirmed, to being a close partner to this committee and the Congress. Thank you.

[The prepared statement of Ms. Rollinson appears in the appendix.]

The CHAIRMAN. Very good.

Dr. Neuman?

STATEMENT OF PATRICIA HART NEUMAN, Sc.D, NOMINATED TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE FEDERAL OLD-AGE AND SURVIVORS INSURANCE TRUST FUND AND THE FEDERAL DISABILITY INSURANCE TRUST FUND, THE BOARD OF TRUSTEES OF THE FEDERAL HOSPITAL INSURANCE TRUST FUND, AND THE BOARD OF TRUSTEES OF THE FEDERAL SUPPLEMENTARY MEDICAL INSURANCE TRUST FUND, WASHINGTON, DC

Dr. NEUMAN. Thank you, Chairman Wyden, Ranking Member Crapo, and members of this committee. I am honored to be here today to be considered for the public trustee position for the Medicare, Social Security, and Disability Insurance trust funds, along with my colleague Demetrios Kouzoukas.

I appreciate your taking the time for this hearing. I am deeply grateful to President Biden for nominating me to be considered for this important position. I am also so grateful for the support of my family, my friends, and colleagues—some of whom are here today—and especially my husband Perry Pockros, my daughter Julia, and my son Ben.

Social Security and Medicare are bedrock programs for our Nation, providing health and economic security to tens of millions of Americans, mostly older adults but also younger people with permanent disabilities, among others. These programs enjoy broad support among the general public, because Americans understand the vital role that they play.

It is difficult to imagine how families would manage without the financial protections provided by Social Security and Medicare. Clearly, Social Security and Medicare face financial challenges that will require attention in the not-too-distant future, with an aging population; a declining worker-to-retiree ratio; and in the case of Medicare, rising health-care costs.

Both the Social Security and Medicare Hospital Insurance trust funds are projected to have insufficient funds to fully cover obligated expenses by the end of the coming decade. Each year, the trustees issue a report on the financial status of these programs. The role of the public trustee is to assure the public of the integrity of the operations and sustainability of the trust funds, and to help the public understand the fiscal challenges these programs face.

The trustees work closely with the actuaries from the Department of Health and Human Services and the Social Security Administration to be sure that the projections are based on sound as-

sumptions, the right questions are being asked, and the presentation of findings is clear, all while recognizing that modeling is by its very nature an inexact science.

In some ways, I have prepared for this position for my entire professional life, working on issues related to health and retirement security for older Americans. My first job on Capitol Hill was on the staff of the Senate Special Committee on Aging, chaired by Senator John Heinz, working right here in the Dirksen Building.

I went on to be trained as a researcher at what is now called the Johns Hopkins Bloomberg School of Public Health, where I received a master's degree in health finance and then a doctorate in health policy. I later served on the professional staff of the House Ways and Means Committee, Subcommittee on Health, where the annual report of the Medicare trustees was a major focus of our work.

Currently, I am a senior vice president, the executive director of our program on Medicare Policy, and senior advisor to the CEO at KFF, formerly known as the Kaiser Family Foundation. Our mission at KFF is to serve as a nonpartisan source of information for policymakers, the media, the health policy community, and the public. We do not take policy positions, similar to the role of the public trustees.

At KFF, I have conducted and directed research, written numerous papers, and spoken to a broad set of audiences about Medicare and related issues. I have examined options to strengthen the financial solvency of the trust fund. I have been a resource for policymakers and others in explaining the challenges facing Medicare and the implications for beneficiaries and program spending.

Collectively, this work has provided the foundational knowledge and experience needed to carry out the responsibilities of a public trustee. I understand that the primary role of a public trustee is to assure the integrity and objectivity of the projections and that this is not a policymaking role.

Relatedly, I understand that the data and the analysis and other information included in the reports are essential to the important work of policymakers. I believe I have the analytic skills required to fulfill the role, and the communication skills to convey this information clearly.

Since I was first nominated, I have been genuinely moved by the reactions of family members, friends, and colleagues of all ages, all of whom thanked me in advance for being willing to do my part as a public trustee, if I am confirmed.

They thank me mainly because they are counting on Medicare and Social Security to be in strong fiscal shape to support their health and financial security in retirement, and so am I. If I am confirmed for this position, I will work to the best of my ability to fulfill the responsibilities with rigor and integrity, and I would be honored to serve in this role, and I look forward to your questions.

[The prepared statement of Dr. Neuman appears in the appendix.]

The CHAIRMAN. Thank you very much. I also remember those days working with Senator Heinz, whom you were referring to, because he was hugely helpful as we closed one of the colossal rip-offs seniors faced with these Medigap policies, where they would

buy counterfeit policies that were not worth the paper they were written on. So I appreciate that history.

Mr. Kouzoukas, welcome.

STATEMENT OF DEMETRIOS L. KOUZOUKAS, NOMINATED TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE FEDERAL OLD-AGE AND SURVIVORS INSURANCE TRUST FUND AND THE FEDERAL DISABILITY INSURANCE TRUST FUND, THE BOARD OF TRUSTEES OF THE FEDERAL HOSPITAL INSURANCE TRUST FUND, AND THE BOARD OF TRUSTEES OF THE FEDERAL SUPPLEMENTARY MEDICAL INSURANCE TRUST FUND, WASHINGTON, DC

Mr. KOUZOUKAS. Thank you, Mr. Chairman, Ranking Member Crapo, and members of the committee. I would like to thank President Biden for the honor of placing my nomination before the Senate, and Senate minority leader McConnell for the trust he placed in me in putting my name forward for the position.

I also thank Dr. Neuman for her collegiality and professionalism, as we have gone through this process of being considered together. And I am deeply grateful for the support of my family, friends, and colleagues, including those watching from home.

We often hear and talk about how the Social Security and Medicare programs make up the largest portion of the Federal budget, and a substantial portion of our Nation's gross domestic product. It is hard to overstate the fiscal, societal, and economic impact of these programs, and each of us can see the role the programs play in the lives of every American family, whether in paying taxes or as beneficiaries of the programs, now or in future generations.

In our Constitution, the people vest Congress with the powers of taxation and spending that underlie these programs. Given their importance and size, it is imperative that Congress and the public have the most accurate and objective information possible about their status and funding.

After all, as Abraham Lincoln is reputed to have said, "Let the people know the facts, and the country will be saved." The work of the public trustees is essentially to help ascertain and publish these facts, while being independent of administering the programs day to day.

This includes witnessing the objectivity and integrity of the assumptions and calculations, as well as participating in the associated internal dialogue and deliberations. The result is enhanced public confidence in the trustees' work.

For me, the opportunity to be considered for this role is meaningful and humbling, and it is for reasons beyond these solemn goals or my professional journey. It is also personal. My first interactions with these programs were as a child of a parent with disabling and early chronic diseases.

The challenge our immigrant parents had navigating the health-care and retirement systems planted a powerful seed. That seed has grown and nourished the perspective that I have brought to my work throughout my career, especially as a public servant. Along the way, I have had the honor to work for the U.S. Department of Health and Human Services in several different capacities, includ-

ing at the Centers for Medicare and Medicaid Services, and from time to time partnering with the Social Security Administration.

I have also served as a member of the Administrative Conference of the United States, representing the public to provide advice to the Federal Government based on my experience in public administration and benefits programs. These roles, built on others in the private sector, have allowed me to develop knowledge and skills especially relevant to the work of the trustees.

For example, early in my career I worked at a nonprofit dedicated to improving public employee pension systems, including their intersection with Social Security. That provided me with a foundation in retirement policy and social insurance concepts, and it led to my work in health care as well.

Later, as both a government lawyer and administrator, I developed a background in Federal appropriations law and accounting processes. I have worked extensively with actuaries in the private and public sectors, including the Office of the Actuary at the Centers for Medicare and Medicaid Services.

I was particularly honored to represent the Centers for Medicare and Medicaid Services at the meeting to issue the 2017 Medicare trustees report, where I served as Secretary at the meeting and signed the report. Finally, as a government employee, I have testified before and worked with Congress on complex and technical topics like those addressed by the trustees. These collective personal and professional experiences afford me the knowledge, institutional memory, and judgment to represent the public in the work of the trustees.

If confirmed, I would work to the best of my abilities to fulfill the expectations of the Greenspan Commission with regard to this important position—that is, to assure that the demographic and economic assumptions for the cost estimates of the future operations of the programs continue to be developed in an objective manner.

Thank you very much for your consideration of my nomination. I look forward to answering your questions.

[The prepared statement of Mr. Kouzoukas appears in the appendix.]

The CHAIRMAN. Thank you very much.

So, we have some obligatory questions that we have to go through with each of the nominees. And let me start first, and we will have to hear from all of you. Is there anything that you are aware of in your background that might present a conflict of interest with the duties of the office to which you have nominated? Ms. Rollinson?

Ms. ROLLINSON. No.

Dr. NEUMAN. No.

Mr. KOUZOUKAS. No.

The CHAIRMAN. Second, do you know of any reason, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Ms. ROLLINSON. No.

Dr. NEUMAN. No.

Mr. KOUZOUKAS. No.

The CHAIRMAN. Third, do you agree, without reservation, to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress if you are confirmed?

Ms. ROLLINSON. Yes.

Dr. NEUMAN. Yes.

Mr. KOUZOUKAS. Yes.

The CHAIRMAN. Finally, do you commit to provide a prompt response in writing to any questions addressed to you by any Senators of this committee?

Ms. ROLLINSON. Yes.

Dr. NEUMAN. Yes.

Mr. KOUZOUKAS. Yes.

The CHAIRMAN. Okay. Let us go to the questions.

I am going to start with you, Ms. Rollinson, and talk about the implications for the IRS if there is a government shutdown. Now, you were there at the agency during that time when the Chief Counsel's Office was coming in and out of government shutdowns, and you are aware that the IRS in these kinds of instances has to furlough existing staff.

What I wanted to ask you though is, what does the shutdown mean for millions of taxpayers, and I am talking about small businesses, I am talking about veterans, I am talking about seniors—the millions and millions of typical taxpayers who cannot get their questions answered, their returns and refunds processed, the kind of information they need to address their hopes and plans for their future?

And put it in the context—you know, so much of what goes on around here, and Senator Crapo and I talk about this, the government talks all kinds of technical lingo. I do not want to do that with this question. I want you to take your best and most experienced take.

What is this going to mean for the small businesses and the veterans and the seniors, if the government shuts down?

Ms. ROLLINSON. Thank you so much. I think your staff was particularly alarmed when I told them that I started during a government shutdown and then left when there was a government shutdown. So I have been there for two government shutdowns in the past, and I will say that, from the perspective of the Chief Counsel, it is concerning in terms of making sure that we are going to be staffed.

But the question about looking at it from the taxpayers' perspective is one that I have seen played out today in many of the news reports: people debating just how big of an impact is it on people right away when the government shuts down. And I think that is something that needs to be considered very carefully.

From the perspective of the Office of Chief Counsel, it means making tough decisions about what work will get done while the government is shut down.

The CHAIRMAN. Freeze frame that. So as Counsel, you are facing questions of, will we be able to do this for veterans or that for seniors, and maybe we have to put it off, or something like that? Is that the kind of choice that you saw people having to make?

Ms. ROLLINSON. Thank you. When I was there, the workers were divided between essential and nonessential. I think they have got-

ten rid of that title, because it was just a little bit offensive to the people who were told they were nonessential. But yes, choices have to be made about what work can get done while the government is shut down, and it can have an impact on ongoing litigation, it can have an impact on guidance to the field. It can have a very direct impact.

The CHAIRMAN. And I just want to make sure that when you talk about litigation and the impact, you are telling us that coming in and out of government and going through that, this is not some abstract issue. This is something that is real for the millions of typical taxpayers. We are still apparently awaiting more guidance from the government, but based on everything I have heard and you have been through them, this is real for those millions of people.

Now, the taxpayers in my State are basically 3,000 miles away from Washington, DC, and for them Washington, DC most of the time might as well be on Mars for the impact it has on them. But I think what I have heard from you in the past, and others, is that for those seniors, those veterans, those small businesses, this is not an abstract issue. This can really have a damaging effect on their lives and their futures. Is that correct?

Ms. ROLLINSON. Yes. I think you raise a very good point.

The CHAIRMAN. Okay; very good.

Dr. Neuman, just a question for you; and my colleagues remember this. And we were so thrilled working with Chairman Hatch, because I went to the chairman, and I said, "You know, when I was coming up as director of the Gray Panthers, Medicare had Part A and Part B. Part A was hospitals, when you broke your ankle." I went to school on a basketball scholarship, saw a lot of those, people who are still recovering from injuries that they sustained when they were young. "And then Part B was for the doctors; you had a horrible case of the flu."

So the three of us, working with Chairman Hatch and a lot of colleagues over here—Senator Cardin, Senator Warner—we said the future of Medicare is going to be the millions of seniors who have two or more chronic conditions. Maybe they have cancer, diabetes, heart issues, these kinds of things.

So we wrote a major bill that I think is really transformative, and I would be interested in your thoughts about the impact and how your work will be affected from these kinds of emerging trends in American health care. Now, I obviously cannot get into any specific bill, but what I can tell you is, the Medicare program of today is not the Medicare program when I was coming up as director of the Gray Panthers. So how do you factor in these emerging trends?

Dr. NEUMAN. Thank you for that question, Senator. I am glad you have brought so much attention to the issue of an aging population, with people with more chronic conditions, and living longer, and the importance of doing something to better manage care for people as they grow older.

This is an important issue. It is an important issue for Medicare. It is an important issue for medical care. I think any one of us who may have family members with diabetes or hypertension or cancer, heart disease, understand just how important it is to better manage care and work across specialties so that people get the best

possible care and that certain conditions are prevented, when possible.

As a public trustee, I think the focus would be somewhat narrower. On the one hand, a public trustee would look at the extent to which chronic conditions drive spending and affect spending, and on the other, a public trustee would want to look at the effect of any interventions or policy changes or regulations that may actually slow the growth in Medicare spending.

The CHAIRMAN. My time has expired. We are going to have some suggestions, because I know—for example, I have been talking to my colleagues and professionals in the field. If there were grab bars, for example, for elderly folks, that could prevent a lot of incredibly harmful falls, which devastate lives and cost enormous sums of money. Those are the kinds of things that I want to talk to you about.

Senator CRAPO?

Senator CRAPO. Thank you very much, Mr. Chairman.

My first question is for both Ms. Neuman and Mr. Kouzoukas. As public trustees, you would be entrusted with providing an unbiased and independent review of the financial status of the trust funds. Maintaining the credibility of the reports submitted to Congress is vital. Their analysis and underlying economic assumptions are used extensively by public and private entities to evaluate not only the programs themselves, but also overall government spending. These reports do not include policy recommendations, nor do they advise on policy.

The public trustee positions do not provide platforms for anyone on either side of the ideological spectrum to espouse their personal policy viewpoints. They are tasked quite simply to provide objective, dispassionate accounts of exactly what is happening with the trust funds.

Dr. Neuman and Mr. Kouzoukas, will you commit to maintaining an independent, nonpartisan, and objective oversight role, if confirmed?

Dr. NEUMAN. Yes.

Mr. KOUZOUKAS. Yes.

Senator CRAPO. Thank you.

I would like to go now to Ms. Rollinson. As we talked about in my office, one of the troubling concerns that I have seen is a recent trend, that from my perspective is a willingness of the IRS and Treasury to ignore the plain language and enacted statutes when issuing regulatory guidance.

For example, in the case of the IRA's new EV tax credit, the IRS and Treasury proposed rules that had no statutory basis and simply ignored the statutory deadline for issuing guidance, which had the effect of temporarily preventing new requirements from taking effect and allowing scores of credits to be claimed inappropriately.

There are other recent instances where the IRS and Treasury have ignored unambiguously stated effective dates and delayed certain provisions from taking effect. As I said earlier, I know that you were not in the government at the time these actions were taken, but do you believe that it is proper for the IRS to issue guidance that is clearly inconsistent with statute?

Ms. ROLLINSON. Thank you for raising this. I was going to just say, “no,” but I will elaborate. The Chief Counsel’s Office is very important in terms of making sure that the laws passed by Congress are interpreted fairly, and that guidance is issued quickly. That is how we cut down on disputes. That is how we make sure that the benefits that Congress is intending people to get are in fact available.

And so, although I do not know fully the exact regulations that you are talking about, if I am lucky enough to be confirmed, it would be a big priority of mine to make sure that the Office of Chief Counsel is advising fully on what we think the proper interpretation of the law is.

Senator CRAPO. Well, thank you. And if confirmed, how will you approach—and I think you have answered this, but I would like you to answer it again. If confirmed, how will you approach a situation where the statute is clear, but the administration seeks a different outcome, whether based on claims of administrative complexity or political expediency?

Ms. ROLLINSON. That is a very important question. What is interesting is how often tax law is not that clear. But I agree with you that to the extent that tax law is clear, we need to stay within the parameters of the law. And this was my experience when I was there before and would anticipate it being my experience if I am lucky enough to be confirmed: I do think there are healthy debates among lawyers as to what words mean.

But again, the Office of Chief Counsel’s role would be to advocate for what we think the law says, and as a side matter—not a side matter but an equally important one—making sure that the rules that are passed are administrable. And that would be my focus, if I am lucky enough to be confirmed.

Senator CRAPO. Thank you.

Very quickly, one last question before my time runs out. I am also very concerned about specific instances where the IRS unilaterally acts without statutory authority, where there is no language to be clear or unclear about.

Pursuant to the administration’s directive, for example, the IRS has recently begun building a program to prepare tax returns and give tax advice, allowing the IRS to act as tax collector, tax enforcer, and tax preparer. That puts them at the center of each stage of the process, and even though it was jettisoned from the partisan IRA, many of us worry that the IRS will move unilaterally into requiring systematic and deeply intrusive reporting on Americans’ bank accounts without statutory authorization.

My question is, do you believe the IRS has the legal authority to prepare tax returns or to track deeply in Americans’ bank accounts without congressional authorization?

Ms. ROLLINSON. Thank you. You are raising what I think are two separate issues. I will address them separately. One is—what I believe you are talking about is Direct File, and the Chief Counsel certainly would not be making a policy call as to whether it is a good idea to have Direct File, but would absolutely be engaged in answering the question of whether we thought there was authority.

And so, if I am confirmed, I look forward to understanding what the thinking was as the IRS came to the conclusion that they be-

lieve they have the authority, since I understand they are moving forward with a pilot program.

Senator CRAPO. All right; thank you. I see my time is way over expired.

The CHAIRMAN. I thank my colleague.

Senator Grassley is next.

Senator GRASSLEY. Mr. Chairman, I would like to make an editorial comment before I start my questioning, and it is in regard to your fourth obligatory question you asked these folks. Each answered "yes," that they would be glad to respond to all of our communications and everything, and I do not question their sincerity on doing that.

But whether you have a Republican or Democrat President, I have found over the years that it is very, very difficult to have that completely fulfilled by the people who always say "yes." So I just say a more honest answer would be "maybe."

The CHAIRMAN. And I would only say, Mr. Grassley, you and I have teamed up on these things, and we ask tough questions, no matter whether it is a Democrat or a Republican, and we are going to continue to do so.

Senator GRASSLEY. Thank you very much.

I am going to start out with Ms. Rollinson, and I want to make clear that I have questions about whistleblowers. But there are two different whistleblower issues in this administration, or even in Republican administrations.

One deals with the IRS whistleblower program for saying that corporations did not pay a certain amount of taxes. That legislation has brought in \$6 billion, so I see it as a very worthwhile program. The second issue with whistleblowers deals with government whistleblowers within.

So I am going to start out with the \$6-billion program. Obviously you know, or maybe you do not know, but I have been a strong advocate for this program, being involved with its enactment as well. I have heard concerns from stakeholders that the Chief Counsel's Office is often a barrier to processing claims, especially in matters that have gone through the Tax Court.

I am concerned that there is an attitude in the Chief Counsel's Office—obviously prior to your going there—that whistleblowers are a threat to the public fisc. The exact opposite is true, as I think the \$6-billion figure proves. Whistleblowers are an asset that can help the IRS identify tax cheats and collect additional revenues.

If confirmed, do you pledge to view whistleblowers as working with the IRS, and work to process cases quickly and fairly?

Ms. ROLLINSON. Thank you, Senator. I am aware of your interest in this issue, and I share it. I think whistleblowers are very important in terms of tax administration, and I really respect the role that they play.

The Office of Chief Counsel should be something quite the opposite of a barrier, because our role is to advise on how to interpret the law. So we should be working directly on understanding the claims that the whistleblower has brought forward, making sure that the law is being applied correctly, and helping dispatch the case as quickly as possible.

Senator GRASSLEY. Okay.

One additional concern in this area I have heard from whistleblowers is that the Chief Counsel's Office often undermines the Whistleblower Office by improperly asserting itself into the award determination: this is how much the whistleblowers should get for this information.

If confirmed, do you pledge to support the role and decisions made by the Whistleblower Office, and not undermine its mission by imposing additional burdens on that office?

Ms. ROLLINSON. Thank you. If confirmed, I would look forward to working closely with that office, and certainly with the goal of not undermining their authority.

Senator GRASSLEY. Okay.

Then this goes to the internal whistleblowers. If confirmed, you will be the chief legal advisor to the IRS Commissioner. As you probably know, I take whistleblower laws and protecting them very seriously, and we have had some IRS whistleblowers go public recently, and they have not been treated as they should have been.

I want a commitment from you that you will support whistleblower rights and protections, and that you will take steps to protect from retaliation all IRS whistleblowers who come forward, even including those involved in the Hunter Biden investigation.

Ms. ROLLINSON. Yes, I agree. It is a very, very different issue, the internal whistleblower, and I again think it is very important. Personally, I hope that if I am confirmed, I run an office where I am open to criticism, that everyone in the office is open to criticism, and that we take it seriously.

And if it ever goes so far as to be a whistleblower case, it is very important that the whistleblowers be treated with respect and that there not be retaliation.

Senator GRASSLEY. Okay.

And then for the trustees of Medicare: the 2023 Medicare trustee report says, "This year's determination triggers a Medicare funding warning." The Medicare trustees have issued this warning over 7 consecutive years. After this determination is made, the President is required to submit proposed legislation to Congress, and Congress is supposed to consider legislation on an expedited basis.

Well, quite obviously, to date no action has been taken throughout these years. Do you agree with this funding warning and that Congress should take this warning seriously?

Mr. KOUZOUKAS. Yes, Senator. The funding warning is something that Congress put in place, and it is something that really goes to the heart of the trustees' role, which is to provide the facts and the data to the Congress and the American public about the fiscal status and future of the programs. And there is a role there for the public trustees and the other trustees to highlight that message.

And the Medicare warning is one way that the Congress has an opportunity to follow up on the work of the trustees, and I look forward to collaborating with this body and the rest of Congress, if confirmed, to provide whatever information and other data might be helpful in Congress's role following up on those warnings.

Senator GRASSLEY. Thank you for answering my questions.

The CHAIRMAN. Senator Grassley, let me just close up on this point. For a number of years, I have been your cochair of the Whistleblower Caucus, and I just want to—

Senator GRASSLEY. And you still are.

The CHAIRMAN. And I thank you, and I look forward to continuing our work.

Senator Whitehouse?

Senator WHITEHOUSE. Thanks, Mr. Chairman. I join you in commending Chairman Grassley's long support for whistleblowers and transparency.

Ms. Rollinson, you are headed over to the IRS to be Chief Counsel, if you are confirmed. You are not there now, as I understand it?

Ms. ROLLINSON. That is correct.

Senator WHITEHOUSE. So this is just something for you to consider when you get over there, if you do not mind hearing me out here. The Supreme Court rendered a decision, at least a majority of it did, called *Citizens United*. I am sure you are aware of that decision. *Citizens United* reflects the proposition that the Supreme Court, 8 to 1, endorsed, that spending anonymous money in politics is corrupting.

So, a pretty solid message. In fact, they said the only reason that we are letting unlimited money pour into politics is because it will be transparent. That is a guard against corruption. So the premise is, anonymous money in politics, what we would call "dark money," is corrupting—point 1. Point 2, we have \$2.6 billion in dark money spent in elections, and more to come. So, \$2.6 billion spent in, on its face, corrupting dark money. So that is kind of a problem for American democracy.

The device for a lot of this dark money corrupting spending is 501(c)(3) and 501(c)(4) organizations, and abuse of 501(c)(3) and 501(c)(4) organizations. I will flag some of the abuses for you. One is to take a 501(c)(3) and a 501(c)(4) organization that are basically twins: same location, same board, same staff, a corporate veil between them that you could pierce with a banana.

And with that, a 501(c)(3) that is supposed to do no politics can get enmeshed with what a 501(c)(4) is allowed to do in politics. Policing the boundary between the 501(c)(3) and 501(c)(4)—zero effort that I have ever been able to see by the IRS. Literally zero effort to even ask or to look and say, "What's up here?" These two really do not look that different as organizations. How are you reflecting the legal difference between 501(c)(3)s and 501(c)(4)s?

Here is another one. You set up a little flotilla of related 501(c)(4)s. So when the donor gives a million dollars, the first 501(c)(4) spends half of it on politics and sends the other half to the second related entity in the cycle, which spends \$250,000 of the \$500,000 on politics, and sends the other 250 to the next one in the cycle, which spends 125 of the 250 on politics, and so forth.

And so, in a meeting room the size of that table, you could take a million-dollar contribution and put 90 percent of it immediately into politics, particularly if it all ends up going to the same super PAC, for instance, being reassembled on the other end of this sham operation. Zero inquiry into 501(c)(4) cycling and the sham operation.

And then finally, misreporting. The IRS receives reports from these organizations that say to the IRS under oath, "We do not spend any money on politics," and over and over again those same

organizations have reported to the Federal Election Commission and other election commissions, "Oh, we spent \$17 million on political ads."

The discrepancy between those two sworn statements is never investigated. I strongly suspect that the battering that the IRS has received by dark money-funded front groups and dark money-funded politicians—which included attempts to impeach an IRS Commissioner, attempts to refer to DOJ IRS staff—have cowed and intimidated the IRS so badly that it is not even trying to do its job.

And by the way, no kudos to DOJ on this. DOJ still insists on an IRS referral, even if it is a simple false statements case, which is bread and butter DOJ work. So, between the DOJ and the IRS, neither side is doing its job, and there is a waist-high pile of baseballs that have piled up between shortstop and second base, of neither side doing its job to defend us from what is, by law, "corrupting political spending."

Please—I will follow up with you after your confirmation, but you cannot just chicken out on doing the job, and I hope you will bring a spirit of integrity there.

Ms. ROLLINSON. Thank you.

The CHAIRMAN. Thank you, Senator Whitehouse.

Senator Lankford is next.

Senator LANKFORD. Mr. Chairman, thank you. Thank you to all of our nominees. This is not a fun process to go through, all of the questioning and all the prep and everything else that goes into this. So I appreciate all the work that you have already done going through this process to be able to get to this point on this.

I do want to be able to have a conversation with our future IRS Counsel here, to be able to talk through just the issues here. It is a pretty straightforward question. The IRS rules, do they carry the force and effect of law? For IRS rules, do they carry the force and effect of law?

Ms. ROLLINSON. Thank you. The IRS has the opportunity to, with Treasury, issue regulations on legislation that is passed by Congress, and they—those regulations—are in fact treated as the interpretation of the law.

Senator LANKFORD. Right; which, by the way, I agree with, obviously. They are carrying that out. Most Americans would also receive that as well. The challenge has been of late that in the past couple of years, Treasury has said that the IRS, when it goes through all its rulemaking process and actually puts its regulations out, is not accountable to OIRA, the Office of Information and Regulatory Affairs; that other agencies have to get their guidance checked, but Treasury is saying IRS does not, that we are going to be exempt from that process and we can make rules without the oversight of OIRA.

Should OIRA be involved in actually that oversight process, or can Treasury and IRS make rules outside of the Administrative Procedures Act?

Ms. ROLLINSON. You raise a really important point that actually, when I was there at Chief Counsel the last time, had just started percolating, because in fact for a long time, the rules did not go through OIRA. I do think there has been a change, especially given some of the court cases that have come out, in terms of what has

to happen in order for the regulations to be considered to have met the APA and be compliant.

When I left the Office of Chief Counsel last time, our regulations were going through OIRA. So one thing that will be interesting, if I am confirmed, is to understand where we are in that process.

Senator LANKFORD. Yes. It was about 97 rules as I recount, went through OIRA oversight during that time period. It seemed to flow. The initial concern was, well, this is going to slow the process down. Treasury, IRS, OIRA were able to work out a time period to be able to make sure that all of this had guidance.

OIRA's design is to be able to make sure we do not end up in a bunch of lawsuits, we do not end up with legal challenges. We actually save the taxpayer money and time, because it has actually gone through an internal review. It is interesting to me to be able to say, with all that is going on right now with IRS and with so many new regs that are coming online, that suddenly those do not apply to oversight.

We can then look at the statute, apply it ourselves, and no one should look over our shoulder. I just do not agree with that. What will be interesting is, you are going to have some conversation on that. Obviously as the Counsel, you will be in the middle of it, saying, "Does this actually apply to us, or is IRS completely separate from the Administrative Procedures Act? Can we make up rules without it?"

How will you go about trying to be able to make that decision? I am not going to put you on the spot on that to make that decision right now, but you are going to have to put a process in place to be able to make recommendations to the administration—should we be independent?

Ms. ROLLINSON. Yes, thank you. I actually think it is one of the most important roles of Chief Counsel, to help ensure that regulations are considered, are found valid, if and when challenged. They are going to be challenged a lot of the time.

Senator LANKFORD. Right.

Ms. ROLLINSON. Taxpayers deserve to understand the guidance that comes out, that the guidance is going to apply to them. It is always concerning if people follow the guidance, and then 10 years later, it is found not valid and people have been following it for years.

So, I will be very interested in making sure that the Office of Chief Counsel does everything it can to make sure our regulations are found valid.

Senator LANKFORD. Okay, that would be helpful. I think participating in the Administrative Procedures Act is not onerous. Every other agency does this, and it actually helps the taxpayer in the long term, to be able to know that there is another set of eyes to be able to look at this.

I know I am running short of time, but churches and faith-based entities for years have had a long-term struggle with the IRS in trying to determine when is it that they are talking about a moral, cultural issue, and when does that actually get into a political issue? What is their level of free speech as a nonprofit and as a faith-based entity?

They have had all kinds of challenges, letters. I know pastors who have made a tape of a message, where they talked about an issue, sent it into the IRS and said, "Does this cross the line? Give us clarity on this." And they have never been able to get clarity from IRS on that.

There seems to be the sword of Damocles that hangs over them all the time, waiting for some judgment, some rule to be able to come down. It is an issue that does need to be resolved, that faith-based entities also know that they maintain their free speech the same as everyone else does.

But so far IRS has been unwilling to be able to make that statement publicly, that faith-based entities do not sacrifice their First Amendment rights as well. So, any help and any guidance on that in the days ahead would be very helpful to faith-based entities all over the country.

Ms. ROLLINSON. I agree; thank you.

Senator LANKFORD. Thank you.

The CHAIRMAN. I thank my colleague.

Senator Carper is next.

Senator CARPER. Thanks; thanks, Mr. Chairman.

I had a chance to welcome you all personally, and I will do that in front of this mass of people. Before I do that, I want to say there's a fellow sitting over my right shoulder. His name is Evan Giesemann. We are only as good as the people who are on our staffs, and as you know, help us understand some of the issues. It is more than any one person could probably do.

But Evan has been with us for about 400 years. [Laughter.] He says it seems that long, but he has actually not done it here nearly that long. But he has really done great work with respect to major legislation, including the Inflation Reduction Act, all kinds of trade legislation, and I—we are going to miss him. I just want to say publicly in front of him and all of you, how much we value his service.

Having said that, I want to ask a question, if I could, of Ms. Rollinson, and I have been a long-time outspoken advocate for fully funding the IRS. I have sat here, I cannot tell you how many times, with the Commissioners of the IRS, candidates or nominees for Commissioner of the IRS. We ask them what can we do to be helpful as a legislative branch.

Almost everybody says, "We need funding. We need to be able to fund the people who work at the IRS to do the work that needs to be done, and make sure everyone's paying their share." I am proud of the work that we did with the Inflation Reduction Act, in which my staff and I had played, I think an important role in providing some badly needed funding for the agency.

I am encouraged that those investments are paying off. One of the most important measures, as it concerns the IRS, is agency responsiveness to everyday taxpayers seeking assistance. We actually monitor in my office, and we have done this—I have been in the Senate for 22 years. We actually measure, every month, constituent services and what do people contact us about, what issues are they raising?

One of the top issues forever has been the IRS, and the issue is responsiveness of the IRS. I think I have the right number here,

but in terms—when I ask my staff to find out—in terms of answering phone calls, the IRS answering phone calls, during the 2023 filing season, I am told about 87 percent of the phone calls were answered by the IRS. Actually somebody picked up the phone; the IRS talked to a constituent.

I have a friend. When you ask him how he is doing, he says, “Compared to what?” Well, compared to before 2023, I think we are looking at numbers, not of 87 percent of calls answered, but about 15 percent of calls answered. I think that is almost criminal for the people we are supposed to be serving.

Now, it is a lot better. It is not perfect, but it is a heck of a lot better.

Question, Ms. Rollinson: if confirmed to be Chief Counsel of the IRS, how will you help provide clarity and certainty to taxpayers, not just personal taxpayers, individual taxpayers, but the business community, nonprofits, and so forth? And how can you better provide clarity and certainty to those taxpayers seeking assistance, in helping assure best-in-class customer service from the agency?

Ms. ROLLINSON. Thank you, and thank you for the support you have given to the IRS. I have read about it. It is very impressive. I think that what the Office of Chief Counsel can do is to help provide timely guidance, timely guidance so people understand their obligations.

I am thrilled to see that this year customer service has increased dramatically at the IRS. What again, in the Office of Chief Counsel, we can do is make guidance publicly available so people can file their taxes, and we can promptly assist the IRS as questions arise, and that would be a very, very important role.

Senator CARPER. Good. Second question, if I could. I mentioned the importance of our workforce, but one of the most important tools for success in any organization, including the IRS, is the strength of its workforce. Unfortunately, during the 2010s, the IRS budget was depleted, and the agency lost, I am told, 20,000 full-time employees, leading to an overwhelming backlog that we have talked about, poor customer service, and really low morale among IRS workers.

Under the leadership of Commissioner Werfel—who I was privileged to introduce and actually recommend to the President to nominate for the leadership post of the IRS—the agency has taken steps to support its employees and rebuild its workforce. There is more work to do.

Ms. Rollinson, if confirmed, how will you work with the other leaders of the IRS to support and empower the agency’s workforce?

Ms. ROLLINSON. I have to say, one of the reasons I really am most excited about the possibility of going back is, I think the people who work there are unbelievably dedicated to the mission and do a great job. I would love to be part of recruiting in more people, so that the staffing can be at a level that gives the American people the tax service they deserve.

Senator CARPER. Mr. Chairman, when we were members of the House of Representatives, I used to hold town hall meetings a lot. I am sure you did too. And we do every 2 years—we do a town hall. We invite the IRS, we invite the Delaware Division of Revenue to come to help people to actually do tax returns.

And I remember once—we do an exercise trying to balance the budget, let the people in the town hall meeting participate in that. I remember one year where they were working on spending—entitlement spending, discretionary spending, defense spending, non-defense spending—they could not balance the budget.

I said to the group—it was about 50 people—I said, “Well, our revenues can always be part of the solution.” I will never forget, Mr. Chairman. A lady in the back row raised her hand, and she said, “Congressman, I do not mind paying my fair share of taxes. I just want to make sure that everybody else is paying their fair share.” I think that really sums it up very well.

Thank you.

The CHAIRMAN. Thank you, Senator Carper.

Senator Bennet is next.

Senator BENNET. Thank you, Mr. Chairman. I really appreciate it, and thank you all for your testimony.

Ms. Rollinson, I only have one thing that I want to focus on today, and we have talked about it before. I appreciate the conversation we had a few months ago on our State tax refund issue that we have in Colorado, called TABOR.

In Colorado, the Taxpayer Bill of Rights amendment, what we call TABOR, passed in 1992 to ensure that the State refunds excess tax revenue to taxpayers. For over 30 years—so for decades and decades and decades—Coloradans have received these tax refunds, and the IRS has not opined on whether they are subject to Federal income taxes.

But in February, the IRS announced—without any leadership, I think, at the IRS—in February the IRS announced that it would, it *would* treat TABOR as federally taxable income, throwing the tax season for Colorado filers into chaos and breaking with a long-standing precedent. I mean, we said to the IRS at the time, “You are doing this, you are giving us this guidance now right in the middle of tax filing season. It is the last possible minute when anybody in the State is going to be prepared to deal with an entirely new rule.”

So, whatever one thinks about the ruling itself or the opinion itself, I think there is a question here about what is a useful way for IRS, the agency, to approach these kind of questions. But I will put that to one side for the moment.

Last month, the IRS proposed a new policy that would tax some of these State and local refunds, overturning the 30-year precedent, I think, that the IRS had, of not treating this as taxable income. I have had a conversation with Commissioner Werfel at least one, maybe two times with this, and we talked about this when we met a few months ago.

I do not believe that anybody over at the IRS and in the Office of the Chief Counsel has grappled with what this is going to mean for Colorado, and maybe what the distinctions are between Colorado and other States that are being affected by this.

When I asked whether the Chief Counsel’s Office had previously reached out to the Colorado Department of Revenue to discuss the change that the IRS was proposing, the answer was, “No, we had not even talked to the people in the State to understand what their perception was of what was being done here.”

I think their office has failed to recognize that the proposed policy is a major change from decades of precedent that is going to have a dramatic effect on Colorado taxpayers. And I hope that you will agree that this is not the right way to make these policy changes, and if confirmed, that we will find a way to be able to work more effectively with States, give people notice, and have some understanding about what is happening.

So I guess what I would just ask, more than anything else on this particular issue is, if you are confirmed, if you would be willing to work with my office, with the Colorado delegation, with the Colorado Department of Revenue, to ensure that the new guidance—while in my view the new guidance would not tax TABOR refunds—but if you do reach that conclusion at the end, that it is only after consultation with the folks who are going to be affected by it. And to the extent that you have a substantive view of this, I would be happy to hear that today.

Ms. ROLLINSON. Thank you. I know this is a very important issue to you and to all the people in Colorado. And yes, if confirmed, I would make it a priority to understand what the thinking has been, and also to work with your office and with tax authorities in Colorado to make sure that the Office of Chief Counsel really does understand what the payments are for.

Senator BENNET. I want to say that I think I had some suggestion from the IRS after the—thank you for that answer. I had a suggestion from the IRS after the latest iteration of this came out, suggesting that some changes that were made temporarily during COVID might have somehow led the IRS to reach the new conclusion that it did.

I would say first of all, I do not understand that, but that may be my fault. But I do not understand it. But I also think that that—it seems to me that that does not necessarily obviate 30 years of practice among the State of Colorado, our taxpayers, and the Internal Revenue Service.

So I had hoped that when you get there, we can get some attention on this and that we can get to a rational conclusion that makes sense for Colorado's taxpayers.

Mr. Chairman, thank you for giving me the opportunity to ask questions.

The CHAIRMAN. I thank my colleague.

Senator Blackburn is next.

Senator BLACKBURN. Thank you, Mr. Chairman, and thank you so much for being before us today. I have a couple of concerns I wanted to raise with you, because the issues seem to continue. One is the cybersecurity at the IRS and what is happening with data, what is happening with data breaches.

There have been some pretty high-profile data breaches—ProPublica. And the GAO has found numerous instances of willful misuse of information and unlawful, unauthorized access to information by employees. So on this GAO report, have you seen that? Have you reviewed the deficiencies, and what are your thoughts?

Ms. ROLLINSON. No, I have not seen the report.

Senator BLACKBURN. Okay. Will you do that and submit something in writing, because to me, this should be intolerable.

Ms. ROLLINSON. I appreciate you raising this. I want a huge priority of the Office to be, if I am confirmed, making sure the American public understands that the IRS is putting them first, and is safeguarding their information. This is a very, very important issue, and if I am confirmed, I look forward to getting—

Senator BLACKBURN. See, I think it is astounding to people that they have to submit this information to the IRS. They are required to do this, and then they find out that there are these data breaches. Each one, it is like, why can't these people get this right? We do hear a lot about it.

Tennesseans are very concerned about that, and people need to know that their information is going to be private, that their name, their address, their Social Security number, their income, their tax filing is not going to be made public. So please, let's get some attention on that issue.

I want to talk to you about Commissioner Werfel. When he was here before us and I questioned him, we looked at that \$400,000 threshold for audits on the American people. He kind of waffled around a little bit on giving me an answer on exactly what that meant. Was that going to be net income? Was it going to be gross income?

Because we have a lot of Main Street small businesses where their gross is \$400,000, but what they make out of that, if they are a restaurant, if they are a retail shop, it might be—they might be taking home actually \$40,000 to \$50,000.

He used a term that was "total positive income." Well, that meant the gross. So you have—this is something that seems to be aimed squarely at the middle class, and at the independent small business owner. So, as you look at this and you say nobody under \$400,000 is going to have an audit, how do you calculate that? Are you looking at the net, are you looking at the gross? Or are you going to use this new, made-up term of total positive income?

Ms. ROLLINSON. Thank you. I have seen the reports that the IRS will be going after the larger partnerships, the high-net-wealth individuals without the intention of auditing those with less than \$400,000. If I am confirmed, I look forward to understanding what they mean by that term, and I share your concern that it is something that the IRS needs to be transparent about, so that everyone understands what is meant.

Senator BLACKBURN. Well, and when they, when the administration did this, what were they talking about? They were talking about high earners, but now, just as we had predicted, it seems to be pointed squarely, squarely at the mom and pops, and at the small businesses.

