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FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS FOR 2016

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON APPROPRIATIONS

HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS

ANDER CRENSHAW, Florida, *Chairman*

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NOTE: Under Committee Rules, Mr. Rogers, as Chairman of the Full Committee, and Mrs. Lowey, as Ranking Minority Member of the Full Committee, are authorized to sit as Members of all Subcommittees.

WINNIE CHANG, KELLY HITCHCOCK,
ARIANA SARAR, and AMY CUSHING,
Subcommittee Staff

PART 7

	Page
Consumer Product Safety Commission	**1**
Federal Communications Commission	**81**
Securities and Exchange Commission	**183**
Statements for the Record	**271**

Printed for the use of the Committee on Appropriations

PART 7—FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS FOR 2016

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FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS FOR 2016

THURSDAY, MARCH 19, 2015.

CONSUMER PRODUCT SAFETY COMMISSION

WITNESSES

HON. ELLIOT F. KAYE, CHAIRMAN, CONSUMER PRODUCT SAFETY COMMISSION

HON. ANN MARIE BUERKLE, COMMISSIONER, CONSUMER PRODUCT SAFETY COMMISSION

Mr. CRENSHAW. This hearing will come to order. Just to let everyone know, we are probably going to have a vote sometime between 11:30 and a quarter to 12:00. Let's get started on time. We will have time for the testimony and a few questions. We will see what happens.

But just let me say that I want to welcome our witnesses, Chairman Kaye and Commissioner Buerkle.

Chairman Kaye, you were only sworn in, I guess, late last summer. However, you have been with the Commission for some time now, and we appreciate your institutional knowledge as chairman.

And, Commissioner Buerkle, we welcome you back to Capitol Hill.

Ms. BUERKLE. Thank you.

Mr. CRENSHAW. Thank you both for being here today and testifying on the Consumer Product Safety Commission's fiscal year 2016 budget request. The Commission has the daunting task of overseeing tens of thousands of consumer products. These products are used daily by all of us, and it is important that the Commission lives up to its mission of protecting consumers from unsafe products, while at the same time ensuring that American businesses and manufacturers are not adversely impacted by unnecessary, onerous rules and regulations.

The President's fiscal year 2016 budget request for the Consumer Product Safety Commission totals $129 million. That is a $6 million increase over 2015. The request includes $5 million for a nanotechnology research center. I am very interested to learn more about this initiative. Additionally, the request includes $17 million in funding for the Import Surveillance pilot program that has had some good success. However, I am concerned with the Commission's request to collect a fee from importers in an effort to expand the program. So I look forward to your testimony here today justifying the fee, but as well as for the outreach the Commission has done with those involved in the global trade.

In the fiscal year 2015 omnibus this subcommittee included $1 million for third-party test burden reductions, as we are concerned that the Commission is not dedicating the appropriate resources to this congressionally-mandated priority. I look forward to hearing your testimony today on how the Commission is implementing this mandate, and work you have done to reduce the significant third-party testing burdens.

And finally, I am interested in learning more about how the Commission works with all the stakeholders. The success of the U.S. regulatory system for protecting consumers and minimizing product hazards relies heavily on a cooperative relationship between the Commission and all of the affected stakeholders.

Chairman Kaye, you have said one of your top priorities when it comes to rulemaking will be addressing public safety hazards. So I am interested to hear your testimony on outreach to stakeholders so that the Commission can get the rules done right instead of wasting your time and our time and resources in litigation and lawsuits.

So once again, welcome to both of you. I look forward to your testimony. I would like now to recognize my distinguished ranking member and friend, Mr. Serrano.

Mr. SERRANO. I noticed the hesitation after distinguished.

Mr. CRENSHAW. I didn't know if you are a distinguished friend or a distinguished ranking member. I think you are both.

Mr. SERRANO. Friend. Thank you. Thank you, Mr. Chairman.

I would also like to welcome Consumer Product Safety Commission Chairman Elliot F. Kaye and Commissioner Ann Marie Buerkle, who also happens to be my former colleague from the New York State delegation. I thank you both for making the time to be here today. It has been several years since the CPSC has had a hearing before the committee, and I am glad to have the opportunity to discuss with you all of the fiscal year 2016 budget requests and other issues of great importance to consumers.

The CPSC has an important role to play in protecting consumers. It is responsible for ensuring that products for sale on the domestic market pose no safety hazards or threats to American consumers. Without CPSC's supervision the American market would be overrun by products that could cause significant deaths, injuries, and safety threats to consumers. Providing adequate funding to this agency should be a high priority for this Congress or any other Congress.

The agency has made significant advances over the past several decades. Families and individuals have been spared great harm as a result of the agency's work to recall household products, such as toys, baby products, and household cleaners, which are found to be defective and dangerous. This work cannot be accomplished without the staff that the agency employs. Unfortunately, employment within the agency has steadily declined over the past 30 years. It seems that budget constraints have impacted employment rates.

The decrease in employment is particularly troubling to me as more and more products enter the market each year. I am especially concerned with the agency's ability to continue to provide consumers with necessary safety information and regulate new products in the growing market.

The agency seeks to expand its research and development in the area of nanotechnology in this year's budget. Nanotechnology is being used to develop products from backpacks to toothbrushes. The government spends more than $1.5 billion per year on nanotechnology research and development, including such things as military and material applications at agencies such as DOD, Energy, and EPA, but spends about one-tenth of 1 percent or $2 million annually at the CPSC to understand the safety implications of consumer products, including children's products that utilize this technology. In the interest of getting the agency ahead of the curve rather than behind it, I believe Congress should consider supporting more funding for this area.

I would also like to express my concern for the need to increase the agency's presence at our borders. In the past few years alone we have seen Chinese products come onto the U.S. market that have been defective and dangerous for American consumers. It is imperative that taxpayer dollars are used to hire and train personnel who can work in conjunction with the U.S. Customs and Border Protection to make certain that defective products do not make it into our homes.

As a parent, a grandfather, and a consumer, I wholly support the work of the Consumer Product Safety Commission. I look forward to discussing these and other issues with you.

And I must say, Mr. Chairman, that this agency doesn't get the attention from Congress that it should, and I don't mean just in funding. A lot of people don't pay attention to it. And yet it is probably one of those agencies that sets us apart from the rest of the world, that we actually care about the quality of our products and how they affect our children and affect ourselves and affect the whole country.

Thank you.

Mr. CRENSHAW. Thank you. And that is why we are having this hearing today.

So, Chairman Kaye, we would like to recognize you for an opening statement. If you could keep that within the 5-minute framework we will have more time for questions. The floor is yours.

Mr. KAYE. Thank you, Mr. Chairman. Good morning, Chairman Crenshaw, Ranking Member Serrano, and the members of the subcommittee. Thank you for the invitation to come speak about the work of the United States Consumer Product Safety Commission and our budget for fiscal year 2016.

I am also pleased to appear alongside my friend and colleague Commissioner Ann Marie Buerkle, who brings great leadership to many issues, especially our efforts to reduce testing costs while assuring compliance with the law.

CPSC's vital health and safety mission touches everyone in some way, each and every day. From the parent of the baby who gently moves his or her child throughout the day from crib, to baby bouncer, to stroller, and back to crib; or the self-employed millennial who on a cold winter day relies on a space heater to stay warm and an extension cord to power a computer; to the baby boomer who purchased adult bed rails to help care for an aging parent moving in, the products in the CPSC's jurisdiction are inseparable from our daily lives.