So Tennesseans want to know where that is, where it is going to land. Is it your total taxable income? Is it going to be that gross? How are you going to address this, because they are really quite concerned about what they see as picking winners and losers at the IRS. They are concerned about people being targeted for their political or their religious positions, things that have happened in the recent past at the IRS. So we will be watching that closely.

Thank you, Mr. Chairman.

The CHAIRMAN. I thank my colleague. Let me just follow up briefly on this point of "net positive income," having talked to Mr.

Werfel in the past. What I believe he is talking about is the example where a hedge fund manager cannot offset their income with losses. But we will continue this conversation, and I look forward to it.

Senator BLACKBURN. And, Mr. Chairman, on that point, he may have given you a different answer in a private conversation. That is not the response that he gave when we had the hearing. Therefore, you have a lot of small business owners out there who are quite concerned about the ramifications of this position, and the lack of clarity of exactly what he is going to do with that authority.

The CHAIRMAN. We will continue this conversation. I will only say I have heard him say in a number of instances that his version of approaches like net positive income is designed to make sure that the very wealthy cannot game the system. But I get my colleague's point, and I look forward to talking with her about it.

Senator Cortez Masto?

Senator CORTEZ MASTO. Thank you, Mr. Chair. And congratulations to all the nominees, and to your families and everyone who is here to support you, and maybe watching to support as well.

Let me start with our public trustee nominees, Dr. Neuman and Mr. Kouzoukas. So, in Nevada, there are over half a million Nevadans who rely on Medicare to cover their health-care needs, and there are over half a million Nevadans who count on Social Security for their financial security, and clearly the solvency of the Medicare and Social Security trust funds is crucial not just for my State, but for the country.

In Congress, we have a responsibility to protect that solvency of these programs. Each year, we look to the trustees' reporting for an accurate assessment of each fund's fiscal health. So let me ask both of you, and I will start with Dr. Neuman. How has your experience prepared you to represent the public interest in the oversight of these trust funds?

Dr. NEUMAN. Thank you for the question, and I should say I am so honored to even be considered for this position. I have spent my entire professional career working on Medicare and retirement income issues, and thinking about how the programs serve the people who rely on them. So, as I approach this position, I approach it thinking of the people in Nevada and across the country who are relying on Medicare and Social Security to be there for them when they need it.

I would approach this position as I approach my other work. I bring analytic skills and work as a nonpartisan. I try to ask good questions, and if I am so fortunate to be confirmed, I would want to ask good questions.

I would want to check that the assumptions of the actuaries are sound, and to think about what are the new trends that are happening and how might they affect the projections. What did COVID mean, for example, for disability? What does the advent of new drugs, such as Alzheimer's drugs, mean for Medicare spending?

So I would look to track what is going on with existing trends, and keep an eye on things that are emerging, in order to be sure that the work of the trustees and the report that comes to you are based on solid information and analysis.

Senator CORTEZ MASTO. Thank you.

Mr. KOUZOUKAS. Senator, I appreciate the opportunity to discuss my background and qualifications for the role. It is really a quite humbling role, and one that is very meaningful to me, both for personal and professional reasons. My first exposure to the programs was in my own family history, like so many Americans, and I appreciate the impact that they have on every American family. And so I think that just makes it all the more critical that Congress have the right information, a complete and objective picture about the financial and fiscal status of the programs, and I would bring to the role a passion for these issues.

I have dedicated my entire professional life to serving the populations that these programs serve, and I very much want to ensure that they continue to have access to the security and care that these programs provide. I have had the opportunity, in fact, to work with different parts of the agencies that produce the reports.

I served as Secretary to the 2017 meeting and signed that report. So I have some familiarity with the process firsthand, and I would look to bring these collective experiences to bear in this role, if confirmed.

Senator CORTEZ MASTO. Thank you.

And then, Ms. Rollinson, I was grateful—Senator Cornyn and I have worked together on legislation that we included in the SECURE 2.0 retirement bill that was passed last year that allows domestic violence survivors to withdraw penalty-free from their retirement plans. But I think there is more that needs to be done with respect to helping domestic violence survivors stay on that path. I think that the IRS can play an important role. So really what I am looking for—and this is a conversation I have had with Commissioner Werfel—will really be just asking if you would commit to working with the Commissioner on this issue and reviewing where IRS policy can be updated to help survivors of domestic violence.

Ms. ROLLINSON. Thank you. That is obviously a very important issue, and yes, I can commit to spending my time working on that issue.

Senator CORTEZ MASTO. Thank you. I appreciate that. My time is up. I again congratulate you all on your nominations, and thank you for your willingness to serve.

Thank you, Mr. Chairman.

The CHAIRMAN. I thank my colleague.

Senator Cassidy is next.

Senator CASSIDY. Mr. Kouzoukas and Dr. Neuman, I will focus my attention on you first. You both come from academic backgrounds. You both have a lot of experience with this, and I understand the role of the trustees is to kind of bring a different perspective to something which is otherwise kind of within the club, if you will.

Now for example, I understand that there is a controversy where the Social Security actuaries presume that replacement rate will be about two kids per family. CBO claims 1.75, and there are others that say it is actually closer to 1.65. And then we have the other influence of continued immigration, which kind of offsets.

Now, that is going to make a huge difference. So, can you describe your approach as to—you are coming into a group which

kind of has a set perspective, and yet credible outside sources say maybe that perspective should be challenged. They may be right, maybe not. How would you handle that, Dr. Neuman?

Dr. NEUMAN. Thank you, Senator, and I appreciate your leadership on raising the visibility of issues and challenges facing Social Security, because I do think these are very important issues.

The work of the public trustees is very technical, and reviewing assumptions is extremely important, because any change in assumptions can have major ripple effects down the road. I think the role of the public trustees is to bring a fresh set of eyes to the decisions that have been made, to bring in experts from outside to be—

Senator CASSIDY. Now, I like what you are saying, but everybody wants to be liked, and as soon as you begin challenging assumptions of folks who have kind of settled on those assumptions, there is always a sense of perhaps being ostracized, et cetera.

And so I guess what I am asking you is, are you all willing to at least challenge those assumptions, understanding you might be the fly in the ointment?

Dr. NEUMAN. Well, I like to think of myself as a straight shooter, and I understand that people might disagree. But I would certainly be comfortable raising questions. If there is conflict, then there is conflict, but I am not going to shy away from raising questions and confronting assumptions if I think they are wrong.

Senator CASSIDY. Mr. Kouzoukas?

Mr. KOUZOUKAS. I do not think I could have said it any better myself. I agree wholeheartedly with that, and I also add that my experience has been that it is not necessary to always be perceived as a fly, that sometimes this is about people understanding that we are all working to the same end, and I think that that is important in carrying out a duty like this.

And so I would say that my role here, if confirmed, would be to understand the perspective of the professionals who work on these issues, and what their viewpoint is, to ask good questions like Dr. Neuman said. And then ultimately in the end, that suggests that perhaps what is most important is some level of transparency about what assumptions are being made, how something like replacement ratios is being described and calculated in the report.

Senator CASSIDY. And let me just interrupt, because I have limited time. But echoing a little bit what Senator Crapo asked, which is, how can you communicate with us? Frankly, you would have to educate us on the importance of these ripple effects. What may sound like a small detail, we understand makes a huge difference 10, 15, 20, and 70 years down the road.

Mr. Kouzoukas, let me ask you this next question my staff confirmed to me. But the Medicare trustees' effect often focuses on the HI fund, Part A, and does not really pay a lot of attention to B and to D. And yet, there is some evidence that when George Bush passed the Part D program, that it had a positive effect in terms of reducing hospitalization.

So there is a dynamic iterative effect. If you do something here, it actually benefits there. In terms of the global budget, we know that it has a big effect. So, if you only focus on HI, you do not focus on the Part D program—my gosh, maybe we are spending a little

bit more on drugs, but we are saving a lot of money on hospitalization—you kind of miss an important story to tell. How would you handle that, sir?

Mr. KOUZOUKAS. I think, Senator, this is an example of how the trustees can contribute to the conversation. While there is a lot of attention focused on the solvency dates and the like—and those are really important things—what is also really important in the work of the trustees is the information and data they provide around the program, the mechanics of the program, and why and how they make the calculations they make.

And so, the kinds of issues that you describe are things that the trustees have worked around and explained in their reports. And I would look forward to having the opportunity to address these—

Senator CASSIDY. I am almost out of time.

Dr. Neuman, would you add anything to what he just said?

Dr. NEUMAN. No. I actually agree, and I think it is the role of the trustees to look at all parts of the program—A, B, C, and D—and look at the interactions. I believe that is what they do, but I think what the public trustees can add to the conversation is making sure that the effects of, say Part D drugs on Part A, are clearly understood when the report is released.

The report is long; it has a lot of technical information. So it is sometimes hard to see what is embedded in the report.

Senator CASSIDY. If the chair will indulge me, I would also ask that you help us put that in the scope of the entire Federal budget, because if we are going to pay for B and D separately from A, we may pay a little bit more here but save a lot there. If that is not delineated, we may not have that understanding.

You have been indulgent, Mr. Chairman, and I yield.

The CHAIRMAN. Well, I just want to say to my colleague—and I very much look forward to working with him on these issues—we were talking with Dr. Neuman, for example, about some of the other emerging trends like chronic care, which came out of this committee.

And apropos of your point with respect to Part D, I was one of the Democrats who voted for Part D. I took an awful lot of flak for it, and I went looking, for example, at the effects of Part D on these other kinds of programs that you have talked about.

We need that kind of information. So I want to thank my colleague for this approach of looking to these emerging trends, and I look forward, particularly in terms of health care, to working closely with you.

Senator CASSIDY. Okay; thank you.

The CHAIRMAN. All right; Senator Hassan is next.

Senator HASSAN. Well, thank you, Mr. Chair. I want to thank you and the ranking member for this hearing, and a “thank you and congratulations” to the panel on your nominations. The Chief Counsel role is vitally important to the fair and efficient administration of the IRS, and public trustees oversee the finances of both the Medicare and Social Security programs, so obviously very important to all Americans.

The IRS Chief Counsel will be responsible for helping the agency modernize its IT systems, issue guidance for taxpayers, and gen-

erally help improve the customer service experience for taxpayers. So, Ms. Rollinson, I start with a couple of questions for you.

The Inflation Reduction Act's investments in IT modernization will help better serve taxpayers, as well as improve administration and implementation of our tax laws. I was really pleased to see that the IRS's strategic operating plan, released earlier this year, placed a particular emphasis on IT modernization.

If confirmed, how will you, Ms. Rollinson, leverage IT modernization efforts to provide a better customer service experience for the taxpayer?

Ms. ROLLINSON. Thank you. Yes, I was very interested and heartened to see that as well, and having been there 5 years ago, yes, technology needed to be improved. If I am lucky enough to be confirmed, I will be very interested to find out what they have been doing, because I am interested in the role that technology can have in helping assess what returns should possibly be audited.

Because we know what the issues are, but how do we find them in the big complex partnerships? How do we find those issues? So that would be something I would be very interested in learning more about.

Senator HASSAN. Well, and there are other ways that, of course, modernization can help the taxpayer experience for people who do not need to be audited as well; correct?

Ms. ROLLINSON. Yes, absolutely. That's right.

Senator HASSAN. Last year, the bipartisan Home Energy Savings Act that Senator Collins and I sponsored became law as part of the Inflation Reduction Act. It expanded tax cuts for families who make energy-efficient home upgrades, such as purchasing a heat pump or upgrading the insulation in their windows or doors. These tax cuts will help Granite Staters lower their energy bills.

Ms. Rollinson, what recommendations do you have to help increase homeowners' use of the home energy improvement tax credits?

Ms. ROLLINSON. Yes. The bill has many, many interesting elements in it, and I know that Treasury has announced that they are through phase one of the guidance. If I am confirmed, I will want to make sure that the guidance is issued quickly, so that taxpayers know what they need to do in order to claim the benefits that they are entitled to, that will encourage them to make these improvements that you are discussing.

Senator HASSAN. Thank you.

One more question for you, Ms. Rollinson. I want to draw your attention to an issue that some of my constituents have been dealing with. When the IRS sends out mail notifications, often it is to inform a taxpayer of an action that the taxpayer needs to take. Failure to respond can result in delayed refunds or problems for their small businesses, and sometimes there is a real disconnect between what the taxpayer says they have received and what the IRS has sent out.

Our office has dealt with dozens of these kinds of cases, and often there has been little leniency from the IRS, even when the taxpayer did nothing wrong. Sometimes they just did not actually get the notice that the IRS says it sent. So how would you rec-

commend improving the mail notification system, so that taxpayers who do not receive notices are not improperly penalized?

Ms. ROLLINSON. Thank you. That is a very thoughtful question, and the mail is something that is near and dear to my heart. I do think that the Office of Chief Counsel needs to work with the IRS to understand how to make sure a notice is received, if they are not being received through the mail, and certainly be understanding if there are in fact delays.

Senator HASSAN. I would appreciate that, because these cases are extraordinarily frustrating for taxpayers, but they often end up being assessed penalties that are really significant harms for them. So I would just urge you to look at it.

And last question to both of our public trustees, and thank you both for your willingness to serve. Public trustees play an essential role in providing unbiased expertise to ensure that the public understands Medicare's solvency and financial health. The trustees' work to assess and project the financial health of the Medicare program creates an essential foundation for all of us as we do our policymaking.

I am very concerned about trends that drive up health-care prices for Medicare, including the increase in provider consolidation that New Hampshire and other States have seen over the last decade. We obviously need competition, but it is disappearing in the health-care market, with fewer and fewer independent providers and fewer and fewer independent hospitals.

Consolidation and payment incentives that drive consolidation have contributed to a health-care affordability crisis for older adults. So, Dr. Neuman and Mr. Kouzoukas, how will you incorporate your knowledge of consolidation trends in the health-care market into your work as a public trustee, and I will start with you, Dr. Neuman.

Dr. NEUMAN. I am familiar with the issues that you are raising, and I think they are important issues. Looking at the effect of consolidation on health-care prices is something that has been well established in the literature. It has some effect on Medicare, but a larger effect is on commercial insurance, people who pay private prices.

I would hope and look forward to working with the trustees to understand what the effect is on health-care trends. Consolidation also may have some impact on quality, and the evidence is a bit mixed on that. I think that is a little bit beyond the scope of the work of the public trustees, but I would want to look broadly at this issue, and thank you for raising it.

Senator HASSAN. Well, thank you; and, Mr. Kouzoukas?

Mr. KOUZOUKAS. I agree that the trustees are obligated to look at all the trends that shape their projections and assumptions, and consolidation can play a role in that as well. So I would look forward to working with the professional staff that work on the report, the working group, and the trustees to understand this issue and to contributing to the dialogue around it as well as the assumptions that they make.

Senator HASSAN. Thank you very much.

Thanks for your indulgence, Mr. Chair.

The CHAIRMAN. Thank you, Senator Hassan, for asking specifically about this consolidation issue. We now have something like 2 million people living in maternity deserts, and that is because these big systems, several of them—and we have faced this in Baker City, OR recently—are saying, “Hey, there are not as many babies being born, and we are just going to pack up.” And we are facing, in Baker City, a hospital that has been there for 120 years plus, basically saying, “We are not going to do it anymore.”

So I want everybody to know that what Senator Hassan is talking about—and we want you two confirmed—this is a very powerful emerging trend: 2 million Americans living in maternity deserts. And this has enormous ramifications for economic development in rural areas. I see Senator Daines here, and, my colleagues, this is going to be a major emerging challenge, and thank you for bringing it up.

Senator HASSAN. And, Mr. Chair, I would just add, it contributes to things like maternity deserts, but it also clearly is contributing to an increase in prices throughout systems. So you know, I look forward to working with you on that. Thank you.

The CHAIRMAN. And we very much support both of you, Democrat and Republican. But this is the kind of emerging trend we have got to get on top of.

Next is Senator Young.

Senator YOUNG. Thank you, Mr. Chairman. I want to congratulate our witnesses. Thank you for being here today, and I am so appreciative that you wish to serve your country in the respective capacities that you have been nominated for.

Ms. Rollinson, I have a few questions for you. You have an impressive, an extensive background in the international tax area, so I suspect you are aware that the Treasury Department has received significant pushback as it pertains to the administration’s handling of OECD Pillar 2 negotiations, particularly provisions like the Under-Taxed Profits Rule.

This would uniquely disadvantage U.S. businesses. It would allow foreign countries to actually tax the U.S. activity of U.S. companies. I have to read that again. It would allow foreign countries to tax the U.S. activity of U.S. companies. So can you please share your views on the current Pillar 2 negotiations?

Ms. ROLLINSON. Thank you for your question. Yes, I have seen that. When I was at the Office of Chief Counsel up until 2019, they were just in the very beginning phases of looking at Pillar 1 and Pillar 2.

The Office of Chief Counsel actually has a very small role to play in this. These are negotiations that, as you mentioned, are done by Treasury. We certainly have some people who would consult on what the current state of the U.S. law was.

Senator YOUNG. Right.

Ms. ROLLINSON. But the Office of Chief Counsel does not have a very strong role in those, the negotiations that you are talking about.

Senator YOUNG. You would—you are nominated to be Chief Counsel to IRS and, as I understand it, an Assistant General Counsel of Treasury, right?

Ms. ROLLINSON. Right.

Senator YOUNG. So more broadly, it is a broader portfolio than just the Chief Counsel position, as I understand it. So, if you could just volunteer to me in light of that, how you anticipate Pillar 2 impacting U.S. companies?

Ms. ROLLINSON. So, I—it is a very important question, and I am worried that I am not going to be giving a very satisfactory answer. I understand the motivation for Pillar 2, because—

Senator YOUNG. I know you can give a thoughtful answer because of your extensive experience as an international tax attorney.

Ms. ROLLINSON. There you go—

Senator YOUNG. Which you did not challenge. [Laughter.]

Ms. ROLLINSON. I did not challenge that, yes. But you are absolutely right—you got me. What I can say is this, that the—

I understand why Pillar 2 evolved, and the reason I say that is, what I did not do much of in international tax—but is critically important—is look at transfer pricing issues. I do not mean to get technical, but there have been so many disputes in the U.S. and abroad—

Senator YOUNG. Let's not get technical, because I—the term “transfer pricing,” I start to glaze over. Let's just get really foundational. Let's go back to, do you agree that the Under-Taxed Profits Rule would disadvantage U.S. businesses by allowing foreign countries to tax U.S. activity of U.S. companies?

I have to say, if you disagree with that, I may find it challenging to support your nomination, because for me it is so obvious, unless you provide me a very compelling reason why you disagree.

Ms. ROLLINSON. Thank you. This is not going to be compelling to you. However, the rule that you mentioned is actually one that I would need to get much more information about. It is not one that I followed carefully once I left, and it was not there when I left.

So it is something that I would need to get a lot more information about before I would have a view as to whether it is disadvantaging companies.

Senator YOUNG. Okay. Well, kindly follow up with me and the committee, so that everyone has an opportunity to review your response. I received a lot of these written responses, I will say this on the record, and it is amazing how your support staff will provide a very vague and diplomatic response to—we know how that works.

Ms. Rollinson, in light, once again, of your extensive international tax experience, you are no doubt aware that I and many of my colleagues have been particularly critical of the administration's failure to secure favorable treatment of important nonrefundable tax credits, such as the R&D credit, under the proposed Pillar 2 regime.

Based on your experience as an international tax professional, do you anticipate the current Pillar 2 model rules will act as a disincentive for companies looking to make investments in R&D activities in the United States?

Ms. ROLLINSON. Thank you. Again, I would need to know a lot more about how it operates right now before I could answer that.

Senator YOUNG. Okay; I will answer.

Ms. ROLLINSON. Okay.

Senator YOUNG. This will be a disincentive to U.S. companies investing in R&D in the United States at the time that China is offering very generous incentives for research and development to companies that locate there.

Thank you.

The CHAIRMAN. My colleagues and members on both sides know that I strongly support reauthorizing the R&D program.

Senator Daines?

Senator DAINES. Mr. Chairman, thank you. I am glad we are having this hearing, as this position has been vacant for over 2 years, leaving the IRS without their top legal advisor. In that time, the IRS has caused direct harm to taxpayers on numerous occasions, with little to no justification. Let me speak to a couple of these instances.

During the early years of the Biden administration, June of 2021, ProPublica leaked a staggering amount of private taxpayer information. This information was legally protected. It was confidential IRS data, yet to this day the IRS has failed to find and hold someone accountable.

Despite the Government Accountability Office underscoring the need to resolve these immediate security weaknesses, the IRS has continued to mishandle private taxpayer information. Just last week, my Republican colleagues on this committee, including myself, sent a letter seeking answers regarding the destruction of millions of unprocessed taxpayer information returns.

On June 14th of 2023, heavily armed, in fact 20 heavily armed IRS agents entered the Highwood Creek Outfitters store in Great Falls, MT and seized boxes of ATF Forms 4473. Let me say that again: 20 heavily armed IRS agents entered a business, Highwood Creek Outfitters, and seized ATF Forms 4437. It is unclear how these forms pertain to the IRS, as they are not a financial document, but rather the background check, the form that contains personal information on gun purchasers.

I filled out many of those forms on firearms I have legally purchased in Montana. Following inquiries from myself and my colleagues, I am glad to have finally received a response announcing the end of these egregious in-person taxpayer visits. However, as we have seen, the IRS has a lengthy history of abusing their power and depriving taxpayers of their rights, and such instances cannot occur again.

Ms. Rollinson, underneath your leadership, what steps would you take to ensure taxpayer information is protected, and to put an end to these intimidation practices?

Ms. ROLLINSON. Thank you, Senator. You really raise a very important issue of public trust, and I find it very disturbing to see how the public trust in the IRS has eroded. To me that is a very critical issue to take on right away. All the issues you raised really go to that point.

And so, I would be hopeful that if I am confirmed, that under my leadership we could work to restore the trust by ensuring that we are working closely with Congress in their very important oversight role, to make sure that Congress gets the information that it needs, that we are reporting to the right people—as I think happened in the ProPublica leak—that something has gone wrong and

do what we can to fix it, and that we make sure that we are working with Congress in a way that Congress's trust in the IRS is restored, and that together we can have the American public's trust restored in the IRS.

Senator DAINES. Yes. I will tell you what. I mean, I was getting calls from a lot of Montanans too. When you talked about the ProPublica leak, thank you. But what happened in Great Falls, to have 20 armed IRS agents move into a business like that and seize the ATF forms—I mean, it was chilling to see what was happening to a business there in Montana.

There is a lot of damage done here, and a breach of trust, whether it is leaks from ProPublica or, in this case, a proactive, premeditated raid with 20 IRS agents armed, to seize ATF forms.

Ms. ROLLINSON. Yes, I understand. We absolutely need to make sure that the IRS is always operating in a fair manner and treating taxpayers fairly. I agree with you.

Senator DAINES. Lastly—and I know I am running out of time—but I was discouraged to see the plan that Commissioner Werfel revealed earlier this year, outlining how he plans to use the \$80 billion allocated to the IRS from the so-called Inflation Reduction Act, the 87,000 agents that have been hired to increase audits on Montanans and target everyday Americans.

While the administration may claim they are not going to increase audits to anybody under \$400,000, their actions say otherwise. If the army of these new IRS agents was not proof enough, just last week the IRS announced their newest effort to knock on taxpayers' doors.

This unit is specifically focused on targeting pass-through entities, the LLCs and S corps, which make up over 95 percent of all businesses and employ about 50 percent of American workers. These actions show the IRS is not going after wealthy tax cheats. They are going after Main Street businesses.

Meanwhile, my office hears from constituents every day who are trying to reach the IRS, and at best they are on hold listening to mediocre '70s music—on hold for hours before reaching an agent—and at worst not able to make any contact at all.

Given your extensive management experience, Ms. Rollinson, do you think it makes sense to prioritize spending billions of dollars on Main Street businesses, instead of investing in customer service efforts at the IRS?

Ms. ROLLINSON. I do agree that the IRS should be focusing on improving customer service. I think that will go a long way to improving the trust that the American public has in the IRS. I think that is critically important.

Senator DAINES. All right.

Thank you, Mr. Chairman.

The CHAIRMAN. I thank my colleague. I only want to say with respect to what is really going on out there in the tax area, it is reflected in what I did today, releasing data that shows that there are nearly 1,000 millionaires who simply refuse to file or pay their taxes, and that is what the new money at the IRS has got to focus on.

Just get your arms around that. That is not what people normally think, where the billionaire or millionaire calls up their tax

accountants and tries to work out some sort of way to not take income or pay payroll taxes. We are talking here about nonfiling. Thousands of millionaires in the data that I released today, just for 3 years from the IRS, simply basically gave a raspberry to the government. They just said, "We are not going to file. We are not going to pay." And that is wrong, and that is what we have got to focus on with the IRS.

Senator Menendez?

Senator MENENDEZ. Thank you, Mr. Chairman.

Just for the record, not all '70s music is that bad, so congratulations to all of the nominees.

Dr. Neuman and Mr. Kouzoukas, my office has heard from constituents who rely on Social Security and Social Security Disability payments who have received letters demanding money back for overpayments made by the agency.

According to recent reports, critically low staffing levels mean it could be several years before the Social Security Administration can reassess cases and catch overpayments. Some individuals are even receiving bills from the Social Security Administration that date back 40 years. In your view, how much of this is caused by chronic understaffing at the Social Security Administration?

Mr. KOUZOUKAS. Senator, thank you for the question. I think that this highlights perhaps the distinction between the role of the trustees and the folks who run the Social Security program. Obviously, Dr. Neuman and I, if confirmed, would have the privilege of serving with those folks and that leadership, and our role would be to assess the financial and fiscal future of the program, to provide data and information to this Congress and the public about the Disability Insurance program in terms of its financial status and the like.

So I think that the kinds of questions you are perhaps getting at relate to the administration of the program day to day, which we would not be involved in.

Senator MENENDEZ. Well, except that in terms of its fiscal integrity, if we are talking about 4 decades later that people are getting notices, if we are thinking about the rate in which there may be overpayment; and of course, even though you are looking at fiscal integrity, I assume that you also want the program to work well as it relates to the well-being of the beneficiaries. This is an issue, because we are talking about millions of dollars. It goes to the fiscal integrity; wouldn't you agree?

Mr. KOUZOUKAS. I could see the connection, yes, as part of a larger, broader picture of the way that the finances roll up to the program, sure.

Senator MENENDEZ. Let me ask you this, both of you. According to the Social Security Administration Inspector General, during fiscal year 2022 the agency—and this goes to fiscal integrity—clawed back \$4.7 billion of overpayments, while another \$21.6 billion remained outstanding. According to recent reports, those who received Social Security payments say they have gotten letters stating they must give back thousands or even tens of thousands of dollars to the government because of overpayment.

What else would you be looking for to have fiscal integrity here, to make sure that we are not talking about billions of dollars, as-

suming that the administration is right and these are overpayments? Obviously to some degree, there has to be a universe of it that is. But it is a very significant number.

Dr. NEUMAN. I would just add that I totally agree with Mr. Kouzoukas in his response to your question, but I have also read these articles that I think you are referring to, and I understand how this is such a serious issue for families who are suddenly asked to repay large amounts of money that they did not know that they owed.

I really think, however, that this is more a question for, say the Social Security Commissioner, because our role would be more to look at what are the effects on disability spending trends and obligations to the Disability trust fund. But the broader issue is that this can have a profound impact, and it is very scary for families when they get these letters.

Senator MENENDEZ. Yes, it is usually scary for them. But it also goes to the integrity of the system, that billions of dollars are being paid out that in fact should not have been paid out. Then I do think that as trustees you would be looking at that as something of concern. Is that a fair statement?

Dr. NEUMAN. Yes, I think that is a fair statement, and it is something that I would look forward to discussing with the actuaries and the public, the other trustees, if I am fortunate to be confirmed.

Senator MENENDEZ. Mr. Kouzoukas?

Mr. KOUZOUKAS. I would as well.

Senator MENENDEZ. Okay. I think with that, I am satisfied with the questions I want to ask you. Thank you very much.

The CHAIRMAN. Thank you. We are moving to wrap up. We've got a couple of procedural things. I have one last question.

I would also like to thank members today for their participation, and with respect to questions for the record, the deadline for members to submit QFRs will be next Tuesday, October 3rd, at 5 p.m. The deadline is firm. We appreciate the cooperation of everyone here.

What is going to happen now is, I want to make one last point, and then I am going to hand matters over to the Senator from Massachusetts, who will ask her questions, and then we will wrap up.

Senator Warren, one of the areas that I have been particularly concerned about is what the shutdown is going to do to seniors and veterans and small business people, in terms of interruptions. And let me tell you what I have picked up, according to the news in the last hour.

If you are for shutting down the government, you are sending a message to America's seniors, for example, you better not lose your Medicare card, because they are not going to be able to get replacements. So this idea that it is some kind of just Washington, you know, ritual or something, that is what it really means.

If you are for shutting down the government, explain it to seniors, because a lot of folks—you know, those Medicare cards can get lost, and seniors are not going to get a replacement.

Senator Warren, thank you for coming.

Senator WARREN. Thank you, Mr. Chairman.

So, the IRS makes a lot of decisions that profoundly affect who actually pays to support our government. That is why I am very concerned about the revolving door, where large accounting firms send their lawyers into high-ranking positions at the IRS to create new tax loopholes for their clients, and then those firms reward those same lawyers with promotions and bigger paychecks when they leave government service and come back to the accounting firm.

Now, Ms. Rollinson, you have been through the revolving door more than once. You have gone from Ernst and Young to the IRS, and then from the IRS back to Ernst and Young, and once again from Ernst and Young back to the IRS, this time as Chief Counsel.

I think that is a red flag, but you have made an unprecedented commitment as a nominee. Ms. Rollinson, you have sent me a letter committing, among other things, to recuse yourself from any matters related to former clients for your first 4 years at the agency, and, for 4 years after you leave the IRS, not to go to work for any company, including Ernst and Young, that has clients you interact with while you are at the IRS.

This goes even further than President Biden's strong ethics requirements. Do I have that right; is that correct?

Ms. ROLLINSON. Yes, that is correct.

Senator WARREN. Ms. Rollinson, I appreciate your taking these steps to assure the public that you will put their interests first, and I support your nomination.

Mr. Kouzoukas, you have been nominated to serve as the public trustee of the Medicare and Social Security trust funds. I have concerns about your conflicts of interest. Now this should not be a surprise. I sent you a letter outlining those concerns.

The position of public trustee was created in the 1980s to give the public a voice in the board of trustees' solvency projections for Medicare and Social Security. And a big factor influencing Medicare solvency today is the growth of Medicare Advantage, a program that allows for-profit insurance companies to provide Medicare coverage that experts say is on target this year to overcharge the government by \$75 billion.

In other words, Medicare Advantage has a lot to do with threatening the solvency of Medicare. Mr. Kouzoukas, you sit on the board of Clover Health, a for-profit insurance company that, according to its most recent SEC filing, receives a "substantial portion" of its total revenue from Medicare Advantage premiums. How much are you paid for your work at Clover?

Mr. KOUZOUKAS. Senator, I am paid according to the company's process for—

Senator WARREN. Okay, and what is the dollar amount? That is what I am asking.

Mr. KOUZOUKAS. Well, there is a portion of the compensation that relates to equity, and a portion that relates to particular roles on the board.

Senator WARREN. So, you do not know the amount that you are getting paid from Clover?

Mr. KOUZOUKAS. I do, Senator.

Senator WARREN. But how about you tell me?

Mr. KOUZOUKAS. Well, there's a portion that relates to the—

Senator WARREN. Could I have a dollar amount, please?

Mr. KOUZOUKAS. Well, it also depends on the year and the time——

Senator WARREN. Okay. You did a financial disclosure last year. Would you like to tell me what you said on your financial disclosure, which you signed under oath?

Mr. KOUZOUKAS. I believe, Senator, as laid out in your letter, you pointed to the payment that was from Clover with regards to 2022, the compensation therein being in the category of \$100,000 or more——

Senator WARREN. Okay. So you received \$100,000 from Clover for your service, and if confirmed as a public trustee, do you plan to quit the Clover board?

Mr. KOUZOUKAS. Senator, I appreciate the opportunity to address your question. The role——

Senator WARREN. It is really easy. You can say “yes” or you can say “no.”

Mr. KOUZOUKAS. Senator, the role of the trustees of the Social Security——

Senator WARREN. Is that a “yes” or a “no”? Do you plan to quit the job for which you were paid \$100,000 a year?

Mr. KOUZOUKAS. Senator, I am grateful to the President and his team for the review of my credentials and qualifications as well——

Senator WARREN. Really, you are going to have to answer this question. Is it “yes” or “no,” are you planning to resign the job that pays you \$100,000 a year while you are a trustee for Medicare?

Mr. KOUZOUKAS. Senator, the review of my current activities and my credentials and qualifications is one that all nominees undergo, and that is one that led to the President putting my nomination before this body. I am grateful for that, and if given the——

Senator WARREN. Look, I am not going to get into why the President nominated you. What I want to know is, are you going to keep a job where you get paid by a for-profit outfit somewhere in the neighborhood of \$100,000 while you keep your government trustee job? Can you answer that question?

Mr. KOUZOUKAS. Senator, the role of the trustee is actually——

Senator WARREN. Okay. I am going to take that as a “yes,” because I am going to assume that if you were going to quit that job, you would be really happy to tell me that right now, before we go into the question of what it means for you to keep this job.

Mr. Kouzoukas, as we both know, as a member of the board, corporate law requires you to help Clover maximize its profits. So for example, if you highlighted the amount of fraud that Medicare Advantage undergoes every year and how that fraud is undermining the solvency of Medicare, that could lead to policies that might limit the Medicare Advantage program. And if that happened, Mr. Kouzoukas, would limiting the Medicare Advantage program undercut the profitability of Clover, the company that by law you are supposed to be watching out for? That was a question.

Mr. KOUZOUKAS. I am not sure I understood the question or got the——

Senator WARREN. So, all right. My question is, if you are on the board of Clover, you are legally obligated to try to help Clover to

improve its profitability over time or at least sustain its profits. That is corporate law 101, right?

So if you are also serving as Medicare trustee—I just want to be clear here. If the focus in the Medicare program is on the amount of fraud that is currently in the Medicare Advantage program, I think it is reasonable to assume that that could lead to reducing the amount of money that we put into Medicare Advantage, to putting more restrictions on Medicare Advantage, to saying we have to put a cap on the beat, maybe cut it out altogether.

What I am asking you is, would that injure Clover? That is, would it reduce Clover's profitability?

Mr. KOUZOUKAS. Senator, I think all Americans, and I especially would share your attentiveness to the questions of fraud. I don't think that—

Senator WARREN. I appreciate that, but I asked you a pretty straightforward question. If you are actually going to be a trustee on behalf of the American people and people who care about the solvency of Medicare, then I think you ought to be able to answer.

If Medicare currently, as it stands, put more restrictions on Medicare Advantage, would that likely cut into the profitability of Clover, the company from which you receive more than \$100,000 in compensation annually?

Mr. KOUZOUKAS. Senator, I think that the question you are asking—

Senator WARREN. I know the question I am asking. Could you answer my question, please?

Mr. KOUZOUKAS. Yes.

Senator WARREN. You want to be a trustee for the American people. You ought to be able to answer that question.

Mr. KOUZOUKAS. The question you are asking is one that deserves a greater context about the role of the trustee.

Senator WARREN. No, it deserves an answer. If you want to be the trustee, then answer the question. If Medicare cut what goes into Medicare Advantage, would that hurt Clover's profitability? That is not a hard question, and in fact Clover has already pretty much answered that in its public documents. So could you give an answer to that please?

Mr. KOUZOUKAS. I think, Senator, that what is important to focus on here—

Senator WARREN. I know what is important to focus on here. That is why I am here, to ask the questions that are important to focus on. Could you answer my question, please?

Mr. KOUZOUKAS. Yes, Senator. I think that, if confirmed, Dr. Neuman and I would be an outside set of eyes and ears—

Senator WARREN. That is not my question. Can you answer my question, or are you just flatly refusing?

Mr. KOUZOUKAS. Senator, I would be delighted to—

Senator WARREN. Then answer my question.

Mr. KOUZOUKAS. And I think that the question is one that is, in the context of a hearing—

Senator WARREN. No. It is a question that is a straight financial question. You know, Mr. Kouzoukas, I think you think you are going to get away with this by just not answering the question and not having a clip that admits how much money you are taking from

a private insurance company that makes its money through Medicare Advantage, at the same time that you are trying to take a public role that will influence whether we focus on the fraud in Medicare Advantage, or whether we turn a blind eye to it.

Let us be clear. If Mr. Kouzoukas ignores the fraud, then he helps Clover. If he focuses on the fraud, he hurts Clover. The conflict of interest here is so big and so pervasive that there is no action that Mr. Kouzoukas can take that does not either help or hurt Clover, the company that pays him \$100,000 a year to sit on its board and watch out for the company.

And there is no waiver that can change that fact. This kind of conflict is shocking, and it is deeply unethical. Not a single other trustee has ever received compensation from an insurance company while acting as a Medicare trustee. If you do not step down from the Clover board, then you should withdraw your nomination.

If you do not withdraw, given the clear conflicts posed by your board service, I will strongly oppose your nomination, and I will encourage every other Senator in this body to do so as well.

I am through, and they want me to gavel out when you are done. So I do not have a gavel, but this hearing is now closed. Thank you.

[Whereupon, at 12:16 p.m., the hearing was concluded.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF HON. MIKE CRAPO,
A U.S. SENATOR FROM IDAHO

Thank you, Mr. Chairman, and welcome to our three nominees: Dr. Neuman and Mr. Kouzoukas, who have been nominated to be public trustees of Social Security and Medicare; and Ms. Rollinson, who has been nominated to be IRS Chief Counsel. Thank you all for your willingness to serve.

The trustees are responsible for producing annual reports that equip Congress and the administration with data needed to safeguard the long-term security and financial viability of the Social Security and Medicare trust funds. Congress added the public trustee positions in 1983 to increase public confidence in the integrity of the trust funds and objectivity of the trustees' reports. The public trustees are tasked with providing objective, dispassionate accounts of exactly what is happening with the trust funds.

If confirmed, you must ensure the public has a balanced, pragmatic understanding of the opportunities and the challenges that face the two programs. I look forward to hearing from each of you today.

Ms. Rollinson, the IRS Chief Counsel is responsible for fairly and impartially interpreting and enforcing our tax laws, while also ensuring taxpayer rights are strictly protected. Given recent IRS controversies and the push for enhanced enforcement, Americans are rightly concerned with the potential erosion of their rights and privacy. The IRS Chief Counsel must have the highest level of skill, judgment, and integrity, and above all, must not let political pressures affect policy outcomes.

Unfortunately, the agencies to which you have been nominated for key posts have recently made repeated practice of putting politics first. My colleagues and I have raised a number of concerns with recent IRS and Treasury actions that will fall under your remit. Interpreting the so-called Inflation Reduction Act is squarely within the IRS Chief Counsel's purview.

The IRA created complexity that has proven unworkable in implementation, putting many American businesses and consumers at a significant disadvantage, and has supercharged IRS enforcement while short-changing taxpayer service.

Since the bill's rushed and strictly partisan passage, the Biden administration has resorted to unilaterally walking back and diluting a number of key provisions. The IRS has simply disregarded statutory deadlines for implementing new Democrat-led provisions, including enhanced information reporting and EV tax credits.

Further, Treasury and IRS's expansive interpretation of IRA's energy tax provisions has provoked significant criticism from members on both sides of the aisle. Other provisions have gone into effect without necessary guidance, leaving taxpayers without information needed to comply.

I look forward to hearing how you will address these concerns and use your expertise to put adherence to the law over desired political outcomes.

If confirmed, you will also have a significant role in addressing a number of other recent, concerning IRS actions, including: use of IRA funds to increase enforcement in areas with a long history of burdensome and low-utility "no change" audits; leaks of confidential taxpayer information; the destruction of 30 million information returns, which reportedly led to additional audits of Earned Income Tax Credit claim-

ants; and the ongoing attempt to stand up and divert resources to an IRS-run tax preparation program without clear statutory authority.

The administration's practice of putting politics before sound policy extends to its failure to protect U.S. interests in OECD international tax negotiations. Rather than focus on fighting discriminatory taxes against U.S. companies and defending current U.S. law, Treasury placed the administration's political agenda first without regard to the potential effect on U.S. taxpayers.

This administration failed to halt discriminatory digital services taxes against U.S. companies, but instead invited foreign governments to pursue new discriminatory taxes against our companies in the form of the Under-Taxed Profits Rule (UTPR), a surtax which also likely violates our existing bilateral tax treaties. As a collateral consequence, Treasury must now exhaust precious resources issuing regulations to mitigate the double taxation it created by unilaterally committing to a global tax deal that undermines U.S. interests.

To avoid these outcomes, I stress the importance of engaging this committee with transparency and responsiveness. Too often in recent years, the administration's nominees have committed to working with us, but have failed to follow through.

On behalf of all American taxpayers, I strongly urge the nominees here today to commit to timely and thorough communication with this committee.

Congratulations on your nominations, and I look forward to discussing these important topics with you.

PREPARED STATEMENT OF DEMETRIOS L. KOUZOUKAS, NOMINATED TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE FEDERAL OLD-AGE AND SURVIVORS INSURANCE TRUST FUND AND THE FEDERAL DISABILITY INSURANCE TRUST FUND, THE BOARD OF TRUSTEES OF THE FEDERAL HOSPITAL INSURANCE TRUST FUND, AND THE BOARD OF TRUSTEES OF THE FEDERAL SUPPLEMENTARY MEDICAL INSURANCE TRUST FUND

Thank you, Chairman Wyden, Ranking Member Crapo, and members of the committee. It is a great honor to be nominated to serve as one of the two public trustees for Social Security and Medicare, and I appreciate your willingness to consider me for the position. I thank President Biden for the honor of placing my nomination before the Senate and Senate Minority Leader McConnell for the trust he placed in me in putting my name forward for this position. I also thank Dr. Neuman for her collegiality and professionalism as we have gone through this process of being considered together. And I am deeply grateful for the support of my family, friends, and colleagues.