We believe we provide an excellent return on investment for the American people. We run a lean operation, especially considering the thousands of different products in our jurisdiction, and we cover them all with a budget in the millions, not the billions.

We are very appreciative of the continued bipartisan support for the Commission and our work. We saw the support in the overwhelming, nearly unanimous passage of the Consumer Product Safety Improvement Act of 2008, and we see it here in the appropriation levels the Congress has provided. These levels have allowed our dedicated staff to drive standards development to make children's products safer, to increase our enforcement effectiveness, and to better educate consumers about product-related hazards.

Our proposed budget reflects our continuing efforts to carry out and enforce CPSIA-driven enhancements to consumer product safety. Unfortunately, not all of those priorities and requirements are achievable at our current levels. For that reason, we were pleased to see the President include in his budget two important consumer product safety initiatives. Both initiatives, if funded, will advance consumer safety and at the same time provide real value to those in industry making or importing safe products.

First, we are seeking a permanent funding mechanism to fully achieve the intent of and direction in CPSIA Section 222. Section 222 calls upon the Commission to develop a Risk Assessment Methodology to identify likely violative imported consumer products. In 2011, we created a small-scale pilot that has been a success. However, the pilot alone does not fulfill the mission and direction and vision of Congress and without full implementation we will not be able to sufficiently integrate CPSC into the much larger United States Government-wide effort to create a single window for import and export filing of all products.

If the CPSC can be fully integrated into the single window, we can transform Congress' vision of a national scope, risk-based, data-driven screening at the ports into a reality, a reality that will mean safer products in the hands of American consumers and faster entry for importers of compliant products.

Our proposed budget also includes increased funding to address critical emerging health and safety questions associated with the exploding use in consumer products of nanomaterials. These materials offer many benefits. However, there has been a significant lag in assessing possible health effects of human exposure to nanomaterials in consumer products, especially to vulnerable populations, such as our children.

In light of the questions raised in the scientific community about the effect that certain nanoparticles might have on human lungs, concerns that center on identified similarities to asbestos exposure, we are seeking to significantly advance the state of the science as it relates to human exposure from consumer products with nano.

In the absence of CPSC driving this work, it will not be done by any other federal agency. All involved, companies already using the nanomaterials in the products they make and parents whose children are already using these products, deserve to know sooner rather than later the answers to the health questions posed.

Finally, I would like to discuss an additional priority of mine, one that is not reflected in dollars but to me at least makes a lot of

sense. How we at the CPSC do what we do is often as important as what we do. Since day one in this position I have worked daily to try to establish a certain culture among the five of us at the Commission level. The Commission, and more importantly, the American public, are far better served by an agency where we operate in a culture of civility, collaboration, and constructive dialogue.

Of course for this to happen it requires a commitment by all five of us. I am pleased to say that any observer of our public meetings would agree that such a positive and productive culture exists at the CPSC. There is no doubt we have policy differences, but we discuss them with respect and stay focused on merit-based policy-making.

Thank you again for the invitation to speak to you about the CPSC and the lifesaving work undertaken by our staff, and I look forward to answering any questions you may have.

Mr. CRENSHAW. Thank you very much.

U.S. CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

STATEMENT OF CHAIRMAN ELLIOT F. KAYE
TO THE FINANCIAL SERVICES AND GENERAL GOVERNMENT SUBCOMMITTEE
OF THE U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON APPROPRIATIONS
FISCAL YEAR 2016 BUDGET HEARING

MARCH 19, 2015

Good afternoon Chairman Crenshaw, Ranking Member Serrano and the members of the Subcommittee. Thank you for the invitation to come speak about the work of the United States Consumer Product Safety Commission and our budget for Fiscal Year 2016.

CPSC's vital health and safety mission touches everyone in some way, each and every day. From the parent of the baby who gently moves his or her child throughout the day from crib, to baby bouncer to stroller and back again to the crib; or the self-employed millennial who, on a cold winter day, relies on a space heater to stay warm and an extension cord to power a computer; to the baby boomer who purchased adult bed rails to help care for an aging parent who needed to move in, the products in CPSC's jurisdiction are inseparable from our lives.

We believe we provide an excellent return on investment for the American people. We run a lean operation, especially considering the thousands of different product categories in our jurisdiction. And we cover them all with a budget in the millions, not the billions.

We are very appreciative of the continued bipartisan support for the Commission and our work. We saw this support in the overwhelming, nearly unanimous vote to pass the Consumer Product Safety Improvement Act of 2008 (CPSIA), and we see it in the appropriations levels the Congress has provided.

These levels have allowed our dedicated staff to drive standards development to make children's products safer, to increase our enforcement effectiveness and to better

educate consumers about product-related hazards, especially drowning prevention, poison prevention, safe to sleep and TV/furniture tipovers.

Our proposed budget reflects our continuing efforts to carry out and enforce CPSIA-driven enhancements to consumer product safety. Unfortunately, not all of those priorities and requirements are achievable at our current levels. For that reason, we were pleased to see the President include in his budget two important consumer product safety initiatives. Both initiatives, if funded, will advance consumer safety and at the same time provide real value to those in industry making or importing safe products.

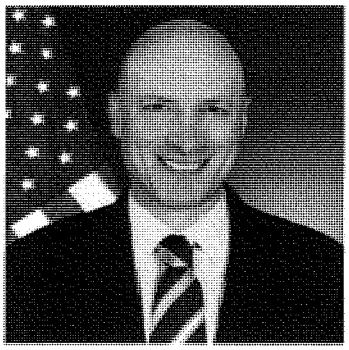
First, we are seeking a permanent funding mechanism to fully achieve the intent of and direction in Section 222 of the CPSIA. Section 222 called on the Commission to develop a Risk Assessment Methodology to identify likely violative imported consumer products. In 2011, we created a small-scale pilot that has been a success. However, the pilot alone does not fulfill the direction and vision of Congress and without full implementation, we will not be able to sufficiently integrate CPSC into the much larger US Government-wide effort to create a "Single Window" for import and export filing of all products. If CPSC can be fully integrated into the Single Window, we can transform Congress' vision of a national-scope, risk-based, data-driven screening at the ports into a reality – a reality that would mean safer products in the hands of American consumers and faster entry for importers of compliant products.

Our proposed budget also includes increased funding to address critical emerging health and safety questions associated with the exploding use in consumer products of nanomaterials. These materials offer many benefits. However, while the federal government has invested billions of dollars into driving research into the expansion of the use of nanomaterials, there has been a significant lag in assessing possible health effects of human exposure to nanomaterials in consumer products, especially to vulnerable populations such as our children. In light of the questions raised in the scientific community about the effect inhalation of certain nanoparticles might have on human lungs – concerns that center on identified similarities to asbestos exposure – we are proposing to significantly advance the state of the science as it relates to human exposure from consumer products. In the absence of CPSC driving this work, it will not be done by any other federal agency. All involved – companies already using the nanomaterials in the products they make, and parents whose children are already using those products — deserve to know sooner rather than later the answers to the health questions posed.

Finally, I would like to discuss an additional priority of mine, one that is not reflected in dollars but, to me at least, makes a lot of sense. How we at the CPSC do what we do is often nearly as or just as important as what we do. Since day one in this position, I have worked daily to try to establish a certain culture among the five of us at the Commission level. The Commission, and more importantly the American public, are far better served by an agency where we operate at the Commission level in a culture of civility, collaboration and constructive dialogue. Of course, for this to happen, it requires a commitment by all five of us. I am pleased to say that I believe any observer of our public meetings would agree such a positive and productive culture exists at the CPSC. There is no doubt we have policy differences, but we discuss them with respect and stay focused on merit-based policymaking.

Thank you again for the invitation to speak to you about the CPSC and the life-saving work undertaken by our staff. I look forward to answering questions you may have.

Elliot F. Kaye



Elliot F. Kaye was sworn in as the 10th Chairman of the U.S. Consumer Product Safety Commission (CPSC) on July 30, 2014. President Barack Obama nominated Mr. Kaye on March 31, 2014, and he was confirmed by the U.S. Senate on July 28, 2014, to a term that expires in October 2020. Chairman Kaye has identified three major areas of focus that will advance his collaborative leadership approach:

CPSC will further harness the experience and expertise of agency staff and safety experts in the private sector to achieve more safety advancements for the American public;

CPSC will continue to prioritize and work to accelerate culture change around brain safety in youth sports; and,

CPSC will be committed to strengthening its line of defense at U.S. ports to keep dangerous imports out of the hands of unsuspecting consumers.

Mr. Kaye served as CPSC's Executive Director from 2013 until his confirmation as Chairman. Previously at CPSC, Mr. Kaye served as Chief of Staff and Chief Counsel to former Chairman Inez Moore Tenenbaum in 2013, Deputy Chief of Staff and Senior Counsel to the Chairman from 2012 to 2013, and as Senior Counsel to the Chairman from 2010 to 2012. He has been the driving force behind many of the agency's most successful initiatives in recent years, including efforts aimed at addressing the chemical burn hazard to young children from the ingestion of coin cell batteries. Mr. Kaye is widely recognized for having played a key role in coalescing the leading organizations and companies in American football around a common goal of creating a culture change to reduce the risk of brain injuries in youth football.

From 2007 to 2010, he was an attorney at Hogan Lovells. Prior to this, he was an attorney at Cooley Godward Kronish LLP and a Judicial Clerk for the Honorable Sterling Johnson, Jr. of the United States District Court for the Eastern District of New York. Mr. Kaye has served as Chief of Staff and Legislative Director for U.S. Representative John Tierney, Chief of Staff and Communications Director for U.S. Representative Pat Danner, and held a number of positions with U.S. Representative Earl Hutto.

He received a B.S.J. from the Medill School of Journalism at Northwestern University and a J.D. from New York University School of Law.

Mr. CRENSHAW. Now, Commissioner Buerkle, you are recognized.

Ms. BUERKLE. Thank you very much. Chairman Crenshaw, Ranking Member Serrano, thank you for holding today's hearing on the United States Consumer Product Safety Commission's fiscal year 2016 budget and for giving me the opportunity to provide testimony to the subcommittee. I had the honor of serving alongside the subcommittee's distinguished members in the 112th Congress, and it is good to be back on Capitol Hill in my capacity as a Commissioner at the Consumer Product Safety Commission. I hope that today's hearing will renew our relationship of working together to keep America's consumers safe from unreasonable risk of injury or harm.

I want to take a moment to acknowledge CPSC Chair Elliot Kaye. While we may differ significantly on the policy issues, the tone he has set at the agency is one of collegiality and mutual respect. I believe that such an environment really allows for real debate and discussion of the issues rather than partisan arguments.

I have been a Commissioner at the agency since July of 2013, and what continues to impress me is the dedication of the CPSC staff. They take our mission of safety very seriously. Equally, I have been impressed by the cooperation and the efforts made by the regulated community to advance safety initiatives, as well as to comply with our regulations.

As a federal agency we are stewards of the American taxpayer's dollars and we must ensure that the regulations we promulgate are reasonable, balanced, and truly address a safety issue. CPSC accounts for only a relatively small amount of our Nation's spending, but we have a very significant regulatory impact on the economy.

Today our national debt exceeds $18 trillion. Yet, the President is proposing a $4 trillion spending plan for 2016 on top of our debt, and I think that this number is equally as staggering, the federal regulatory state in the United States costs our economy an estimated $1.86 trillion annually, which is more than the GDP of Canada.

Regulations are a necessary part of government, but I believe that the CPSIA has forced too much regulation without regard to risk, let alone cost-benefit. As a result, we are unnecessarily burdening businesses, especially our small businesses.

I did not support the Commission's 2016 overall budget request of $129 million, in part because it calls for a $6 million increase over current funding levels and an $11 million increase over what this subcommittee appropriated in 2015.

The intended use of the funds is also of concern to me. In 2011 Congress directed the CPSC to explore ways to reduce costs associated with third-party testing. To date, the Commission has done very little to approve actual burden-reduction ideas. I am grateful to this committee and to the House for including the $1 million for burden reduction in our 2015 appropriation, and I hope that our agency will spend the money wisely. I am disappointed that the President's budget request did not follow your lead in funding burden reduction.

Test burden reduction and safety are not mutually exclusive, and I think that burden reduction must be a part of our operations at CPSC. One of the most challenging things for anyone to do is

prioritize scarce resources, whether it is a hard-working family sitting around their kitchen table or the leadership of a regulatory agency. However, in this climate of a weak economic recovery, we all must make tough choices to be fiscal responsible while remaining true to our mission.

With that in mind, I am also concerned that CPSC may be spreading itself too thin. The agency has clearly identified import safety as a major priority. We got a significant boost for that program in our 2015 appropriation, and I would like to see our agency focus on that issue before we expand efforts elsewhere.

CPSC should become more collaborative, not only with consumers and consumer groups, but also with manufacturers and the regulated community. The agency should spend more of its resources on education and outreach, educating consumers about potential hazards, as well as informing the industry about how to comply with our law and regulations. I urge greater collaboration with the regulated community by placing greater emphasis on voluntary standards rather than mandatory standards. We should seek out where we can build public-private partnerships to achieve our common goal of safety.

Rule review must be a greater priority for CPSC so we can better understand what regulations are effective and which ones are not. Doing this will allow us to ensure that the rules we have promulgated are meaningful, and more importantly, actually improve safety. Rules that are not working or are no longer necessary must be amended or should be repealed.

The common goal for all of us, Congress, CPSC, industry, and consumers, is safety. We are all people who have families for whom we want safe products. I have 6 children and 16 grandchildren, and I do not want dangerous products hurting them or any American. But the United States Government cannot and should not try to establish a zero-risk society. We must find a balance that keeps people safe from unreasonable harms and risks, with solutions that actually address a problem so that the regulated community is not unnecessarily burdened. We must do so in a way that spends the American people's tax dollars efficiently and effectively.

Thank you very much for the time to be here today, and I look forward to answering any questions you might have.

Mr. CRENSHAW. Well, thank you very much.