We often hear and talk about how the Social Security and Medicare programs make up the largest portion of the Federal budget, and a substantial portion of our Nation's Gross Domestic Product. It is hard to overstate the fiscal, societal, and economic impact of these programs. And each of us can see the role the programs play in the lives of every American family, whether in paying taxes or as beneficiaries of the programs, now or in future generations. In our Constitution, the people vest Congress with the powers of taxation and spending that underlie these programs; given their importance and size, it is imperative that Congress and the public have the most accurate and objective information possible about their status and funding. After all, as Abraham Lincoln is reputed to have said, "Let the People know the facts and the country will be saved." The work of the public trustees is essentially to help ascertain and publish these facts while being independent of administering the programs day to day. This includes witnessing the objectivity and integrity of the assumptions and calculations as well as participating in the associated internal dialogue and deliberations. The end result is enhanced public confidence in the trustees' work.

For me, the opportunity to be considered for this role is meaningful and humbling for reasons beyond these solemn goals or my professional journey. It is also personal. My first interactions with these programs were as a child of a parent with disabling and early chronic diseases. The challenge my family had navigating the health-care and retirement systems planted a powerful seed. That seed has grown and nourished the perspective that I have brought to my work throughout my career, especially as a public servant. Along the way, I have had the honor to work for the U.S. Department of Health and Human Services in different capacities, including at the Centers for Medicare and Medicaid Services, and, from time to time,

partnering with the Social Security Administration. I have also served as a member of the Administrative Conference of the United States, representing the public to provide advice to the Federal Government based on my experience in public administration and benefits programs.

These roles built on others in the private sector and allowed me to develop knowledge and skills especially relevant to the work of the public trustees. For example, early in my career, I worked at a nonprofit dedicated to improving public employee pension systems, including their intersection with Social Security. That provided me with a foundation in retirement policy and social insurance concepts. Later, as both a government lawyer and administrator, I developed a background in Federal appropriations law and accounting processes. I have worked extensively with actuaries in the private and public sector, including the Office of the Actuary at the Centers for Medicare and Medicaid Services. I was particularly honored to represent the Centers for Medicare and Medicaid Services at the meeting to issue the 2017 Medicare trustees report, serving as secretary at the meeting and signing the report. Finally, as a government employee, I have testified before and worked with Congress on complex and technical topics like those addressed by the trustees.

These collective personal and professional experiences afford me the knowledge, institutional memory, and judgement to represent the public in the work of the trustees. If confirmed, I would work to the best of my abilities to fulfill the expectations of the Greenspan Commission with regard to this important position—to “assure that the demographic and economic assumptions for the cost estimates of the future operations of the program[s] . . . continue to be developed in an objective manner.”

Thank you for your consideration of my nomination. I look forward to answering your questions.

SENATE FINANCE COMMITTEE

STATEMENT OF INFORMATION REQUESTED OF NOMINEE

A. BIOGRAPHICAL INFORMATION

1. Name (include any former names used): Demetrios L. Kouzoukas.
2. Position to which nominated: Member of the board of trustees of the Federal Hospital Insurance trust fund, the Federal Supplementary Medical Insurance trust fund, the Federal Old-Age and Survivors Insurance trust fund, and the Federal Disability Insurance trust fund.
3. Date of nomination: January 3, 2023,
4. Address (list current residence, office, and mailing addresses):
5. Date and place of birth: October 24, 1975; Chicago, IL.
6. Marital status (include maiden name of wife or husband's name):
7. Names and ages of children:
8. Education (list all secondary and higher education institutions, dates attended, degree received, and date degree granted):
 University of Illinois College of Law, 1997–2000, J.D., 2000.
 The George Washington University, 1993–1997, B.A., 1997.
 Illinois Mathematics and Science Academy, 1990–1993, High School diploma, 1993.
 Maine Township High School East, 1989–1990.
9. Employment record (list all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment for each job):

Team8 (PrestigePEO is Team8's Professional Employer Organization), Executive and Partner, Vienna, VA, 2022–present.

Self-employed, Paragon Health Institute Initiative Director, Vienna, VA, 2021–present.

Pro Unlimited, Senior Advisor (for McKinsey and Co.), Vienna, VA, 2021–present.

CM Life Sciences IV, Inc., nominee for Director, New Castle, DE, 2021–present.

U.S. Department of Health and Human Services, Director, Center for Medicare and Principal Deputy Administrator, Centers for Medicare and Medicaid Services, Washington, DC and Baltimore, MD, 2017–2021.

Administrative Conference of the United States, Public Member, Washington, DC, 2014–2017.

UnitedHealthcare Medicare and Retirement, General Counsel, Minnetonka, MN, 2012–2016.

Covington and Burling LLP, of Counsel, Washington, DC, 2009–2012.

U.S. Department of Health and Human Services, Principal Associate Deputy Secretary, Associate Deputy Secretary, Washington, DC, 2008–2009.

U.S. Department of Health and Human Services, Deputy General Counsel, Washington, DC, 2006–2008.

U.S. Department of Health and Human Services, Special Assistant to the General Counsel, Washington, DC, 2003–2006.

Gardner Carton and Douglas, Associate, Washington, DC, 2000–2003.

George Mason University School of Law, Adjunct Professor, Arlington, VA, 2002.

University of Illinois College of Law, Research Assistant, Champaign, IL, 1999–2000.

U.S. House of Representatives Committee on the Judiciary, Intern, Washington, DC, 1999.

Garretson and Santora (through First Temporary Services), Legal Secretary, Chicago, IL, 1998.

National Committee on Public Employee Pension Systems, Office Manager and Writer, Washington, DC, 1993–1997.

10. Government experience (list any current and former advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments held since college, including dates, other than those listed above):

None, other than those listed above.

11. Business relationships (list all current and former positions held as an officer, director, trustee, partner (*e.g.*, limited partner, nonvoting, etc.), proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, other business enterprise, or educational or other institution):

Partner, Team8.

Director, Clover Health.

Director, Alliance for Health Policy.

Nominee for Director, CM Life Sciences IV, Inc.

Director/Chair (former), Virginians for Limited Government.

In connection with my role at UnitedHealthcare listed above, there may have been times when I served as Secretary for meetings of the insurance entities of the organization.

As part of my work as a lawyer in the roles listed above, I provided advice to and consulted with clients. As part of my work in other roles listed above, I engaged in consultations.

12. Memberships (list all current and former memberships, as well as any current and former offices held in professional, fraternal, scholarly, civic, business, char-

itable, and other organizations dating back to college, including dates for these memberships and offices):

Parent teacher associations (Plymouth Creek Elementary School, Colvin Run Elementary School, Cooper Middle School), 2012–present.

Woodcrest Homeowners Association, 2012–2018 (estimated).

Vinewood Homeowners Association, 2003–2012.

Glen Forest Community Pool, 2011–2012 (estimated).

Saint Katherine Greek Orthodox Church, Our Lady of Good Counsel Catholic Church, St. Thomas à Becket Catholic Church, Holy Name of Jesus Catholic Church, Our Lady of Lourdes Church, various dates.

Minnesota Zoo Foundation, 2013–2017 (estimated).

Fairfax County and Virginia Association for the Gifted, 2019–2020 (estimated), and Minnesota Council for the Gifted and Talented, 2016–2017 (estimated).

Minnesota Historical Society, 2013–2015 (estimated).

Friends of the Hennepin County Library, 2013–2015 (estimated).

Friends of the National Zoo, 2009–2011 (estimated).

Friends of Claude Moore Colonial Farm at Turkey Run, 2009 (estimated).

American Medical Association Digital Medicine Payment Advisory Group, 2021–present.

Virginia State Bar, 2000–present.

Bar Association of the District of Columbia, 2001–present.

Minnesota State Bar, 2013–2022.

Virginia Bar Association, 2000–2003 (estimated).

Illinois State Bar Association, 1999–2000 (estimated).

American Bar Association, 1998–2000 (estimated).

American Health Lawyers Association, 2000–Present, Co-Chair of Payers, Plans and Managed Care Practice Group Health Plan Affinity Group, 2016 (estimated), Program Committees.

The Federalist Society for Law and Public Policy, 1997–Present (estimated).

Freedom Club, 2014–2017.

Republican National Lawyers Associations, various dates.

Presidential Transition Team, 2016–2017, Agency Action and Policy Implementation team member.

Food and Drug Law Institute, 2010–2012 (estimated).

Drug Information Association, 2010–2012 (estimated).

Health Care Compliance Association, 2010–2012 (estimated).

National Republican Club of Capitol Hill, 2000–2008 (estimated).

Public Interest Law Foundation, 1997–2000 (estimated).

Young America's Foundation, 1992–1997 (estimated).

George Washington University College Republicans, 1993–1997.

The Conservative Network, 1993–1997 (estimated).

Maine Township Regular Republican Organization, 1989–1995 (estimated).

Mensa, 1985–1989 (estimated).

In addition, I have participated in student activities, as well as volunteer events or activities connected to charitable or other organizations.

13. Political affiliations and activities:

- a. List all public offices for which you have been a candidate dating back to the age of 18.

None.

- b. List all memberships and offices held in and services rendered to all political parties or election committees, currently and during the last 10 years prior to the date of your nomination.

Fairfax County Republican Committee, member, various dates.

Republican Party of Minnesota Plymouth Precinct 2, member, various dates, Secretary in 2016–2017 (moved before initiating substantial duties).

Arlington County Republican Committee, member, various dates.

I have, at times, been a volunteer for various political party organizations, campaigns, and similar organizations, as well as an attendee at meetings and delegate at conventions.

- c. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$50 or more for the past 10 years prior to the date of your nomination.

Harrison for Congress, \$2,900 (March 1, 2021).

Michael D. Crain for Fort Worth, \$50 (January 28, 2021).

Tracci for Albemarle County Commonwealth's Attorney, \$300 (May 7, 2019), \$962 (June 13, 2015).

National Republican Congressional Committee, \$300 (October 27, 2018).

UnitedHealth Group Incorporated PAC, \$288 (December 31, 2016), \$288 (November 28, 2016), \$96 (October 19, 2016), \$192 (September 30, 2016), \$192 (August 31, 2016), \$288 (July 31, 2016), \$192 (June 30, 2016), \$192 (May 31, 2016), \$192 (April 30, 2016), \$192 (March 31, 2016), \$192 (February 29, 2016), \$192 (December 31, 2015), \$192 (November 30, 2015), \$192 (October 31, 2015), \$192 (September 30, 2015), \$192 (August 31, 2015), \$288 (July 31, 2015), \$192 (June 30, 2015), \$192 (May 31, 2015), \$192 (April 30, 2015), \$192 (March 31, 2015), \$192 (February 28, 2015), \$288 (January 31, 2015), \$192 (December 31, 2014), \$96 (October 15, 2014), \$192 (August 31, 2014), \$192 (July 31, 2014), \$192 (June 30, 2014), \$192 (May 31, 2014), \$192 (April 30, 2014), \$192 (March 31, 2014), \$192 (February 28, 2014), \$1,000 (November 30, 2013), \$500 (October 31, 2013).

Friends of Erik Paulsen \$500 (November 8, 2016), \$1,000 (October 15, 2014).

Scott Walker Inc. \$500 (August 8, 2015).

Friends of Pat Toomey \$1,000 (December 22, 2015).

Ben Sasse for U.S. Senate \$250 (April 4, 2014).

Freedom Club \$3,000 (September 8, 2014).

14. Honors and awards (list all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognitions for outstanding service or achievement received since the age of 18):

Young America's Foundation scholarship, 1993 (estimated).

The George Washington University Dean's List, 1993–1997 (various times).

The George Washington University Presidential Academic Award, 1993–1997.

The George Washington University board of trustees scholarship, 1994–1997.

University of Illinois College of Law Illinois Legislature fellowship, 1999–2000 (estimated).

Northwest Suburban Bar Association scholarship, 1997 (estimated).

University of Illinois College of Law Dean's List, 1997–2000 (various times).

Hellenic Bar Association of Illinois scholarship, 1998 (estimated).

This does not include U.S. Department of Health and Human Services Departmental Honors Awards, Office of the Secretary awards, and Centers for Medicare and Medicaid Services Honor Awards possibly awarded between 2003–2009 and 2017–2021.

15. Published writings (list the titles, publishers, dates, and hyperlinks (as applicable) of all books, articles, reports, blog posts, or other published materials you have written):

“Parallel Review: Not for Everyone, Useful for Some, and Additional Considerations for Improvement,” American Health Lawyers Association Life Sciences Practice Group Member Briefing (December 2011).

“Coverage and Reimbursement for Life Sciences Products—Recommendations from the MEDCAC,” Bloomberg Health Law Report, with Anna Kraus and Katherine Sauser (September 2011), available at: <http://web.archive.org/web/20111018024003/http://www.cov.com/files/Publication/2049cb18-632e-4f10-9a84-07593a2e8c30/Presentation/PublicationAttachment/ec9263b0-f9b9-445c-973a-0a8dab6b6a34/From%20Research%20to%20Revenue%20-%20Coverage%20and%20Reimbursement%20for%20Life%20Sciences%20Products%20-%20Recommend.pdf>.

“Coverage and Reimbursement Considerations for In Vitro Diagnostics, Bloomberg Health Law Report,” with Anna Kraus and Katherine Sauser (June 2011), available at: <http://web.archive.org/web/20210512111234/https://www.cov.com/-/media/files/corporate/publications/2011/06/coverage-and-reimbursement-considerations-for-in-vitro-diagnostics.pdf>.

“Coverage and Reimbursement of Laboratory Tests,” In Vitro Diagnostics: The Complete Regulatory Guide, Food and Drug Law Institute (2010).

“Legal Preparedness for Obesity Prevention and Control: The Structural Framework and the Role of Government,” *The Journal of Law, Medicine, and Ethics* (Summer 2009), available at: <https://web.archive.org/web/20170706064956/https://aslme.org/media/downloadable/files/links/0/6/06-Kouzoukas.pdf>.

“Public Health Emergency Legal Preparedness: Legal Practitioner Perspectives,” *Journal of Law, Medicine and Ethics*, (Spring 2008), available at: <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.227.5374&rep=rep1&type=pdf>.

“Rx Reimportation: A Legislative History,” *Health Care News* (November 2002), available at: <http://web.archive.org/web/20021105005210/https://www.heartland.org/Article.cfm?artId=10669>.

“HIPAA’s Privacy Rule on Research: Insight into the Tension between Privacy and the Value of Knowledge,” *Topics in Health Information Management* (May 2002) “HIPAA’s Impact on Sites: Questions and Answers,” *Clinical Trials Advisor*, with Christine Pierre (May 2002).

“Politics, Law Delay Drug Discount Card,” *Health Care News* (January 2002), available at: <http://web.archive.org/web/20041028061905/http://www.heartland.org/pdf/ACF35D.pdf>.

“Lupron and You: How to Avoid Compliance Problems in Your Relationships With Pharmaceutical Companies,” *BNA’s Health Law Reporter*, with Mark Fitzgerald (June 7, 2001).

“Congress Passes FUTA Provision: Planning and Implementation Issues for Tribal Employees,” *Native American Law Digest*, with Kathleen Nilles and Karen McAfee (March 2001).

16. Speeches (list all formal speeches and presentations (e.g., PowerPoint) you have delivered during the past 5 years which are on topics relevant to the position for which you have been nominated, including dates):

“Empowering Patients to Drive Value in Medicare,” American Health Lawyers Association Health Plan Law and Compliance Institute (November 2019).

“Keynote Address,” Centers for Medicare and Medicaid Services Medicare Advantage and Prescription Drug Plan Fall Conference and Webcast (November 2019), available at: <https://www.youtube.com/watch?v=FZEaAMkLBbs&t=5473s>.

“Emerging Medicare Trends,” Alliance for Health Policy Health Policy Conference (October 2019).

Witness, U.S. Senate Special Committee on Aging Hearing on The Complex Web of Prescription Drug Prices (June 2019), available at: <https://www.senate.gov/isvp/?autoplay=false&comm=aging&filename=aging061919>.

“Keynote Address,” Centers for Medicare and Medicaid Services Medicare Advantage and Prescription Drug Plan Spring Conference and Webcast (May 2019), available at: <https://www.youtube.com/watch?v=hUUpOWxcuGA>.

“2019 Policy Priorities for CMS,” America’s Health Insurance Plans National Health Policy Conference (March 2019).

“Keynote Address,” Centers for Medicare and Medicaid Services Medicare Advantage and Prescription Drug Plan Fall Conference and Webcast (September 2018), available at: <https://www.youtube.com/watch?v=31Fv-EO2T-E>.

“Keynote Address,” Centers for Medicare and Medicaid Services Medicare Advantage and Prescription Drug Plan Audit and Enforcement Conference and Webcast (May 2018), available at: <https://www.youtube.com/watch?t=5870&v=kfhmCH0yaS4>.

Witness, U.S. House of Representatives Committee on Ways and Means Health Subcommittee Hearing on Implementation of MACRA’s Physician Payment Policies (March 2018), available at <https://www.youtube.com/watch?v=WM58JCX4cSQ>.

In addition, I have at times made informal speeches in formats such as opening remarks, panel discussions, fireside chats, and class guest lectures.

17. Qualifications (state what, in your opinion, qualifies you to serve in the position to which you have been nominated):

My interest in and passion for the Medicare program originates beyond my professional journey. My first interactions with Medicare were as a child of a parent with chronic disease. The challenge we had navigating the health-care system planted a powerful seed. Those experiences shape the perspective that I have brought to my work in every role I have had the privilege to play. Along the way, I have had the honor to work for the U.S. Department of Health and Human Services (including the Centers for Medicare and Medicaid Services) and with the Social Security Administration.

This built on initial work on retirement policy and entitlements at a nonprofit focused on public employee pension systems (including their intersection with Social Security). Later, as both a government lawyer and administrator, I developed a background in Federal appropriations law and accounting processes, providing context for the trustees’ work. I have also worked extensively with actuaries in the private and public sector, including the Office of the Actuary at the Centers for Medicare and Medicaid Services. I represented the Centers for Medicare and Medicaid Services at the trustees’ meeting to issue the 2017 report, serving as secretary at the meeting and signing the report. Finally, as a government employee, I have testified before congressional committees and otherwise worked with Congress on complex topics like those addressed by the trustees, so I appreciate the importance of being able to provide Congress with helpful background to inform its deliberations.

These collective personal and professional experiences afford me the knowledge, institutional memory, and judgement to, if confirmed, represent the public in the work of the trustees.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections (including participation in future benefit arrangements) with your present employers, business firms, associations, or organizations if you are confirmed by the Senate? If not, provide details.

No, as the appointment would be to serve as a special government employee. I will continue my current employment if confirmed by the Senate.

2. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, provide details.

Yes. I intend to keep all of my current employment and other commitments.

3. Has any person or entity made a commitment or agreement to employ your services in any capacity after you leave government service? If so, provide details.

No. I intend to keep all of my current employment and other commitments.

4. If you are confirmed by the Senate, do you expect to serve out your full term or until the next presidential election, whichever is applicable? If not, explain.

Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Indicate any current and former investments, obligations, liabilities, or other personal relationships, including spousal or family employment, which could involve potential conflicts of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Designated Agency Ethics Officials (DAEO) at the Social Security Administration to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into and that has been provided to this committee. I am not aware of any other potential conflicts of interest.

2. Describe any business relationship, dealing, or financial transaction which you have had during the last 10 years (prior to the date of your nomination), whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Designated Agency Ethics Officials (DAEO) at the Social Security Administration to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into and that has been provided to this committee. I am not aware of any other potential conflicts of interest.

3. Describe any activity during the past 10 years (prior to the date of your nomination) in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy. Activities performed as an employee of the Federal Government need not be listed.

I have been involved in issues involving law and public policy at the Federal, State, and local level. This has included, in the positions and activities described above, providing legal advice, supporting judicial and administrative litigation pleadings and other filings, assisting with comments on rulemaking, responding to government requests, helping prepare congressional testimony, participating in research, identifying regulatory trends, considering impacts of policy changes, reviewing articles for publication, discussing administrative process and operations, contributing to educational analyses, volunteering with political campaigns, and taking part in presidential transition activities.

4. Explain how you will resolve any potential conflict of interest, including any that are disclosed by your responses to the above items. (Provide the committee with two copies of any trust or other agreements.)

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Designated Agency Ethics Officials (DAEO) at the Social Security Administration to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into and that has been provided to this committee. I am not aware of any other potential conflicts of interest.

5. Two copies of written opinions should be provided directly to the committee by the designated agency ethics officer of the agency to which you have been nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position.

I understand that my ethics agreement has been provided to the committee along with the accompanying transmittal documents.

D. LEGAL AND OTHER MATTERS

1. Have you ever been the subject of a complaint or been investigated, disciplined, or otherwise cited for a breach of ethics for unprofessional conduct before any court, administrative agency (*e.g.*, an Inspector General's office), professional association, disciplinary committee, or other ethics enforcement entity at any time? Have you ever been interviewed regarding your own conduct as part of any such inquiry or investigation? If so, provide details, regardless of the outcome.

No.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority for a violation of any Federal, State, county, or municipal law, regulation, or ordinance, other than a minor traffic offense? Have you ever been interviewed regarding your own conduct as part of any such inquiry or investigation? If so, provide details.

No.

3. Have you ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

No, other than in my role as a government official, when I was at times a party to court actions, and also to the extent current board of director members are generally considered as parties in litigation.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, provide details.

No.

5. Please advise the committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

None.

E. TESTIFYING BEFORE CONGRESS

1. If you are confirmed by the Senate, are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so?

Yes.

2. If you are confirmed by the Senate, are you willing to provide such information as is requested by such committees?

Yes.

QUESTIONS SUBMITTED FOR THE RECORD TO DEMETRIOS L. KOUZOUKAS

QUESTIONS SUBMITTED BY HON. RON WYDEN

Question. The role of public trustees is a unique role in public service. Rather than starting a new job in public service, you now wear “two hats”: one as the public trustee to the Social Security and Medicare trust funds, and the other “hat” representing your nongovernment day jobs. Can you talk about how you will approach dealing with any apparent conflict wearing your two “hats”?

Answer. The role of the boards of trustees for the Social Security and Medicare trust funds is one that by its very nature addresses this question. Specifically, the role of the boards of trustees for the Social Security and Medicare trust funds is not to make policy in any way; rather the role is to help provide information and data regarding the fiscal and actuarial status and future of the programs. By participating in that process, the public trustees enhance the credibility of that information and data by being an outside set of eyes and ears in the assembly and drafting of the board’s report. This process enables policymakers including members of Congress to make the best decisions around the future of the programs. As such, the role is separate from the public trustees’ nongovernment jobs. Further, in my ethics agreement, I agree, if confirmed, to consult with the Designated Agency Ethics Official if an actual or potential conflict does arise during my appointment, as well as to take measures necessary to resolve such conflict.

Question. Looking at each of your backgrounds, you both have extensive experience in the Medicare program, including coverage and solvency. You would bring a different perspective than past public trustees, many of whom have Social Security, pensions, or economic backgrounds. This can be a good thing, as it is important to have a fresh, outside perspective to the discussion. If confirmed, you would serve as the public trustee for the Social Security trust funds as well. While the trustees use the same demographic and economic assumptions to develop the Social Security and Medicare trustees reports, changes to those assumptions can have different impacts on each trust funds’ solvency. Can you talk about how you would approach your role as Social Security public trustee, and whether it would differ from your role as Medicare public trustee?

Answer. I agree the Social Security and Medicare programs overlap a great deal. And it makes sense that the same board members have historically served on the boards for both at the same times. The programs share not only assumptions but also largely the same population, many aspects of their financing, and their breadth and economic impact.

If I am confirmed, I would approach the two roles differently to some extent by identifying and taking into account the differences in the history and design of the two programs. This would include, for example, the administration of the Social Security program as a cash payment rather than a third-party reimbursement program, as well as considering what Social Security's longer history tells us about the ability to make good predictions.

QUESTIONS SUBMITTED BY HON. ELIZABETH WARREN

Question. What is the total compensation you received for your 2021 Clover Health board service?

Answer. In accordance with the company's policies, I received \$58,250 and 25,608 restricted stock units.

Question. What were the components of this compensation?

Answer. The components were a cash retainer and restricted stock units.

Question. Did you receive a bonus from Clover Health? If so, how big was this bonus, and for what activities did you receive this bonus?

Answer. No.

Question. What is the total compensation you received for your 2022 Clover Health board service?

Answer. In accordance with the company's policies, I received \$90,000 and 20,271 restricted stock units. (My 2022 Financial Disclosure Report lists, per the instructions for the relevant line, the amounts paid in 2021 and in 2022 through the filing date for a total of \$103,250.)

Question. What were the components of this compensation?

Answer. The components were a cash retainer and restricted stock units.

Question. Did you receive a bonus from Clover Health? If so, how big was this bonus, and for what activities did you receive this bonus?

Answer. No.

Question. What is the total compensation you expect to receive for your 2023 Clover Health board service?

Answer. In accordance with the company's policies, I received \$70,000 and expect to receive approximately \$24,000. I also received 213,576 restricted stock units (including 36,585 units on a one-time basis) which would be considered income for 2024 upon vesting after a year of continuous service. (It is typical for members of a board of directors to receive equity grants in one year which vest in a future year if still on the board, are considered income for that future year at the value at that point in time, and may be reported in different ways on a Financial Disclosure Report depending in part on the timing of the report.)

Question. What are the expected components of this compensation?

Answer. The components are a cash retainer and restricted stock units.

Question. Are you eligible to receive a bonus for your 2023 service?

If so, how big are the potential bonuses and for what activities might you receive this bonus?

Answer. No, I believe that I am not eligible to receive a bonus for the remainder of 2023. As specified above, some of the restricted stock units referred to above were on a one-time basis.

Question. How many shares of Clover Health stock do you own, whether or not such equity is part of your compensation for board service?

What is the current value of those shares?

Answer. I have 45,879 vested shares. As of October 25, 2023, their value is \$41,659. In addition, there are 213,576 shares which would vest in 2024 after a year of continuous service and be considered income then at the value at that point in time.

Question. Do you have any stock options for Clover Health stock? If so, please describe the number and conditions related to these stock options.

Answer. No.

Question. Do you have any other financial interest in Clover Health, beyond the compensation you receive for your board service and your shares of Clover stock?

Answer. No, other than possibly through personal mutual funds or similar holdings.

Question. What portion of Clover Health's annual revenue in 2022 came from Medicare Advantage payments?

Answer. The company has reported the following revenue and claims incurred information for its Medicare Advantage segment in 2022:

Year ended December 31, 2022 (in thousands)

Premiums earned, net (net of ceded premiums of \$470)	\$1,084,869
Non-insurance revenue	—
Other income	\$2,577
Intersegment revenues	—
Net medical claims incurred	\$996,410

Question. Do you agree that Clover Health has a financial interest in matters affecting the payments the government makes to Medicare Advantage plans?

Answer. Yes, the company generally has an interest in certain payment decisions made by the Secretary of Health and Human Services. These decisions are not made by the boards of trustees for the Social Security and Medicare trust funds, which do not make policy in any way.

Question. Are Clover Health board members required to meet a code of ethics, or otherwise subject to any ethics requirements?

Answer. Yes, the company has adopted a code of business conduct and ethics.

Question. If so, have Clover Health officials determined that your board service for the company and your service as a Medicare and Social Security trustee would be consistent with that ethics code?

Answer. The company has not informed me of inconsistencies with the code and my service, if confirmed, on the boards of trustees for the Social Security and Medicare trust funds.

Question. Do you have any other financial interests or serve in any capacity on behalf of any other company with business interests affected by the Medicare or Social Security programs?

Answer. I don't believe so, other than possibly through personal mutual funds or similar holdings.

Question. Do the public trustees help oversee the financial operations of the Medicare trust funds?

Answer. The Medicare trustees report typically includes a section regarding the "financial operations" of the Medicare trust funds. That section is a statement of revenues and expenditures, which the Social Security Act specifies be included in the reports. The Medicare boards of trustees, which includes the public trustees, are responsible for and oversee the production of the reports, including this section.

Question. Are the public trustees responsible for representing the interests of the public on the Medicare and Social Security trust funds?

Answer. While they are not considered "representative members" under the Federal Advisory Committee Act regulations, public trustees, along with the other members of the boards of trustees for the Social Security and Medicare trust funds, rep-

represent the public in the work of trustees. In particular, the public trustees are members of the public who serve the function of informing, along with the other trustees, policymakers and the public about the size of any trust fund deficits that would need to be resolved in order to avert program insolvency.

Question. Does the role of a public trustee involve developing projections and recommendations related to the solvency of the Medicare trust funds?

Answer. The relevant Social Security Act provisions related to the role of the trustees reference “general policies followed in managing the trust fund” and also require that the Medicare board of trustees report annually to the Congress on the financial and actuarial status of the HI and SMI trust funds. This includes solvency projections based on current law.

Question. Does the Medicare system currently face any solvency issues?

Answer. Yes, this year’s Medicare trustees report projected that, under current law, the Medicare Hospital Insurance (HI) trust fund reserves will become depleted in 2031.

Question. Do you agree that Medicare Advantage plans have been found to overcharge the government for coverage provided to beneficiaries?

Answer. Yes, there have been instances where Federal agencies have made such findings with respect to specific Medicare Advantage plans. The boards of trustees for the Social Security and Medicare trust funds do not have a role in that process or discuss those cases.

Question. Has Clover Health been investigated by the Department of Justice for “upcoding,” the practice of adding additional risk codes to beneficiaries’ medical records to secure higher capitated payments from the Centers for Medicare and Medicaid Services (CMS)?

Answer. The company publicly disclosed an inquiry by the U.S. Attorney’s Office for the Eastern District of Pennsylvania, as further described in the company’s previous annual and other filings. Also, an article published online in 2021 referred to a former employee of the company being asked about “promoting higher level coding” in connection with that inquiry.

Question. In your ethics agreement with the Social Security Administration, did you agree to recuse from any particular matter that would have a direct and predictable effect on your financial interests, or the financial interests of an entity whose interests are imputed to you, unless you receive a waiver?

Answer. As part of my nomination process, the Social Security Administration’s (SSA) Office of the General Counsel and the U.S. Department of Health and Human Services’ Office of the General Counsel thoroughly reviewed my financial holdings, and private-sector employment and positions. Based on that review, I signed an ethics agreement drafted by the SSA and approved by the U.S. Office of Government Ethics. SSA’s Designated Agency Ethics Official (DAEO) forwarded that agreement to the White House and Senate along with a letter stating that he found “no conflict of interest or other problem under applicable laws and regulations” between my disclosures and the proposed position.

As part of that agreement, I agreed I would not, if confirmed, personally and substantially participate in particular matters that would have a direct and predictable effect on my financial interests, or the financial interests of an entity whose interests are imputed to me, unless I received a waiver or qualified for a regulatory exemption. I also agreed that, if I am confirmed, and circumstances arise where an actual or potential conflict may exist during my appointment, I will consult with the SSA’s DAEO’s office and take measures necessary to resolve such conflict, including recusal from the matter. It is my understanding from the DAEO’s office that, generally, the content of the trustees reports do not meet the definition of “particular matter” nor do the reports have a direct and predicable effect on the Medicare Advantage program.

Question. Will you commit to making this agreement publicly available?

Answer. Pursuant to the appropriate rules and regulations, yes, I agree to make this agreement available to the public.

Question. If confirmed as a public trustee, would you only be eligible to receive a waiver if it is found that the financial interest at issue is not so substantial as to be deemed likely to affect the integrity of your government service?

Answer. SSA's DAEO determined that there is "no conflict of interest" caused by my financial interests, including private-sector positions, thoroughly reviewed as part of the usual vetting process. Additionally, while a waiver of a conflict could be granted if the DAEO determined that the facts of a situation supported such a waiver, the DAEO has not indicated that such a waiver would be required; I understand this is because, as made clear by the DAEO's conclusion that there is "no conflict of interest" and underlying determinations, if confirmed, I will not be participating in particular matters, and instead I will be participating in matters of general applicability that are also not likely to have a direct or predictable effect on the financial interests imputed to me. Therefore, I do not anticipate a waiver being required or applicable.

Question. In your ethics agreement with the Social Security Administration, did you also commit to avoid any *appearance* of a conflict of interest in the event that you are confirmed?

Answer. In that agreement, I committed, if confirmed, to consult with the DAEO's office if an actual or potential conflict does arise during my appointment, as well as to take measures necessary to resolve such conflict.

Question. Would Clover Health's interests be imputed to you, as a member of its board of directors?

Answer. Yes, the interests thoroughly reviewed by the DAEO in reaching the conclusion referred to above that there is "no conflict of interest" include those imputed by virtue of serving as a member of the board of directors.

Question. Do you agree that, under 18 U.S.C. § 208 and 5 CFR § 2635.402, you would have to recuse from any particular matters that would have a direct and predictable effect on Clover's financial interest, if that interest is substantial enough to likely affect the integrity of your service?

Answer. The Social Security Administration's (SSA) Office of the General Counsel and the U.S. Department of Health and Human Services' Office of the General Counsel thoroughly reviewed my financial holdings, and private-sector employment and positions. SSA's DAEO determined my financial interests do not conflict with the position for which I have been nominated. Based on that review, I signed an ethics agreement drafted by the SSA and approved by the U.S. Office of Government Ethics in which I stated that if I were asked to participate personally and substantially in any particular matter that had a direct and predictable effect on the financial interests imputed to me, including Clover Health, I would recuse myself from that matter unless I obtain a waiver or a regulatory exemption applied.

It is my understanding, from the DAEO's office, that the work of the boards of trustees for the Social Security and Medicare trust funds does not fall within the definition of a particular matter at 5 CFR 2635.402(b)(3) (defining "particular matter" as not extending to the "consideration or adoption of broad policy options that are directed to the interests of a large and diverse group of persons"). Also, there was a determination of the DAEO that the duties of the boards of trustees for the Social Security and Medicare trust funds do not have a direct and predictable effect on the Medicare Advantage program as defined at 5 CFR 2635.402(b)(1) (defining "direct and predictable effect" as specifically excluding an effect where the "chain of causation is attenuated or is contingent upon the occurrence of events that are speculative or that are independent of, and unrelated to, the matter").

Question. If the trustees address the threats that overpayments to Medicare Advantage plans pose to the financial health of the Medicare program, potentially leading to the adoption of policies that place more restrictions on Medicare Advantage, would such changes likely cut into the profitability of Clover?

Answer. While the Centers for Medicare and Medicaid Services publishes annual parameters for the "gain/loss margin" of Medicare Advantage plans which are incorporated into the annual bid submission and review process, to my knowledge, the trustees reports have not discussed topics like "overpayments" to Medicare Advantage plans, either as defined in the Social Security Act or more generally. If I am confirmed, and the topic came up, I would consult with the appropriate ethics officials.

The role of the boards of trustees for the Social Security and Medicare trust funds is not to make policy in any way; rather the role is to help provide information and data regarding the fiscal and actuarial status and future of the programs. By participating in that process, the public trustees enhance the credibility of that information and data by being an outside set of eyes and ears in the assembly and draft-

ing of the board's report. This process assists policymakers such as members of Congress to make the best decisions around the future of the programs.

Question. Do you believe that a reasonable person could at least find an appearance of a conflict of interest in a board member of a Medicare Advantage plan serving as a public trustee?

Answer. The vetting process administered by the Social Security Administration prior to my nomination for this position resulted in a conclusion by the SSA's DAEO that, in addition to there being "no conflict of interest," there is no "other problem under applicable laws and regulations." I understand from the DAEO's office that the reasonable person test discussed in relevant Federal regulations with language like that in this question requires examination of relevant facts like the role of the boards of trustees for the Social Security and Medicare trust funds being not to make policy in any way, the determination of the DAEO that those duties do not have a direct and predictable effect on a Medicare Advantage plan, the terms of my ethics agreement requiring me to seek agency counsel should circumstances change, and the position of trustee being a Special Government Employee expected to work less than 60 days in a calendar year. These facts support the DAEO's correct conclusion that there is no "other problem under applicable laws and regulations," including the appearance of a conflict of interest as described in relevant regulations or more generally.

Question. Are you aware of anyone who has previously served as a public trustee while also being compensated by a Medicare Advantage plan?

Are you aware of anyone who has previously served as a public trustee while also being compensated by *any* private health insurance company?

Answer. I am not personally aware of all the employment arrangements or compensation of previous public trustees.

Question. If confirmed as a public trustee, do you plan to quit the Clover board?

If not, how do you propose to comply with Federal ethics law and avoid any apparent conflict of interest while simultaneously serving as both a public trustee of Medicare trust funds and a board member of a Medicare Advantage plan?

Answer. Prior to being nominated for this position, I discussed my positions with SSA, and the U.S. Department of Health and Human Services. They advised that it would be consistent with the ethics laws and regulations to retain the current positions that I hold in the private sector, and therefore it is my current intention to retain those approved positions, including specifically the Clover Health board. The public trustees' position is considered a "special government employee," serving fewer than 60 days in any year, and therefore it is traditional and expected that persons in this role also hold positions in the private sector.

My ethics agreement specifies the activities and roles that I would continue if confirmed as a public trustee. This agreement was reviewed and approved by SSA's DAEO and the Office of Government Ethics. Additionally, the DAEO forwarded that agreement to the White House and Senate along with a letter stating that he found "no conflict of interest" between my disclosures and the proposed position. I am grateful to President Biden and his team for the review, as part of the nomination process, of my credentials and qualifications as well as present private-sector positions that I would continue if confirmed. If confirmed, in the event there are new questions that arise, as stated in the agreement mentioned above, I will consult with the DAEO's office, as I have to date, and take any measures identified as necessary as part of that process.

QUESTIONS SUBMITTED BY HON. MIKE CRAPO

Question. What is your understanding of the role of the trustees with regards to recommending or setting policy?

Answer. The role of the boards of trustees for the Social Security and Medicare trust funds is not to make policy in any way; rather the role is to help provide information and data regarding the fiscal and actuarial status and future of the programs. By participating in that process, the public trustees enhance the credibility of that information and data by being an outside set of eyes and ears in the assembly and drafting of the board's report. This process enables policymakers such as members of Congress to make the best decisions around the future of the programs.

Question. Have you addressed any potential conflicts of interest in your ethics agreement with the Social Security Administration in consultation with the U.S. Department of Health and Human Services and the U.S. Office of Government Ethics?

Answer. Yes.

Question. Do you commit to not participating personally or substantially in any particular matter that to your knowledge would have a direct and predictable effect on your financial interests unless a waiver has been issued or a regulatory exemption applies?

Answer. Yes.

Question. If a potential conflict of interest arises, will you consult with agency officials and take the measures necessary to resolve the conflict?

Answer. Yes.

PREPARED STATEMENT OF PATRICIA HART NEUMAN, SC.D., NOMINATED TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE FEDERAL OLD-AGE AND SURVIVORS INSURANCE TRUST FUND AND THE FEDERAL DISABILITY INSURANCE TRUST FUND, THE BOARD OF TRUSTEES OF THE FEDERAL HOSPITAL INSURANCE TRUST FUND, AND THE BOARD OF TRUSTEES OF THE FEDERAL SUPPLEMENTARY MEDICAL INSURANCE TRUST FUND

Chairman Wyden, Ranking Member Crapo, and members of this committee, I am honored to be here today to be considered for the public trustee position for the Medicare, Social Security, and Disability Insurance trust funds, along with my colleague, Demetrios Kouzoukas. I appreciate your taking the time for this hearing. I am deeply grateful to President Biden for nominating me to be considered for this important position. I am also so very grateful for the support of my family, friends, and colleagues—some of whom are here today—and most especially, my husband Perry Pockros, my daughter Julia, and my son Ben.

Social Security and Medicare are bedrock programs for our Nation, providing health and economic security to tens of millions of Americans, mostly older adults but also younger people with permanent disabilities, and others. These programs enjoy broad support among the general public because Americans understand the vital role they each play. It is difficult to imagine how families would manage without the financial protection provided by Social Security and Medicare.

Clearly, Social Security and Medicare face financial challenges that will require attention in the not too distant future. With an aging population, a declining worker to retiree ratio, and—in the case of Medicare—rising health-care costs, both the Social Security and the Medicare Hospital Insurance trust funds are projected to have insufficient funds to fully cover obligated expenses before the end of this coming decade.

Each year, the trustees issue a report on the financial status of these programs. The role of the public trustees is to assure the public of the integrity of the operations and sustainability of the trust funds, and to help the public understand the fiscal challenges facing these programs. The trustees work closely with the actuaries from the Department of Health and Human Services and the Social Security Administration to be sure that projections are based on sound assumptions, the right questions are being asked, and the presentation of findings is clear, while recognizing that modeling by its very nature is an inexact science.

In some ways, I have prepared for this position my entire professional life, working on issues related to health and retirement security for older Americans. My first job on Capitol Hill was on the staff of the Senate Special Committee on Aging, chaired by Senator Heinz, working right here in the Dirksen building. I went on to be trained as a researcher at what is now called the Johns Hopkins Bloomberg School of Public Health, where I received a masters in health finance and doctorate in health policy. I later served on the professional staff of the House Committee on Ways and Means Subcommittee on Health, where the annual report of the Medicare trustees was a major focus of our work.

Currently, I am a senior vice president, the executive director of the Program on Medicare Policy, and senior advisor to the CEO at KFF (formerly known as the Kaiser Family Foundation). Our mission at KFF is to serve as a nonpartisan source of information for policymakers, the media, the health policy community, and the public. We do not take policy positions—similar to the role of the public trustees.