Testimony of Ann Marie Buerkle
Commissioner
United States Consumer Product Safety Commission

Hearing on the 2016 Performance Budget Request of the CPSC

Before the

U.S. House of Representatives
Committee on Appropriations

Subcommittee on Financial Services
and General Government

March 19, 2015

Commissioner Ann Marie Buerkle 1

Chairman Crenshaw and Ranking Member Serrano, thank you for holding today's hearing on the U.S. Consumer Product Safety Commission's Fiscal Year 2016 Budget and for giving me the opportunity to provide testimony to the Subcommittee. I had the honor of serving alongside the subcommittee's distinguished Members in the 112th Congress, and it is good to be back on Capitol Hill in my capacity as a Commissioner of the CPSC. I hope that today's hearing renews our relationship of working together to keep American consumers safe from unreasonable risk of injury or harm.

I want to take a moment to acknowledge CPSC Chairman Elliot Kaye. While we may differ significantly on policy issues, the tone that he has set at the agency during his brief tenure is one of collegiality and mutual respect. Such an environment allows for a real debate and discussion of the issues rather than partisan arguments.

I have been a Commissioner at the agency since July 2013, and what continues to impress me is the dedication of CPSC's staff. They take our mission of safety very seriously. Equally, I have been impressed by the cooperation and efforts made by the regulated community to advance safety and comply with our regulations.

As a federal agency we are stewards of the American taxpayers' dollars and we must ensure the regulations we promulgate are reasonable, balanced, and truly address a safety issue. CPSC accounts for only a relatively small amount of our nation's spending, but we have a large regulatory impact and contribute to our nation's alarming spending problem. Our national debt exceeds $18 trillion yet the President is proposing a $4 trillion spending plan for 2016. On top of our debt, the federal regulatory state in the United States costs our economy an estimated $1.86 trillion annually, which is more than the GDP of Canada.

Regulation is a necessary function of government, but I believe that CPSIA has forced too much regulation without regard to risk--let alone cost benefit. As a result we are unnecessarily burdening businesses, especially small businesses. We must ask ourselves: what is the problem we are trying to fix, and most importantly, is our proposed solution the least burdensome way to solve the problem?

I did not support the Commission's overall 2016 budget request of $129 million, in part because it calls for a $6 million increase over current funding levels and an $11 million increase over what this subcommittee appropriated for FY15.

The intended use of the funds requested is of concern to me. In 2011, Congress directed CPSC to explore ways to reduce costs associated with third-party testing. To date, however, the Commission has done little to approve actual burden-reduction ideas. I am grateful to this committee and the House for including $1 million for burden reduction in our FY 2015 appropriation. I am hopeful that the agency will spend that money wisely. I am disappointed that the President's Budget Request did not follow your lead in funding burden reduction. We should be looking at burden reduction as a regular part of our program.

One of the most challenging things for anyone to do is to prioritize scarce resources; whether it is a hard working family sitting around a kitchen table or the leadership of a regulatory agency sitting in a conference room. However, in this climate of slow economic recovery, we all must make very tough choices to be fiscally responsible while remaining mission driven.

With that in mind, I am concerned that CPSC may be spreading itself too thin. The agency has clearly identified import safety as a major priority. We got a significant boost for that program in our FY2015 appropriation. I would like to see our agency focus on that issue before we expand our efforts elsewhere.

CPSC should become more collaborative not only with consumers and consumer groups but also with manufacturers and the regulated community. The agency should spend more of its resources on education and outreach - educating consumers about potential hazards as well as informing industry on how to comply with the law. I urge greater collaboration with the regulated community through greater emphasis on voluntary standards rather than mandatory ones. We should seek out areas where we can build public-private partnerships to achieve a common goal. Rule review should be a greater priority for CPSC so we can better understand what regulations are

effective and which are not. Doing this will allow us to ensure that rules we have promulgated are meaningful and actually improve safety. Rules that are not working or are no longer necessary should be amended or repealed.

The common goal among us all – Congress, CPSC, industry, and consumers – is safety; we are all people who have families for whom we want safe products. I have six children and sixteen grandchildren. I do not want dangerous products hurting them or any American. But the U.S. government cannot and should not try to create a zero-risk society. We must find a balance that keeps people safe from unreasonable risks with solutions that actually address a problem so the regulated community is not unnecessarily burdened. We must do so in a way that spends the American peoples' tax dollars efficiently and effectively.

Ann Marie Buerkle

Hon. Ann Marie Buerkle is a Commissioner at the U.S. Consumer Product Safety Commission (CPSC). She was appointed to the agency by President Barack Obama in May of 2013 and was confirmed by the U.S. Senate in June 2013. The term expires in October 2018.

Prior to joining the Consumer Product Safety Commission, Buerkle served the people of Upstate New York's 25th Congressional District in the U.S. House of Representatives. During her time in Congress, Buerkle served on the Oversight & Government Reform, Foreign Affairs, and Veterans' Affairs Committees. She served as Chair of the Veterans' Affairs Subcommittee on Health. While in Congress, Buerkle was also appointed by President Obama to serve as a United States Representative to the 66th Session of the General Assembly of the United Nations.

While in Congress, Ann Marie strived to work across party lines on policies that would improve the nation's economy, reduce wasteful government spending, provide tax relief to the middle class, and ensure veterans had access to the resources and care that they earned.

Prior to being elected to Congress, Ann Marie worked in a private law firm, and in 1997 was appointed, by then Attorney General Dennis Vacco, as an Assistant New York State Attorney General representing the State of New York on behalf of Upstate Medical University; a role she held for 13 years.

Ann Marie graduated from St. Joseph's Hospital School of Nursing as a Registered Nurse in 1972 and in 1977 she graduated from Le Moyne College with a Bachelor of Science Degree. In 1991, Ann Marie returned to college, this time to earn her law degree. She graduated from Syracuse University College of Law with a Juris Doctorate degree in 1994.

In addition to her professional accomplishments, Ann Marie has six grown children and fifteen grandkids that inspire her in all that she does.

Mr. CRENSHAW. Let me just start. And, again, we are probably going to be voting before too long, but I think we will have a chance to get a few questions in. And I want to start with this import surveillance.

As I understand it, you are proposing to expand the program that you have now through I guess a fee, and there is some concern that that has an impact on international trade, things like that. Now, can you tell us what you are doing to make sure you are not going to duplicate any other efforts? Are you talking to the stakeholders involved? Are you going to form an advisory committee? How do you propose to put that in place and make sure you are not doing something that is already being done?

Mr. KAYE. Thank you, Mr. Chairman, I appreciate the question.

Yes, absolutely. We have gone through all of those steps, one, to make sure we are not duplicating any other effort by any other Federal agency. And from our perspective, we look at the post-9/11 era when Congress looked to the border agencies, there are 47 agencies that have a presence at the border, and to seek a way for those agencies not only to be better at what they do to screen items that are coming in, but to coordinate and collaborate better to make sure that the United States Government is talking and then talking back to the trade. And it is something the trade has been seeking.

And so in the SAFE Port Act of 2006 the Congress required the agencies to go online and require e-filings through the International Trade Data System, ITDS, which is a Customs-related entity, as well as with Treasury, and also to do it through the Automated Commercial Environment, the ACE system that Customs runs.

What changed everything was the President's executive order from a year ago February where it significantly accelerated the timeline to get all of these agencies into the single-window system that I referenced in my testimony. And so what the CPSC is trying to do is to play its part. We have been identified as one of the 14 key border agencies by the Department of Homeland Security and Customs and Border Protection as being a necessary entity to have the capability to participate in that single-window effort. And the vision of that single window is that if a trade entity is bringing in compliant products, they will move through much more quickly and the government will be able to focus its efforts on those parties that are not following the rules.