At KFF, I have conducted and directed research, written numerous papers and spoken to a broad set of audiences about Medicare and related issues for older Americans. I have examined options to strengthen the financial solvency of the Medicare trust fund. I have been a resource for policymakers and others in explaining the challenges facing Medicare, and the implications for beneficiaries and program spending. Collectively, this work has provided the foundational knowledge and experience needed to carry out the responsibilities of a public trustee.

I understand that the primary role of a public trustee is to assure the integrity and objectivity of the projections, and that this is not a policymaking role. Relatedly, I understand that the data and analysis and other information included in these reports are essential to the important work of policymakers. I believe I have the analytic skills required to fulfill this role and the communication skills to convey that information clearly.

Since I was first nominated, I have been genuinely moved by the reactions of family members, friends and colleagues of all ages, virtually all of whom thank me, in advance, for being willing to do my part as a public trustee, if I am confirmed, mainly because they are counting on Medicare and Social Security to be in strong fiscal shape to support their health and financial security in retirement, as am I.

If I am confirmed for this position, I will work to the best of my ability to fulfill the responsibilities with rigor and integrity. I would be honored to serve in this role, and I look forward to your questions.

Thank you.

SENATE FINANCE COMMITTEE

STATEMENT OF INFORMATION REQUESTED OF NOMINEE

A. BIOGRAPHICAL INFORMATION

1. Name (include any former names used): Patricia Hart Neuman.
2. Position to which nominated: Member of the board of trustees of the Federal Old-Age and Survivors Insurance trust fund and the Federal Disability Insurance trust fund; member of the board of trustees of the Federal Hospital Insurance trust fund; member of the board of trustees of the Federal Supplementary Medical Insurance trust fund.
3. Date of nomination: April 7, 2022.
4. Address (list current residence, office, and mailing addresses):
5. Date and place of birth: April 9, 1959; Baltimore, MD.
6. Marital status (include maiden name of wife or husband's name):
7. Names and ages of children:
8. Education (list all secondary and higher education institutions, dates attended, degree received, and date degree granted):
 The American School in London, London, UK; 1974–1977; H.S diploma, 1977.
 Wesleyan University, Middletown, CT; 1977–1981, BA with Honors; 1981.
 The Johns Hopkins Bloomberg School of Hygiene and Public Health (previously called Johns Hopkins School of Hygiene and Public Health, 1985–1993; MHS (1987) and Sc.D. (1993).
9. Employment record (list all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment for each job):
 MCI Telecommunications, Washington, DC; data entry; 1981 (~ 3 months).
 U.S. Senate Special Committee on Aging, Washington DC; legislative correspondent; professional committee staff; 1982–1985.

The Johns Hopkins Medical Institutions Center for Hospital Finance and Management, Baltimore, MD; Research Associate; 1987–1989.

U.S. House of Representatives Committee on Ways and Means, Subcommittee on Health, Washington, DC; Professional Committee Staff; 1989–1994.

Henry J Kaiser Family Foundation, Washington, DC; senior vice president, executive director, Program on Medicare Policy, senior advisor to the president; 1995–present.

10. Government experience (list any current and former advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments held since college, including dates, other than those listed above):

See question 9 for employment in U.S. Senate and U.S. House of Representatives.

1992—Member of National Advisory Panel on Medicare Education, <https://www.govinfo.gov/content/pkg/FR-2002-01-25/html/02-1687.htm>.

11. Business relationships (list all current and former positions held as an officer, director, trustee, partner (e.g., limited partner, nonvoting, etc.), proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, other business enterprise, or educational or other institution):

- Bread for the City, board of directors.
- Grantmakers in Health, board of directors.
- Trust u/w Amelia Lange Bell Trust for Nancy Hoving—trustee.
- Trust u/w Thomas Hoving Trust for Nancy Hoving—trustee.
- LLR Limited partnership (private equity investment fund).
- Claire S Frankel Estate—co-trustee (terminated June 2021).
- Trimarc—general partner (terminated May 2019).

12. Memberships (list all current and former memberships, as well as any current and former offices held in professional, fraternal, scholarly, civic, business, charitable, and other organizations dating back to college, including dates for these memberships and offices):

- National Academy of Social Insurance.
- AcademyHealth—membership lapsed during COVID.
- Bread for the City, board of directors (charitable).
- Grantmakers in Health, board of directors (nonprofit).

13. Political affiliations and activities:

- a. List all public offices for which you have been a candidate dating back to the age of 18.

None.

- b. List all memberships and offices held in and services rendered to all political parties or election committees, currently and during the last 10 years prior to the date of your nomination.

None.

- c. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$50 or more for the past 10 years prior to the date of your nomination.

Barack Obama (2012): \$500.

Maggie Hassan (2012): \$50.

Fred Duval (2013): \$250.

Hillary Clinton (2016): \$250.

Jesse Colvin (2018): \$500.

Jacky Rosen (2018): \$250.

Theresa Greenfield for Iowa (2020): \$50.

Fight for Progress (2020): \$50.

The 99 Problems PAC (2020): \$100.

ActBlue—Amy McGrath \$250.

ActBlue—MarchonPac \$200.

ActBlue Kohl for Congress.

ActBlue—Brindisi for Congress in 2020.

14. Honors and awards (list all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognitions for outstanding service or achievement received since the age of 18):
 - National Center for Health Services Research and Health Care Technology Assessment, Dissertation Grant, 1989 (awarded in 1989, but unable to accept).
 - Gerontological Society, Dissertation Grant, 1989 (awarded in 1989, but unable to accept).
 - Metropolitan Life Foundation Fellow, 1985–1986.
15. Published writings (list the titles, publishers, dates and hyperlinks (as applicable) of all books, articles, reports, blog posts, or other published materials you have written):
See attachment A.
16. Speeches (list all formal speeches and presentations (*e.g.*, PowerPoint) you have delivered during the past 5 years which are on topics relevant to the position for which you have been nominated, including dates):
See attachment A.
17. Qualifications (state what, in your opinion, qualifies you to serve in the position to which you have been nominated):

I have spent my entire professional life analyzing issues related to health and retirement security for older Americans. Over the course of my career, I have been invited as an expert witness to testify before Congress on a range of issues related to Medicare and retirement security, written about and spoken about these issues, examined options to strengthen the financial solvency of the Medicare trust fund, and have served as an independent resource for the media and others in explaining the findings of the annual report of the Medicare trustees, and the implications for beneficiaries and program spending. While serving on the professional staff of the House Ways and Means Committee, the annual report of the Medicare and Social Security trustees was a major focus of our work. My doctorate in health policy from the Johns Hopkins University Bloomberg School of Public Health, and extensive professional work in the field since then, provides the tools needed to meet the responsibilities of a trustee, and contribute to the process of reviewing the annual report to be sure the underlying assumptions and analyses are sound and the presentation is clear. I understand that the primary role of a public trustee is to assure the integrity and objectivity of the projections, and believe I have the analytic skills required to fulfill this role and the communication skills to convey that information clearly to the public. I believe in public service; it would be an honor to be confirmed for this position.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections (including participation in future benefit arrangements) with your present employers, business firms, associations, or organizations if you are confirmed by the Senate? If not, provide details.
Not applicable. The public trustee is an uncompensated position, other than for expenses, so I would need to continue my current employment if confirmed by the Senate.
2. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, provide details.
I do not have plans, commitments, or agreements to pursue employment opportunities other than my current position at KFF.
3. Has any person or entity made a commitment or agreement to employ your services in any capacity after you leave government service? If so, provide details.
No.

4. If you are confirmed by the Senate, do you expect to serve out your full term or until the next presidential election, whichever is applicable? If not, explain.
Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Indicate any current and former investments, obligations, liabilities, or other personal relationships, including spousal or family employment, which could involve potential conflicts of interest in the position to which you have been nominated.

None, per review by SSA OGE.

2. Describe any business relationship, dealing, or financial transaction which you have had during the last 10 years (prior to the date of your nomination), whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

I have consulted with the Office of Government Ethics and the Social Security Administration designated agency ethics official to identify potential conflicts of interest.

3. Describe any activity during the past 10 years (prior to the date of your nomination) in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy. Activities performed as an employee of the Federal Government need not be listed.

None. KFF is an independent, nonprofit organization with a mission to inform policy discussions. We do not lobby or take positions on policy matters. I have published extensively and spoken to reporters on related matters but have not engaged for purposes of influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy.

4. Explain how you will resolve any potential conflict of interest, including any that are disclosed by your responses to the above items. (Provide the committee with two copies of any trust or other agreements.)

Not applicable.

5. Two copies of written opinions should be provided directly to the committee by the designated agency ethics officer of the agency to which you have been nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position.

Not applicable.

D. LEGAL AND OTHER MATTERS

1. Have you ever been the subject of a complaint or been investigated, disciplined, or otherwise cited for a breach of ethics for unprofessional conduct before any court, administrative agency (*e.g.*, an Inspector General's office), professional association, disciplinary committee, or other ethics enforcement entity at any time? Have you ever been interviewed regarding your own conduct as part of any such inquiry or investigation? If so, provide details, regardless of the outcome.

No.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority for a violation of any Federal, State, county, or municipal law, regulation, or ordinance, other than a minor traffic offense? Have you ever been interviewed regarding your own conduct as part of any such inquiry or investigation? If so, provide details.

No.

3. Have you ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

No.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, provide details.
No.
5. Please advise the committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.
None, other than to reassert my qualifications and interest in serving as a public trustee, my commitment to fulfill the duties of the public trustee, and that it would be an honor to do so.

E. TESTIFYING BEFORE CONGRESS

1. If you are confirmed by the Senate, are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so?
Yes
2. If you are confirmed by the Senate, are you willing to provide such information as is requested by such committees?
Yes.

Attachment A

Patricia Hart Neuman, Sc.D., Published Materials

Journal Articles

- Dusetzina, Stacie, Juliette Cubanski, Andrew Roberts, Jack Hoadley, Sarah True, Leonce Nshuti, and Tricia Neuman, "Trends in Medicare Part D Coverage of Generics With Equivalent Brand-Name Drugs," *The American Journal of Managed Care* July 15, 2021, 27 (7). <https://www.ajmc.com/view/trends-in-medicare-part-d-coverage-of-generics-with-equivalent-brand-name-drugs>.
- Frank, Richard and Patricia Neuman, "Addressing the Risk of Medicare Trust Fund Insolvency," *JAMA Network* January 26, 2021, 325 (4)341–342. <https://jamanetwork.com/journals/jama/article-abstract/2775457>.
- Dusetzina, Stacie, Juliette Cubanski, Leonce Nshuti, Sarah True, Jack Hoadley, Drew Roberts, and Tricia Neuman, "Medicare Part D Plans Rarely Cover Brand-Name Drugs When Generics Are Available," *Health Affairs*, August 3, 2020. vol. 39. no. 8. <https://www.healthaffairs.org/doi/abs/10.1377/hlthaff.2019.01694?journalCode=hlthaff>.
- Neuman, Patricia, and Gretchen Jacobson, "Medicare Advantage Checkup," *New England Journal of Medicine*, November 2018; 379:2163–2172. <https://www.nejm.org/doi/full/10.1056/nejmhpr1804089>.
- Neuman, Patricia, and Gretchen Jacobson, "Medicare Premium Support Proposals Could Increase Costs for Today's Seniors, Despite Assurances," *Health Affairs* blog post, March 2017. <https://www.healthaffairs.org/doi/10.1377/hblog20170309.059109/full/>.
- Hoadley, Jack, Patricia Neuman, and Juliette Cubanski, "The Cost of a Cure: Revisiting Medicare Part D and Hepatitis C Drugs," *Health Affairs* blog post, November 2016. <https://www.healthaffairs.org/doi/10.1377/hblog20161103.057356/full/>.
- Neuman, Patricia and John Rother, Co-Editors, "Medicare at 50," *Generations (Journal of the American Society on Aging)* Summer 2015, vol. 39, no. 2. <https://www.kff.org/wp-content/uploads/2015/06/generations-medicare-at-50-lessons-and-challenges-neuman-rother.pdf>.
- Hoadley, Jack, Juliette Cubanski, and Patricia Neuman, "Medicare's Part D Drug Benefit at 10 Years: Firmly Established but Still Evolving," *Health Affairs*, October 2015 34:1682–1687. <https://www.healthaffairs.org/doi/10.1377/hlthaff.2015.0927>.
- Neuman, Patricia, Juliette Cubanski, and Anthony Damico, "Medicare Per Capita Spending By Age and Service: New Data Highlights Oldest Beneficiaries," *Health Affairs*, February 2015 34:335–339. <https://www.healthaffairs.org/doi/10.1377/hlthaff.2014.1371>.

- Jacobson, Gretchen, Patricia Neuman, and Anthony Damico, "At Least Half of New Medicare Advantage Enrollees Had Switched From Traditional Medicare During 2006–11," *Health Affairs*, January 2015 34(1): 48–55. <https://www.healthaffairs.org/doi/10.1377/hlthaff.2014.0218>.
- Neuman, Patricia, Barbara Lyons, Jennifer Rentas, and Diane Rowland, "Dx for a Careful Approach to Moving Dual Eligible Beneficiaries into Managed Care Plans," *Health Affairs*, June 2012 31(6):1186–94. <https://www.healthaffairs.org/doi/10.1377/hlthaff.2012.0160>.
- Cubanski, Juliette and Patricia Neuman, "Medicare doesn't work as well for younger, disabled beneficiaries as it does for older enrollees," *Health Affairs*, September 2010 29(9):1725–33. <https://www.healthaffairs.org/doi/10.1377/hlthaff.2009.0962>.
- Safran, Dana, Michelle Kitchman Strollo, Stuart Guterman, Angela Li, William H. Rogers, Patricia Neuman, "Prescription Coverage, Use and Spending Before and After Part D Implementation: A National Longitudinal Panel Study," *Journal of General Internal Medicine*, January 2010. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2811599/>.
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- Wilson, Ira B., Cathy Schon, Patricia Neuman, Michelle Kitchman Strollo, William H. Rogers, Hong Chang, and Dana Gelb Safran, "Physician-patient Communication About Prescription Medication Non-adherence: A 50-State Study of America's Seniors," *Journal of General Internal Medicine*, January 5, 2007. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1824770/>.
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- Hanson, Kristina, Patricia Neuman, David Dutwin, and Judith Kasper, "Uncovering the Health Challenges Facing People with Disabilities: The Role of Health Insurance," *Health Affairs*, Web Exclusive, November 19, 2003. <https://www.healthaffairs.org/doi/10.1377/hlthaff.W3.552>.
- Safran, Dana, Patricia Neuman, Cathy Schoen, et al., "Prescription Drug Coverage and Seniors: How Well Are States Closing The Gap?" *Health Affairs*, Web Exclusive, July 31, 2002. <https://www.healthaffairs.org/doi/abs/10.1377/hlthaff.W2.253>.
- Laschober, Mary, Michelle Kitchman, Patricia Neuman, and Allison Strabic, "Trends in Medicare Supplemental Insurance and Prescription Drug Coverage, 1996–1999," *Health Affairs*, Web Exclusive, February 27, 2002. <https://www.healthaffairs.org/doi/10.1377/hlthaff.W2.127>.
- Steinberg, Earl, Benjamin Gutierrez, Aiman Momani, Joseph A. Boscarino, Patricia Neuman, and Patricia Deverka, "Beyond Survey Data: A Claims-Based Analysis of Drug Use and Spending by the Elderly," *Health Affairs*, Vol. 19, No. 2,

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- Laschober, Mary, Patricia Neuman, Michelle Kitchman, Laura Meyer, and Kathryn Langwell, "Medicare HMO Withdrawals: What Happens to Beneficiaries?" *Health Affairs*, Vol. 18, Number 6, November/December 1999. <https://www.healthaffairs.org/doi/10.1377/hlthaff.18.6.150>.
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Testimony

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- "Income Security and the Elderly: Securing Gains Made in the War on Poverty," testimony by Patricia Neuman before the U.S. Senate Special Committee on Aging, March 5, 2014. <https://www.kff.org/wp-content/uploads/2014/03/testimony-neuman-senate-special-committee-on-aging-3-5-14.pdf>.
- "Rethinking Medicare's Benefit Design: Opportunities and Challenges," testimony by Patricia Neuman before the Energy and Commerce Subcommittee on Health, June 26, 2013. <https://www.kff.org/wp-content/uploads/2013/06/neuman-testimony-for-energy-and-commerce-6-26-2013.pdf>.
- "Medicare Advantage: Key Issues and Implications for Beneficiaries," testimony by Patricia Neuman before the Committee on the Budget, U.S. House of Representatives, June 28, 2007. <https://www.kff.org/wp-content/uploads/2013/01/7664.pdf>.
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- “Navigating Medicare in the age of COVID-19,” RetirementRevised. Podcast audio, April 2, 2020. <https://retirementrevised.substack.com/p/navigating-medicare-in-the-age-of-140>.
- “All about Medicare,” What the Health—KHN. Podcast audio, August, 22, 2019. <https://khn.org/news/khns-what-the-health-all-about-medicare/>.

QUESTIONS SUBMITTED FOR THE RECORD TO PATRICIA HART NEUMAN, SC.D.

QUESTIONS SUBMITTED BY HON. RON WYDEN

Question. The role of public trustees is a unique role in public service. Rather than starting a new job in public service, you now wear “two hats”: one as the public trustee to the Social Security and Medicare trust funds, and the other “hat” representing your nongovernment day jobs. Can you talk about how you will approach dealing with any apparent conflict wearing your two “hats”?

Answer. The public trustee is considered a “special governmental employee” and is not a full-time position. Public trustees typically serve in this role in addition to having full-time employment. I am currently a senior vice president at KFF, executive director of KFF’s Program on Medicare Policy and senior advisor to KFF’s president and CEO. If I am confirmed, I would continue my employment at KFF and also serve as a public trustee.

I do not foresee future conflicts with these two roles but do think it would be appropriate to make clear when I am and *am not* speaking in my role as a public trustee, including when I am giving public presentations, speaking to the media or writing papers.

Question. Looking at each of your backgrounds, you both have extensive experience in the Medicare program, including coverage and solvency. You would bring a different perspective than past public trustees, many of whom have Social Security, pensions, or economic backgrounds. This can be a good thing, as it is important to have a fresh, outside perspective to the discussion. If confirmed, you would serve as the public trustee for the Social Security trust funds as well. While the trustees use the same demographic and economic assumptions to develop the Social Security and Medicare trustees reports, changes to those assumptions can have different impacts on each trust funds’ solvency. Can you talk about how you would approach your role as Social Security public trustee, and whether it would differ from your role as Medicare public trustee?

Answer. I would approach the role of public trustee for Social Security much as I would for Medicare. While the Medicare and Social Security programs serve somewhat different functions, they share a number of similar features and future challenges. For example, the solvency projections of the Supplementary Medical Insurance trust fund, the Federal Hospital Insurance trust fund, the Federal Old-Age and Survivors Insurance trust fund, and the Federal Disability Insurance trust fund are each affected by trends and assumptions related to birthrates, immigration patterns, mortality, and growth in the economy. In addition, Medicare’s fiscal health is also influenced by changes in health-care spending, and the various factors that influence Medicare spending trends.

The primary roles of the trustees—to review the assumptions made by the actuaries, consider whether the assumptions are reasonable, how emerging trends may

affect projections, and communicate the findings clearly to the public—apply similarly to Social Security and Medicare, though Medicare may be somewhat more complicated by underlying payment reforms that affect spending, health care trend data and more frequent changes in policy. In addition, the role of the public trustee is to give the public confidence in the objectivity of the projections that apply to each of the trust funds, including explaining changes that may have occurred from one year to the next, and the urgency and magnitude of the fiscal challenges facing the programs and the people they serve.

The attributes that I bring to the work pertaining to the Medicare trust funds will apply to work that is involved for the Federal Old-Age and Survivors Insurance and Federal Disability Insurance trust funds.

QUESTIONS SUBMITTED BY HON. MIKE CRAPO

Question. What is your understanding of the role of the trustees with regards to recommending or setting policy?

Answer. The role of the public trustee is to work with the actuaries of the Social Security Administration and Department of Health and Human Services to produce the annual reports required by law based on sound and objective data and analysis, and to give the public confidence that the assumptions built into the report and projections presented in the report are reasonable. My understanding is that the public trustees do not take positions on policy issues or make recommendations for specific policy solutions.

Question. Have you addressed any potential conflicts of interest in your ethics agreement with the Social Security Administration in consultation with the U.S. Department of Health and Human Services and the U.S. Office of Government Ethics?

Answer. Yes.

Question. Do you commit to not participating personally or substantially in any particular matter that to your knowledge would have a direct and predictable effect on your financial interests unless a waiver has been issued or a regulatory exemption applies?

Answer. Yes.

Question. If a potential conflict of interest arises, will you consult with agency officials and take the measures necessary to resolve the conflict?

Answer. Yes.

PREPARED STATEMENT OF MARJORIE A. ROLLINSON, NOMINATED TO BE CHIEF COUNSEL, INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

Chairman Wyden, Ranking Member Crapo, and members of the committee, I am honored to be here today as the nominee for Chief Counsel for the Internal Revenue Service. I want to thank the committee for considering my nomination and also the President for placing his confidence in me.

I could not be here today without the support and encouragement of my entire family, most especially of Harry, my husband of 36 years, my daughters Emma and Claire, and my mother. They always inspire me to be and do my best.

I grew up in the DC area, surrounded by dedicated public servants. From a young age, I learned the importance and dignity of hard work done well. My mother, who raised me and my three sisters, founded a nursery school. (I was in her first class.) She worked there until she retired almost 40 years later and helped hundreds of children during the most critical phase of their development. My husband Harry spent over half of his career teaching in Virginia public schools. Knowing just how wonderful he is as a father, I can appreciate the tremendous impact he had on the lives of his students.

The example of my many friends and family in public service is what is calling me out of retirement today, in hopes of becoming the IRS Chief Counsel. This is a critical time for the IRS. The agency has lacked adequate resources for decades, but with increased funding, the IRS can develop into a world class service organization and promote a fairer tax system. The IRS also is at the forefront of imple-

menting a substantial number of recent tax law changes. These efforts require tireless work from the Office of Chief Counsel, and I am eager to lead those efforts.

My technical tax expertise and leadership experience from time in both the private and public sectors have prepared me to help the IRS meet these challenges. I spent most of my career at Ernst and Young, where I had many wonderful mentors who taught me valuable lessons about leadership, collaboration, and serving with integrity. I also had the privilege of spending more than 5 years at the Office of Chief Counsel. There, I saw employees who exhibited a deep commitment to integrity and a profound dedication to the mission. Treating taxpayers fairly was at the core of everything Chief Counsel employees did, and it would be the capstone of my career to serve alongside them again, if I am privileged to be confirmed.

Throughout my career, I have learned that being a successful leader means drawing on the expertise of my staff, making sure everyone understands the mission, and always celebrating successes. I deeply enjoy technical tax work, but what I find most rewarding is motivating staff to produce exceptional results and reach their goals.

I look forward to answering your questions and, if confirmed, to being a close partner to this committee and the Congress.

SENATE FINANCE COMMITTEE

STATEMENT OF INFORMATION REQUESTED OF NOMINEE

A. BIOGRAPHICAL INFORMATION

1. Name (include any former names used): Marjorie Anne Rollinson (nickname: Margie).
2. Position to which nominated: Chief Counsel, Internal Revenue Service.
3. Date of nomination: June 6, 2023.
4. Address (list current residence, office, and mailing addresses):
5. Date and place of birth: August 20, 1962, Washington, DC.
6. Marital status (include maiden name of wife or husband's name):
7. Names and ages of children:
8. Education (list all secondary and higher education institutions, dates attended, degree received, and date degree granted):

Hamilton College.
Dates Attended: September 1980–May 1981.

Wellesley College.
Dates Attended: September 1981–May 1984.
Bachelor of Arts, May 1984.

University of Maryland, College of Law.
Dates Attended: September 1984–May 1987.
Juris Doctor, May 1987.
9. Employment record (list all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment for each job):

Ernst and Young.
Deputy Director of the National Tax Department.
Washington, DC.
March 2019–February 2022.

Office of Chief Counsel, Internal Revenue Service.
Associate Chief Counsel (International).
Washington, DC.
October 2016–January 2019.

Deputy Associate Chief Counsel (Technical).
Washington, DC.
October 2013–September 2016.

Georgetown University.
Adjunct Professor of Law.
Washington, DC.
August 2016–December 2016.

Ernst and Young.
Principal.
Washington, DC.
March 2002–September 2013.

Principal.
McLean, VA.
October 1999–August 2002.

Principal.
Washington, DC.
September 1997–September 1999.

Senior Manager.
Washington, DC.
October 1992–September 1997.

Manager.
Washington, DC.
February 1991–September 1992.

Manager.
Baltimore, MD.
September 1989–January 1991.

Ernst and Whinney.
(Merged with Arthur Young in 1989 to form Ernst and Young.)
Senior Tax Consultant.
Baltimore, MD.
August 1987–August 1989.

10. Government experience (list any current and former advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments held since college, including dates, other than those listed above):

None.

11. Business relationships (list all current and former positions held as an officer, director, trustee, partner (*e.g.*, limited partner, nonvoting, etc.), proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, other business enterprise, or educational or other institution):

As noted above, I was a Principal (which is a partner) of Ernst and Young from 1997–2013 and 2019–2022.

12. Memberships (list all current and former memberships, as well as any current and former offices held in professional, fraternal, scholarly, civic, business, charitable, and other organizations dating back to college, including dates for these memberships and offices):

The dates below are to the best of my recollection.

Member, Maryland Bar Association, December 1987–present.

Member, American Bar Association, 1997–2022 (although, not every year).

Member, Brewster Ladies Library, 2022–present.

Member, Friends of Brewster Elders, 2022–present.

Member, Massachusetts Audubon Society, 2018–present.

Member, Brewster Cemetery Association, 2021–present.

13. Political affiliations and activities:

- a. List all public offices for which you have been a candidate dating back to the age of 18.

None.

- b. List all memberships and offices held in and services rendered to all political parties or election committees, currently and during the last 10 years prior to the date of your nomination.

None.

- c. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$50 or more for the past 10 years prior to the date of your nomination.

I made no political contributions while I was employed by the Federal Government (2013–2019). To the best of my knowledge, below is a list of political contributions I made in the last 10 years that total over \$50.

Date	Contributed To	Amount
11/04/2020	ActBlue (earmarked for Biden Fight Fund)	\$110
8/13/2020	ActBlue (earmarked for Biden Fight Fund)	\$100
7/30/2020	Biden Victory Fund	\$100

14. Honors and awards (list all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognitions for outstanding service or achievement received since the age of 18):

Exceptional Service Award from the U.S. Treasury Department, May 2019.

Chief Counsel Distinguished Service Award, January 2019.

15. Published writings (list the titles, publishers, dates and hyperlinks (as applicable) of all books, articles, reports, blog posts, or other published materials you have written):

See attachments.

16. Speeches (list all formal speeches and presentations (*e.g.*, PowerPoint) you have delivered during the past 5 years which are on topics relevant to the position for which you have been nominated, including dates):

I moderated a Practising Law Institute class entitled “Basics of International Taxation” on July 20, 2021. Attached is the transcript of this session. I have only been able to locate a transcript for one session, although I moderated the whole day.

I participated in an Ernst and Young external webcast entitled “Proposed Foreign Tax Credit Regulations would add new requirements and elections” on October 15, 2020. Attached is the slide deck used for this webcast.

I participated in an Ernst and Young external webcast entitled “Final and Proposed Foreign Tax Credit Regulations” on December 13, 2019. Attached is the slide deck used for this webcast.

I participated in an Ernst and Young external webcast entitled “New Treasury regulations concerning Subpart F income, global intangible low-taxed income (GILTI) inclusions, and the dividends received deduction” on June 21, 2019. Attached is the slide deck used for this webcast.

In addition, from March 2020 to February 2022, I participated in a series of webcasts hosted by Ernst and Young entitled “Tax in the time of COVID–19.” The dates and full titles of these webcasts are listed below. The recordings and slide decks only remain available online for some time, so I am not able to access those materials for some of the webcasts in which I participated. To the best of my knowledge, slide decks and recordings are available only for webcasts starting on July 24, 2020 forward (marked with an asterisk), and the slide decks for those webcasts are attached. These were informal and unscripted events, and I did not prepare or provide formal speeches or presentations.

- Policy perspectives: Tax in the time of COVID–19, March 20, 2020: <https://event.on24.com/wcc/r/2229259/0487BC58EE1CCC37A8C807576A6E0B0C>.
- Tax in the time of COVID–19: keeping abreast of rapidly changing tax developments, March 27, 2020: <https://event.on24.com/wcc/r/2242042/0D62D4F17C35C1A58C7536C572CD7F33>.

- Tax in the time of COVID-19: tax implications and opportunities stemming from the CARES Act, April 3, 2020: <https://event.on24.com/wcc/r/2249111/00D225C362418A5D9B96DD6C7C6C6381>.
- Tax in the time of COVID-19: what US and global tax administrations are doing in response to the pandemic, April 10, 2020: <https://event.on24.com/wcc/r/2261245/9DE486DED79033F1911188570FDA9A79>.
- Tax in the time of COVID-19: examining developments affecting disaster losses, qualified improvement property and compliance, April 17, 2020: <https://event.on24.com/wcc/r/2283730/F03B252E81FEF47391B420DFB4DEB71A>.
- Tax in the time of COVID-19: how the pandemic is affecting the economy, compliance and transfer pricing, April 24, 2020: <https://event.on24.com/wcc/r/2283743/A7364A198DBDEBA680E9B75A0A0B5A9B>.
- Tax in the time of COVID-19: the latest out of Washington including the employer retention credit and IRS filing guidance, May 1, 2020: <https://event.on24.com/wcc/r/2307300/2335DAC9E4C53C4AAD898D6773602CE3>.
- Tax in the time of COVID-19: updates on IRS operations and global developments, May 8, 2020: <https://event.on24.com/wcc/r/2318685/19FCF4E3463E308D7977D4E82AC1D313>.
- Tax in the time of COVID-19: what's happening in international tax, on Capitol Hill and at the IRS, May 15, 2020: <https://event.on24.com/wcc/r/2348509/FDDB5EF07ADCBD9D265C93FD3D0BDD>.
- Tax in the time of COVID-19: what's new and notable in tax credits, refunds and at the IRS, May 29, 2020: <https://event.on24.com/wcc/r/2372423/03DD948DB65D5AD2A8AC4C55E9EB2FA1>.
- Tax in the time of COVID-19: an update on U.S. legislative, state and IRS developments, June 12, 2020: <https://event.on24.com/wcc/r/2399701/F22FA5FA1B309C85CE9D3B8E80B3767A>.
- Tax in the time of COVID-19: preparing for potential future tax changes, June 26, 2020: <https://event.on24.com/wcc/r/2407637/FEC1365480EBC9B9C8E6A189945947D6>.
- Tax in the time of COVID-19: update on the Employee Retention Credit, net operating losses and IRS developments, July 10, 2020: <https://event.on24.com/wcc/r/2448899/48008ACFD386B7E15B8B9FCBE9688EBA>.
- *Tax in the time of COVID-19: global, IRS and Treasury developments, July 24, 2020: <https://event.on24.com/wcc/r/2448931/2D69911CC3FCCB9198F26EC73C3D2BD8>.
- *Tax in the time of COVID-19: update on legislative, regulatory and IRS developments, August 7, 2020: <https://event.on24.com/wcc/r/2549636/953D8652DEECB7A5A8585B51C4C9E6EF>.
- *Tax in the time of COVID-19: update on legislative, economic, regulatory and IRS developments, August 21, 2020: <https://event.on24.com/wcc/r/2561002/115D50A7C216B64EAD411756650734C6>.
- *Tax in the time of COVID-19: update on legislative, economic, regulatory and IRS developments, September 11, 2020: <https://event.on24.com/wcc/r/2632715/253246C7DF41E857E6B2F62FAF3EB3DE>.
- *Tax in the time of COVID-19: update on legislative, economic, regulatory and IRS developments, September 25, 2020: <https://event.on24.com/wcc/r/2665699/C1862AC9BC97276144C000EF579CFCF4>.
- *Tax in the time of COVID-19: update on legislative, economic, regulatory and IRS developments, October 9, 2020: <https://event.on24.com/wcc/r/2735211/9EBAEE60263EBCA043C16969B355C85D>.
- *Tax in the time of COVID-19: update on legislative, economic, regulatory and IRS developments, October 23, 2020: <https://event.on24.com/wcc/r/2772357/683EAC5C6766EF74F1BE1A4612EFC2A5>.
- *Tax in the time of COVID-19: post-election outlook, November 20, 2020: <https://event.on24.com/wcc/r/2845392/02BB19E8B63D2E7C5B1DF1E440BFC20F>.

- *Tax in the time of COVID-19: post-election outlook, December 4, 2020: <https://event.on24.com/wcc/r/2862160/601C3356B11870AB5780868414F6EE2D>.
- *Tax in the time of COVID-19: post-election outlook, December 18, 2020: <https://event.on24.com/wcc/r/2879453/6C372C5A8F87C6E4270CEF185C410E67>.
- *Tax in the time of COVID-19: post-election outlook, January 8, 2021: <https://event.on24.com/wcc/r/2937023/F8BC1FCAB193674FCD0495F6C2CF116C>.
- *Tax in the time of COVID-19: post-election outlook, January 22, 2021: <https://event.on24.com/wcc/r/3151723/0FD304CC14FCA234FC4987FC5BDF24B5>.
- *Tax in the time of COVID-19: update on legislative, economic, regulatory and IRS developments, February 5, 2021: <https://event.on24.com/wcc/r/2987070/00987601769E0BAB8FA431BBBC69838F>.
- *Tax in the time of COVID-19: update on legislative, economic, regulatory and IRS developments, February 19, 2021: <https://event.on24.com/wcc/r/2999202/D4DC00DBFBC8D1287A9F49C929E74F09>.
- *Tax in the time of COVID-19: update on legislative, economic, regulatory and IRS developments, March 5, 2021: <https://event.on24.com/wcc/r/3031123/2AF8F633FE24158D85DC364D7C68DBF9>.
- *Tax in the time of COVID-19: update on legislative, economic, regulatory and IRS developments, March 19, 2021: <https://event.on24.com/wcc/r/3057498/5503AF67B7E076A85FB2151742B1BCE6>.
- *Tax in the time of COVID-19: update on legislative, economic, regulatory and IRS developments, April 2, 2021: <https://event.on24.com/wcc/r/3062419/4D772973FFE7F8D863E60B10056FA7A3>.
- *Tax in the time of COVID-19: update on legislative, economic, regulatory and IRS developments, April 16, 2021: <https://event.on24.com/wcc/r/3098610/123304CEDC428EBFF7C5A4EF611F9CBE>.
- *Tax in the time of COVID-19: update on legislative, economic, regulatory and IRS developments, May 14, 2021: <https://event.on24.com/wcc/r/3151723/0FD304CC14FCA234FC4987FC5BDF24B5>.
- *Tax in the time of COVID-19: update on legislative, economic, regulatory and IRS developments, June 4, 2021: <https://event.on24.com/wcc/r/3191435/F7A0FA96FC005BC2065F4264AEB3D27E>.
- *Tax in the time of COVID-19: update on legislative, economic, regulatory and IRS developments, June 18, 2021: <https://event.on24.com/wcc/r/3240977/FD4E0B725AE039D609DDCD308339D318>.
- *Tax in the time of COVID-19: update on legislative, economic, regulatory and IRS developments, July 2, 2021: <https://event.on24.com/wcc/r/3264042/B4ABD1339A2B1C1198EDE1923EBC1835>.
- *Tax in the time of COVID-19: update on legislative, economic, regulatory and IRS developments, July 16, 2021: <https://event.on24.com/wcc/r/3296788/DC4F0000E9EA61A1ADD4E611AF16EB1C>.
- *Tax in the time of COVID-19: update on legislative, economic, regulatory and IRS developments, July 30, 2021: <https://event.on24.com/wcc/r/3320498/252771BEC6E3793A23A3376878CD77F6>.
- *Tax in the time of COVID-19: update on legislative, economic, regulatory and IRS developments, September 10, 2021: <https://event.on24.com/wcc/r/3359657/C2A2A6CACCACB814ECB82C217FEF5B9E>.
- *Tax in the time of COVID-19: update on legislative, economic, regulatory and IRS developments, September 24, 2021: <https://event.on24.com/wcc/r/3411210/E50885CA4A8DD4B60701A6BEC95178C5>.
- *Tax in the time of COVID-19: update on legislative, economic, regulatory and IRS developments, October 8, 2021: <https://event.on24.com/wcc/r/3438598/4692FE559E2A19F8C0BEB89BA79C8461>.

- *Tax in the time of COVID-19: update on legislative, economic, regulatory and IRS developments, October 22, 2021: <https://event.on24.com/wcc/r/3461187/0567C36D54BC784244A7DFFF1D65AA79>.
 - *Tax in the time of COVID-19: update on legislative, economic, regulatory and IRS developments, November 5, 2021: <https://event.on24.com/wcc/r/3485464/9829D8A25FBD7BE7274FC5F1223D7866>.
 - *Tax in the time of COVID-19: update on legislative, economic, regulatory and IRS developments, November 19, 2021: <https://event.on24.com/wcc/r/3508641/D2799BF0DF5F84145E4D4B65D5B19DCB>.
 - *Tax in the time of COVID-19: update on legislative, economic, regulatory and IRS developments, December 17, 2021: <https://event.on24.com/wcc/r/3554693/A1CCF8DD176296DFD901B9FC0B73CA91>.
 - *Tax in the time of COVID-19: update on legislative, economic, regulatory and IRS developments, January 21, 2022: <https://event.on24.com/wcc/r/3572625/39C42C984C5AA8AF07185B96BE08FC90>.
 - *Tax in the time of COVID-19: update on legislative, economic, regulatory and IRS developments, February 4, 2022: <https://event.on24.com/wcc/r/3612146/5EEC7E025B28D36E37E1BC70E6346765>.
 - *Tax in the time of COVID-19: update on legislative, economic, regulatory and IRS developments, February 18, 2022: <https://event.on24.com/wcc/r/3631707/4E8383CF0F46EA211DAE4CFBD4404A22>.
17. Qualifications (state what, in your opinion, qualifies you to serve in the position to which you have been nominated):

I have had a long career of honing my tax technical skills and gaining leadership acumen as I led increasingly large groups of professionals. I began my career the year after the passage of the historic 1986 Tax Act at Ernst and Whinney, preparing both individual and corporate returns. In 1991, I transferred to the National Tax Department of Ernst and Young as a manager and began focusing on international tax. The National Tax practice had been set up to mirror the Office of Chief Counsel, with different departments focusing on corporate, international tax, partnership taxation, exempt organizations, etc.

In the International Tax Department, I analyzed new regulations and informed our practice offices around the country about new developments. My client responsibilities were focused almost exclusively on large U.S. multinational corporations. In 1997, I was promoted to Principal in the International Tax Department. Early on in my time as a Principal, I was transferred to the Mid-Atlantic area to lead the International Tax group there. I was responsible for about 40 professionals, which helped me grow my leadership skills. In 2003, I was asked to lead the International Tax Department in the national office. In that role, I led a group of over 50 professionals and developed a talent for helping professionals grow and contribute at their highest potential.

In 2013, I was afforded the opportunity join the Federal Government as the Deputy Associate Chief Counsel (Technical). This role was similar to the one I had had at Ernst and Young, and I was excited and proud to join the Federal workforce. Two years later, I was named Associate Chief Counsel (International) and was responsible for a group of 100 professionals. In this capacity, I had the opportunity to collaborate closely with all of the other Associate Chief Counsels, as well many officials at the Internal Revenue Service, the Department of the Treasury, and the Department of Justice. Our office was extraordinarily active following the passage of the 2017 Tax Cuts and Jobs Act, and we produced high-quality guidance in record time.

In 2019, I returned to Ernst and Young to serve as the deputy director of the National Tax Department—which, at the time, had over 1,200 professionals. I led the National Tax Department until I retired in February 2022. These experiences and qualifications have prepared me well to lead the Office of Chief Counsel. I am a strong tax technical lawyer with decades of experience, and I am familiar with the Office of Chief Counsel. I have successfully led large offices and know that I work very well with colleagues of different specialties and backgrounds.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections (including participation in future benefit arrangements) with your present employers, business firms, associations, or organizations if you are confirmed by the Senate? If not, provide details.

I am currently retired and, consistent with my Ethics Agreement, plan to continue receiving my Ernst and Young pension. I have a relatively small 401(k) account that I earned while at Ernst and Young. I plan to roll that amount into my IRA account in the near future. Ernst and Young does not control the account and no longer makes any contributions to the account.

2. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, provide details.

No.

3. Has any person or entity made a commitment or agreement to employ your services in any capacity after you leave government service? If so, provide details.

No.

4. If you are confirmed by the Senate, do you expect to serve out your full term or until the next presidential election, whichever is applicable? If not, explain.
- Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Indicate any current and former investments, obligations, liabilities, or other personal relationships, including spousal or family employment, which could involve potential conflicts of interest in the position to which you have been nominated.

None.

2. Describe any business relationship, dealing, or financial transaction which you have had during the last 10 years (prior to the date of your nomination), whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

None.

3. Describe any activity during the past 10 years (prior to the date of your nomination) in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy. Activities performed as an employee of the Federal Government need not be listed.

None.

4. Explain how you will resolve any potential conflict of interest, including any that are disclosed by your responses to the above items. (Provide the committee with two copies of any trust or other agreements.)

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Designated Agency Ethics Official at the Department of the Treasury to identify any potential conflict of interest. Any conflict of interest will be resolved according to the terms of an ethics agreement that I have entered into with the Treasury Department's Designated Agency Ethics Official and that will be provided to this committee. In the event that an actual or potential conflict of interest arises during my appointment, I will consult with the Treasury Department's ethics counsel and take the measures necessary to resolve the conflict.

5. Two copies of written opinions should be provided directly to the committee by the designated agency ethics officer of the agency to which you have been nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position.

I understand that my ethics agreement has been provided to the committee along with the accompanying transmittal documents.

D. LEGAL AND OTHER MATTERS

1. Have you ever been the subject of a complaint or been investigated, disciplined, or otherwise cited for a breach of ethics for unprofessional conduct before any court, administrative agency (*e.g.*, an Inspector General's office), professional association, disciplinary committee, or other ethics enforcement entity at any time? Have you ever been interviewed regarding your own conduct as part of any such inquiry or investigation? If so, provide details, regardless of the outcome.

No.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority for a violation of any Federal, State, county, or municipal law, regulation, or ordinance, other than a minor traffic offense? Have you ever been interviewed regarding your own conduct as part of any such inquiry or investigation? If so, provide details.

No.

3. Have you ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

When I was the Deputy Associate Chief Counsel (International), my office dismissed an employee for cause. He filed a complaint against the agency asking to be reinstated, and by the time his hearing took place, I was the Associate Chief Counsel (International). I was called to give an account of the incident that led to the employee's dismissal (conduct he admitted to). He was not reinstated.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, provide details.

No.

5. Please advise the committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

None.

E. TESTIFYING BEFORE CONGRESS

1. If you are confirmed by the Senate, are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so?

Yes.

2. If you are confirmed by the Senate, are you willing to provide such information as is requested by such committees?

Yes.

Attachments**Published Writings****Articles, Letters, EY Tax Alerts**

Title	Date	Publisher	Body	Notes
Practice Guide to International Tax Planning	1996	American Institute of Certified Public Accountants, Tax Division		
Notice 2007-13 and the Substantial Assistance Rules—A Good Start, But More Clarification Required	1/08	Journal of International Taxation 19, J. Int'l Tax'n 18 Checkpoint		MRNOTICE_2007_13 AND THE SUBSTANTIAL ASSISTANCE RULES_A GOOD START BUT MORE CLARIFICATION REQUIRED__Jo.pdf

Articles, Letters, EY Tax Alerts—Continued

Title	Date	Publisher	Body	Notes
Second Round of Guidance on Dividend Repatriation Provisions	5/30/05	Social Science Research Network		Preview only—no link publicly available
INFO 2015-0013—Section 4371—Imposition of Tax	3/27/15	Bloomberg Tax	Department of the Treasury Internal Revenue Service Information Letter	MRIRS_INFO_2015-013__Section_4.pdf
AM 2018-003—Section 482—Allocation of Income and Deductions Among Taxpayers	8/03/18	Bloomberg Tax	Department of the Treasury Internal Revenue Service Legal Advice Issued by Associate Chief Counsel (AMs)	MRIRS_AM_2018-003_-_Section_482.pdf
AM 2017-005—Section 367—Foreign Corporations	11/24/17	Bloomberg Tax	Department of the Treasury Internal Revenue Service Legal Advice Issued by Associate Chief Counsel (AMs)	MRIRS_AM_2017-005_-_Section_367.pdf
Year of the PFIC? First the '97 Act, and Now Guidance on Making QEF Election	3/02/98	Tax Notes Federal		MR78tn1163.pdf
U.S. eyes international overhaul	5/99	International Tax Review Vol. 10, Iss. 5, (May 1999): 51–52		MR10IntITaxRev51.pdf
U.S. reforms face uneasy future	5/99	International Tax Review 10 Int'l Tax Rev. 53		MR10IntITaxRev53.pdf
IRS Extends Grouping Opportunity	5/31/99	International Tax Review		MR10IntITaxRev23.pdf
Time Is Running out for Cash Repatriation	10/05	International Tax Review 16 Int'l Tax Rev. 29 (2005)		MR16IntITaxRev29.pdf
Practical Application under the Check-the-Box Regime	Fall 1997	International Tax Journal 23 INT'l TAX J. 1 (1997)		MR23IntITaxJ1.pdf
Budget Reconciliation Is Next for Congress' Tax Law Writers	2/06	International Tax Review 17 Int'l Tax Rev. 22 (2006)		MR17IntITaxRev22.pdf
Different ETI Repeal Bills Means Difficult Negotiations Ahead	8/04	International Tax Review 15 Int'l Tax Rev. 22 (2004)		MR15IntITaxRev22.pdf
U.S. Taxation of U.S. Persons Doing Business or Investing in Mexico: An Overview Article: U.S. Taxation of U.S. Persons Doing Business or Investing in Mexico: An Overview	1/01/94	St. Mary's Law Journal 26 St. Mary's L. J. 107, 109		MRARTICLE_U.S. TAXATION OF U.S. PERSONS DOING BUSINESS 0.dox

Articles, Letters, EY Tax Alerts—Continued

Title	Date	Publisher	Body	Notes
Basics of International Taxation 2021; Earning Income from Cross-Border Activities	7/21/21	PLI		Transcript MRPLI072021.pdf
Basics of International Taxation 2021; Earning Income Through a Foreign Corporation	7/21/21	PLI		Transcript MRPLIEarning Income Through a Foreign Corporation (1).pdf
Tax Clinic, Practical Advice on Current Issues	1/05	The Tax Adviser		Link not available online
Final Regulations on Dual Consolidated Losses: A Practical Guide (Part II)	10/01/07	The Tax Adviser		
Final Regulations on Dual Consolidated Losses: A Practical Guide (Part I)	9/01/07	The Tax Adviser		
New Rules on Treatment of Certain Stock of a Foreign Corporation Under Sec. 7874	1/01/10	The Tax Adviser		
Allocation and apportionment of expenses for Section 199 purposes: for many taxpayers, calculation of the Section 199 deduction will require an enormous amount of work. This article focuses on one aspect of the deduction, the allocation and apportionment of expenses under the Section 861 regulations and the proposed Section 199 regulations.	6/06	The Tax Adviser		
Final Regs. on Partnership Allocations of CFTEs	1/01/07	The Tax Advisor		Published in Factiva MR010707
House Ways and Means Committee Chair proposes comprehensive international tax changes for reconciliation bill	9/17/21	EY		EY Tax Alert
Discussion draft released by Senators Wyden, Brown, Warner proposes significant changes to current international tax rules	8/29/21	EY		EY Tax Alert

Articles, Letters, EY Tax Alerts—Continued

Title	Date	Publisher	Body	Notes
FIRST IMPRESSIONS: Tax-payers need to consider international tax implications of making certain net operating loss elections under Revenue Procedure 2020–24	4/10/20	EY		EY Tax Alert
Source-of-income rules modified by proposed regulations implementing TCJA changes	1/08/20	EY		EY Tax Alert
Final and proposed regulations provide additional guidance for determining allowable foreign tax credits	12/08/19	EY		EY Tax Alert
Considerations related to the potential delay in finalization of Tax Cuts and Jobs Act proposed regulation packages	6/05/19	EY		Internal-only EY Tax Alert MR2019–1038
Service rules on application of manufacturing exception where sales activities did not include the taking of title	7/01/13	EY		EY Tax Alert Written before links were available MR070113
U.S. Supreme Court resolves circuit split, rules UK Windfall Profits Tax is creditable under Section 901	5/28/13	EY		EY Tax Alert Written before links were available MR2013–1020
EY Tax Alert provides in-depth analysis of final and temporary regulations on outbound asset reorganization	3/29/13	EY		EY Tax Alert Written before links were available MR2013–0636
Treasury regulations issued concerning outbound asset reorganizations	3/26/13	EY		EY Tax Alert Written before links were available MR2013–0601
Senator Levin reintroduces Cut Unjustified Tax Loopholes Act	2/18/13	EY		EY Tax Alert Written before links were available MR2013–0364
IRS proposes changes to rules for failure to comply with gain recognition agreements and other filings	2/04/13	EY		EY Tax Alert Written before links were available MR2013–0255
Continued attention required for listed transactions identified in Notice 2001–45	11/26/12	EY		EY Tax Alert Written before links were available MR2012–1914

Articles, Letters, EY Tax Alerts—Continued

Title	Date	Publisher	Body	Notes
Notice 2012–39 announces regulations to be issued under Section 367(d) affecting certain outbound transfers of intangible property in asset reorganizations	7/20/12	EY		EY Tax Alert Written before links were available MR2012–1240
HP's investment in foreign entity characterized as debt: foreign tax credits and capital loss disallowed	6/28/12	EY		EY Tax Alert Written before links were available MR2012–1113
Treasury issues final and proposed regulations clarifying prior guidance on ODLs and the coordination with OFL and SLL provisions	7/27/12	EY		EY Tax Alert Written before links were available MR2012–1107
New Section 7874 regulations establish bright-line rule for substantial business activities test	6/12/12	EY		EY Tax Alert Written before links were available MR2012–1020
Treasury and IRS issue temporary regulations on Section 909 foreign tax credit splitting events and final “technical taxpayer” regulations under Section 901	2/15/12	EY		EY Tax Alert Written before links were available MR2012–0342
IRS and Treasury amend Section 861 interest allocation and apportionment regulations for corporate partners with 10% or greater interest and users of FMV method	1/22/12	EY		EY Tax Alert Written before links were available MR2012–0138
Third Circuit U.S. Court of Appeals holds UK “Wind-fall Profits” tax is not creditable income tax for U.S. foreign tax credit purposes	1/03/12	EY		EY Tax Alert Written before links were available MR2012–0015
Treasury releases final regulations on foreign base company sales income branch rules	12/21/11	EY		EY Tax Alert Written before links were available MR2011–2153
Treasury and IRS issue final regulations on disregarded entities and conduit financing	12/12/11	EY		EY Tax Alert Written before links were available MR2011–2083

Articles, Letters, EY Tax Alerts—Continued

Title	Date	Publisher	Body	Notes
Proposed regulations clarify rules for controlling domestic shareholders to adopt or change a method of accounting or tax year on behalf of a foreign corporation	11/09/11			EY Tax Alert Written before links were available MR2011–1889
Treasury and IRS issue proposed regulations on the taxation of income of foreign governments under Section 892	11/08/11	EY		EY Tax Alert Written before links were available MR2011–1887
EY coordinating approach to understanding economic substance codification	4/20/10	EY		EY Tax Alert Written before links were available MR2010–0575
Omission of international information results in statute suspension for entire return	4/02/10	EY		EY Tax Alert Written before links were available MR2010–0506

Webinars, Webcasts, Presentations

Title	Date	Group	Notes
Issues Under the Proposed FTC Regulations and Some Early Observations on the Proposed FDII Regulations	3/19/22	International Tax Institute	Webinar
Tax Reform Update with the IRS	3/22/18	International Tax Institute	Webinar
Navigating the Subpart F Services Rules	3/18/15	International Tax Institute	Webinar
Issues Under the Proposed FTC Regulations	3/19/19	International Tax Institute	Webinar
Outbound Transfers to Partnerships after Notice 2015–54	12/17/15	USA Branch of the International Fiscal Association	IFA USA New York Region Fall Seminar
Luncheon Speaker	12/07/15	USA Branch of the International Fiscal Association	IFA USA New York Region Fall Meeting
More “Known Unknowns”—How do Members of Consolidated Groups Recover “Previously Taxed Income?”	5/15	Proskauer	2015 May Meeting Preliminary Program MRMoreKnownUnknowns.pdf
New Treasury regulations on subpart F income, GILTI inclusions, and the DRD under Section 245A	6/21/19	EY	EY Webcast MRSection 245A temp regs and GILTI final regs—Final slides v2.pdf
Final and proposed foreign tax credit regulations	12/13/19	EY	EY Webcast MRfinal_and_proposed_ftc_regulations_december_2019—final_slides_v2.pdf

Webinars, Webcasts, Presentations—Continued

Title	Date	Group	Notes
Tax in the time of COVID-19: what U.S. and global tax administrations are doing in response to the pandemic	4/10/20	EY	EY Webcast MRtax in the time of covid19 april 10 final slides.pdf
Proposed foreign tax credit regulations would add new requirements, election	10/15/20	EY	EY Webcast MRproposed ftc regulations october2020 final slides.pdf
Unknown title	5/05/16	ABA Tax Section 2016 May Meeting	Materials only available to members: https://www.americanbar.org/groups/taxation/events_cle/meeting_materials/16may_materials/
Codification of the Economic Substance Doctrine: Issues, Uncertainties, and Application	9/29/10	Bloomberg Tax (BNA)	Webinar replay not available online

Question 16, October 15, 2020 Webcast Slides**Proposed Foreign Tax Credit Regulations Would Add New Requirements, Election**

October 15, 2020

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Today's Agenda

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1. Allocation of foreign taxes.
 2. Creditability of foreign taxes.
 3. Accrual of foreign taxes.
 4. Miscellaneous topics.
 5. Applicability dates.
 6. One-minute recap.
-

Polling Question

Do you know how many of the provisions in the Proposed Regulations will impact your company?

- A. None
 - B. One to two provisions
 - C. Three to four provisions
 - D. Don't know
 - E. Does not apply (EY, faculty, other)
-

Allocation of Foreign Taxes

Disregarded Payments

2020 Proposed Regulations contain a new comprehensive set of rules addressing the allocation and apportionment of foreign income taxes relating to disregarded payments.

- ▶ Generally assign recipient's foreign gross income arising from the receipt of disregarded payments and the associated foreign taxes based on the current or accumulated income of the payor.
 - ▶ Leverages the income reattribution rules used in the foreign branch and global intangible low-taxed income (GILTI) high-tax exclusion provisions.
 - ▶ Gross income and foreign taxes are allocated at the "taxable unit" level.
 - ▶ For individuals or domestic corporations, "taxable unit" means a foreign branch, foreign branch owner, or certain non-branch taxable units.
 - ▶ For foreign corporations, "taxable unit" means a tested unit.
-

Special Rules

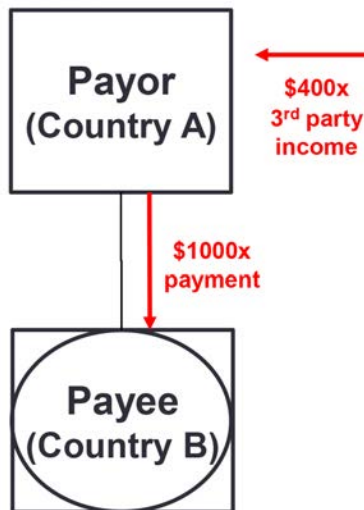
Transaction	Special rule for allocation and apportionment of taxes
Disposition of stock under U.S. law	Assigned to the same category as the corresponding U.S. dividend (<i>i.e.</i> , Section 1248) and capital gain amounts (to the extent thereof), with any remaining foreign gross income assigned to groupings based on the tax book value of the corporation's stock as determined under the asset method in Treas. Reg. Section 1.861-9
Partnership distribution or disposition of a partnership interest	Assigned to the same category as the corresponding U.S. capital gain amount (to the extent thereof), with any excess assigned to groupings based on the tax book value of the partnership interest or the partner's pro rata share of partnership assets (as applicable) under Treas. Reg. Section 1.861-9(e)

Special Rules—Continued

Transaction	Special rule for allocation and apportionment of taxes
Disregarded re-attribution payments	▶ Payee—Assigned to the same groupings as the associated re-attribution amounts ▶ Payor—Payor's gross income is not reduced by disregarded re-attribution payments for purposes of allocating and apportioning payor's foreign taxes
Disregarded payments in excess of reattribution payments	▶ Treated as a contribution and assigned to the residual grouping if made from one taxable unit to a taxable unit owned by the first tested unit ▶ If not a contribution, then treated as a remittance and assigned based on the groupings to which the assets of the payor are assigned under the rules of Treas. Reg. Section 1.861-9
Disregarded remittances	Assigned based on the groupings to which the assets of the payor are assigned under the rules of Treas. Reg. Section 1.861-9

Disregarded Reattribution Payment

- ▶ \$100× passive foreign personal holding company income (FPHCI).
- ▶ \$300× gross tested income.
- ▶ If regarded, the \$1,000× payment would be allocated ratably to FPHCI and tested income.
- ▶ No Country A taxes.
- ▶ \$1000× foreign gross income.
- ▶ \$100× Country B taxes.



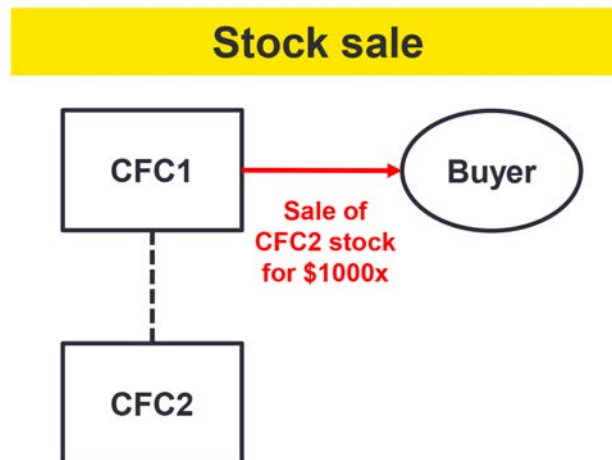
Reattribution

- ▶ Payor taxes are allocated without regard to reattribution of gross income.
- ▶ Payee taxes are allocated **after** \$400x of gross income is reattributed to Payee (\$100x of FPHCI, \$300x of tested income).
- ▶ Excess of disregarded payment over reattributed income (\$600x) is treated as a contribution from Payor to Payee.

Allocation of Foreign Taxes

- ▶ Payee
 - ▶ \$10x—passive FPHCI
 - ▶ \$30x—tested income
 - ▶ \$60x—residual (no credits)

Stock Sale and Partnership Distributions



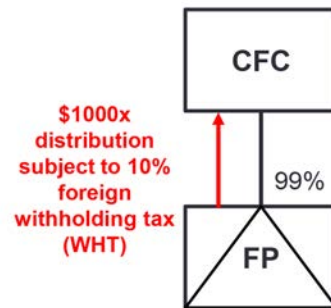
Facts

- ▶ Foreign: \$1000x capital gain
- ▶ U.S.: \$400x dividend (Section 964(e)), \$100x capital gain
- ▶ CFC2 tax book value: 100% general category tested income group
- ▶ \$100x foreign tax

Allocation of Foreign Taxes

- ▶ \$40x general category
- ▶ \$50x general category tested income group
- ▶ \$10x passive category

Partnership distribution



Facts

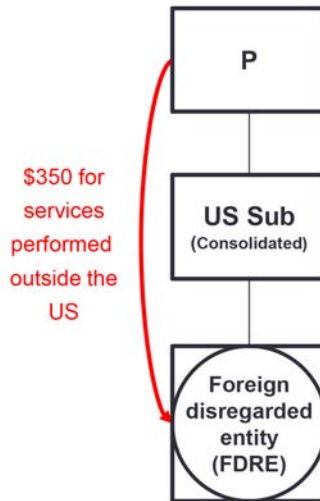
- ▶ Foreign: \$1000× dividend
- ▶ U.S.: \$800× return of basis, \$200× capital gain
- ▶ Tax book value of FP assets: 100% general category tested income group
- ▶ \$100× WHT

Allocation of foreign taxes

- ▶ \$80× general category tested income group
- ▶ \$20× passive category

Branch Reattribution in Consolidated Groups

- ▶ Prior to redetermination P has:
 - ▶ \$400 U.S. source income general category
 - ▶ \$600 foreign source income passive category
 - ▶ \$350 services payment that would be allocated to general if regarded



Consolidated Return

- ▶ \$350 is an intercompany transaction between P and U.S. Sub
- ▶ Timing, character and source of U.S. Sub's income and P's deduction are redetermined as if divisions of one corporation

Reattribution

- ▶ P's \$350 of foreign source income is redetermined to be U.S. source branch category

Polling Question

What rule in Prop. Reg. Section 1.861-20 would most impact your company?

- A. Partnership distributions or dispositions of a partnership interest
 - B. Disregarded remittances (dividends)
 - C. Disregarded reattribution payments
 - D. Not sure
 - E. Does not apply (EY, faculty, other)
-

Creditability of Foreign Taxes

Proposed Section 901 Creditable Foreign Taxes

Current Reg. Section 1.901-2

- ▶ A foreign levy is a foreign income tax creditable under Section 901 if:
 - ▶ It is a **tax**;
 - ▶ The **predominant character** of that tax is that of an income tax in the U.S. sense; met if the foreign tax is:
 - ▶ Likely to reach net gain in the normal circumstances in which it applies (**net gain requirement**)

- ▶ Realization requirement
- ▶ Gross receipts requirement
- ▶ Net income requirement
- ▶ **Not a soak-up tax**

Prop. Reg. Section 1.901-2

- ▶ **Would revise the definition of a foreign income tax by:**
 - ▶ Modifying the realization, gross receipts and net income requirements; and
 - ▶ Establishing a **jurisdictional nexus requirement** between the income subject to tax and the foreign jurisdiction (which would apply foreign taxes under Sections 901 and 903).
 - ▶ **Would also:**
 - ▶ Examine the **terms of foreign tax law** instead of application of tax in practice (reducing need for empirical analysis); and
 - ▶ Modify the rules for determining the **amount of foreign tax paid** and eligible for credit.
-

Jurisdictional Nexus Requirements

▶ **Response to Foreign Countries Adopting Novel Extraterritorial Taxes (e.g., digital services taxes)**

Non-residents			Residents
Activities nexus	Property situs nexus	Sourcing nexus	Arm's length
▶ Income taxable in foreign country limited to income attributable to non-resident's activities within foreign country (including functions, assets and risks located in foreign country); ▶ Without taking into account as a significant factor certain destination-based criteria (e.g., location of customers and users)	▶ Income from sales or dispositions of property taxable on basis of situs of property include only gains attributable to disposition of real property located in foreign country; ▶ Or movable property forming part of business property of taxable presence in foreign country; ▶ Including interests in entity attributable to property	▶ Income (other than income from sales or dispositions of property) taxable in foreign country on a source-basis is taxed based on foreign sourcing rules that are reasonably similar to those of U.S. ▶ For instance, income from services must be sourced based on where the services are performed	▶ Foreign tax imposed on residents of the foreign country may be imposed on worldwide income, but must provide that any allocation made pursuant to the foreign country's transfer pricing rules is determined under arm's length principles; ▶ Without taking into account as a significant factor certain destination based criteria

Proposed Section 903 “in Lieu of” Taxes

Revised Substitution Requirement

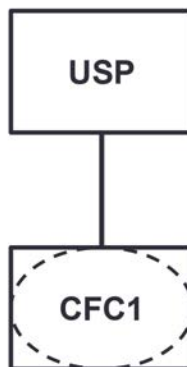
- ▶ The foreign tax analyzed under Section 903 (tested foreign tax) satisfies the substitution requirement only if, based on foreign law, **four tests** are met:
 - (1) A foreign net income tax must be generally imposed by the same foreign country (**generally-imposed net income tax**);
 - (2) Neither the generally-imposed net income tax nor any other separate foreign net income tax imposed by same foreign country is imposed with respect to any portion of the income to which the amounts that form the base of the tested foreign tax relate (**excluded income**);
 - (3) **“But for”** the tested foreign tax, the generally-imposed net income tax would be imposed on the excluded income; and
 - (4) If the generally-imposed net income tax were applied to excluded income, the generally-imposed net income tax would either continue to qualify as a foreign net income tax or would itself constitute a separate levy that is a foreign net income tax.
- ▶ The tested foreign tax, by virtue of the substitution requirement, **must also satisfy the jurisdictional nexus requirements**.
- ▶ Special rule for **cross-border, source-based withholding taxes** in order to clarify the application of the substitution requirement to such taxes.

Polling Question

To what extent would the new jurisdictional nexus requirements, if finalized, impact the amount of foreign tax credits that your company could claim?

- A. Significantly
 - B. Moderately
 - C. Little to no effect
 - D. Not sure
 - E. Does not apply (EY, faculty, other)
-

Allocating Taxes With Respect to Covered Events



Facts

- ▶ CFC1 checks the box to be disregarded from USP on 4/1
- ▶ CFC1 (now a DRE) accrues \$100x of foreign taxes on 12/31

Allocation of Foreign Taxes

- ▶ \$75x foreign taxes to USP
- ▶ \$25x foreign taxes to CFC1
- ▶ Consider Section 901 vs 960
- ▶ **2020 Proposed Regulations expand circumstances in which foreign taxes are allocated**
 - ▶ *See e.g.*, Treas. Reg. Section 1.9012(f)(4)(ii) (allocating taxes between transferor and transferee upon a transfer of a disregarded entity).
- ▶ **Proposed allocation rule** applies to a partnership, disregarded entity, or corporation that undergoes one or more “covered events.”
- ▶ **Covered events:**
 - ▶ Partnership termination;
 - ▶ Transfer of a disregarded entity;
 - ▶ Change in the entity classification of a disregarded entity or corporation; or
 - ▶ Certain changes in a partner’s interest in a partnership
- ▶ Foreign **withholding taxes** are not subject to the allocation rules
- ▶ Proposed rules for allocating foreign taxes in connection with **Section 336(e) or 338 elections**

Proposed Section 901 Regulations on Crediting and Deducting Foreign Income Taxes**Rules Addressing Changes From Crediting to Deducting (and Vice Versa) Foreign Income Taxes**

- ▶ Require that an **election to claim a credit (or change from deduction to credit)** for foreign income taxes paid or accrued in a year be made before expiration of the 10-year refund limitation period under Section 6511(d)(3).
- ▶ Require **choice to deduct (or change from credit to deduction)** for foreign income taxes paid or accrued in a year be made before expiration of 3-year refund limitation period under Section 6511(a).
 - ▶ Preamble notes rule eliminates current mismatch where a taxpayer who makes timely election to change from crediting to deducting may be time-barred from obtaining a refund of U.S. tax for the deduction year
- ▶ But allow a taxpayer claiming foreign tax credits (FTCs) for the year to also deduct additional taxes finally determined and paid as a result of foreign tax re-determination in that year, if such taxes relate back to prior year in which taxpayer deducted foreign income taxes

Accrual of Foreign Taxes**Proposed Section 905 Regulations****Rules for Accrual-Method Taxpayers**

- ▶ **All events test** under Section 461 applies to determine when foreign income taxes accrue for FTC purposes, and incorporate **“relation-back doctrine”** to treat foreign income taxes as accruing at end of year to which tax relates once all events test is met.
- ▶ A **52-53 week U.S. tax year** that ends in same calendar month as foreign tax year (and closes within six days of close of foreign tax year) is treated as ending

on last day of the foreign tax year for purposes of determining amount of foreign taxes that accrue during the 52–53 week U.S. tax year.

- ▶ **Contested foreign income taxes** do not accrue until contest is resolved, even if taxpayer remits the contested taxes in an earlier year.
 - ▶ Would withdraw revenue rulings that allow credit for portion of contested taxes that has been paid but remains contested
 - ▶ But allow an election to claim a “provisional credit” for portion of taxes paid even though contest is not resolved, subject to requirement for IRS to examine whether taxpayer exhausted all effective and practical remedies and notifying IRS of when contest concludes.

Proposed Section 905 Regulations on When Foreign Income Taxes Accrue

Address Instances in Which an Improper Method of Accounting for Accruing Foreign Income Taxes Has Been Established

- ▶ Require taxpayers to file Form 3115 to obtain permission to change from improper method to proper method of accruing foreign income taxes.
- ▶ Provide a “modified cut-off” approach for adjusting foreign income taxes that can be claimed as a credit or deduction in year of change from improper to proper method.

Treat a Change From Deducting to Crediting Foreign Income Taxes (and Vice Versa) as a Foreign Tax Redetermination Under Section 905(c)

- ▶ Would allow the IRS to assess and collect any tax deficiencies in intervening years resulting from change in election, even if three-year limitation period has expired under Section 6501(a) (*e.g.*, change to credit foreign income taxes previously deducted and increased a net operating loss (NOL) claimed in an intervening year).

Polling Question

What impact would the expanded scope of foreign tax redeterminations have on your company’s compliance burden?

- A. Significant impact
- B. Moderate impact
- C. Little to no impact
- D. Not sure
- E. Does not apply (EY, faculty, other)

Miscellaneous Topics

Miscellaneous Topics

- (1) Disallowance of FTC or deduction under Section 245A(d)
- (2) Interest expense allocation and apportionment

Prop. Reg. Section 1.245A(d)-1

No credit or deduction would be allowed for foreign income taxes attributable to “specified distributions” or “specified earnings and profits”

- ▶ **Specified distributions** are distributions to a domestic corporation that are:
 - ▶ Dividends for which a Section 245A dividends received deduction is allowed
 - ▶ Hybrid dividends
 - ▶ Distributions of Section 245A(d) previously taxed earnings and profits (PTEP) (*i.e.*, hybrid dividend or Section 1248/964(e) PTEP)
 - ▶ **Specified earnings and profits** of a foreign corporation are those that, if distributed, would give rise to a specified distribution if distributed
 - ▶ Foreign income taxes are attributed to specified distributions and specified earnings and profits under Treas. Reg. Section 1.861-20
 - ▶ New anti-avoidance rule would treat foreign taxes as attributable to a specified distribution or specified earnings and profits if a transaction or series of transactions is undertaken with a principal purpose of avoiding Section 245A(d) rules
-

Polling Question

To what extent would the proposed rule regarding the denial of foreign tax credits under Section 245A(d) negatively affect your company’s creditable foreign taxes?

- A. Significantly
 - B. Moderately
 - C. Little to no effect
 - D. Not sure
 - E. Does not apply (EY, faculty, other)
-

Interest Expense and Apportionment

Special Rule for Foreign Banking Branches

- ▶ Foreign banking branch interest expense reflected on a foreign banking branch’s books and records, conformed to U.S. federal income tax principles, would be directly allocated to the foreign banking branch income of that branch to the extent of such income.
 - ▶ A foreign banking branch is a foreign branch owned by a bank.
 - ▶ Foreign banking branch interest expense is regarded interest expense recorded on the separate books and records of a foreign banking branch.
 - ▶ Foreign banking branch income is gross income assigned to the foreign branch category that is attributable to a foreign banking branch (including treaty resourced income).
- ▶ Similarly to other direct allocation provisions, assets of a foreign banking branch generating foreign banking branch income to which foreign banking branch interest expense is directly allocated under this special rule generally are not taken into account under the general asset method of Treas. Reg. Section 1.861-9T.
- ▶ Comments requested on whether disregarded interest payments between foreign branches and between a foreign branch and a foreign branch owner are needed and whether comparative leverage ratio rules are necessary.

Interest Expense Allocation and Apportionment

Election to Capitalize R&E and Advertising Expenditures

- ▶ R&E expenditures.
 - ▶ **Apportioned** among statutory and residual groupings based on SIC code of R&E expense.
 - ▶ Applicability: effectively applicable only until 2022, at which time Section 174 *requires* capitalization.
- ▶ Advertising expenditures.
 - ▶ **Apportioned** among statutory and residual groupings based on income **expected** to be generated from **product sales or services** to persons to whom advertising is directed.

CFC Netting

- ▶ Certain CFC-to-CFC debt no longer treated as related group indebtedness (RGI), for CFC netting calculation purposes.
- ▶ Also not treated as RGI for purposes of determining the foreign base period ratio, including taxable years that end before **2020 Proposed Regulations are filed with the Federal Register**

Applicability Dates

Regulation	Effective dates
Proposed modifications to Treas. Reg. Section 1.861–20	Tax years that begin after December 31, 2019, and end on or after 2020 Proposed Regulations are filed with the Federal Register
Proposed regulations under Sections 901 and 903 on creditability of foreign income taxes	Foreign taxes paid or accrued in tax years beginning on or after rule is finalized
Proposed modifications to technical taxpayer rules under Section 901	Foreign taxes paid or accrued in tax years beginning on or after rule is finalized
Proposed regulations under Sections 901 and 905 related to when a foreign income tax is accrued and changes from claiming credits to deductions (or vice-versa) for foreign income taxes paid or accrued	Foreign income taxes paid or accrued in tax years beginning after the rule is finalized
Prop. Reg. Section 1.245A(d)–1, Section 245A(d) disallowance of certain credits and deductions for foreign income taxes	Tax years of a foreign corporation that begins after December 31, 2019, and end on or after 2020 Proposed Regulations are filed with the Federal Register
Prop Reg. Section 1.861–3, source of subpart F, GILTI and certain inclusions with respect to passive foreign investment companies (and associated Section 78 dividends)	Tax years ending on or after 2020 Proposed Regulations are filed with the Federal Register
Proposed revisions to Treas. Reg. Section 1.367(b)–7	Tax years of a foreign corporation ending on or after 2020 Proposed Regulations are filed with the Federal Register

Applicability Dates—Continued

Regulation	Effective dates
Prop. Reg. Section 1.904(f)–12(j)(5), carryback of post-2017 NOLs to a pre-2018 tax year	Applies to carrybacks of NOLs incurred in tax years beginning on or after January 1, 2018
Prop. Reg. Section 1.861–9(k), election to capitalize R&E or advertising expenses for purposes of apportioning interest expenses	Tax years beginning on or after the rule is finalized
Prop. Reg. Section 1.861–10(g), direct allocation of interest expense for foreign bank branches	Tax years beginning on or after the rule is finalized
Revisions to financial services category income rules under Treas. Reg. Section 1.904–4(e)	Tax years beginning on or after the rules are finalized
Modifications to Treas. Reg. Section 1.904–4(f) foreign branch category income definition	Tax years beginning after December 31, 2019, and ending on or after 2020 Proposed Regulations are filed with the Federal Register
Prop. Reg. Section 1.250(b)–5(c)(5), clarification of “electronically supplied services” under Section 250	Proposed to apply to tax years beginning on or after January 1, 2021 (consistent with the Section 250 regulations generally)

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Upcoming Thought Center webcasts

<https://taxnews.ey.com/news/2020-0001-upcoming-tax-webcasts>.

- **Tuesday, October 20:** State & local tax developments in the real estate industry: Responses to COVID–19-related issues and state legislative updates
- **Wednesday, October 21:** Latin America “nearshoring” webcast series: Panama session
- **Friday, October 23:** Tax in the time of COVID–19: update on legislative, economic, regulatory and IRS developments (webcast series)
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Question 16: December 13, 2019 Webcast Slides

Final and Proposed Foreign Tax Credit Regulations

December 13, 2019

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Today's Agenda

1. Overview
2. Final regulations
3. Proposed regulations
4. Final and proposed § 905(c) regulations
5. One-minute recap

Overview

Foreign Tax Credit (FTC) Regulations

- ▶ Final regulations are generally consistent with the proposed regulations published on November 28, 2018, with certain modifications.
- ▶ Proposed regulations address the allocation and apportionment of expenses and current year foreign taxes.
- ▶ Final and proposed regulations provide guidance for applying modified § 905(c).

Final FTC Regulations

Changes in Final Regulations

Additions	Changes not made
▶ Safe harbors for transitioning pre-2018 FTC carryforwards to post-2017 tax years ▶ Foreign branch category ▶ Exclude transfers of certain intangible property (IP) by a foreign branch to its foreign branch owner from the IP re-allocation rule ▶ Inventory and non-inventory disregarded property sales, including re-allocation based on hypothetical depreciation/amortization ▶ Reduce previously taxed earnings and profits (PTEP) groups to 10 ▶ Various changes to interest expense apportionment	▶ No FTC for § 956 inclusions ▶ § 78 gross-up for § 960(b) taxes ▶ Foreign taxes paid or accrued on base differences allocated to foreign branch or residual category ▶ No carryover of foreign taxes paid or accrued by a controlled foreign corporation (CFC) ▶ Continue to deliberate the availability of a § 245A deduction to a CFC ▶ Must compute separate limitation loss for § 951A (global intangible low-taxed income (GILTI)) category ▶ Must allocate and apportion expenses to § 951A category

Pre-2018 FTC and Loss Accounts

- ▶ Transition rules for pre-2018 foreign tax and loss carryforwards (OFL, SLL, ODL, NOL*)
 - ▶ **General rule**
 - ▶ General category pre-2018 foreign tax and loss carryforwards remain general
 - ▶ **Elective reconstruction**
 - ▶ General category pre-2018 foreign tax and loss carryforwards are allocated between general category and foreign branch category as if the foreign branch category had existed in pre-2018 tax years (including re-allocation rules)

* OFL = overall foreign loss; SLL = separate limitation loss; ODL = overall domestic loss; NOL = net operating loss

► **Elective safe harbor #1**

- General category pre-2018 foreign tax carryforward for each pre-2018 taxable year is allocated between the general category and foreign branch category using the following ratio:

$$\text{Unused pre-2018 foreign taxes} \times \frac{\text{Taxes paid/accrued by foreign branches}}{\text{All general basket taxes paid/accrued}}$$

- When foreign taxes are allocated under the reconstruction method or safe harbor, pre-2018 SLL or ODL accounts may be allocated ratably between the general and branch baskets using the same ratio

► **Elective safe harbor #2**

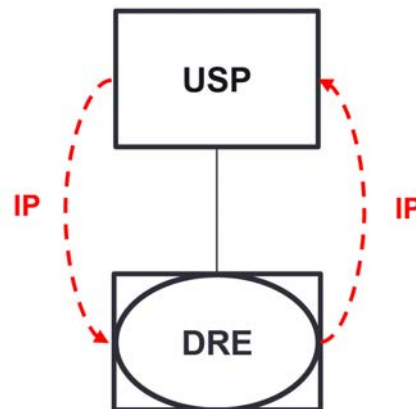
- Recapture or utilize pre-2018 loss carryforwards (SLL, OFL, or NOL) by recharacterizing or offsetting the first available income in the post-2017 general or foreign branch category

Adjustments to Foreign Branch Income

Intangible Property Transfers

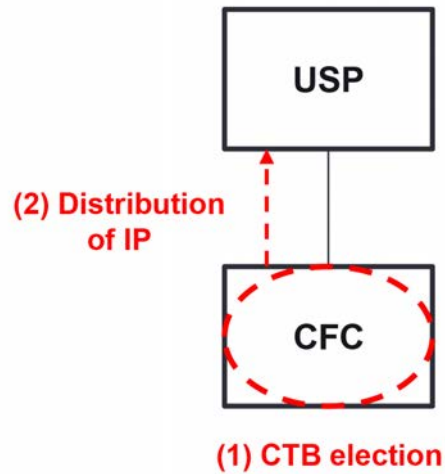
General Rule

- Foreign branch gross income is increased or decreased to account for transfers of intangible property described in § 367(d)(4) to (or from) a foreign branch and a foreign branch owner
- Treated as having sold the property for annual payment contingent on the productivity of the property as determined under 367(d)
- No “netting” of offsetting amounts



Exceptions

- Adjustments required only for transfers occurring on or after December 7, 2018 (date proposed regulations were released)
- Adjustments not required for intangible property considered owned transitorily by a foreign branch



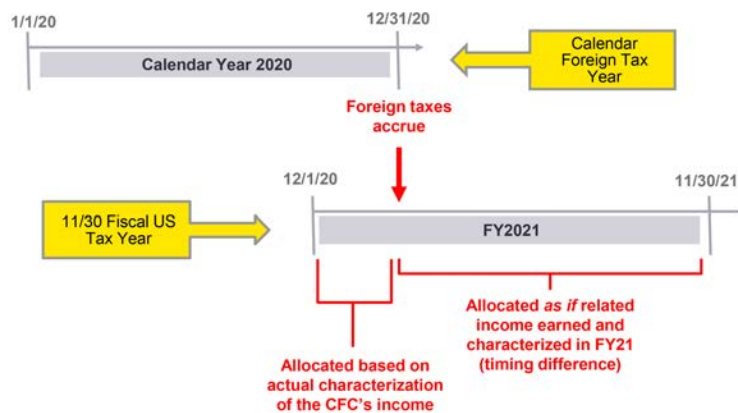
Polling Question

Will the new exceptions to the intangible property rule apply to your company?

- A. Yes, because we transferred IP prior to 12/7/18
- B. Yes, because we have had or will have transitory branch ownership
- C. No
- D. Don't know
- E. Does not apply (EY, faculty, other)

Foreign Taxes and Timing Differences

If income is not recognized for U.S. purposes in the current year, tax is allocated and apportioned as if the income were recognized in the current year.



Proposed FTC Regulations

Research and Experimental (R&E) Expenditures

Optional Gross Income Method Eliminated

Modified mandatory gross receipts-based apportionment:

Step 1: R&E expenditures are allocated to a taxpayer's "gross intangible income" in the relevant SIC code category as a class

- ▶ Intangible income is all gross income attributable to intangible property including sales, services, and royalties (including §367(d) inclusions), but does not include dividends or other inclusions with respect to stock.
- ▶ **So no R&E expenditures are allocated to a taxpayer's GILTI or subpart F income inclusion.**

Step 2: Allocated R&E expenditures are then apportioned to the statutory and residual groupings within the class of gross income in a two-step process:

- ▶ Exclusive geographic apportionment applies to 50% of R&E.
 - ▶ Remaining R&E expenditures are apportioned to statutory (§904 baskets) and residual (U.S.-source) groupings based on gross receipts (including those of benefiting controlled and uncontrolled parties) related to the taxpayer's gross intangible income.
-

R&E Expenditures

- ▶ Effective for taxable years beginning after December 31, 2019.
 - ▶ Taxpayers may rely on the proposed regulations for taxable years beginning after December 31, 2017.
-

Polling Question

Does your company currently allocate R&E expenditures to GILTI or subpart F inclusions?