And so everything we have done to try to implement our RAM system, both our pilot that you and I referenced in both of our testimonies, as well as the full-scale version that we are seeking, is consistent with that effort. And we also, to your question about advisory groups, we did set up through the Department of Commerce and Customs, they have a Commercial Operations Advisory Committee, we set up a special subcommittee on consumer products where we are engaging all the key, relevant members of the trade to make sure we get this right.

All of the agencies that are participating in the single window are creating pilots to try to test the system so that when it goes live at the end of the year, at least the initial part of it, it has been

stress tested and we can see that it works. And we are doing one of the pilots, and we had a webinar last week.

Every 2 weeks we are having these sessions with this Advisory Committee to make sure that as we do our pilot and as we take other steps to try to get online with the single window that we will have gotten it right. But the key to that is we do not currently have the funding mechanism to be able to join that single window and to deliver our part of moving compliant trade more quickly through the ports and stopping those that we should be focusing on.

Mr. CRENSHAW. Thank you.

Commissioner Buerkle, do you see it that way?

Ms. BUERKLE. Not exactly, Mr. Chair.

First of all, I kind of want to separate it out. It becomes very complicated when you put them all together because I think there are separate initiatives we should talk about. And I will just say for the record that I am not a proponent of user fees. I think constitutionally they are questionable. You cannot charge an individual for a service they haven't received. And the money would be used to build the system. So I think there is a constitutional issue and a fairness issue. Some will not even avail themselves of the service. But, primarily, the Constitution is my concern with the user fee.

Beyond that, I think we have to look at this in three steps. The initiative, and the chairman referred to, I am so pleased that he has opened this up to the public in discussion, is the 1110 rule for the agency, which is electronic filing of a certificate of compliance if someone wants to bring product into the country. Until we get that piece in place, we have no mechanism to comply with the next piece of this, which is the executive order, which is allowing it to come through a single window. So first we need the 1110.

Now, gratefully, the agency is doing a pilot, which will start January 2016, which I think is a very wise thing to do because when you are involving so many players and so many parties and you are talking about bringing trade to its knees if we don't get this right. So the pilot is a good idea. So that is the 1110.

That final 1110 rule in the e-filing probably won't come to fruition for a couple of years. The next part of the money we were given in 2015 is being used to—it is a need survey that is being done, a requirements survey. We are spending $1 million on it to put it out for bid and to have it contracted to look at how and what the RAM system, as we expand it, should be and how it should work. That makes sense. And before we do that and complete that and identify the needs of CPSC, I think we should do that first, and then spend the money on expanding the RAM.

But I think it is important when we talk about this Risk Assessment Methodology, that is RAM, is that we right now have the capability to look at every line for every article that is coming into the United States. We don't have the people. We are not collocated at many of our ports with CBP. And that is where the money, the additional of the $4 million from last year, part of that will be used to ramp up our presence at the borders, and so that is a good thing.

But my thought is in all of this, we are affecting so many stakeholders. This is a difficult, complicated issue. We can take it step

by step. Let's get the e-filing done, then let's look at what our requirements survey showed, build out the RAM, and make sure that we can communicate electronically with CBP so as those certificates come in we are not stopping trade or bringing it to its knees.

Mr. CRENSHAW. Well, thank you.

And my time has expired, and I hope somebody will ask about the $1 million that we appropriated to reduce some of the test burden.

But right now let's go to Mr. Serrano.

Mr. SERRANO. Thank you.

I had a budget question to ask both of you, but I was inspired by something you said, Ms. Buerkle, that I would like both of you to comment on.

I am not interested in wrecking American business. But we got to be the country we are because we said early on, before many countries said it, the air you breathe should be cleaner than it is, the water you drink should be cleaner than it is, you shouldn't be poisoned, the clothing you wear should not by simply going near a stove light up and burn you. Those are regulations, and that is a bad word in some cases. So where do you find the balance between protecting the American consumer and not hurting American business?

Some people would say, well, he is a classical liberal Democrat, he is against business. No, I want business to survive. I am a capitalist. I want it to survive. But I also want my children and grandchildren to be safe. I want to be safe.

So, again, remembering that we, by setting up certain regulations, went ahead of other countries in how we behave. I mean, I remember, and I will close with this, growing up in New York City when I was 15, 16—you may know this—by 6 o'clock in the evening your eyes, your ears, your nose were dirty with just the pollution that was coming off the chimneys. It took a regulation to stop that and people don't breathe that way in New York City any longer.

So where is the balance? To both of you.

Ms. BUERKLE. Well, I will start.

Mr. SERRANO. Sure.

Ms. BUERKLE. I think you have identified what the problem is and what the difficulty is when you are making a decision as a regulator. We will go back to the import surveillance and the need to make sure that the product brought into this country is safe. Currently in place we have this Risk Assessment Methodology that will look at the lines of product coming in. The system that is set up assesses a priority or a risk, so if it is a manufacturer who has had difficulties before that will be highlighted and that product will be looked at.

So there is a system in place. It does need to be made so it can communicate with CBP and the whole single-window initiative, and that is a very important piece of this. But it is not to say something isn't in place right now. The RAM pilot can be a little bit misleading because it is not that it is not at every port. It is. But I would say personnel and having people collocated at the ports and being able to investigate and look at that product is a piece that is missing, but thankfully we got some additional money for new staff not only to be collocated, but also to work on our compliance.

I think when we look at any regulation we have to find the balance. And as I said in my comment, I have children and grandchildren and we want safe products. But I think we have to begin to have an appreciation that industry wants safe products. They are people with families who want safe products. They are people who want to have a good brand. No manufacturer, no importer, no retailer wants to have a product that injures, or worse, hurts or kills someone. That is not what they are about.

And so if we can partner with them, I think that is going to be very important so that when we promulgate regulations they make sense, they are balanced, and they do protect just what you are talking about.

Mr. KAYE. Thanks, Congressman.

It is certainly something we spend a lot of time thinking about. I can promise you that. We recently, the Commission approved a rule to require a performance standard for the first time for small high-powered magnets. You may have seen this in the news. These are tiny little spherical-sized or shaped magnets that are basically adult desk toys. Kids were getting a hold of them. They were swallowing them. They were ending up on opposite sides of kids' intestines. They were boring their way through because they are so high powered. And they were creating awful, life-altering injuries, and in one case of an Ohio child, unfortunately, it took her life.

This was a very challenging rulemaking for us because you had on one side some phenomenally interesting, entrepreneurial companies that were doing great things with these magnets, and on the other side you had this rampant spate of injuries that, unfortunately, continues while there is still product out there. And you had doctors coming in and surgeons saying, you have to do something about it, you have to save these kids. And parents were up in arms over that. They couldn't control them in their household. They didn't even know they were in their household. They were coming in attached to backpacks and belt buckles, and the parents didn't know that the kids had picked them up at school.

And so we weighed that very heavily. That was a very, very difficult choice, and it was actually the first time that I was the chairman of the agency when the magnets rule was finalized, and during my statement, I spoke to the owner of the company who is going to primarily be affected by that. And I weigh those all the time. It is constantly on my mind. And we try to do the best we can. The law, the Regulatory Flexibility Act, requires us, and we follow it, to focus on small businesses and the impact on small businesses. So that is always at the front of our mind. But this idea that there are these faceless bureaucrats in Washington who don't think about it is totally false.