- A. Yes
 - B. No
 - C. Don't know
 - D. Does not apply (EY, faculty, other)
-

Stewardship Expenses

Definition of Stewardship Expenses Retained

Step 1: Allocate to dividends and inclusions received or accrued (or to be received or accrued) from related corporations

- ▶ Stewardship expenses allocated to GILTI and subpart F inclusions, as well as §78 gross-up amounts

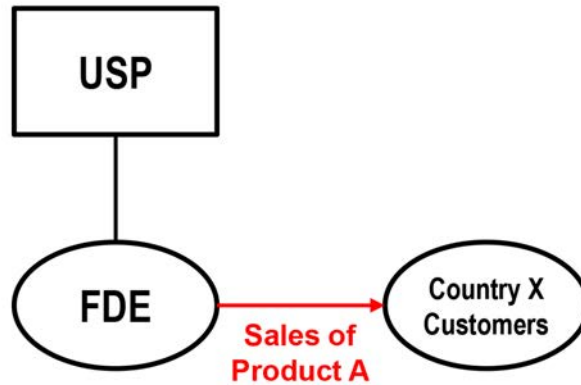
Step 2: Apportion based on relative values of taxpayer's stock assets in the same manner that is applied for allocating and apportioning interest expense

Applicability: generally applies to taxable years that end on or after the date proposed regs are filed in the federal register

It is now more important to properly identify what activities and costs constitute stewardship

Litigation Damages Awards, Prejudgment Interest, and Settlement Payments

Facts



- ▶ In 2015, FDE sells Product A in Country X generating foreign source general category income.
- ▶ In 2019, FDE makes a deductible payment for damages caused by Product A (sold in 2015) in Country X.
- ▶ In 2019, FDE sells Product A to customers in Country X generating U.S. source foreign branch category income.

Expected Result

The deduction is allocated to U.S. source foreign branch category income, consistent with the sales of Product A in 2019 (i.e., rather than the 2015 sales).

Polling Question

What impact would the proposed stewardship rules have on your company's foreign source income calculation?

- A. Increase foreign source income
 - B. Decrease foreign source income
 - C. No impact on foreign source income
 - D. Don't know
 - E. Does not apply (EY, faculty, other)
-

Interest Expense Allocation And Apportionment

Guaranteed Payments for the Use of Capital

- ▶ Treated as interest expense for allocation and apportionment purposes and as "interest equivalents" that are foreign personal holding company income under §954(c)

Partnership to Partner Loans

- ▶ Harmonizes the treatment of loans made by a partnership to its partner(s) with the treatment of downstream partnership loans
- ▶ Requires the matching of interest income to the statutory and residual categories to which the interest expense is attributable

Assets Funded by Disallowed Interest

Assets are only connected with capitalized, deferred or disallowed interest if using debt proceeds in the acquisition causes interest to be capitalized, deferred or disallowed

- ▶ § 163(l) disallows interest because of ability to settle in stock; not use of debt

Polling Question

Which proposed expense allocation and apportionment rules would have the biggest impact on your company?

- A. R&E expenditures
- B. Stewardship expenses
- C. Litigation damages awards, prejudgment interest, and settlement payments
- D. Other
- E. Do not expect any impact as a result of the proposed regulations
- F. Does not apply (EY, faculty, other).

Allocating and Apportioning Current Year Foreign Taxes

Step 1: Assign the taxpayer's foreign gross income to statutory and residual groupings

- ▶ Amount determined under foreign law but characterized under U.S. law
- ▶ If a corresponding U.S. item exists in same tax year, foreign gross income assigned to same grouping as corresponding U.S. item
 - ▶ Corresponding U.S. item can be of a different amount
 - ▶ Special rules apply if the corresponding U.S. item is zero or less
- ▶ If a corresponding U.S. item not recognized, or recognized in different U.S. tax year, foreign gross income assigned *as if* the event resulted in the recognition of U.S. gross income in the year the tax is paid
- ▶ If a corresponding U.S. item is recognized but excluded from U.S. gross income, foreign source gross income is assigned *as if* the foreign gross income is includible in U.S. gross income
- ▶ If a current year foreign tax is paid or accrued with respect to a base difference, the foreign tax is assigned to the residual grouping

Step 2: Allocate and apportion the deductions allowed under foreign law to the foreign gross income in the statutory and residual groupings

Step 3: Allocate and apportion foreign income tax by reference to the foreign taxable income in the statutory and residual groupings

Exclusive List of Base Differences

1. Death benefits described in § 101
2. Gifts and inheritances described in § 102
3. Contributions to capital described in § 118

4. Receipt of money or other property in exchange for stock described in § 1032 (including transfers described in § 351(a))
 5. Receipt of money or other property in exchange for a partnership interest described in § 721
 6. Return of basis distribution under § 301(c)(2)
 7. Distribution to a partner described in § 733
- If paid by a U.S. taxpayer, foreign taxes are assigned to the foreign branch category
 - If paid by a CFC, foreign taxes are assigned to the residual category and no credit is allowed

Polling Question

Does your company anticipate incurring foreign taxes associated with base differences?

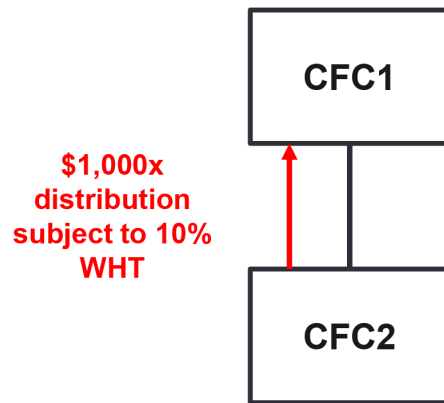
- A. Yes
 - B. No
 - C. Don't know
 - D. Does not apply (EY, faculty, other)
-

Special Rules

Transaction	Special rule for allocation and apportionment of taxes
Distributions that are recognized for U.S. and foreign tax purposes	Assigned to the same category as the corresponding U.S. dividend and capital gain amounts (to the extent thereof), with any foreign distribution that corresponds to a U.S. return of capital being treated as a base difference
Distributions that are recognized <i>only</i> for foreign tax purposes	Assigned <i>as if</i> a distribution were made for U.S. purposes in the year the foreign tax is paid
Disregarded payments by a foreign branch	Deemed to be made ratably out of the foreign branch's accumulated after-tax income, which is allocated by reference to the relative tax book values of the branch's assets (including stock)
Disregarded payments by an foreign branch owner to a foreign branch	With one exception, assigned to the residual grouping (<i>i.e.</i> , branch category for U.S. owners, residual income for CFC owners)
Taxes paid by a U.S. shareholder on income from reverse hybrids	Allocated and apportioned by reference to the reverse hybrid's foreign income; however, Prop. Reg. § 1.904-6(f) assigns to the GILTI basket based on the GILTI inclusion percentage
Gain on the sale of a disregarded entity (DRE)	Assigned <i>as if</i> the DRE's assets were sold for foreign tax purposes (<i>e.g.</i> , by reference to the DRE's <i>inside</i> asset basis under foreign law)

Actual Distributions and Reverse Hybrids

Actual Distributions



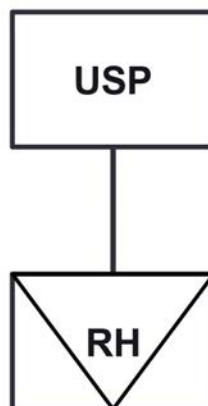
Facts

- ▶ Foreign: \$1000× dividend
- ▶ U.S.: \$400× dividend, \$500 × return of capital, \$100 × capital gain
- ▶ \$100× foreign withholding tax (WHT)

Allocation of Foreign Taxes

- ▶ \$40× general category
- ▶ \$50× residual income grouping (no credit)
- ▶ \$10× passive category

Reverse Hybrid



Facts

- ▶ \$1000× tested income
- ▶ \$100× foreign taxes
- ▶ 60% § 951A inclusion percentage

Allocation of Foreign Taxes

- ▶ \$60×—§ 951A category
- ▶ \$40×—general category?

Disregarded Payments

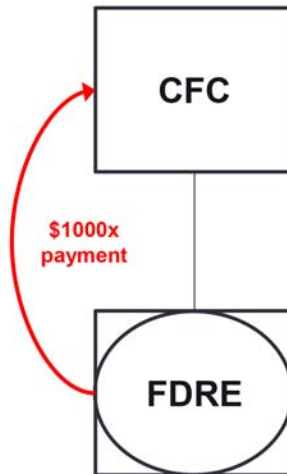
Taxes Imposed on Disregarded Payments Generally Governed by One of Three Special Rules

- A. Disregarded payments by a foreign branch
- B. Disregarded payments by a foreign branch owner
- C. Disregarded payments in exchange for property

Disregarded Payments by a Foreign Branch

-
- ▶ **Scope:** An item of foreign gross income that a taxpayer includes by reason of the receipt of a disregarded payment made by a foreign DRE or other foreign branch.
 - ▶ **Assignment:** Assigned to a grouping by deeming the payment to be made ratably out of all of the **accumulated after-tax income** of the foreign branch.
 - ▶ Accumulated after-tax income **deemed** to have arisen in groupings in the same ratio as tax book value of the **assets** of the branch in the groupings.
 - ▶ Assets include stock held by foreign branch.
 - ▶ Payment cannot be made with a principal purpose of avoiding an operative section or result in a “material distortion.”

Disregarded Payments by a Foreign Branch



Facts

- ▶ \$1,000× payment
- ▶ \$100× foreign taxes
- ▶ FDRE assets—60% general/40% passive

Allocation of Foreign Taxes

- ▶ \$60×—general category
- ▶ \$40×—passive category

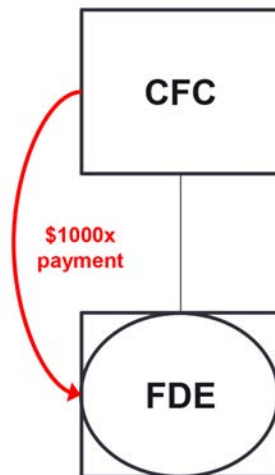
Disregarded Payments by a Foreign Branch Owner

- ▶ **Scope:** An item of foreign gross income that a taxpayer includes by reason of the receipt of a disregarded payment made by a foreign branch owner to a foreign branch (not including disregarded payments in exchange for property).
- ▶ **Assignment:** Residual grouping
 - ▶ If foreign branch owner is a U.S. person, taxes are assigned to foreign branch category
 - ▶ If foreign branch owner is a CFC, taxes are assigned to residual income category (no credits)
- ▶ **Exception:** Does not apply to disregarded sales or exchanges of property.

Disregarded Sales or Exchanges of Property

- ▶ **Scope:** An item of foreign gross income attributable to gain recognized under foreign law by reason of a disregarded payment received in exchange for property.
- ▶ **Assignment:** Characterized and assigned to the grouping to which the corresponding U.S. item would be assigned if the event giving rise to the foreign gross income resulted in the recognition of gross income or loss for U.S. tax purposes in that U.S. taxable year.

Disregarded Payments by a Foreign Branch Owner



Scenario 1

- ▶ \$1,000× payment for **property**
- ▶ If regarded, the property sale would produce general category gross tested income
- ▶ \$100× foreign taxes
- ▶ Foreign taxes are allocated to general category tested income

Scenario 2

- ▶ \$1,000× payment for services
- ▶ \$100× foreign taxes
- ▶ Foreign taxes are allocated to the residual category (no credit)

Polling Question

Which of the special rules for allocating and apportioning current year foreign taxes would most impact your company?

- A. Disregarded payments by foreign branches
 - B. Disregarded payments by a foreign branch owner
 - C. Foreign taxes paid on inclusions from reverse hybrids
 - D. Other
 - E. Don't know
 - F. Does not apply (EY, faculty, other)
-

Final and Proposed § 905(c) Regulations

Final § 905(c) Regulations

- ▶ **Finalizes provisions from 2007 temporary regulations:**
 - ▶ Definition of foreign tax redetermination

- ▶ Change in foreign tax liability and certain other changes that affect FTC
- ▶ Includes:
 - ▶ Refunds
 - ▶ Corrections or adjustments to reflect final liability
 - ▶ Additional payments, including contested taxes
 - ▶ Taxes not paid within *24 months* of close of taxable year
- ▶ Currency translation rules
 - ▶ 24-month change, inflationary currencies, accrued taxes translated on date of payment, and §988 gain/loss on functional currency change

Proposed §905(c) Regulations

- ▶ **Re-proposes and modifies provisions from 2007 temporary regulations**
 - ▶ **Foreign tax redetermination**
 - ▶ Adds changes that may affect U.S. tax liability
 - ▶ Amount of foreign tax credit, distributions and inclusions, high tax exception
 - ▶ **Repeal of §902—no prospective pooling adjustments**
 - ▶ Requires adjustments to E&P, taxable income, and inclusions for year to which foreign taxes relate *and* any affected subsequent year
 - ▶ Even if no change to originally claimed FTC
 - ▶ Same rule for post-2018 redeterminations for pre-2017 years
 - ▶ **Successor rule**
 - ▶ Redetermination made as if it occurred in hands of original taxpayer
 - ▶ **Notification requirements**
 - ▶ Incorporates and modifies notification requirements in 2007 temporary regulations
 - ▶ Generally satisfied by submitting amended return, Form 1116/1118, and statement
- Exception:** No change to U.S. tax due—adjust carryovers and attach statement to return for year in which redetermination occurs.

Polling Question

On average, how often do you anticipate filing amended returns by reason of §905(c)?

- A. Multiple times a year
- B. Once a year
- C. Once every 2+ years
- D. Do not expect to file amended returns by reason of §905(c)
- E. Don't know
- F. Does not apply (EY, faculty, other)

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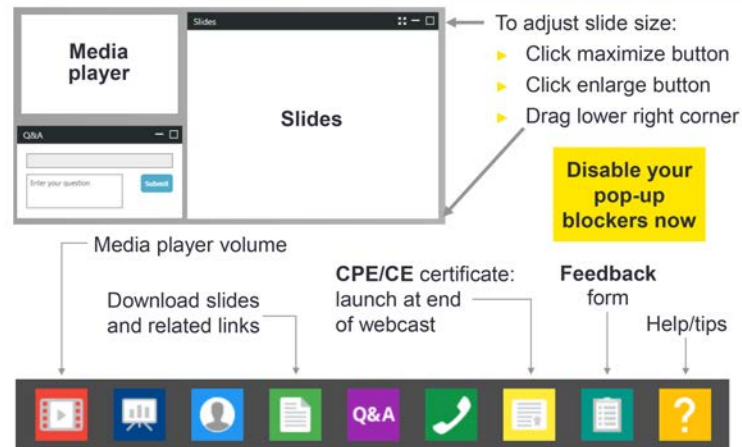
Upcoming Thought Center Webcasts

taxnews.ey.com/news/2019-0001-upcoming-tax-webcasts

- ▶ **Tuesday, December 17:** Accounting for income taxes: a quarterly perspective
- ▶ **Wednesday, December 18:** Year-end planning for alternative asset managers: reflecting on year one of tax reform reporting
- ▶ **Thursday, January 9:** Research credit: recent federal cases point to a challenging examination environment (Available soon)
- ▶ **Thursday, January 16:** Planning implications for 2019 returns (Available soon)

Thanks for Participating.

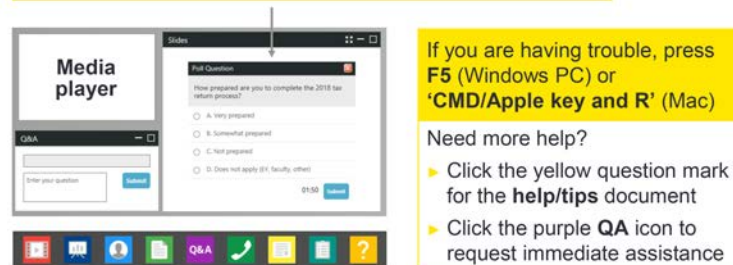
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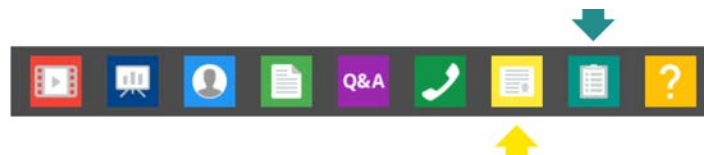


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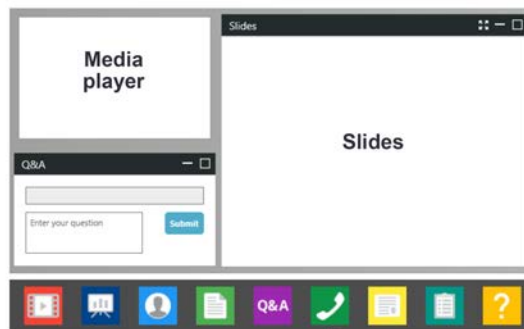
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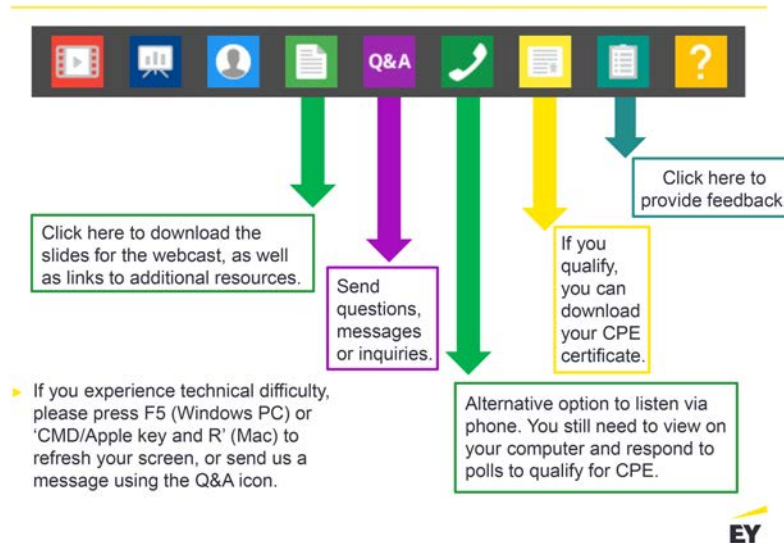
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Question 16: June 21, 2019 Webcast Slides**New Treasury Regulations Concerning Subpart F Income, Global Intangible Low-Taxed Income (GILTI) Inclusions, and the Dividends Received Deduction**

June 21, 2019

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Today's Moderator

Craig Hillier
EY Americas Director of
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Today's Ernst & Young LLP Presenters

Marjorie Rollinson	Anna Voortman	Martin Milner	Jose Murillo
National Tax	National Tax	National Tax	National Tax
Department—	Department	Department	Department—
Deputy Leader	International Tax	International Tax	Director of
	Services	Services	International Tax
			Services

Today's Agenda

-
- 1. Background**
 - 2. Overview of Temporary Section 245A Regulations**
 - 3. Overview of Final and Proposed GILTI Regulations**
 - 4. One-Minute Recap**
-

Polling Question

Has the late release of final regulations delayed your compliance process?

- A. Yes
- B. No
- C. Does not apply (EY, faculty, other)

Section 245A Temporary Regulations

Overview of Section 245A and temporary regulations

-
- ▶ Section 245A provides a 100% deduction (DRD) on the foreign-source portion of dividends received by a U.S. shareholder from a specified 10%-owned foreign corporation (SFC).
 - ▶ Section 245A temporary regulations deny (in whole or in part) the Section 245A DRD for the “ineligible amount” of any dividend, which can be created by,
 - ▶ Certain gain from property dispositions recognized by an SFC (extraordinary disposition) during its GILTI “gap period” on a date on which it was a controlled foreign corporation (CFC), or
 - ▶ Certain changes in controlling Section 245A shareholder’s ownership in a CFC (extraordinary reductions) following which the subpart F income or tested income of the CFC is not taken into account by a U.S. person.
 - ▶ Rules apply to dividends (including under Sections 964(e) and 1248(a)) made **after December 31, 2017**.
 - ▶ *De minimis* rule applies in certain cases.
-

Extraordinary Dispositions

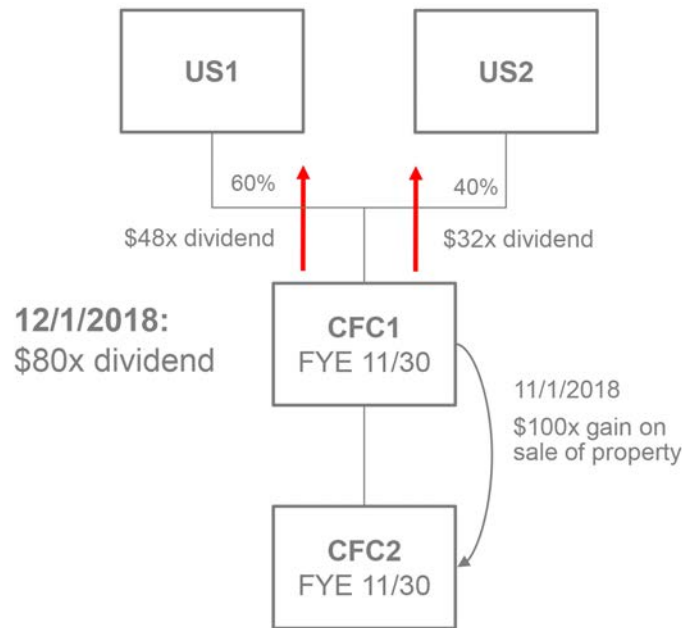
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- ▶ An extraordinary disposition is,
 - ▶ Any disposition of property (with respect to which recognized gain would otherwise constitute gross tested income) by the SFC during its GILTI gap period and on a date on which it was a CFC,
 - ▶ To a related party, but only if,
 - ▶ The disposition occurs outside the ordinary course of the SFC’s activities.
 - ▶ Dispositions to related U.S. persons (including by distribution) and indirectly through certain flow-through entities are included
 - ▶ Whether a disposition is outside the ordinary course of the SFC’s activities is based on all facts and circumstances, however dispositions undertaken with a principal purpose of generating E&P or of intangible property (as defined in Section 367(d)(4)) are deemed outside the ordinary course of the SFC’s activities
-

Extraordinary Dispositions

-
- ▶ The gain recognized from all extraordinary dispositions gives rise to “extraordinary disposition E&P” that is proportionately tracked in an extraordinary disposition account specific to each Section 245AUS shareholder of the SFC at the beginning of the SFC’s GILTI gap period (or later if CFC status does not exist on that date)
 - ▶ The extraordinary disposition account is used to determine the extraordinary disposition amount with respect to a dividend paid by the SFC
 - ▶ Except under the successor rules, the extraordinary disposition account balance cannot increase after the close of the GILTI gap period
 - ▶ The extraordinary disposition account balance is reduced by certain dividends paid by the SFC
 - ▶ Once determined, **50% of the extraordinary disposition amount** is part of the ineligible amount of a dividend for which the Section 245A DRD is disallowed
 - ▶ Dividends are treated as paid first out of non-extraordinary disposition E&P (a formula to determine that amount)
 - ▶ Ordering rules are provided to account for multiple dividends paid in the same tax year

Extraordinary Disposition Amount

Temp. Reg. § 1.245A-5T(j)(2), Example 1



- **Extraordinary disposition:** During its GILTI gap period CFC1 sells property to CFC2; the sale is not in the ordinary course of CFC1's activities
- The next year, CFC1 pays a \$48x dividend to US1 and a \$32x dividend to US2
- CFC1 has \$110 E&P at the close of the year of the distributions, without regard to the distributions

	CFC1	US1	US2
Extraordinary disposition E&P	\$100x		
Non-extraordinary disposition E&P	\$10x		
Extraordinary disposition account		\$60x	\$40x
Dividend received from CFC1		\$48x	\$32x
Paid first out of non-extraordinary disposition E&P		\$6x	\$4x
Extraordinary disposition amount		\$42x	\$28x
Ineligible amount (50%)		\$21x	\$14x

Extraordinary Reductions

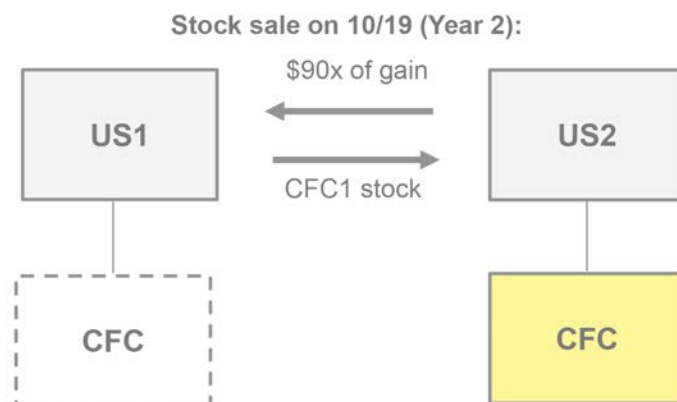
- An extraordinary reduction occurs with respect to a controlling Section 245A shareholder's ownership of a CFC during a taxable year of the CFC if,
 - The controlling Section 245A shareholder transfers, directly or indirectly, CFC stock representing more than 10 percent (value) of the CFC stock

owned, directly or indirectly, as of the beginning of the CFC's tax year (and at least 5 percent of the total by value) (**10% transfer event**), or

- ▶ As a result of one or more transactions, the controlling Section 245A shareholder's ownership in the CFC as of two dates is diluted by more than 10 percent (value) and at least (5 percent) (**10% dilution event**)
- ▶ If an extraordinary reduction occurs, the extraordinary reduction amount of a dividend received by the controlling Section 245A shareholder from the CFC equals the lesser of,
 - ▶ The amount of dividend, or
 - ▶ The controlling Section 245A shareholder's pre-extraordinary reduction pro rata share of the CFC's subpart F income or tested income for the year, reduced by any such amounts taken into account by certain U.S. persons and by the extraordinary reduction amounts of any prior dividends received by the controlling Section 245A shareholders from the CFC.
- ▶ **Election** can be made to instead close the CFC's taxable year as of the date of the extraordinary reduction.

Extraordinary Reduction

Temp. Reg. § 1.245A-5T(j)(2), Example 3



- ▶ CFC uses a calendar tax year
- ▶ Year 1: CFC has no previously taxed E&P
- ▶ Year 2: CFC has \$160× tested income and \$160× E&P
- ▶ US1 has \$90× built-in gain in its CFC stock
- ▶ Treatment **before** applying extraordinary reduction rules
 - ▶ \$90× gain is a Section 1248(a) dividend that is eligible for a Section 245A DRD provided certain requirements are met
 - ▶ US2 takes \$70× tested income in to account with respect to CFC under Section 951A (\$160× tested income reduced under Section 951(a)(2)(B) by the \$90× dividend to US1)
- ▶ Extraordinary reduction
 - ▶ US1's sale of the CFC stock is more than 10% of its CFC stock (by value) and at least 5% of all the outstanding CFC stock
- ▶ Extraordinary reduction amount
 - ▶ Entire \$90× Section 1248 dividend because

- ▶ \$90× is at least equal to US1's pre-reduction pro rata share of CFC's tested income (\$160×) reduced by the amount of tested income taken into account by US2 (\$70×)
- ▶ Election to close CFC's tax year
 - ▶ US1 may elect to close CFC's Year 2 taxable year on the date of the stock sale
 - ▶ If the election is made, US1 takes 100% of CFC's tested income into account as of the date of the stock sale, and US2 takes into account 100% of CFC's tested income thereafter

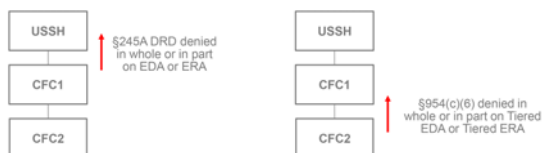
Ineligible Amount

Extraordinary disposition and reduction amounts

- ▶ The ineligible amount of a dividend received by a Section 245A shareholder from an SFC equals the sum of,
 - ▶ 50 percent of the extraordinary disposition amount of the dividend, and
 - ▶ 100 percent of the extraordinary reduction amount of the dividend.
- ▶ No foreign tax credits are allowed with respect to the dividend!
- ▶ If the provisions are applying to a CFC, the same country exception of Section 954(c)(3) may still apply, however if the dividend results in subpart F income **all** U.S. shareholders (including individuals) of the CFC must include in income their pro rata share of the subpart F income

Limitation on Section 954(c)(6) Exception

- ▶ Provisions are applied to dividends received by a CFC by limiting application of Section 954(c)(6) if a Section 245A DRD would be denied if the dividend was paid directly to a U.S. shareholder
 - ▶ Dividend may constitute subpart F income if look-through treatment is denied
- ▶ Application of Section 954(c)(6) is generally denied on:
 - ▶ 50% of the tiered extraordinary disposition amount (Tiered EDA), and
 - ▶ 100% of the tiered extraordinary reduction amount (Tiered ERA)



Ordering Rules

Ordering of Hybrid Dividends, EDAs and ERAs

1. Dividend is subject to Section 245A(e) if it is a "hybrid dividend" or "tiered hybrid dividend"
2. If Section 245A(e) does not apply, the excess reduction amount portion of the dividend is denied a Section 245A DRD or Section 954(c)(6) exception
3. Next, the dividend is treated as paid out of non-extraordinary disposition E&P
4. Finally, the ineligible amount of the dividend is determined (and a Section 245A DRD or Section 954(c)(6) exception is denied)

Polling Question

What aspect of the temporary regulations do you expect to have the biggest impact on your company?

- A. Rules on extraordinary disposition amounts (including Section 954(c)(6) limitation)
 - B. Rules on extraordinary reduction amounts (including Section 954(c)(6) limitation)
 - C. Do not expect any impact as a result of the temporary regulations
 - D. Does not apply (EY, faculty, other)
-

Miscellaneous Items

-
- ▶ Potential consequences with respect to **Section 956 inclusions**
 - ▶ Final Section 956 regulations reduce any “tentative Section 956 amount” where the U.S. shareholder would be allowed the Section 245A DRD if the amount was actually distributed
 - ▶ If Section 245A DRD is denied this may trigger a Section 956 inclusion
 - ▶ Reporting considerations
 - ▶ Taxpayers **must report** ineligible amounts, tiered extraordinary disposition amounts, and tiered excess reduction amounts on appropriate form under Section 6038
 - ▶ Applies to transactions that occurred in tax years before temporary regulations issued.
-

Final and Proposed GILTI Regulations

Section 951A

Overview

-
- ▶ Any U.S. person that is a U.S. shareholder of a CFC for any taxable year of the U.S. shareholder shall include in gross income its GILTI for such taxable year.
 - ▶ Effective for taxable years of foreign corporations beginning after December 31, 2017, and taxable years of U.S. shareholders in which or with such taxable years of foreign corporations end.
 - ▶ Proposed regulations related to GILTI were issued September 13, 2018.
 - ▶ The final GILTI regulations issued June 14, 2019, largely adopted, with some modifications, the proposed regulations.
 - ▶ Treasury Department also released new proposed regulations providing for a GILTI “high-tax exception” and modifications to the determination of GILTI inclusions from CFCs held through domestic partnerships.
 - ▶ A U.S. shareholder’s GILTI inclusion represents certain net income of the U.S. shareholder’s CFCs to the extent it exceeds a specified return on certain tangible assets of the CFCs.
 - ▶ A U.S. shareholder’s GILTI amount for a taxable year equals the excess (if any) of:
 - ▶ The U.S. shareholder’s “net CFC tested income” for the taxable year, over
 - ▶ The U.S. shareholder’s “net deemed tangible income return” for the taxable year



Final GILTI Regulations

Key takeaways for 2018 returns

- ▶ Certain domestic partnerships are treated as foreign, requiring GILTI items to be taken into account directly by certain U.S. partners.
- ▶ Tested income is a taxable income concept; but more guidance to follow regarding application of Code provisions expressly limited to domestic corporations.
- ▶ Lack of clarity regarding application of Section 961(c) to tested income determination.
- ▶ Pro rata share anti-abuse rule narrowed.
- ▶ Modified gap period/disqualified basis rules
 - ▶ Application expanded to all non-inventory property
 - ▶ Related deductions allocated solely to residual income
 - ▶ Disqualified basis generally carries over in related party transactions
- ▶ Proposed GILTI high-tax exception cannot be relied on currently.

Final GILTI Regulations

Other changes

Key changes and confirmations	Anticipated future guidance	Rejected recommendations
▶ Tested income and tested loss ▶ U.S. taxable income determination ▶ <i>De minimis</i> and full inclusion coordination ▶ Section 367(d) expense allocation ▶ Disregards qualified deficits ▶ Deduction/loss attributable to disqualified basis not allowed against tested income, subpart F income, or effectively connected income (see next slide) ▶ QBAI ▶ Excludes Section 168(k) property ▶ Temporary ownership rule narrowed ▶ Alternative depreciation system (ADS) transition rule ▶ Election to eliminate disqualified basis for all purposes ▶ Tested interest income and expense ▶ Section 163(j) definitions ▶ Netting for related party receivables ▶ Net used tested loss recapture rule not finalized	▶ Application of “domestic” provisions to CFCs (including Section 245A) ▶ Interaction of Sections 961 and 951A ▶ Net used tested loss rules ▶ Conforming foreign-derived intangible income (FDII) QBAI rules to new GILTI QBAI rules ▶ Expanded automatic method changes for depreciation	▶ No expense apportionment to GILTI ▶ No elective subpart F income treatment for GILTI income ▶ No tested loss carryforwards ▶ Depletable assets not included in QBAI ▶ No QBAI in tested loss CFCs

Disqualified Basis: Denial of Deductions and Losses

- ▶ The final GILTI regulations contain two rules relating to **disqualified basis**
 - ▶ Disqualified basis is depreciable or amortizable basis created by reason of a certain property transfer between related CFCs during the seller's GILTI gap period
 - ▶ Any deduction (e.g., depreciation or amortization) or loss from disqualified basis is allocated and amortized solely to residual CFC gross income (so not against tested income, subpart F income, or effectively connected income)
 - ▶ Any depreciation, amortization, or cost recovery allowances attributable to disqualified basis is not properly allocable to property produced or acquired for resale under Sections 263, 263A, or 471
 - ▶ Election available to eliminate disqualified basis for all purposes of the Code, including Section 901(m)
 - ▶ Rules expanded to apply to all property other than inventory
-

Polling Question

Does your company's reporting system have the capability of providing the information necessary to properly compute the GILTI inclusion?

- A. Yes
 - B. No
 - C. Don't know
 - D. Does not apply (EY, faculty, other)
-

Application to Domestic Partnerships

The final GILTI regulations treat a domestic partnership as foreign for determining a partner's GILTI inclusion for foreign subsidiaries of the domestic partnership.

In general

The final GILTI regulations:

- ▶ A domestic partnership is treated as foreign for purposes of determining the ownership of stock owned by the partnership within the meaning of Section 958(a), but
- ▶ The domestic partnership is still treated as domestic for determining U.S. shareholder status, CFC status, and controlling domestic shareholder status

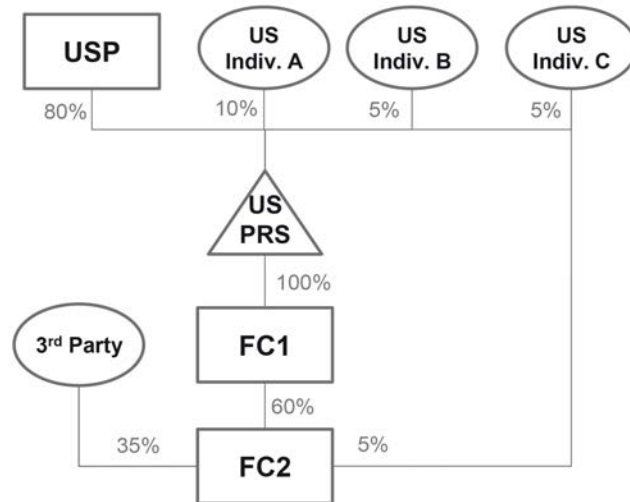
Applicability

The final GILTI regulations apply:

- ▶ For purposes of Section 951A and any provision that applies by reference to Section 951A, and
 - ▶ To tax years of foreign corporations beginning after December 31, 2017.
-

Subpart F income

- ▶ The new proposed regulations would extend this rule to Section 951 for tax years of foreign corporations beginning on or after the date final regulations are published in the Federal Register.
- ▶ However, domestic partnership can apply the proposed regulations for tax years of foreign corporation beginning after December 31, 2017.

Example: GILTI and Domestic Partnerships**► Anticipated § 951A Results**

U.S. person	Foreign subsidiary	§ 958(b) ownership	U.S. shareholder?	Inclusion %/ § 958(a) ownership
USP	FC1	80%	Yes	80%
	FC2	80%	Yes	48%
Indiv. A	FC1	10%	Yes	10%
	FC2	10%	Yes	6%
Indiv. B	FC1	5%	No	–
	FC2	5%	No	–
Indiv. C	FC1	5%	No	–
	FC2	10%	Yes	3% *

*8% in total.

► Other considerations

- Subpart F income inclusions
- Section 961 basis adjustments

Polling Question

Do you anticipate the treatment of a domestic partnership as foreign for GILTI purposes will reduce your company's GILTI inclusion?

- A. Yes
- B. No

- C. Don't know
 D. Does not apply (EY, faculty, other)

Effective/Applicability Dates



Foreign Tax Credit

The following items are included in the final Section 951A regulations:

- ▶ Section 245A DRD denied on Section 78 gross up for taxable years beginning before January 1, 2018. (Amended Section 78 would deny the Section 245A DRD for later years.)
- ▶ Section 965(n) elections (*i.e.*, forego net operating losses (NOLs) in the transition tax year)
 - ▶ New guidance on determining the sourcing of the current year loss, now requiring that the Section 965(c) deduction be considered in the computation
 - ▶ Limited period to revoke a prior election

Proposed GILTI HTE

Overview

- ▶ Elective GILTI HTE would generally exclude a "tentative gross tested income item" of a CFC to the extent the "tentative net tested income item" was subject to foreign effective rate of tax that is greater than 90% of the maximum rate under Section 11 (so greater than 18.9%, or 90% of the current 21%).
- ▶ If elected, the GILTI HTE
 - ▶ Would apply to all tentative gross income items of a CFC, at the level of each qualified business unit (QBU) of the CFC;
 - ▶ Is binding on all U.S. shareholders of the CFC; and
 - ▶ Applies to all CFCs that are member of the same controlling domestic shareholder group
- ▶ The proposed GILTI HTE would only apply to taxable years of CFCs beginning on or **after** the date these proposed regulations are finalized (cannot be applied currently)

Gross Tested Income Eligible for the High-Tax Exception

Identifying High-Taxed Tested Income: Multi-Step Process

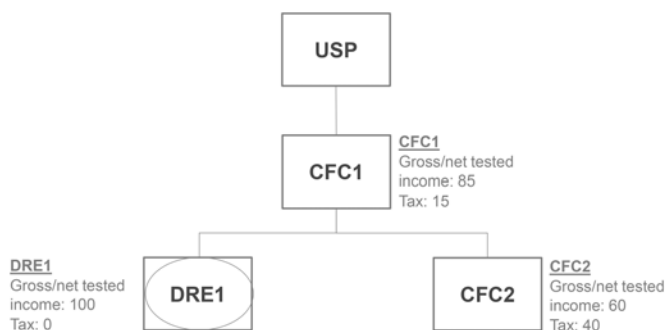
1. Identify each **QBU** of a CFC
2. Determine the **gross tested income**, by basket, attributable to each QBU
3. Adjust QBU income for **disregarded items**
4. Allocate and apportion **QBU deductions** to arrive at “tentative net tested income items”
5. Determine the **foreign taxes** that are “properly attributable” to each tentative net tested income item
6. Determine whether the foreign **effective tax rate** for each tentative net tested income item is greater than **18.9%** using the following formula:

$$\frac{\text{Properly attributable taxes}}{\text{Tentative net tested income item} + \text{Properly attributable taxes}}$$

Electing the Proposed GILTI HTE

- | | |
|-------------------|--|
| Manner | ▶ Attach a statement to an amended or originally filed return including specified information |
| Scope | ▶ If elected, the GILTI HTE applies to all gross tested income items of all CFCs that are members of a controlling domestic shareholder group |
| Duration | ▶ Effective for the election year and all subsequent years, unless revoked |
| Revocation | ▶ An election may generally be revoked in any year
▶ After revocation, a subsequent election cannot be made for 5 years
▶ Such subsequent election cannot be revoked another 5 years |

Example: Application of the GILTI HTE



Polling Question

Do you anticipate the proposed GILTI high-tax exception will reduce your company's GILTI tax liability?

- A. No, effective tax rate threshold is too high
 - B. No, because I can't access QBU level information
 - C. Don't know yet
 - D. Does not apply (EY, faculty, other)
-

One-Minute Recap

Polling Question

What anticipated future guidance would have the greatest impact on your GILTI tax liability?

- A. Application of Section 961(c) for determining tested income (relating to lower tier basis adjustments)
 - B. Finalization of the GILTI high-tax exception
 - C. Clarification regarding the availability of Section 245A DRD at the CFC level
 - D. Other
 - E. Does not apply (EY, faculty, other)
-

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Upcoming Thought Center webcasts

<https://taxnews.ey.com/news/2019-0001-upcoming-tax-webcasts>

- **Tuesday, June 25:** Global payroll challenges for U.S. employers—Hosted by Ernst & Young LLP and Bloomberg Tax
 - **Thursday, July 11:** The “new normal” for U.S. business tax compliance—Putting new rules into practice for tax year 2018 filings
 - **Thursday, July 18:** Ernst & Young LLP's state income tax seminar series: ongoing impacts of TCJA on state taxation—Seminar #1—Ongoing impacts of TCJA on state taxation: corporate compliance in 2019
-

Thanks for participating.