And I know that the time has expired. The last thing I want to mention, though, is we had the longest hearing in the history of the agency back on January 7 and it had to do with recreational off-highway vehicles. And we spent, we started in the morning, Commissioner Buerkle remembers it well, and we finished it and it was dark out at night. And we had panel after panel of all different types of folks coming in and talking to us about our rulemaking. And the point of that was to try to get it right.

So we do think about these issues. It is certainly at the top of our minds and it will continue to be.

Mr. CRENSHAW. Thank you.

Mr. SERRANO. In closing, Mr. Chairman, we spend a lot of time, as we should, worrying, being concerned about the working conditions of people who make products overseas and so on, and I think we spend less time concerning ourselves with the products they are producing.

And my concern goes back to the fact that I am one who believes we do live in the greatest country on Earth, but we didn't get here without a certain behavior. And if that behavior is overburden, people are overburdened, we should look at it. But we should not just discard it as just more government oversight or whatever that is bad.

Mr. CRENSHAW. Thank you.

Ms. BUERKLE. If I could just answer——

Mr. CRENSHAW. No, we are going to try to give everybody a chance.

Ms. BUERKLE. I am sorry.

Mr. CRENSHAW. Mr. Rigell.

Mr. RIGELL. Thank you, Mr. Chairman.

And, Chairman Kaye and Commissioner Buerkle, thank you very much for being here.

And I noted with appreciation, Mr. Chairman, your emphasis on civility and collaboration and constructive dialogue, and that was affirmed in the Commissioner's written testimony as well, and I appreciate that.

I would like to draw your attention, Chairman Kaye, to the disposition of the interpretive rule. I am not an expert on this, but we are going to pursue this line of questioning because I think it would be helpful here, and the process by which firms work through the Commission to implement voluntary recalls.

The budgetary pressure that you are under is going to continue, essentially into perpetuity. That is just the nature of where we are as a country and the sharp increase in the number of seniors and just some other things that are taking place. We are seeing it on every single line item of our federal budget.

So within that framework, and with the shared goal of ensuring that American people can buy products with confidence, that these products are not going to hurt them or their family members, we need to look for efficiency and to be very creative in how we approach the governance side here. And it seems to me, based on the information that I have, that we are going in the wrong direction when we make it more difficult or we put in roadblocks and disincentives to voluntary recalls.

I would like for you to respond to that, please. And if there is a difference in view with yours and the Commissioner's, Commissioner Buerkle, I would like to give her an opportunity to respond as well.

Mr. KAYE. Absolutely. Thank you, Congressman. And before I address that, I do want to thank you for the Drywall Safety Act. We have discharged all of our obligations under that act.

Mr. RIGELL. Thank you so much. So many have hurt so badly financially, and I wish we could do more. But thank you for what you have done very much.

Mr. KAYE. Yes, and thank you for that law.

So the voluntary recall notice rule that you referenced began under a prior chairman, and at that time I did not work on that rule. And everything I am saying I have said already in the public, so I am not giving anything away here. It was not something that was part of my portfolio. By the time I became Chairman, I was interviewed in my office by our three leading trade papers and media that came in to talk to me about my priorities. And what I have said then, and I will say it again now, is my priority is that the Commission work on safety rules, rules that have a clear, justifiable impact on safety. And so I think my track record since I have been chairman is to focus on those kind of rules.

Now, there are folks behind me right now who have been impacted by that work, who may not like that we are doing it, but it has to do with products that have a demonstrated history, unfortunately, of what I would consider to be an unreasonable risk of injury.

So this is a way of saying I have a higher priority, or a series of higher priorities than the voluntary recall notice rule. I have not spent time on it since I have been chairman.

Mr. RIGELL. So it is essentially static then? I mean, it is set aside and you haven't picked it up and pursued it. I am just trying to understand your position on it.

Mr. KAYE. Yeah, I have not. That is not to say that it is meritless. I just have never studied it closely enough because I didn't work on it. I have not yet read the comments. I think that there is value to having some type of template for these voluntary recalls so that they can move through the process more quickly. But, again, I have higher priorities than that rule.

Mr. RIGELL. Okay. Thank you.

Commissioner.

Ms. BUERKLE. Yes. With regards to the voluntary recall, my concern with that is, and we have heard from both sides of the aisle on this issue, we have a very successful fast track recall program at the CPSC and this will impede the process and the speed at which products with be taken out of the market if, indeed, they are dangerous.

Mr. RIGELL. To be precise, Commissioner, when you refer to this, this would be the proposed rulemaking if implemented.

Ms. BUERKLE. The proposed rule for, yes, voluntary recall.

Mr. RIGELL. Yes.

Ms. BUERKLE. Now, to the Chairman's comment, and it is true, we have not taken any steps to further these two issues. And I say two because there is a second one, information disclosure, which we call 6(b), two very controversial proposed rules. And what I would like to see is, because they are both set in our operating plan for final rules in 2015, what happens is, is there a lot of angst and uncertainty out with those stakeholders who will be involved with this. And that is a problem because there is uncertainty as to whether or not we are going to move forward with these proposed rules.

And I would like to see some resolution on that. If we are not going to take action on them, we really should get them out of the operating plan so we can create certainty for the stakeholders.

Mr. RIGELL. That sounds like compelling logic.

And I thank you both for your testimony today, and out of respect for my colleagues I am going to yield back. Perhaps we can get another line of questioning in before they have to go vote.

Thank you.

Mr. CRENSHAW. Thank you very much.

They just called the vote, but I think we have two members that would like to ask questions, and if we could all pay attention to the clock I think we can have those questions, and then we will probably have to go vote.

So Ms. Herrera Beutler.

Ms. HERRERA BEUTLER. Thank you.

And you referenced, Chairman, the ROV rulemaking. As someone who grew up in southwest Washington State I remember riding different off-road vehicles as early as 6 years old. My family would go out. We would go camping, go with other families. It was one of the ways my mother kept my brother focused because he was passionate about it. And in southwest Washington we have a community that is just as passionate.

And, quite frankly, this is going to sound a little funny, but we weren't wealthy. You can pick a hobby as a family and you can find a way to do it that is reasonably affordable. So when I am thinking about this community we are not talking about millionaires and billionaires. We are talking about average middle-income families who as a family have chosen to do these type of activities together. And so the affordability piece is incredibly important to me.

Two thoughts. You referenced the long meeting, and what concerns me the most is that you made the decision, and anybody who is going to use an off-road vehicle assumes a certain amount of risk, whether it is a bicycle or a motorized vehicle or whether you are going to go hiking. I mean, there is a certain amount of personal risk that you have to take into account. Parents, families have to make these decisions. And I know over the years, things have, based on data, scientific data, information that we have about incidents, there have been appropriate adjustments and changes. Right? There have been appropriate standards put in place. I am not talking about that.

What concerns me is it seems or it appears that the requirements were made, but we don't—I mean, actually, I have one of your quotes here. "Thus, we cannot estimate the potential effectiveness of the dynamic lateral stability and the vehicle handling requirements in preventing injuries." So I don't know how you can say that and then make the rule about it. Perhaps you could speak to that.