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QUESTIONS SUBMITTED FOR THE RECORD TO MARJORIE A. ROLLINSON

QUESTIONS SUBMITTED BY HON. MICHAEL F. BENNET

TABOR

Question. In Colorado, a Taxpayer's Bill of Rights amendment, known as TABOR, passed in 1992, ensures that the State refunds excess tax revenue to taxpayers. For over 30 years, Coloradans have received these tax refunds, and the IRS has not opined on whether they are subject to Federal income taxes. On August 30, 2023, the IRS issued proposed guidance on State tax payments (Notice 2023-56), which would result in some TABOR refunds being subject to Federal tax. As I have mentioned to you before, this overturns decades of precedent of how TABOR refunds are treated.

The Office of the Chief Counsel (the Office), which you would lead, met with my office and the rest of Colorado's congressional delegation offices, including Senator John Hickenlooper, and Representatives Joe Neguse, Diana DeGette, Lauren Boebert, Ken Buck, Doug Lamborn, Jason Crow, Brittany Pettersen, and Yadira Caraveo about Notice 2023-56, following our outreach.

The Office pointed to 26 U.S. Code §111—Recovery of tax benefit items and *Maines v. Commissioner* as the basis for changing how the IRS treats TABOR refunds. Based on our conversation with the Office, we believe that Colorado's TABOR refunds, required under the State's constitution, should be considered differently than other types of State payments.

Can you explain what your perspectives are on *Maines v. Commissioner* and whether you believe that refunds mandated by a State constitution should be treated exactly the same as refunds not mandated by a State constitution?

Answer. It is critical that the IRS Office of Chief Counsel carefully analyze all applicable case law, statutes, regulations, and guidance when determining whether payments—like those provided to Coloradans by TABOR—should be considered taxable for Federal income tax purposes. The Office of Chief Counsel must also ensure it conducts a thorough process to gather the facts of each particular case, such as by meeting with stakeholders and State experts to understand the details of how TABOR works. As I mentioned during my hearing, if I am confirmed, I will make it a priority to understand this issue in more detail, including analyzing the applicability of *Maines v. Commissioner* to this situation.

Question. If you are confirmed, what will your process be to review the guidance released prior to the office having a Senate-confirmed leader to ensure it aligns with your jurisprudence?

Answer. If I am confirmed, one of my first tasks will be to meet with each office in the Office of Chief Counsel to understand the current state of key guidance projects, including on this issue, and ensure I am up to speed on and agree with the legal underpinnings of the guidance.

Question. If Notice 2023–56 is finalized, how will you ensure that States, like Colorado and its Department of Revenue, have enough time to implement the changes? Would you be willing to delay the Notice’s effective date until after Colorado’s next legislative session so that changes apply to the 2024 tax filing season?

Answer. Clear, timely guidance to taxpayers is essential for effective tax administration. As I discussed in the hearing, it will be a priority for me to understand the Office of Chief Counsel’s thinking on the substance and timing of this guidance.

QUESTIONS SUBMITTED BY HON. ROBERT P. CASEY, JR.

Question. At the request of Chairman Wyden, the Government Accountability Office recently released a report on how the IRS audits large partnership businesses, which have over \$100 million in assets and over 100 different partners. The GAO found that the IRS audited only 54 out of over 20,000 of these huge partnerships in 2019, an audit rate of 0.2 percent.

That’s the same rate that the IRS audited average Americans with only \$25,000 to \$50,000 in income.¹ But we know that wealthy businesses are the ones avoiding taxes on their income, not regular Americans. One study found that partnerships funneled over \$100 billion to tax havens like the Cayman Islands in that same year, 2019.² Much of that money later came back to the U.S., untaxed.

Do you think it is fair or fiscally responsible to audit \$100 million businesses at the same rate as average Americans?

Answer. It is essential that our tax system operate fairly and, right now, there is evidence that a significant number of high earners, large corporations, and complex partnerships are not paying the taxes they legally owe. This outcome erodes public trust in our tax system because honest taxpayers should know that when they file their taxes, everyone else—regardless of their income—is doing the same. Some of these disparities do arise because it is easier for the IRS to audit lower-income, than sprawling businesses.

Question. Can you commit to working with my staff to make sure Congress gives the Chief Counsel’s office the tools it needs to better go after wealthy tax cheats?

Answer. If I am confirmed, it will be very important to me to make sure the Office of Chief Counsel has the right staffing and resources so it can provide expert legal advice to IRS offices looking at the returns of these filers and pursue litigation if necessary to hold evaders accountable. I would also look forward to working with your office to make sure the Office of Chief Counsel is equipped with the right tools to ensure a fair, effective tax administration system.

QUESTION SUBMITTED BY HON. SHELDON WHITEHOUSE

Question. It has been over a decade since Congress passed the Foreign Account Tax Compliance Act (FATCA), with bipartisan support, to provide the IRS the information it needs to find hidden income in offshore accounts. However, according to a Treasury Inspector General for Tax Administration report “the IRS has taken virtually no compliance actions to meaningfully enforce” it.³ According to the IRS Chief Research and Analytics officer in 2021 testimony before the Tax and IRS Oversight Subcommittee, research found that U.S. households hold as much as \$2 trillion in offshore tax havens—double what prior research had found.⁴

Before the passage of the Inflation Reduction Act (IRA), Secretary Yellen explained that human resource and information technology limitations caused by resource constraints had hampered the IRS’s ability to make effective use of the information collected under FATCA.

¹ <https://www.irs.gov/pub/irs-utl/statement-for-updated-audit-rates-ty-19.pdf>.

² https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3985535.

³ TIGTA, Report No. 2018–30–040, *Despite Spending \$380 Million, the IRS is Still not Prepared to Enforce Compliance with the Foreign Account Tax Compliance Act* (July 2018).

⁴ *Closing the Tax Gap: Lost Revenue from Noncompliance and the Role of Offshore Tax Evasion*, Before the Senate Finance Subcommittee on Taxation and IRS Oversight, 117th Congress (2021) (Testimony of Barry Johnson), <https://www.finance.senate.gov/hearings/closing-the-tax-gap-lost-revenue-from-noncompliance-and-the-role-of-offshore-tax-evasion>.

With the help of additional funding under the IRA, will you ensure that FATCA fulfills its promise to crack down on offshore tax evasion? How? What will be the initial steps taken that show this activity has begun?

Answer. Effective enforcement of FATCA is critical for cracking down on offshore evasion and supporting a fair tax system. The IRA provides funding to transform the IRS by improving customer service, updating technology, and making sure high-income individuals, large corporations, and complex partnerships pay the taxes they legally owe. I am not privy to IRS's current activities on FATCA enforcement, but, if confirmed, I look forward to understanding and evaluating the work that is underway, and working with partners across the IRS to implement any needed improvements.

QUESTIONS SUBMITTED BY HON. JOHN BARRASSO

Question. My office has been inundated with letters from concerned Wyoming taxpayers regarding the new 1099-K threshold set to go into effect in 2024. I share their concerns. The lower threshold will be \$600, much lower than the current \$20,000 threshold. This means millions more taxpayers will be impacted by the new burdensome 1099-K reporting rules. American families will be sent tax forms associated with income that would not qualify as taxable income, like selling an old piece of furniture online at a loss. To quantify the impact, more than 44 million 1099-K forms are expected to be mailed to taxpayers in time for the 2024 tax filing season. It is a massive increase from the roughly 14 million forms in 2023. As you know, last year the IRS unilaterally delayed the reporting requirements.

Do you believe the IRS has the authority to delay the 1099-K reporting requirements once again?

If the IRS is unable to delay the reporting requirements and Congress does not increase the threshold, is the IRS currently able to successfully administer a \$600 threshold and the 44 million estimated 1099-K forms that would be associated with that threshold?

What steps would you take to ensure that American families are not subjected to unnecessary scrutiny, confusion, and tax burdens associated with their 1099-K forms?

Answer. I agree with you that it is essential for the IRS to help taxpayers understand and meet their tax obligations through clear guidance. I am not familiar with the specifics surrounding the IRS's decision last year to delay implementation of the 1099-K legislative changes made by the American Rescue Plan. As a result, I cannot speak to the legal authorities that served as the basis for this or any future delay. If confirmed, my focus will be twofold: ensuring the laws passed by Congress are administered fairly and effectively, and that the IRS issues clear, timely guidance to help taxpayers understand their tax obligations. I would also look forward to engaging with you and your staff on this issue once I am up to speed on IRS's plans.

Question. There has been much controversy surrounding the idea of the IRS standing up its own direct e-filing alternative. The so-called Inflation Reduction Act provided \$15 million to the IRS to study the feasibility of a free e-file tax return system. Upon completion of its study, the IRS immediately launched a "free" tax preparation software option before Congress or the public had the chance to provide feedback following the report. This Direct File program is a massive expansion of the IRS. It turns the IRS into a one-stop shop as tax preparer, tax collector, and tax auditor.

Do you believe the IRS has the statutory authority to create and maintain a Direct File program? If so, please explain your rationale.

Do you believe concerns of the IRS simultaneously acting as the tax preparer, collector, and enforcer are merited?

What safeguards should be put in place under a Direct File program?

Answer. If I am confirmed as Chief Counsel, my role will be to ensure the law is applied fairly, impartially, and appropriately to all issues that come before me, including the Direct File pilot program. If confirmed, I commit to learning from the team about how they determined the IRS has the legal authority to pursue this program and engaging with you and your team on what I learn.

Question. As the chief legal advisor to the IRS Commissioner, the role of the IRS Chief Counsel is to provide legal guidance and interpretive advice to the IRS, Treasury, and to taxpayers. This role would also handle international tax matters.

One international tax matter currently being discussed by Treasury and the IRS deals with concerns over the extraterritorial assertion of retroactive taxes on a number of U.S. companies by Germany under a 100-year-old dormant law known as section 49.

Under the Convention between the United States and Germany for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion of Taxes, there is a dispute resolution mechanism. Article 25 generally provides for a Mutual Agreement Procedure to eliminate double taxation when the actions of one or both of the Contracting Parties (U.S. or Germany) results in taxation that is not in accordance with the convention. Paragraph 3 of Article 25 also allows the Contracting Parties to “consult together for the elimination of double taxation in cases not provided for in this Convention.”

Does the dispute resolution provision of the U.S.-Germany tax treaty apply to the cases involving section 49?

Has the U.S. utilized the treaty provisions, mentioned above, to “consult” with Germany over the elimination of double taxation of U.S. companies?

What would be your strategy to resolve this issue with Germany?

Answer. I understand and appreciate the importance and significance of the United States's network of tax treaties. Over my career, I have seen real benefits in eliminating double taxation, which supports U.S. businesses both domestically and abroad. While I have only read public reporting of this specific issue with Germany, if confirmed, I would commit to consulting with IRS Chief Counsel staff and Treasury to review or provide legal analysis and assist interagency partners in any conversations that may be ongoing on this issue, including ensuring that we are in fact using the appropriate dispute resolution provisions. Ensuring the promises that tax treaties provide is paramount in supporting this growing network.

Question. On September 14, 2023, the IRS ordered an immediate moratorium on processing new Employee Retention Credit (ERC) claims. This policy will run through at least December 31, 2023. This is a pandemic-era tax credit that provided much-needed funds to small businesses that were either partially or fully shut down due to lockdowns or suffered specified revenue declines during certain time periods. The agency did this over concern of fraudulent claims. While the IRS must aggressively pursue bad actors, it is also important for legitimate claims of eligible businesses to be handled in a timely manner. I am concerned the actions of the IRS could present financial difficulties for small businesses that appropriately filed for relief through the ERC.

If you are confirmed to the position of the IRS Chief Counsel, what is your plan to timely process ERC claims for taxpayers who appropriately followed the law in claiming the ERC?

How will you go after bad actors and fraudulent behavior, while holding harmless taxpayers that correctly claimed this form of relief?

Answer. I have followed the public reporting on the ERC claims, including how scammers and bad actors are targeting honest taxpayers to file improper claims, as well as the actions the IRS recently announced to help protect these taxpayers. If I am confirmed, my role as Chief Counsel will be to ensure fair and impartial administration of the tax laws passed by Congress, and that would include advising the IRS on the tools it has to pursue the aggressive promoters, marketers, and scammers fueling fraud concerns in this program. I would look forward to working with Commissioner Werfel and other business units within the IRS to pursue these bad actors, while ensuring eligible taxpayers can claim the tax benefits they are entitled to.

QUESTIONS SUBMITTED BY HON. MARSHA BLACKBURN

Question. One of the main issues I hear about from Tennessee small business owners is navigating the tax code. As you know, many small businesses do not have full-time legal counsel and can become burdened by compliance costs of the tax code, which can result in audits and penalties.

Do you see opportunities where the Office of the Chief Counsel can make it easier for small businesses to navigate compliance issues, and should you be confirmed, how can Congress work with you to resolve these issues?

How do you plan to ensure that regulations and guidance from the IRS are clear and consistent to ensure no confusion between the IRS and taxpayers?

Answer. The Office of Chief Counsel plays a critical role in helping all taxpayers, including small businesses, understand their tax obligations. In my view, the Office should do everything in its purview to help small businesses on the front end, through clear, timely public guidance for taxpayers. These efforts can help taxpayers meet their tax obligations up front, preventing the need for further compliance activities, and ensure small businesses are claiming the tax benefits they are entitled to. If I am confirmed, I will make sure my team focuses on getting out guidance that is timely and clear to taxpayers and engaging with stakeholders to understand where guidance may need to be further clarified.

Question. We've seen multiple breaches of privacy at the IRS over the last several years, and just last week, an IRS contractor was charged for leaking the sensitive tax information of high-profile individuals to media outlets, including ProPublica. Instances like this undermine the public's trust in the IRS and law-abiding stakeholders are rightfully concerned that our tax authorities are acting in a political manner, threatening taxpayers with serious privacy breaches and punishing them for complying with the law.

Do you commit to working with your IRS colleagues to investigate and prosecute anyone who has illegally leaked taxpayer information?

Answer. The safety and security of taxpayer data is critically important to me and to the IRS. From my time in the Office of Chief Counsel, I know that the agency takes this very seriously.

If confirmed, it would be my responsibility to help ensure that the IRS complies with all of its obligations under the law to safeguard taxpayer data and to use data only for appropriate purposes. I commit to ensuring that any alleged leak of taxpayer information is referred to the appropriate authorities for investigation and, if warranted, prosecution.

Question. Do you commit to keeping the Senate Committee on Finance updated on any illegal IRS leaks of taxpayer information and informing us of the steps being taken by the IRS to prevent such leaks in the future?

Answer. I commit to being a close partner to the Senate Committee on Finance and to helping ensure you are kept informed about the kinds of critical issues like those in your question.

Question. Do you commit to ensuring that any regulations coming out of the IRS prioritize protecting taxpayer privacy?

Answer. Americans entrust the IRS with their sensitive information, and they should have the confidence that it will be protected and used only for lawful purposes. If confirmed, I would help ensure that the IRS complies with all of its obligations under the law to safeguard taxpayer data and to use data only for appropriate purposes.

Question. Will you commit to working with Congress to ensure that the IRS proactively works to ensure that these types of leaks do not happen in the future?

Answer. If confirmed, I would be a close partner to Congress on these important issues. I look forward to working with you and your staff to ensure Americans have confidence that their confidential information is being appropriately safeguarded.

Question. During your testimony, I asked that you review the Government Accountability Office's May 2022 report "IRS Security of Taxpayer Information: Characteristics of Employee Unauthorized Access and Disclosure Cases" (GAO-22-105872).

Will you commit to reviewing this report and provide a written response detailing the actions that you would take, if confirmed as IRS Chief Counsel, to address the agency's past failures to safeguard taxpayer information?

Answer. I deeply respect the important oversight role of the Government Accountability Office and believe our government functions best when oversight bodies, like GAO, conduct robust and rigorous oversight of agency programs and operations. I also share your deep commitment to ensuring that taxpayer data is only accessed

and used for authorized purposes. If I am confirmed, I will work with other offices throughout the IRS that are responsible for ensuring the security of taxpayer data. I also commit that, if confirmed, I will be a close partner to Congress and will make myself available to speak with you and answer your questions on this and other matters as appropriate.

Question. Similarly, I request that you review September 2023 report “Security of Taxpayer Information: IRS Needs to Address Critical Safeguard Weaknesses” (GAO-23-105395).

Will you commit to reviewing this report and provide a written response addressing the GAO’s recommendations to the IRS, and what steps you would take, if confirmed, to implement GAO’s outstanding recommendations?

Answer. I appreciate and share your commitment to ensuring that taxpayer data is kept safe and secure at all times, and I appreciate GAO’s work in this important area. As Chief Counsel, I would work with other offices throughout the IRS that are responsible for ensuring the security of taxpayer data. If confirmed, I will be a close partner to Congress and will make myself available to speak with you and answer your questions on this and other matters as appropriate.

Question. I would like you to address the Biden administration’s pledge not to increase audits on individuals and small businesses making \$400,000 or less. Several of my colleagues and I asked Commissioner Werfel while he was in front of this committee this April for specific details, but serious questions remain on how this pledge will function in practice.

For example, the IRS has yet to provide definitive answers on whether this pledge applies equally to single and married filers. Without differentiating, the IRS is penalizing families with two working parents. Additionally, we have not received clarity from the agency on how this will be applied to owners of pass-through entities, including sole proprietorships, partnerships, limited liability companies, and S corporations.

If you are confirmed to the position of IRS Chief Counsel, will you commit to working with Commissioner Werfel to provide expedient, detailed information about how the IRS will implement the administration’s pledge to Congress?

Answer. If confirmed, I would want my legacy at the Office of Chief Counsel to be increasing the public’s trust in the IRS. A key element of this work is ensuring taxpayers understand how the IRS is focusing its resources on high-income individuals, large corporations, and complex partnerships who are not paying the taxes they legally owe, and is not focused on middle-income families and small businesses. If confirmed, I look forward to working with Commissioner Werfel and others at the IRS to ensure that the IRS communicates clearly about the current state of implementation of this commitment.

Question. It is my understanding that the administration plans to use “total positive income,” defined by the IRS as “the sum of all positive amounts shown for the various sources of income reported on an individual income tax return and, thus, excludes losses,”⁵ as the benchmark income calculation for the administration’s pledge.

How do you think the IRS should calculate “income” with respect to the administration’s pledge not to increase audits among those with incomes less than \$400,000?

In your opinion, do you believe that the IRS using TPI would capture more taxpayers than if it used “taxable income,” the term used in the Inflation Reduction Act limiting IRA-funded audits to those with taxable incomes above \$400,000?

Answer. The Office of Chief Counsel is responsible for ensuring fair and impartial administration of tax laws through guidance, litigation, and expert legal advice to IRS offices and IRS leadership. It would be outside the purview of my office to set audit policy. I am not currently privy to IRS discussions about the implementation of this pledge. If I am confirmed, I would want to learn more from the Commissioner about how the IRS is implementing the pledge so I can provide advice on any relevant legal issues.

Question. Lastly, the ambiguity from the IRS on its auditing criteria casts significant doubt that this pledge can be practically implemented. However, there has

⁵ [https://www.irs.gov/statistics/soi-tax-stats-irs-data-book-glossary-of-terms#:~:text=Total%20positive%20income%20\(Tables%209a,and%2C%20thus%2C%20excludes%20losses.](https://www.irs.gov/statistics/soi-tax-stats-irs-data-book-glossary-of-terms#:~:text=Total%20positive%20income%20(Tables%209a,and%2C%20thus%2C%20excludes%20losses.)

been no indication or information from the agency on measures that will hold it accountable to the administration's pledge.

Do you believe that the IRS should subject itself to accountability mechanisms to ensure the Biden administration is held to its own pledge?

What would these accountability mechanisms look like if you were confirmed to the Chief Counsel position?

Answer. Transparency and accountability are critical to ensuring that the IRS has the public's trust. The trust of the American taxpayer is fundamental to the functioning of our voluntary tax system, and, if confirmed, I will always lead the Office of Chief Counsel with this value in mind and advise the Commissioner accordingly. I commit to working closely with you and the Committee on Finance to answer your questions and to providing Congress the information it needs for its legislative and oversight work. If confirmed, I look forward to working with Commissioner Werfel and others at the IRS to ensure that IRS is clear about implementation of this pledge.

QUESTIONS SUBMITTED BY HON. BILL CASSIDY

Question. Superfund excise taxes were reinstated in January 2023 and are collected on taxable chemicals and taxable substances. The excise taxes were last imposed and collected in 1995, and there appears to be a lack of historical knowledge within the Treasury and the IRS as to the refund and credit process.

Two types of superfund claims exist: (1) tax credit claims and (2) tax refund claims. The IRS is not processing either category of claims. For tax credit claims, the IRS is (1) denying the credit; (2) requiring payment for the full superfund tax amount with no credit offset; and (3) assessing penalties and interest for failure to pay even though an offset or credit is claimed per the law. For refund claims, the IRS is not processing and paying claims for refund, while commencing audits of the refund claims.

There is a substantial adverse economic impact by the Treasury and IRS not following the law by providing credits and refunds. The impact on smaller and medium-sized exporters is the worst. For example, the U.S. exporter is charged the superfund tax by their supplier of chemicals and substances, so the exporter pays the superfund tax to the supplier at the time of purchase. The exporter then exports the chemical or substance and claims a credit/refund of the superfund tax from the IRS. Because the IRS is not paying the credit/refund claims, the exporter is left with a cash shortage and required to use lines of credit and pay interest to keep operating and exporting.

If confirmed, do you pledge to get to the bottom of why the IRS is not applying current law as written at the time of the expiration of the superfund excise tax in 1995 to credit claims and refund claims made since the reinstatement of the tax? If yes, will keep me updated on your findings?

Answer. If I am confirmed, my focus across all of the Office of Chief Counsel's work will be ensuring that the IRS is administering the tax laws passed by Congress fairly, impartially, and in line with statutory text and congressional intent. As I am not privy to information about how the IRS is applying this provision of the tax code right now, I look forward to learning about these issues, if confirmed, and engaging with you and your staff on your concerns.

Question. The CHIPS Act provides powerful incentives to spur investment in America's semiconductor industry; the new tax credit found at section 48D is one important component of the Act. Recently, the U.S. Department of Treasury and the IRS issued proposed regulations under section 48D. These proposed regulations limit the tax credit to exclude certain key players in the semiconductor supply chain.

The semiconductor manufacturing process does not consist solely of semiconductor fabrication facilities but involves a highly integrated supply chain of companies that occupy key roles throughout the chip-making process. This includes a wide range of chemistries that enable the manufacture of silicon wafers, doping to impart innovative characteristics (*e.g.*, conductivity), polishing and cleaning of the wafers, and further preparation of the wafers.

While these supply chain companies have been included as eligible to apply for grants through the Commerce Department, they are not under the proposal for the tax credit.

What explains this disconnect between the implementation of the grants and the tax credit? Will you investigate what can be done to ensure a unified approach to implementation of the CHIPS Act?

Answer. I applaud the work Congress put into passing the CHIPS Act. This is a critical national priority. It is my understanding that Treasury issued an NPRM in March and has not yet published a final rule. While I'm not familiar with all of the differences between the pieces of guidance you highlight, if confirmed I look forward to learning more about any regulations in progress and ensuring the Chief Counsel's office provides any assistance and resources in supporting this key program.

Question. One or more companies have developed robocall systems that flood IRS phone lines with simultaneous automated phone calls. When an IRS representative answers one of the lines, a company subscriber is patched into the representative. Painfully long holds and dropped calls are largely bypassed and avoided, at the cost of flooded phone lines that crowd out other taxpayers and tax representatives. Sophisticated tax practitioners are able to cut in line.

Among other requirements, IRS Circular 230 requires that tax practitioners "act fairly and with integrity in practice before the Internal Revenue Service." Piratical use of public phone lines in order to crowd out taxpayers and professionals unwilling to pay a private company an entrance fee is unfair and unscrupulous. This practice undermines our shared goals to propel IRS customer service into modernity.

As Chief Counsel, will you investigate and potentially seek to prevent this practice?

Answer. Ensuring taxpayers have a good experience interacting with the IRS is very important to me, and I know the IRS is laser-focused on using its resources to improve customer service. I am concerned by the practice you mention, as it undercuts the fairness of our tax system. If confirmed, I commit to learning more from the IRS team about what they are already doing to address this issue and to engaging with attorneys in the Office of Chief Counsel about legal avenues to prevent this practice.

Question. In recent years, the term "syndicated conservation easement" has become somewhat synonymous with "bad" transactions. This is problematic, in part because virtually all commercial real estate transactions are syndicated.

If confirmed, what will you do to ensure that, consistent with congressional intent, legitimate donations to protect historic structures are given a fair review?

Answer. While I am not familiar with IRS's current work in this area, I know that having certainty and clarity is essential for investments in these historic preservation programs. If I am confirmed, I will work to ensure the IRS is meeting statutory requirements associated with historic preservation easements. I would sit down with the Office of Chief Counsel team to learn more about how they are handling this issue and identify any needed improvements. I would also work with Commissioner Werfel and other relevant IRS offices to address any issues I see, implement any improvements I identify, and make sure we are keeping you and your staff updated on progress.

Question. Recent developments in the Tax Court case of *LakePoint Land II LLC et al. v. Commissioner*, 2023 Tax Ct. Memo LEXIS 114, suggest that there are some significant problems you will need to address with Chief Counsel personnel if you are confirmed. In that case, the court sanctioned the IRS for actions of its counsel in presenting to the court a backdated penalty approval document and a false affidavit, and for failing to timely inform the Court that these documents were erroneous.

In its opinion, the Tax Court wrote:

we find the actions taken by respondent . . . fall short of respondent's obligation to this Court. It is undisputed that this Court was not made aware of the backdated July Lead Sheet and erroneous RA Brooks Declaration until April 10, 2023, which was some 7 months after the Motion for Partial Summary Judgment was filed, and some 5 months after respondent's counsel knew (or should have known) of the backdated signature. . . . We find

the actions of respondent's counsel to be in bad faith and to have multiplied the proceedings in this case unreasonably and vexatiously." *Id.* at 15–17.

In an August 22, 2023 order in that case, the Tax Court directed the IRS to provide a forthright and comprehensive response to the taxpayer's request for information as to the name and title of all IRS personnel, including members of the Office of Chief Counsel, who became aware the various misstatements and the dates on which they became aware.

The IRS personnel involved in backdating penalty approval documents and falsely swearing as to their validity appear to have engaged in unethical behavior.

Will you investigate the conduct of IRS employees in *LakePoint Land II* and deal with any unethical acts accordingly? Could you please report your findings and decisions to the committee? In light of what happened in *LakePoint Land II*, how will you seek to restore the credibility of the Office of Chief Counsel?

Answer. I share your commitment to accountability, as the trust of the American taxpayer is a cornerstone of our voluntary tax system. The American people must have confidence that all taxpayers are being treated fairly and with integrity. If confirmed, I will be committed to ensuring that the IRS and the Office of Chief Counsel act ethically and honestly in all of our work, and I commit to holding employees accountable who do not comport with these values.

Since I am not at the IRS, I do not know the particular facts of what occurred but, if confirmed, I will certainly learn more about this matter. Throughout my career, I have had a deep commitment to serving with integrity, and I expect my employees to do the same. This is critical to instilling public trust in the agency and its work.

If I am confirmed, I will be a close partner to Congress and will make myself available to speak with you and answer your questions on this and other matters.

Question. There are also penalty approval backdating allegations in several other pending Tax Court cases: (*Arden Row Assets*, *Basswood Aggregates*, and *Delwood Resources*). See, *Bloomberg*, "IRS Asked to Admit to More Easement Penalty Approval Backdating" (August 21, 2023).

Will you investigate what happened in these cases and report your findings to the Finance Committee?

Answer. As noted above, since I am not in the building, I do not know the particular facts concerning these cases, but I will certainly make it a priority to learn more if confirmed. As Chief Counsel, I would be a close partner to the Senate Finance Committee and would make myself available to answer the committee's questions and provide the committee the information that it needs for its legislative purposes. I commit further that, as Chief Counsel, I would ensure that the Office of Chief Counsel treats all taxpayers fairly, ethically, honestly, and with the utmost integrity.

Question. IRS Notice IR-2023-144 entitled "IRS cautions plan sponsors to be alert to compliance issues associated with ESOPs" came out of the blue on August 9th and surprised and confused many companies that are organized as ESOPs. Commissioner Werfel broadly stated his goals to include "alerting higher-income taxpayers and businesses to compliance issues and aggressive schemes involving complex or questionable transactions, including those involving ESOPs." The IRS notice identified the issues in a broad and non-specific manner, listing: (1) valuation issues, (2) prohibited allocation of shares, and (3) failure to follow tax law requirements for ESOP loans. One specific example included in the notice involves an ESOP management S corporation characterizing business income as loans, but it is unclear how common this practice is or why it is unique to ESOPs.

Can you provide your perspective on IRS Notice IR-2023-144 and the issues with ESOPs it describes? If you are not currently able to provide much clarity, will you do so, if confirmed?

Answer. I am not familiar with the details of the IRS's recent notice related to ESOPs. If confirmed, I will make sure to learn more about this notice and understand the issues at play with ESOPs.

Question. It is rumored that the IRS counsel's office has a directive to never settle and instead litigate 100 percent of conservation easement cases. If this is true, conservation easement cases have the potential to completely overwhelm the Tax Court for the next decade, with a reported volume of cases upwards of 1,000. In the past,

the IRS has engaged in settlement initiatives with taxpayers, even over issues where there are high levels of controversy or disagreement.

If confirmed, will you reconsider this 100-percent litigation strategy on conservation easements, if it is, in fact, true? If confirmed, will you report back to the committee regarding updates on the situation?

Answer. I am not privy to information about the IRS's current litigation strategy on this issue. If confirmed, one of my first tasks will be to learn about the status of current and planned guidance, major projects and issues facing the Office of Chief Counsel, and the Office's litigation strategies. I would also look forward to engaging with you and your staff on your concerns.

QUESTIONS SUBMITTED BY HON. MIKE CRAPO

Question. Since ProPublica first reported it had received “troves” of stolen taxpayer information in June 2021, my Republican colleagues and I have been pushing for answers as to how private taxpayer information was so massively compromised.

On Friday, September 29, 2023—more than 2 years after ProPublica's initial reports—the Department of Justice charged an IRS contractor with stealing private taxpayer information and leaking the confidential data to news organizations.

While many questions remain, at the very least, it is clear that IRS guard rails failed to prevent this brazen breach of taxpayer rights.

If confirmed, will you commit to working with this committee in a timely and thorough manner on all aspects related to this significant security breach, and on actions the IRS can take to better protect tax and financial information of all U.S. taxpayers?

Answer. I share your deep commitment to the protection of taxpayer data. From my time in the Office of Chief Counsel, I know that the safety and security of confidential tax information is of paramount importance to the agency and its employees. If confirmed as Chief Counsel, I would take very seriously my responsibility to ensure that the IRS complies with all its obligations under the law to safeguard taxpayer data and to use data only for appropriate purposes.

I can commit to you that, as Chief Counsel, I would help ensure the IRS takes appropriate action in response to incidents of this nature. My understanding is that this matter was immediately referred to the appropriate authorities, and, if confirmed, I would work with other IRS offices to ensure the IRS takes seriously any and all recommendations made by those authorities and takes appropriate action. Further, I commit to being a close partner to you and the Committee on Finance on this and other important issues, and I commit to working closely with you and the committee to help ensure that taxpayers have confidence in the IRS and in the security of their confidential tax information.

Question. The IRA provided a massive \$80 billion funding boost to the IRS, and earmarked most of these funds for enforcement initiatives. The American people have heard many troubling reports of late about the IRS overstepping its bounds, intimidating taxpayers through unannounced visits, providing knowingly false records to courts, and undertaking enforcement campaigns that ignore the facts of a case and try to force taxpayers into unfavorable settlements.

The IRS often says it is outgunned in enforcing the laws. While in a few cases that assertion may be valid, it just is not true for the vast majority of Americans trying in good faith to comply with our tax laws, without the capacity or resources available to the IRS.

If confirmed, how will you undertake your role as the IRS's chief legal officer in a way that does not trample taxpayer rights or intimidate taxpayers into unjustified settlements?

Answer. There is nothing more fundamental to our voluntary tax system than the notion that all taxpayers must be treated fairly. The American people must have confidence that all taxpayers are being treated impartially, regardless of who they are, where they live, or what they believe. I share your view that it is critically important for the public to have confidence in the IRS, and I would work tirelessly as Chief Counsel to help the agency earn and maintain the public's trust. Throughout my career, I have had a deep commitment to serving with integrity, and I would expect the same from the employees in the Office of Chief Counsel.

If confirmed, I would be uniquely situated to advise the Commissioner and the agency on issues of taxpayer fairness. The tax code mandates that taxpayers be treated fairly and, as the chief legal advisor for the IRS, it would be my responsibility to ensure that we follow the tax code in all respects. I know these issues are of paramount importance to you and the Committee on Finance, and I commit to working closely with you and your staff to ensure that taxpayers are always treated honestly, impartially, and with integrity.

Question. As the Chief Counsel you would, if confirmed, ensure that all activities of the Office of Chief Counsel adhere to the highest ethical standards. As recently as September 2023, the IRS agreed to settle and drop a penalty in the *Lakepoint Land II LLC v. Commissioner* case (T.C. Memo 2023-111). This was because a court found an IRS supervisor backdated her signature on a penalty approval form. When faced with the backdating, the IRS was “less than forthcoming” with the truth to such a level that it amounted to “bad faith” and “multiplied the proceeding in this case unreasonably and vexatiously.” This case was so egregious the Tax Court ordered the IRS to pay the defendant’s fees and expenses. Since the *Lakepoint* case, many other taxpayers have come forward with similar complaints.

Can you explain how you would prevent such a clear ethical lapse by the attorneys you would be supervising?

What actions would you take if you found an attorney under your supervision did something unethical, like backdate a document or operated in bad faith with the Tax Court?

Answer. Since I am not at the IRS, I do not know the particular facts of what occurred in this case but, if confirmed, I will certainly learn more about this matter.

Throughout my career, I have had a deep commitment to serving with integrity. From my time in the Office of Chief Counsel, I know integrity is at the heart of everything the Office does, and this is critical to instilling public trust in the agency and its work. If I am confirmed to lead the Office of Chief Counsel, I will be committed to ensuring that the Office of Chief Counsel always treats taxpayers fairly, ethically, honestly, and with the utmost integrity in all of our work. This would be the cornerstone of my leadership, and I commit to holding employees accountable who do not comport with those values.

Question. There have been several controversial implementation and political decisions involving implementation of IRA tax provisions—particularly redefining the term “free trade agreement” with respect to eligibility for electric vehicle tax credits and postponing statutory deadlines for those credits. When Congress passed the IRA, the administration, as reflected on the U.S. Trade Representative’s website, identified only congressionally approved trade agreements that lifted tariffs as “free trade agreements.” In contrast, Treasury’s NPRM provides that a free trade agreement does not actually need to free any trade, and can include executive agreements that simply note labor and environmental commitments.

If confirmed, will you commit to providing me a timely and complete explanation of Treasury’s authority to redefine the term “free trade agreement”—from its traditional plain language understanding—and to postpone the statutory deadline for providing guidance on EV tax credits?

Answer. If confirmed, I commit to devoting time to understand this issue, reviewing the legislation and intent, and understanding any opinions that have been offered in this regard. As I said in the hearing, often tax law is not that clear, but I would be happy to meet with you to better understand your views and be a resource to you and your staff.

Question. As the Chief Counsel you would, if confirmed, be the principal legal advisor to the IRS Commissioner on all matters pertaining to the interpretation, administration, and enforcement of the Internal Revenue Code (IRC). Codified in section 7701(o) of the IRC is the economic substance doctrine, which has historically been a tool to prevent abusive tax shelters and transactions that lack a genuine business purpose.

Given the evolving nature of our economy and the increasing complexity of financial transactions, can you please explain how you would intend to apply the economic substance doctrine as the Chief Counsel?

Specifically, how do you plan to strike a balance between ensuring taxpayers are not engaging in artificial transactions solely for tax benefits, while also not chilling

legitimate business activities? Do you believe the IRS's current use of the economic substance doctrine is too much, too little or about right?

Answer. If confirmed, one of my top priorities will be figuring out how the Chief Counsel's office can best support the agency's goals of promoting a fair tax system and helping taxpayers understand their tax obligations while working to address tax evasion and other abuses. I look forward to learning more about the IRS's approach to these issues, including the specific issues you have raised. As Chief Counsel, I would work to ensure fair and impartial interpretation and administration of the tax code, in line with statutory text and congressional intent.

Question. As you know from my questions to you in your confirmation hearing, I'm very concerned about instances where the IRS unilaterally acts without statutory authority. I recall you testifying that it would be important for you to better understand some of the issues where this has arisen and be an independent voice at the IRS for interpreting the law.

To this end, if confirmed, will you commit to providing me a timely and complete explanation of the IRS's authority (or lack thereof) with respect to preparing tax returns and requiring information reporting on flows in all bank accounts over a certain threshold, as was proposed in the Build Back Better proposal and legislation?

Answer. If I am confirmed as Chief Counsel, my role will be to ensure the law is applied fairly, impartially, and appropriately to all issues that come before me, including the Direct File pilot program. If confirmed, I commit to learning from the team about how they determined the IRS has the legal authority to pursue this program and engaging with you and your team on what I learn. My understanding is that the legislative proposal with respect to bank accounts was not enacted and it was not included in the FY 2024 Greenbook.

Question. Another concerning area of recent IRS activity relates to how it is conducting its enforcement campaigns. For instance, I understand that the IRS has many hundreds of section 831(b) insurance company cases in various stages of litigation, but has taken only a small handful all the way through the process of obtaining a judgment. Meanwhile, I understand that IRS blanket settlement policy for these microcaptive cases requires the plaintiff to fully concede the case and at least some (if not all) penalties in order to avoid litigation. I further understand that there are at least dozens of instances where the IRS has pushed a microcaptive into litigation only to settle the matter for no deficiency (or some trivial amount) shortly before the matter went to trial.

Do you believe it is an efficient use of IRS and taxpayer resources to require a case that could be resolved for no deficiency (or some trivial amount) to be pushed into active litigation before it is resolved?

If confirmed, will you commit to providing me a timely and complete explanation of the IRS's settlement standards with respect to its current enforcement campaigns, as well as an analysis of any cases related to these campaigns where actual litigation commenced and which were thereafter settled for less than the applicable pre-trial settlement standard the IRS uses?

Answer. I am deeply committed to effective stewardship of public funds, including making sure that the Office of Chief Counsel's resources are deployed in ways that best support a fair system and avoid unnecessary litigation. I am not familiar with the specifics of the cases you mention, but, if confirmed, I will look into how IRS handles these cases and whether the current practice is an effective use of the Office of Chief Counsel's resources. I would also work to report back to you and this committee on my findings, within the bounds of all applicable laws, rules, and regulations.

QUESTIONS SUBMITTED BY HON. STEVE DAINES

Question. In June of 2022, an IRS spokesperson told Fox News Digital that Code for America has not been involved in developing the Direct File pilot program. However, documents indicate they were. Congress did not authorize funds for the IRS to look into creating the Direct File pilot until August of 2022. Commissioner Werfel expressed to Congress that the IRS would wait to create a pilot until consulting with Congress, but the Direct File prototype was created prior to any serious consultation, authorization of funds, or a final report discussing benefits and drawbacks of a Direct File pilot.

Please provide an answer on Code for America's involvement in the development of an IRS free file program, and a timeline of when such program was built out.

Answer. Other than what the IRS has publicly shared, I am not privy to information about how the IRS developed the congressionally mandated Direct File study or their current work on the Direct File pilot for filing season 2024. If I am confirmed, my role at the Office of Chief Counsel will be to ensure that the IRS's decisions and projects are legally sound.

Question. You are being considered for the role of IRS Chief Counsel and Assistant General Counsel at the Department of the Treasury. Throughout the course of Treasury's negotiations with the OECD, Secretary Yellen has made commitments in negotiations that lack proper authority to fulfill.

If you are confirmed to serve in this dual role, how will you ensure that Treasury does not overstep its authority and advise the Secretary on these matters?

Answer. As discussed during my testimony, negotiations with the OECD are led by the Treasury Department and the Chief Counsel's role in the process is generally focused on advising on the current state of U.S. tax law. In all my work, I strive to provide my best advice and promote adherence to the law.

QUESTIONS SUBMITTED BY HON. CHUCK GRASSLEY

Question. Every nominee that is confirmed by the Finance Committee is asked if they will commit to promptly respond to any questions asked by a member of this committee. You answered in the affirmative to this question as has every IRS and Treasury nominee before you. Yet, questions for the record submitted by myself and other members of this committee to Commissioner Werfel and to Secretary Yellen have been outstanding for approximately 160 days and 190 days respectively.

In your opinion, does this delay in responding to questions comport with a commitment to promptly respond to members of this committee?

What would you consider a reasonable time period for responding to member questions?

If you are confirmed, will you urge your colleagues at the Internal Revenue Service and Department of Treasury to adhere to their commitment to respond promptly to member questions?

Answer. I deeply respect the important oversight role of Congress and believe our government functions best when Congress conducts rigorous oversight to identify waste, fraud, and abuse and to ensure that Federal agencies serve the American people effectively and with integrity. I share your commitment to transparency and accountability, both of which are critical to instilling public trust in the IRS and its work.

As Chief Counsel, I would advise the IRS on its obligations regarding the sharing of information with oversight bodies, including Congress. I commit that, if confirmed, I will be a close partner to the Congress and will make myself available to speak with you and your staff to promptly answer questions and provide the information necessary for your legislative and oversight work.

Question. I, along with ranking member Crapo and every Republican member of the Finance Committee, have repeatedly requested the Department of Treasury to provide this committee with data and analysis relevant to the revenue effects of the OECD Pillar 1 agreement on U.S. companies and the public. However, Treasury has so far refused to provide the requested information.

If confirmed, will you commit to working with Treasury to immediately provide the data and analysis as requested?