Mr. KAYE. Sure, I would be happy to. And all I would ask from anybody who is going to look at this issue, and I don't think that this is an unfair thing to ask, is that you not only look at the materials that have been provided to you by folks who have a specific interest in it, but you actually take the time to please read the entire rulemaking package. I know that is a lot to ask, and I appreciate from having spent 8 years as a staffer on the Hill how limited

your time is, but the rulemaking is that serious and that big a deal, especially if you have a personal history in these vehicles.

Ms. HERRERA BEUTLER. So I guess I understand that. I guess, specifically, though, I would like you to speak to that quote.

Mr. KAYE. Sure.

Ms. HERRERA BEUTLER. That you are making a rule for which you don't know and do not have the data to say it is going to be effective.

Mr. KAYE. So I understand why the groups that are opposed to that rule have latched onto that quote by our staff in the draft package.

Ms. HERRERA BEUTLER. I got it off Google as I am sitting here.

Mr. KAYE. Right. And that quote has been used a number of times. That quote was pulled from the economic analysis portion of the rulemaking package, and it has been taken out of context because what the staff was saying is we are not able to at this point, based on the limited economic data that is available, quantify the specific dollar amount of the benefits associated with the rulemaking package. That is a very different concept from saying we can't figure out whether or not what we have proposed works, and I think that is an important distinction to state in this hearing.

Ms. HERRERA BEUTLER. So just a quick follow-up on that. So you are saying you actually do have the ability to estimate the effectiveness of the dynamic lateral stability and vehicle handling requirements in preventing injuries.

Mr. KAYE. Absolutely.

Ms. HERRERA BEUTLER. I didn't read anything in there about—I wasn't talking about dollars. We are talking about injuries. Obviously, that is the most important thing.

Mr. KAYE. Correct. And that is the frustration from our point, is that that quote has been lifted out of a section that had to do with economic analysis and figuring out specific dollar amounts of benefits as opposed to injury reduction.

The staff figured out, based on an analysis of vehicles that had been subject to a recall, the line, from their perspective—and I am not a vehicle dynamicist, so I am telling you what our technical experts—we all rely on technical experts and scientific experts—they figured out that if these vehicles were designed in such a way as to lower their rollover resistance, there would be a line between the current ones on the market that don't meet the standard, that have a propensity to roll over all too frequently and kill people, and those that wouldn't. And they can definitively state from their technical analysis that they believe that will make a tremendous difference in the number of deaths and injuries associated with these vehicles.

I also want to speak to your point about assumption of risk, and I completely agree with you. But what is lost in that discussion often is that the consumer is informed. I think we all believe and agree that a consumer has to be informed before a consumer can properly make an assessment about risk. What has been difficult for us with these products is many of them are designed in such a way that when the consumer goes to turn the vehicle, and maybe you experienced this when you were riding on them with your family——

Ms. HERRERA BEUTLER. I rode a three-wheeler.

Mr. KAYE. Okay. Well, thankfully those——

Ms. HERRERA BEUTLER. So if you really want to talk about it.

Mr. KAYE. Yeah, exactly. Well, those don't exist anymore, or shouldn't.

The vehicles turn, when they start to turn, unlike a car, they turn in a much more sharp fashion than the driver may intend. From our experience, we are not so sure that drivers fully appreciate that, especially new-time drivers to recreational off-highway vehicles. And as I mentioned, since that is the opposite experience that we have in automobiles, that goes to being informed. We don't think consumers are informed.

Ms. HERRERA BEUTLER. And I agree with that. And I will yield back. I guess, I mean, you are not going to put a 12-year-old for the first time ever on a high-powered quad. I mean, there is some——

Mr. KAYE. People do, though, all the time.

Ms. HERRERA BEUTLER. So if I understand you correctly, then you are taking it a step beyond that and telling parents when and how. So there is a difference between information and assuming that you have the right to parent everybody's children.

Mr. KAYE. Absolutely. I totally understand that.

Ms. HERRERA BEUTLER. And I do need to yield back, although I do want—can she——

Mr. CRENSHAW. Just very briefly.

Ms. BUERKLE. Very briefly.

Mr. CRENSHAW. We have got some time. There are 350 Members haven't voted yet. But they all started voting.

Ms. BUERKLE. I think the biggest issue with ROVs is that there is this pursuit by the majority in the Commission to get to a mandatory standard. In 2014 there was a new voluntary standard that was passed and the Commission never looked at that 2014 standard before it got to this proposed mandatory standard. The industry is very engaged. They want to work with us. And we have been directed by, bipartisan, two letters from the Senate saying work hard to get to a voluntary standard, do not push this to a mandatory standard.

And that has been my frustration, because I continue to say there is so much uncertainty, there are so many questions we all have to ask about this. We had a successful tech-to-tech meeting in October. Let's do that again and again until we can reach a consensus about what we agree on, what changes we can make, so that we end up with a voluntary standard, which I think is the intent of Congress.

Mr. CRENSHAW. Thank you very much. Thank you.

Mr. Amodei.

Mr. AMODEI. Thank you, Mr. Chairman.

Mr. Chairman, I am a process guy. And so I am looking at the rulemaking stuff and I see that there have been some FOIA issues where your own counsel says, hey, we have got a problem and blah, blah, blah, we need you to disclose. So I am assuming that, because you have indicated you are a process person too, that there will be an extension in that comment period for those folks to fully digest when they get FOIA compliance, so that everybody has the amount

of time that is anticipated by the reg to do whatever they are going to do to have their best shot, correct?

Mr. KAYE. So we have already had one extension of the comment period, and as of I think 2 days ago now everything has been turned over, that under the FOIA laws, that we should have already turned over. And I agree completely with you. It is unfortunate that we didn't get it right the first time. But there is a process in place under FOIA, there was an appeal, and the process worked. And so we did end up turning over all that data.

We do have a pending request that you referenced in front of us for further extension of the comment period. My understanding is that we might be getting an additional request from a different part of the industry community. We are waiting to see if that one comes in.

And then I can't unilaterally do that. That is a Commission requirement. And so when the staff sends up their recommendation to us, we will take that into consideration.

We don't always go with what the staff said. We had a recommendation on a different rulemaking last week where the staff recommended we do not extend the comment period. We overruled that recommendation and went ahead and extended that comment period.

I can give you this commitment, and I am going to slightly disagree with my colleague. There is a pursuit. But the pursuit is not to do a mandatory rule. The pursuit is to get to an effective rule. So I am going to continue to be committed. And when I say effective standard, that could be a voluntary standard. During that 7-hour hearing that I referenced, I begged, and there are some of the individuals in the room behind me right now, I begged those with the power in the voluntary standards community to reopen the standards process. That is the mechanism for us to join them at the table and create an effective voluntary standard.

To date, they have declined to do that. I can't make them do that. You probably could.

Mr. AMODEI. And I appreciate that. But the question is not what are you going to do on the substance. The question started with, I am a process guy. And so when I have your own counsel telling me that you didn't meet the law, and I have got single digits of days from when that is complied with to when the thing is at the end of it, and then you come tell me, and I know you can't do it yourself, but in a general sense, it is like if they have got 48 hours after you finally comply, after your own counsel says we didn't meet the standards, I would think that would be a strong case for giving these people, whoever they may be, the benefit of the process.