Answer. Transparency and good governance are key priorities in ensuring trust in the IRS. While I am not aware of Treasury's data analysis process, if confirmed, I would be willing to learn about the Office of Chief Counsel's work in this area, but this question might be best answered by Treasury.

Question. At a March 16, 2023 Finance Committee hearing, I asked Secretary Yellen whether any aspects of the OECD Pillar 2 agreement violated our bilateral tax treaty obligations. She succinctly responded, "No, there is no violation in anything we proposed." While Treasury has asserted that Pillar 2 is compliant with tax treaties, it has yet to provide any legal analysis to justify that assertion. Treasury

is not the sole arbiter of whether or not Pillar 2 is consistent with our international commitments approved by Congress through treaty.

Would you agree that Congress deserves substantive response to legitimate concerns that have been raised by a growing number of tax professionals that the Undertaxed Profits Rule violates our bilateral tax treaty obligations?

If confirmed, will you commit to working with Treasury to provide such a response?

Answer. I commit to working with you and Treasury to understand any implications of Pillar 2 that the Office of Chief Counsel is involved in and working with you and your staff to make sure you are informed, if I am confirmed.

Question. For more than 2 years, I have asked the IRS and Treasury for information regarding the apparent leak or hack of confidential taxpayer information that was subsequently published by news outlets, including ProPublica.

In that time very little information was provided regarding the disclosures and recently we learned from public reporting that a government contractor has been arrested for stealing and sharing taxpayer information with news outlets.

Commissioner Werfel has been quoted as saying, “The IRS has put in place new protocols and protections that tightened security, and our aggressive work in this critical area continues in order to protect the tax and financial information of taxpayers.”⁶

If confirmed, will you commit to working with colleagues to provide information to the members of the Finance Committee regarding how the security of IRS systems was compromised, and what new protocols and protections have been implemented, as cited by Commissioner Werfel?

Will you also commit to working with your colleagues to provide regular briefings and updates regarding the security of IRS IT systems and efforts to safeguard taxpayer information?

Will you further commit to undertaking a review of how IRS employees, including contractors, are trained on the legal protections afforded taxpayer information under section 6103 of the Internal Revenue Code?

Moreover, will ensure all employees and contractors are effectively educated on the criminal penalties provided under sections 7213 and 7213A of the Internal Revenue Code concerning the unauthorized disclosure or inspection of protected taxpayer information?

Finally, will you commit to providing members of the Finance Committee an update on your actions as IRS Chief Counsel to ensure IRS employees and contractors are well versed in, and are in compliance with, taxpayer privacy protection laws within 60 days of your confirmation?

Answer. I share and appreciate your commitment to safeguarding confidential taxpayer data. From my time in the Office of Chief Counsel, I know that the agency takes the strict confidentiality requirements of section 6103 very seriously. Since I was not at the IRS at the time of this incident, I am not familiar with the particulars of this matter, but it is my understanding is that it was immediately referred to the appropriate authorities. If confirmed as Chief Counsel, I would work with other IRS offices to ensure the IRS takes seriously any and all recommendations made by those authorities and takes appropriate action. I would also work with other IRS offices to help ensure that Congress is kept appropriately apprised of new protocols and protections regarding the security of IRS IT systems.

If confirmed, I look forward to learning more about the IRS’s current approach to training and education on section 6103, section 7213, and section 7213A and to seeing where improvements can be made. I can commit to you that, as Chief Counsel, I would take very seriously my responsibility to ensure that the IRS complies with all of its obligations under the law to safeguard taxpayer data and to use data only for appropriate purposes.

I know this is a priority for you and the Senate Finance Committee, and I commit to being a close partner to you and your staff on this important issue.

Question. The IRS is subject to the Federal Information Security Modernization Act (FISMA) of 2014 (Pub. L. 113–283) in terms of how it handles information and

⁶<https://www.politico.com/news/2023/09/29/irs-leak-charge-00119190>.

the reporting of breaches after they occur. FISMA also requires that security incidents are reported to certain congressional committees within 7 days after it has been determined that a breach has occurred.

Since it has been publicly announced that a contractor has been criminally charged for stealing taxpayer information and providing it to news organizations, it sounds like the IRS has known for some time that a breach of IRS systems had in fact occurred.

If you are confirmed, as Chief Counsel you would be legal advisor to the Commissioner and would need to advise the IRS on compliance with any applicable Federal laws.

When did the IRS become aware that a contractor had stolen sensitive taxpayer information?

Have Treasury and the IRS fulfilled all responsibilities for notification of a breach, including the Secretary of Homeland Security, the Cybersecurity and Infrastructure Security Agency, and relevant congressional committees?

Have taxpayers who had their information stolen and distributed been notified?

Answer. My understanding from public reporting is that this matter was immediately referred to the appropriate authorities. However, I was not at the IRS when this incident occurred and cannot speculate as to what the IRS knows, what reporting obligations apply (including under the Federal Information Security Modernization Act of 2014), and whether affected taxpayers have been notified. As Chief Counsel, I would work with other offices at the IRS to ensure the IRS takes seriously any and all recommendations made by investigative authorities under my tenure and takes appropriate action. I also would help ensure that the IRS complies with all of its obligations under the law to report incidents of this nature.

Question. As I discussed at your hearing, I have heard concerns from stakeholders that the Office of Chief Counsel has acted as a roadblock to processing whistleblower claims quickly and fairly.

If confirmed, do you pledge to support the role and decisions made by the Whistleblower Office, and not to undermine or place additional burdens on that office when it is trying to fulfil its mission?

Additionally, do you pledge to quickly act on cases in remand and discovery in the Tax Court so that whistleblowers stop seeing delays caused by Chief Counsel that can go on for more than a year?

Answer. Whistleblowers are essential for a fair, functioning tax system, and I deeply respect the role they play in ensuring that everyone plays by the rules. If confirmed, I look forward to learning more about this program from my team and gaining a better understanding of where improvements may be needed.

Question. The Strategic Operating Plan which detailed how the IRS would spend the \$80 billion in mandatory funding provided by the Inflation Reduction Act. The plan includes a single paragraph stating the intention to “Develop and implement a plan to improve the IRS Whistleblower Program.” The report doesn’t include substantive details on implementing this goal and additional information has not been produced by the IRS.

If confirmed, will you commit to provide details on how the IRS intends to accomplish this goal and also provide regular updates as work progresses?

Answer. I thank you and Senator Wyden for your bipartisan work over the years on this important issue. Whistleblowers are essential for a fair, functioning tax system, and I deeply respect the role the IRS Whistleblower Program plays in bolstering public trust in the IRS. If confirmed, I look forward to learning about how the IRS plans to improve the IRS Whistleblower Program, including any improvements the Office of Chief Counsel can make that would better support that program, and to working with Commissioner Werfel to make sure we keep you and your staff updated on these improvements.

Question. Often many years can pass between the filing of a whistleblower claim and the payment of an award. I understand that these delays in part stem from the practice of the IRS waiting until all tax years covered by a claim are fully adjudicated. In the cases where a claim covers multiple years of activity, there may be tax years that have completely closed out and an award is payable except additional tax years are still open. Processing awards in this way needlessly adds years to the

time between the filing of a claim and the payment of an award, and is a further disincentive for whistleblowers to take the risks in coming forward.

If confirmed, will you commit to examining how the IRS can pay awards to eligible whistleblowers that stem from tax years that have been completely closed out, even if additional years on the same claim, that would have no impact on proceeds already collected, remain open?

Answer. I greatly value the role that whistleblowers play in ensuring that everybody pays their fair share, and I share your commitment to ensuring that this program encourages whistleblowers to come forward. If I am privileged to serve as Chief Counsel, I look forward to learning more about this program and how it can be improved.

Question. As I noted at your hearing, I am concerned with how the IRS has treated employees who have stepped forward with concerns related to the Hunter Biden investigation. To demonstrate his commitment to protecting whistleblowers and their rights to blow the whistle on waste, fraud, abuse, and misconduct, I have urged Commissioner Werfel to meet with the whistleblowers in question. It is my understanding that he has yet to do so.

If confirmed, as the chief legal advisor to the IRS Commissioner, would you recommend Commissioner Werfel meet with the whistleblowers? If not, why not?

Answer. Like you, I deeply respect the role that whistleblowers play in ensuring that the IRS remains accountable to the American people. This role is critical to bolstering public trust in our government institutions, and it is necessary that whistleblowers always be heard and respected. Since I am not at the IRS, I do not know the particulars of this case. However, if I am confirmed, the Office of Chief Counsel will be a place where employees know they will be listened to and that people will be held accountable for any inappropriate action. I would make it a priority to foster an environment in which employees feel like they can be open and report suspected misconduct wherever they see it, without fear of retaliation or reprisal.

Question. The Inflation Reduction Act required the IRS to study the feasibility of creating an option to file taxes directly with the IRS for free. Having delivered this report, it appears that the IRS is moving ahead with creating this option without any further authorization or input from Congress. Aside from questions as to whether the IRS has the authority to do this, there are concerns about nongovernmental partners possibly involved and longstanding questions about the ability of the IRS to protect taxpayer information.

If confirmed, do you pledge to keep both sides of this committee fully briefed regarding any efforts to develop a “direct file” option, as well as ensuring the IRS doesn’t exceed its statutory authority?

Answer. If I am confirmed as Chief Counsel, my role will be to ensure the law is applied fairly, impartially, and appropriately to all issues that come before me, including the Direct File pilot program. If confirmed, I commit to learning from the team about this program and the IRS’s relevant legal authorities and to engaging with you and your staff.

Question. In May, the IRS released its “Strategic Operating Plan,” which was supposed to provide detail on its plans for the nearly \$80 billion in mandatory funding provided last July. While that plan is full of lofty aspirations, it is short on specifics. Moreover, no additional updates or details on that plan have been provided to Congress. This is part the result of the fact that the underlying law has no reporting or oversight measures whatsoever.

To address this, Senator Thune and I introduced the IRS Funding Accountability Act. Amongst other things, our bill would require the IRS to submit to Congress an updated detailed spending plan annually and provide us with quarterly reports as to actual expenditure of these funds.

Do you agree that timely and reliable information from the IRS is vital for Congress to exercise its Constitutional role of conducting oversight?

Should you be confirmed, would you advise the IRS Commissioner and Treasury Secretary to provide regular updates to Congress on the progress of their plan and as to the actual expenditure of funds?

Answer. I share your commitment to transparency and accountability, both of which are critical to ensuring that the IRS has the public’s trust. The trust of the American taxpayer is the cornerstone of our voluntary tax system. I deeply respect

the important oversight role of Congress and believe that congressional oversight helps our government function more efficiently and effectively.

As Chief Counsel, I would advise the IRS on its obligations regarding the sharing of information with Congress and other oversight bodies, including reporting obligations enacted by Congress, and I would ensure that the IRS complies with the law. If confirmed, I also commit to working closely with you and other members of the Senate Finance Committee to ensure you have the information necessary for your legislative and oversight work.

Question. For decades, tax regulations generally skipped the review process other agencies had to follow in submitting significant regulations to the Office of Information and Regulatory Affairs (OIRA) for a cost-benefit analysis. During the Trump administration, this changed with the release of a Memorandum of Agreement between Treasury and OMB that put in place an OIRA review process for tax regulations. However, in June the Biden administration ended this OIRA review for tax regulations. Kristin Hickman, a law Professor at the University of Minnesota and former Special Adviser to the Administrator of the Office of Information and Regulatory, criticized this Biden administration decision calling it “a big step backward for transparency and accountability in the exercise of discretion over tax policy.”

Do you agree with Professor Hickman, why or why not?

Answer. It is important to ensure that tax regulations are implemented thoughtfully and in accordance with the law. If confirmed, I look forward to learning more about the Memorandum of Agreement between the Department of the Treasury and the Office of Information and Regulatory Affairs at the Office of Management and Budget. As Chief Counsel, I would work to ensure that the IRS abides by all laws, rules, and regulations related to the development of tax regulations. I would be happy to follow up with you as I learn more.

Question. The IRS has experienced several legal defeats involving taxpayers challenging IRS guidance for failing to adhere to the Administrative Procedures Act (APA). For instance, in *Mann Construction*, the Sixth Circuit invalidated a 2007 IRS notice establishing “a listed transaction” for failing to follow the APA. This and other decisions potentially have broad implications as to the validity of other guidance issued by the IRS and raise a number of other questions pertinent to tax administration.

Should you be confirmed, what steps will you take to ensure IRS rules and regulations are in full compliance with the APA?

Answer. One of the most important roles of the Office of Chief Counsel is to help ensure that promulgated regulations are consistent with the law and adhere to the governing procedural requirements. That includes following all applicable requirements of the Administrative Procedure Act.

Question. In September the IRS announced it was temporarily suspending processing of new Employee Retention Credit claims due to massive fraud and has warned business owners of scams perpetrated by promoters.

IRC section 6532(b) says the IRS has a 2-year statute of limitations to bring suits to recover erroneous refunds and in the case of fraud that time limit is extended to 5 years.

However, the Federal Circuit in *BSR Partnership v. United States*, 795 F.3d 1338 (Fed. Cir. 2015) held that only the taxpayer’s fraud holds the assessment period open indefinitely pursuant to section 6501I(1), as opposed to fraud by the promoter.

In order to ensure that fraudulent Employee Retention Credits claims are appropriately adjudicated, do you think Congress needs to statutorily extend that statute of limitations, or does current law give the IRS enough flexibility to pursue these claims?

Answer. If I am confirmed, my role at the Office of Chief Counsel will be to make sure the IRS fairly, impartially, and effectively administers tax laws passed by Congress. It would be outside my authority to opine on policy changes to the tax code, though I am aware that Treasury included a related legislative proposal to increase the statute of limitations on assessment of ERCs in the FY 2024 Greenbook. I would be happy to work with you and this committee to ensure any legislative changes you are considering would be administrable by the IRS. In addition, I am not familiar with the details of the IRS’s legal authorities around the ERC but would want to learn more and engage with the Office of Chief Counsel team on this question, if I am confirmed.

Question. As IRS Chief Counsel and Assistant General Counsel of the Department of Treasury, it is your duty to provide the IRS Commissioner and Treasury Secretary your expert legal opinion as to the meaning of laws and statutes as written by Congress.

If confirmed, do you pledge to exercise your duties as specified in the IRC based on your own interpretation and not to be subject to directives from the Commissioner or from Treasury that conflict with applicable laws or statutes?

If you are directed to make any decision that for political or other reasons conflicts with applicable laws or statutes, how would you respond?

Answer. If confirmed as Chief Counsel, it would be my responsibility to help ensure that the IRS implements the tax code consistent with the statutes written by Congress. This is a responsibility that I would take very seriously, and, if confirmed, I commit that I would follow all applicable laws and regulations without regard to politics. I would look forward to working closely with you and other members of Congress.

QUESTIONS SUBMITTED BY HON. JAMES LANKFORD

Question. In 2016, the Government Accountability Office reviewed IRS rule-making procedures and noted, “Over the past 3 decades, the tax code has increasingly been used by policymakers as a tool for accomplishing social and economic objectives by creating special tax credits, deductions, and exemptions to achieve certain policy goals. These credits, deductions, and exemptions are known as ‘tax expenditures’ because they represent revenue losses. . . . Because Treasury and IRS are responsible for issuing regulations necessary to implement this growing number of tax expenditures, many tax regulations today are related to social and economic objectives rather than traditional tax collection or administration issues. However, tax regulations, including an increasing number implementing tax expenditures, are routinely exempt from E.O. 12866 and CRA analysis and oversight requirements due to Treasury’s and IRS’s views on applicability of these requirements and the exemptions in OMB’s longstanding agreement with Treasury.”

Because many IRS regulations are not simply transfer payments, they influence social and economic behavior. Do you believe it could benefit IRS regulations to go through centralized review? If confirmed, would you support revoking the recently issued Treasury-OMB Memorandum of Agreement and allow OIRA to review tax regulations?

Answer. As Chief Counsel, I would work to ensure that the IRS abides by all laws, rules, and regulations related to the development of tax regulations, and it is important to ensure tax regulations are implemented thoughtfully and in accordance with the law. If confirmed, I would be happy to follow up with you on this issue after I learn more about the Memorandum of Agreement between the Department of the Treasury and the Office of Information and Regulatory Affairs at the Office of Management and Budget.

Question. What is your understanding of the IRS’s interagency review process for tax regulations? Will you commit to making public which agencies are consulted when the IRS promulgates a rule?

Answer. I cannot speak to the specifics of how the tax regulatory review process works now at the IRS. If I am confirmed, I would look forward to learning more about the interagency review process as it currently stands and abiding by all laws, rules, and regulations related to the development of tax regulations. I would be happy to engage with you and your staff as I learn more.

Question. Do you agree that it is not the role of the IRS or any other government agency to deny an otherwise available public benefit, including tax status or tax credits, to an organization on account of its religious status?

Answer. There is nothing more fundamental to our voluntary tax system than the notion that all taxpayers must be treated fairly. I agree that the American people must have confidence that all taxpayers are being treated impartially, regardless of who they are, where they live, or what they believe.

Question. Nonprofits that engage in communications about moral or social issues never know for sure whether the IRS will deem their communications to constitute political campaign participation or intervention. This is a result of the vagueness in the law and non-enforcement by the IRS. If confirmed, you will have the responsi-

bility to ensure that all IRS actions and tax status decisions operate in accordance with the Constitution, including protections for free speech, freedom of association and religious freedom.

If confirmed, will you ensure that the IRS does not take any adverse action against any individual or organization, including nonprofits and houses of worship, on the basis that it speaks about moral or political issues in accordance with their ideological beliefs? Further, will you commit that no decisions will be based on bias for or against an ideological, political, or religious viewpoint?

Answer. If confirmed, I will work tirelessly to ensure that the IRS is administering the tax code fairly, impartially, and without bias for or against an ideological, political, or religious viewpoint.

Question. There have been reports of bias in the IRS's evaluation of religious organizations' charitable status. An organization's particular religious character, affiliation, or exercise should have no bearing on the IRS's determination of such organization's qualification for tax-exempt status and should not be the basis for targeting. As previously mentioned, it is not the role of the IRS or any other government agency to deny an otherwise available public benefit to an organization on account of its religious status.

How will you ensure that employees at the IRS have neutral and respectful consideration of individuals and groups, particularly for those organizations with a religious or faith-based mission?

Answer. The American people must have confidence that the IRS is treating all taxpayers fairly and impartially, regardless of who they are, where they live, or what they believe. As the chief legal advisor for the IRS, I would take seriously my responsibility to help ensure that the agency follows this principle throughout its work.

Question. Will you commit to transparency with Congress on the on the process, procedures, reviews, communication, and training regarding determination of tax-exempt status for applicant organizations?

Answer. I share and appreciate your commitment to accountability and transparency. If confirmed, I look forward to learning more about the IRS's current approach to these issues and can commit that, as Chief Counsel, I would take very seriously my responsibility to ensure that the IRS treats all taxpayers fairly and impartially.

QUESTIONS SUBMITTED BY HON. JOHN THUNE

Question. Back in 2021, private taxpayer information was illegally obtained by the left-leaning media outlet ProPublica. Myself and several members of the Finance Committee have asked for information from the Biden administration about this unauthorized disclosure of confidential taxpayer information, but to no avail.

If confirmed, do you commit to being transparent with members of the Finance Committee about any unauthorized disclosures of private taxpayer information and forthcoming about the 2021 leak of information to ProPublica?

In your experience, what role do you believe that the IRS Chief Counsel should play in the protection of confidential taxpayer information and what do you believe should be implemented that would improve the IRS's protection of this private information?

Answer. From my time in the Office of Chief Counsel, I know that safeguarding taxpayer data is critically important to the IRS. Taxpayers should have confidence that their confidential information will be protected and used only for lawful purposes.

As Chief Counsel, it would be my responsibility to help ensure that the IRS complies with all of its obligations under the law to safeguard taxpayer data and to use data only for appropriate purposes. I commit to you that I would take this responsibility very seriously and would be a close partner to you and the Senate Finance Committee on these important issues.

Question. The Inflation Reduction Act provided funding for a task force to study the overall feasibility of and the IRS's capacity to develop and administer a direct e-file tax return system. I have a number of concerns with the IRS establishing a direct-file option for Americans to file their taxes. But foundationally, I disagree

with the notion that the IRS has the legal authority to establish such a system without explicit authorization from Congress.

Do you believe that the IRS has the statutory authority to implement a direct e-file tax return system? If so, please explain.

Answer. If I am confirmed as Chief Counsel, my role will be to ensure the law is applied fairly, impartially, and appropriately to all issues that come before me, including the Direct File pilot program. If confirmed, I commit to learning from the team about this program and the IRS's relevant legal authorities and to engaging with you and your staff.

QUESTIONS SUBMITTED BY HON. TODD YOUNG

Question. During your nominations hearing, I asked you to discuss the impact the OECD Pillar 2 rules would have on the United States, and you declined to provide direct commentary, instead stating that you “have not followed carefully” the OECD Pillar 2 Under-Taxed Profits Rule (UTPR) and “would need to get much more information about” it. I find this to be concerning, given you have touted your qualification for this role based on your extensive international tax experience. Now that you have had additional time to more thoroughly review these rules, I would again ask you to answer the following questions, based on your experience as an international tax professional:

Can you please share your views on the current Pillar 2 framework?

Answer. I thank you for your commitment to and deep appreciation of international tax and also for allowing me the opportunity to discuss this issue more. As I said in the hearing, I am not familiar with the full details of Pillar 2, though I have followed the OECD project known as BEPS since 2012. Since the hearing, I have studied more to try to better understand this framework. I was able to learn that the Joint Committee on Taxation published an estimate concluding that, under various scenarios, the Pillar 2 agreement could raise revenues as much as \$236 billion or reduce revenues as much as \$122 billion.

Question. How do you anticipate Pillar 2 will impact U.S. companies specifically?

Answer. According to news reports, there appear to be more open issues to be considered before the full impact on U.S. companies will be known.

Question. Do you anticipate that the current rules will act as a disincentive for companies looking to make investments in R&D activities in the U.S., particularly given the administration has failed to remedy the unfavorable treatment of important nonrefundable tax credits, such as the R&D credit, under the proposed Pillar 2 regime? Yes or no?

Answer. From what I understand, R&D credits seem to be generally treated as nonrefundable at this time. I assure you, to the extent I am able, if confirmed, I will learn more about the Office of Chief Counsel's role in this work, review any Office of Chief Counsel analysis, and would be pleased to meet with you further on this issue.

Question. You testified about how, in your international tax experience, “transfer pricing issues” caused “so many disputes in the U.S. and abroad.” In the OECD's latest round of Pillar 2 Administrative Guidance (pg. 89) issued in July, which provided for only a temporary UTPR safe harbor, the OECD acknowledged that, among the UTPR's permanent problems, it would cause increased disputes. I specifically want to highlight the following quote from this guidance:

First, the Top-Up Tax allocated to jurisdictions under the UTPR will often be disproportionate to the profits arising in those jurisdictions. Many MNE Groups will have a significant portion of their operations and profits in the UPE Jurisdiction and smaller operations in other jurisdictions. Second, there are more possibilities for disputes to arise under the UTPR because it relies on more information and a higher degree of co-ordination than the IIR.

Given these permanent problems both with respect to inappropriate allocation of profits as well as increased disputes—in addition to disadvantaging U.S. companies—does that cause you any concern with respect to interpreting and administering U.S. tax law?

Answer. I agree it is a shared priority to ensure vigorous defense of U.S. law and specific attention to administering laws to the fullest extent in a way that does not disadvantage U.S. taxpayers. As I also noted during the hearing, I have not closely followed the Pillar 2 developments for the last couple of years, but I am hopeful that the framework might mitigate disputes among taxpayers and different taxing authorities. If confirmed, I would ensure that the Office of Chief Counsel remains focused on fairly interpreting and administering U.S. tax law.

Question. Given this admission by the OECD, do you view any benefit to Treasury pushing to make the UTPR safe harbor permanent?

Answer. As I said earlier, if confirmed, I am going to dedicate time and resources to learning everything about the Office of Chief Counsel's role in this work and would be happy to meet with you to understand the implications of various policy scenarios.

Question. The Priority Guidance Plan (PGP) released last week indicates that regulations to address the Pillar 2 tax return and foreign tax credits (FTC) are being considered. It is crucial that taxpayers have adequate time to review and comment on regulations prior to the implementation of Pillar 2 by some foreign countries. While Notice 23–55 helpfully suspended some provisions of the 2022 final regulations, it does not appear that the Notice addresses the treatment of foreign tax credits for purposes of the global anti-base erosion (GloBE) return.

Can you point to specific portions of the Notice 23–55 that you believe provide FTC guidance for GloBE purposes?

Answer. I appreciate the need for regulations to be fair, transparent, and not burdensome. As you know from my resume, I have not been in private practice since these regulations were proposed so I cannot speak to any specific encounters that I have had; that said, I understand Treasury issued a notice in July 2023 that provides temporary relief from the regulations you reference, and that more work will be done.

Question. The final foreign tax credit regulations issued by Treasury in 2022 are extremely burdensome, can you please detail some of the challenges and questions you have encountered with these new regulations?

Answer. I have not been in private practice since these regulations were proposed, so I cannot speak to any specific challenges.

Question. As Chief Counsel, will you commit to working with Congress to ensure that the 2022 regulations are revisited to address the concerns of industry and Congress, such as cost recovery, the source-based attribution rules for withholding taxes on services, and the single-country license rule?

Answer. If confirmed, I commit to ensuring I will use my position as Chief Counsel to provide thorough legal advice that prioritizes taxpayer experience and legislative intent.

Question. It is no secret that in recent years the IRS has had a variety of service and performance issues, many of which my colleagues have highlighted today. From the ProPublica leak of taxpayer information to the significant and persistent delay of taxpayer returns, and, most recently, the revelation that the IRS's decision to destroy 30 million unprocessed returns has likely caused significant harm to countless taxpayers. All of these actions have undermined public trust in the agency and created challenges for taxpayers across the Nation.

If confirmed, what do you see as your role in helping to restore public trust in the agency?

Answer. I share your view that it is critically important for the public to have confidence in the IRS, and I would work tirelessly as Chief Counsel to help the agency earn and maintain the public's trust. If confirmed as the chief legal advisor for the agency, I would be uniquely situated to advise the Commissioner and the agency on these issues. Taxpayers must be treated fairly, impartially, and with the utmost integrity. As Chief Counsel, it would be my responsibility to help ensure that the agency adheres to those principles throughout its work.

Question. Recent developments in the Tax Court case of *LakePoint Land II, LLC v. Commissioner of Internal Revenue* (T.C. Memo 2023–111) highlight significant problems within the Chief Counsel's Office. In *LakePoint Land II*, the court sanctioned the IRS for actions of its counsel in presenting to the court a backdated pen-

alty approval document and a false affidavit, and for failing to timely inform the court that these documents were erroneous. In its opinion, the Tax Court wrote:

. . . we find the actions taken by respondent . . . fall short of respondent's obligation to this Court. It is undisputed that this Court was not made aware of the backdated July Lead Sheet and erroneous RA Brooks Declaration until April 10, 2023, which was some 7 months after the Motion for Partial Summary Judgment was filed, and some 5 months after respondent's counsel knew (or should have known) of the backdated signature. . . . We find the actions of respondent's counsel to be in bad faith and to have multiplied the proceedings in this case unreasonably and vexatiously.

The IRS personnel involved in backdating penalty approval documents and falsely swearing as to their validity appear to have engaged in illegal and unethical behavior. If confirmed, will you investigate the conduct of IRS employees in *LakePoint Land II* and refer appropriate cases for criminal prosecution?

Answer. If confirmed, I will ensure that employees in the Office of Chief Counsel are held accountable for any unethical behavior. I share your commitment to accountability, as the trust of the American taxpayer is a cornerstone of our voluntary tax system. The American people must have confidence that all taxpayers are being treated fairly and with integrity. Since I am not at the IRS, I do not know the particulars of this case.

Question. In light of what happened in *LakePoint Land II*, how will you seek to restore the credibility of the Office of Chief Counsel?

Answer. If I am confirmed, the Office of Chief Counsel will be a place where employees know they will be held accountable if they do not serve with integrity. This is the only way for the IRS to earn and keep the trust of the American taxpayer.

Question. There are also penalty approval backdating allegations in several other pending Tax Court cases (*Arden Row Assets*, *Basswood Aggregates*, and *Delwood Resources*). If confirmed, will you investigate what happened in these cases and report to the committee?

Answer. As noted above, if confirmed, I will ensure that employees in the Office of Chief Counsel are held accountable for any unethical behavior. I will be committed to ensuring that the Office of Chief Counsel always treats taxpayers fairly, ethically, honestly, and with the utmost integrity in all of our work.

Since I am not at the IRS, I do not know the particular facts of what occurred in these instances, but, if confirmed, I will certainly learn more about these cases and will make myself available to speak with you and answer your questions.

QUESTIONS SUBMITTED BY HON. MARK R. WARNER

Question. In June, Senator Moran and I were joined by 20 of our Senate colleagues in sending a letter asking the Treasury Department to issue clarifying guidance that Fannie Mae and Freddie Mac (the GSEs) are not subject to the Tax-Exempt Controlled Entity (TECE) rule for purposes of multiinvestor LIHTC partnerships.

As you know, Internal Revenue Code section 168(h)(6) states that investors that partner with TECE organizations are not entitled to benefits including accelerated depreciations, bonus depreciation, historic rehab tax credits, or certain energy credits that support companies offering affordable housing tax credits. Under current guidance, there is some confusion over whether the GSEs, despite paying billions of dollars in Federal taxes, are considered TECEs, due to the fact that the Treasury Department currently operates as a conservator for both organizations. This uncertainty has effectively sidelined the GSEs from participating in multiinvestor funds, which deliver the majority of capital to rural LIHTC deals.

Rural areas face unique challenges related to affordable housing development, including an aging population, smaller development opportunities, and many substandard homes in need of repair. These factors have led to generally fewer investors seeking development opportunities in these areas, and as a result, the LIHTC program has historically served as an investment lifeline in these communities, with

GSEs serving as significant LIHTC investors due to their statutory Duty to Serve requirements.⁷

In short, barriers to GSE participation in the LIHTC program—such as the current uncertainty surrounding the TECE rule—would significantly reduce affordable housing investment in rural America at a time when it is desperately needed.

Do you agree that Fannie Mae and Freddie Mac should not be considered Tax-Exempt Controlled Entities?

Answer. The availability of low-income housing is an important priority, and I appreciate your leadership on this. Since I am not in the building, I do not know the legal analysis that has been done to date by the Office of Chief Counsel, but I would be eager to get up to speed quickly if confirmed as Chief Counsel.

Question. If confirmed, do you commit to promptly engaging with me and the bipartisan group of cosigners on this issue?

Answer. If confirmed, I look forward to working with you and your Senate colleagues on this important issue.

SUBMITTED BY HON. ELIZABETH WARREN,
A U.S. SENATOR FROM MASSACHUSETTS

September 22, 2023

The Honorable Elizabeth Warren
United States Senate
Washington, DC 20510

Dear Senator Warren:

It was a pleasure meeting with you. I appreciate your insights and agree the Internal Revenue Service is at a particularly critical juncture at this moment. Thanks to increased funding provided by Congress, the IRS now has the resources it needs to modernize. At the same time, the IRS is implementing critical tax law changes, including the corporate alternative minimum tax and green credits provisions.

I am honored to be considered for the position of Chief Counsel of the IRS. The Office of Chief Counsel plays an integral role in promoting a fair tax system through the guidance it issues, litigation it pursues, and legal advice it provides to IRS offices.

If confirmed, I commit to the high ethical standard this administration has required of all confirmed appointees. Specifically, the recusals in the President's Ethics Pledge (Executive Order No. 13989) require me to recuse myself for a period of 2 years from participating personally and substantially in any matters involving any former employer or client identified in my ethics agreement. If confirmed, I agree to extend this recusal term from 2 to 4 years. I do not intend or expect to seek a waiver from these recusals. However, if unanticipated circumstances were to arise, I commit to considering all available alternatives—in close consultation with agency ethics officials—prior to seeking a waiver.

Further, I affirm that I have not been promised by an employer any promotion, salary increase, or other compensation in exchange for going back into government and later returning to a private sector role, and I will not enter into such an agreement in the future.

For 4 years after leaving government service, I also commit not to lobby, or to support lobbying activities directed toward, the Treasury Department or the IRS, or to participate in litigation to which the Treasury Department or the IRS is a party, or in any cases brought by the IRS against any clients.

I also commit not to seek employment or compensation from, including as a result of any board service, any company (including law firms and large accounting firms) that I interact with or that has a client that I interact with during my time in government for 4 years following my tenure, if confirmed, as IRS Chief Counsel.

Sincerely,

Marjorie Rollinson

⁷A recent report from Freddie Mac showed that the LIHTC program supports over 40 percent of the multifamily housing market in rural Persistent Poverty Counties (PPCs).

Ahead of Nomination Hearing, Senator Warren Raises Ethics Concerns With Medicare and Social Security Public Trustee Nominee

Demetrios Kouzoukas currently serves on the board of a for-profit private health insurer selling Medicare Advantage plans. “(Public) trustees play an obvious and significant role in protecting the Medicare program—a role that, in your case, will be compromised by your financial conflicts of interest. . . . It will be impossible for you to serve as a full member of the boards of trustees while also complying with Federal ethics law.”

Text of Letter

Washington, DC—United States Senator Elizabeth Warren (D–MA) sent a letter to Demetrios Kouzoukas, President Biden’s nominee to serve as public trustee on the boards of trustees for the Social Security and Medicare trust funds, raising concerns about financial conflicts of interest arising from his position on the board of directors of Clover Health, a private health insurer that derives a significant portion of its revenue from Medicare Advantage.

“Your role on the board of directors for the for-profit health insurer Clover Health—a company that derives nearly all of its revenue from Medicare, including a substantial share of its total revenue from Medicare Advantage—gives you an inseparable personal financial stake in the trustees’ Medicare projections and should disqualify you from the role of public trustee,” wrote Senator Warren.

In the 1980s, Congress created two public trustee positions and required that the public trustees belong to different political parties. In January, President Biden nominated Demetrios Kouzoukas to serve as the Republican public trustee for the Social Security and Medicare trust funds, a role that involves reporting to Congress each year on the past and future status of the Social Security and Medicare trust funds and recommending policy changes to preserve and extend the solvency of the program. The public trustee positions were created in 1983 to “represent the public in the report development process,” and help establish the underlying assumptions of the Social Security and Medicare trustees reports.

Senator Warren highlighted her particular concerns that Mr. Kouzoukas’s role on the board of directors for Clover Health, which he commits to retain if confirmed, would create personal and financial pressures to downplay the fiscal threat that Medicare Advantage poses to the financial health of the Medicare trust funds, and potentially recommend policy changes that would serve to further entrench the program’s hold over Medicare, thereby perverting the impartial nature of the position.

Senator Warren noted that Kouzoukas owns 25,000 shares of Clover stock, and in 2022 received \$100,000 in compensation for his board service. “Federal ethics law bars any government official, ‘including a special government employee’ such as a public trustee, from ‘participat(ing) personally and substantially’ in any ‘particular matter in which . . . he (or an) . . . organization in which he is serving as . . . director . . . has a financial interest,’” wrote Senator Warren. “(I)t will be impossible for you to serve as a full member of the boards of trustees while also complying with federal ethics law.”

“While I am supportive of President Biden’s efforts to fill the roles of public trustees, which have been vacant since 2015, I believe your service on Clover Health’s board of directors presents an unavoidable conflict of interest that would prevent you from effectively serving as a public trustee,” concluded Senator Warren. “I ask that you come prepared to discuss these conflicts at your September 28, 2023 nomination hearing before the Senate Finance Committee.”

Senator Warren has long advocated for strong ethics standards for public officials, including ending financial conflicts of interest and protecting vital health-care programs for seniors and people with disabilities:

- On August 29, 2023, Senator Warren announced that she has secured historic ethics commitments from Dr. Monica Bertagnolli, President Biden’s nominee for Director of the National Institutes of Health (NIH), to halt the revolving door between former Federal employees and giant pharmaceutical companies.
- In July 2023, at a hearing of the Senate Armed Services Committee, Senator Warren secured ethics commitments from General Charles Q. Brown, Jr., President Biden’s nominee to be the next Chairman of the Joint Chiefs of Staff. When asked if he would agree not to become a defense industry lobbyist or receive compensation from a defense contractor for 4 years, General Brown said

he did not “intend to pursue opportunities in the defense sector or a lobbyist upon retirement from military service.”

- In June 2023, Senator Warren announced that she secured another historic ethics commitment from Federal Reserve board nominee Dr. Adrianna Kugler, the same one that she previously secured from Vice Chair for Supervision Michael Barr, Dr. Lisa Jefferson, and Dr. Phillip Cook. These nominees’ ethics commitments—to a 4-year recusal period from matters which they oversee on the Board of Governors, not to seek a waiver from these recusals, and not to seek employment or compensation from financial services companies for 4 year after leaving government service—are the strongest ethics standards in the history of the Fed.
- On March 22, 2023, at a hearing of the Senate Finance Committee, Senator Warren defended the Centers for Medicare and Medicaid Services’s (CMS) proposed adjustments to the Calendar Year 2024 Medicare Advantage (MA) payment rates, pushing back against giant insurance companies and their lobbyists who are peddling misinformation to protect their billions in profits and scare beneficiaries into opposing the rule.
- On February 2, 2022, during a hearing of the Senate Finance Subcommittee on Fiscal Responsibility and Economic Growth, Senator Warren questioned witnesses about how corporate profiteering in the pharmaceutical, insurance, and financial industries is contributing to excessive costs for Medicare.
- In January 2022, Senator Warren secured a commitment from then-FDA Commissioner nominee Dr. Robert Califf to recuse himself from matters involving his former employers and clients for 4 years, 2 years longer than what is required in the Biden administration’s Ethics Pledge.

PREPARED STATEMENT OF HON. RON WYDEN,
A U.S. SENATOR FROM OREGON

The Finance Committee meets this morning to discuss an important set of nominations that are instrumental to the Federal Government’s finances.

First is the nomination of Marjorie Rollinson to be Chief Counsel at the IRS. The Chief Counsel’s office is responsible for ensuring the agency is implementing tax law by the books. It’s difficult to overstate the importance of this responsibility, but I’m pleased that the President has sent the Finance Committee such a qualified nominee. Ms. Rollinson has decades of tax and management experience in both the public and private sector, including several years at the Office of the Chief Counsel that she has been nominated to run. If confirmed, Ms. Rollinson would be the first woman to serve as Chief Counsel.

As colleagues are aware, the IRS is waist-deep in its work to issue guidance related to the Inflation Reduction Act. Having a confirmed Chief Counsel will ensure this work is carried out to the letter of the law.

The Chief Counsel’s office also has an important role in the IRS’s efforts to move away from auditing low-income and middle-class Americans and towards complex pass-throughs and wealthy individuals. This goes right to the heart of the reality of the tax code: working Americans, mostly low- and middle-income, overwhelmingly comply with the law because their information is automatically passed on to the agency through payroll.

On the other side of the coin are these complex pass-throughs and other structures often designed by the wealthy specifically for tax avoidance. I expect any Chief Counsel to provide support for the agency’s effort to put more attention on billion-dollar partnerships rather than low-income individuals, and to ensure legal strategy is sound, as I have little doubt those who have made millions through tax avoidance schemes will be fighting this fresh approach with a legion of lawyers.

It’s no secret that Democrats and Republicans have differing views about how the IRS should operate. But the position of the Chief Counsel has historically been one that has received bipartisan support, and it is my hope that will remain true with Ms. Rollinson’s nomination. The last Chief Counsel, Michael Desmond, was reported out of the Finance Committee with a 26–2 vote, and was confirmed by the Senate with an 84–15 vote. I urge all of my colleagues to maintain this bipartisan support.

Now, on to the public trustees. The board of trustees of the Social Security and Medicare trust funds is responsible for issuing annual reports to Congress on the status of the trust funds that ensure Americans receive their earned benefits now and into the future.

The board is made up of six members: the Treasury Secretary, the Secretary of Labor, the Secretary of Health and Human Services, and the Commissioner of Social Security, as well as two public trustees.

The board has been without public trustees for over 8 years. Unlike most nominations that come before this committee, the public trustees do not represent the views of the President or the agencies they will be managing. The public trustees represent the American people, ensuring their voices and views are represented in the board's annual reports. The Finance Committee has long held the view that when the term of a public trustee expires, a new public trustee must be nominated to bring fresh views to the board.

That's going to include insight on emerging trends in Medicare, like how to update and strengthen the Medicare guarantee so it squarely addresses chronic illnesses that are the overwhelming concern for the program and the seniors who count on it. Improving chronic care is an effort that began in this committee on a bipartisan basis with myself and the late, great Senator Orrin Hatch, and I look forward to continuing our work in that bipartisan spirit.

That's why I'm glad to see two new faces before the committee, although they need little in the way of introduction. Tricia Neuman is practically a household name when it comes to Medicare policy and finances as a longtime leader at the Kaiser Family Foundation. She worked in both the House and Senate, and when Americans read news articles about health-care policy, it's more likely than not that Ms. Neuman will have been interviewed for her insight.

Demetrios Kouzoukas has been nominated to fill the Republican slot for the public trustee. Mr. Kouzoukas has extensive experience across our Federal health programs, serving at both Health and Human Services and the Centers for Medicare and Medicaid Services, as well as a variety of roles in the private sector.

Both nominees have the experience needed to represent the public and ensure the integrity of the board's reports. I'd also like to emphasize that this role requires putting the public interest first, not the interests and values of your day job and other financial relationships. The financial future of both Social Security and Medicare are on the minds of families across the country as well as lawmakers, and work will need to be done to chart a course that will protect and strengthen Americans' earned benefits.

I want to thank the trustees for considering this role, as it will require dozens of hours of time each year and sweat equity to fulfill this public service.