Mr. KAYE. I agree. I agree. And my track record has been fairness.

Mr. AMODEI. I am not attacking your track record.

Mr. KAYE. No, and I appreciate that.

Mr. AMODEI. I want to make sure that you are a process person.

Mr. KAYE. I am definitely a process person, and I would imagine that Commissioner Buerkle would agree.

Mr. AMODEI. Thank you very much.

Ms. BUERKLE. Mr. Chairman, could I just add one quick comment to that?

Mr. CRENSHAW. Certainly.

Ms. BUERKLE. And that is the suggestion of opening up the standard, the voluntary standard. The general way a voluntary standard and the ANSI standards are done is not public. And if CPSC opens up this voluntary standards hearing, it then becomes public because of our limitations. So it is better to let the ANSI process work the way it always works and not try to change the ANSI process into getting a voluntary standard.

Mr. CRENSHAW. Thank you very much.

Let me just finally say, this whole question about balancing safety with the impact it has on commerce, I didn't get a chance, but I want you to just be aware that Congress said that we have got to relieve some of that test burden that we are having. That is why we gave you an extra million dollars, because we thought that whole concept was languishing somewhere. I think your report was due on March 16. It has just come in. We will look at that. But I hope you will continue to make that a priority.

So with that, this hearing is adjourned. Thank you so much.

Financial Services and General Government Subcommittee Hearing on Consumer Product Safety Commission for Chairman Elliot Kaye

Questions for the Record Submitted by Chairman Ander Crenshaw

Voluntary Recall

For nearly 40 years, the Commission has partnered with manufacturers and retailers of all sizes to ensure that the system of voluntary recalls is effectively reducing the safety risks posed to the public. In fact, the Commission has highlighted the success of program, noting that 90 percent of recalls through the award-winning Fast Track program are implemented within 20 days.

I believe voluntary recalls have been largely successful because of the Commission's opportunity to leverage its resources with industry to help drive education campaigns related to proper use of consumer products. This cooperative relationship with industry has helped save lives and Commission resources. So I am concerned about the Commission's voluntary recall proposed rule issued in November 2013 that would make voluntary recall agreements legally binding. I believe this proposed rule would cripple the highly successful voluntary recall program currently in place.

You've indicated publicly that your priority as Chairman would be on rules that address product safety hazard.

Question: Where does the voluntary recall rule fit within that list of priorities?

Response: As Chairman, my priority is for the Commission to work on safety efforts that have a clear, justifiable impact on safety. There are persistent and deadly hazards, especially to children, that need to be addressed in a meaningful, effective and sustained way. This approach will continue to be how I prioritize work out of my office, and how I will continue to evaluate the project recommendations from our staff. As a practical matter most years, in addition to our planned priorities, we can count on one or more emerging hazards to require our attention and a reshuffling of some of our regulatory priorities. These hazards in the past have included contaminated imported drywall, high-powered magnets and magnet sets and liquid laundry detergent packets. This year alone we have a heightened focus on nanotechnology, laminate flooring, and, depending on Congressional direction, potentially also liquid nicotine containers. At each stage when we reevaluate which safety rules must be prioritized, I will continue to focus on efforts that have a real safety impact for the American public.

Question: The public comments you received on the voluntary recall proposal have been overwhelmingly in opposition. A number of Members of Congress have written to the Commission to express their concern about possible implications that the proposed rule would have, particularly its impact on the Fast Track recall program. The Financial Services Appropriations bill had an amendment to prohibit funds for implementing this rule on the House floor. However, your Fiscal Year 2016 operating plan indicates the Commission intends to issue

a final rule on voluntary recalls this year. Does the Commission plan to proceed with a final rule on voluntary recalls despite all the opposition to the proposal?

Response: Based on where we are in the fiscal year and the remaining work left to do this fiscal year pursuant to our operating plan, I do not believe the Commission will proceed with a final rule this fiscal year.

Question: Did the Commission consult with representatives of industry and consumer groups when it was developing its proposal to change the voluntary recall process?

Response: As I did not work on this rule when I worked for my predecessor, Chairman Tenenbaum, I cannot speak directly to this question. I can say the Commission has followed the notice and comment requirement of the Administrative Procedure Act with respect to this proposed rule.

Question: Are there plans to work with industry and consumer groups to improve effectiveness in the recall process?

Response: When a recall is needed, CPSC works with industry to determine the best way to reach consumers for that specific product. We are always looking for new techniques to promote recalls and recall effectiveness. Currently, we are having some success using social media platforms, in addition to our traditional communication channels, to announce recalls. We have strongly encouraged firms to use Facebook, Twitter, YouTube, Instagram, Pinterest, and/or Google+ to communicate recall information. We have trained our Compliance staff on the various forms of social media and produced a social media guide for industry that is posted on our Recall Guidance Web page. In addition, CPSC posts most recalls on various social media platforms — Twitter, Flickr, Blogs, and YouTube. Compliance staff routinely gives speeches, makes presentations, and participates in recall effectiveness discussions with industry and consumer groups, and staff plans to continue these efforts. Additionally, we have completely updated our recall guidance page on www.cpsc.gov.

The following additional efforts are under way to improve recall effectiveness:

- Producing a short video demonstrating how to complete the Monthly Progress Report Form that will be posted to our Recall Guidance page to ensure that companies are providing the most accurate recall effectiveness data;

- Reviewing our recall monitoring procedures to ensure that once a recall is announced, Compliance staff closely monitors the recall's effectiveness. We have reached out to other federal regulators with recall authority to share best business practices and engaged in discussions with stakeholders to ensure that recalls, especially high-priority recalls, achieve a high level of effectiveness; and,

- Working with CPSC IT staff to expedite filing Monthly Progress Reports by recalling companies through the CPSC business portal.

Question: Has the Commission considered establishing a formal advisory committee that can help maximize the effectiveness of the recall process and could recommend future changes to the Commission and its staff?

Response: We have considered this process in a number of areas, not just this one. However, the challenges and costs of setting up a formal advisory committee in compliance with the Federal Advisory Committee Act (5 USC § App. 1) can be significant, especially for an agency as small as ours. Even more importantly, we are concerned that the time it can take to set one up may create missed opportunities for feedback on the very issue in question. Since I have become Chairman, I have prioritized finding effective ways to significantly improve the lines of communication with our stakeholders. I think we have made great progress in this area, with even more to come.

Speaking more generally, I think it is important to note that CPSC is one of the most transparent agencies in the federal government. The Commission also annually holds a "Priorities Hearing" where any member of the public may attend and speak directly to the Chairman and the Commissioners about why a specific issue should be on the Commission's agenda for the coming Fiscal Year. I always look forward to hearing from our stakeholders at this event.

In addition, we work hard to meet with stakeholders. When industry groups visit the Washington area, they often meet with my staff and me, Commissioners and CPSC professional staff. I also make it a point to meet with stakeholders at their turf, whether it is at an association's annual conference or at an individual company's manufacturing facilities. As long as I am Chairman, we will continue to welcome comments and input from all of our stakeholders and continue to find ways to maintain a productive dialogue.

Window Blind Coverings

The CPSC published an Advanced Notice of Proposed Rulemaking (ANPR) for window coverings in January. It's important we have safe products on the market. We can all agree the safety of our children is foremost. With so many products on the market it's important we focus our energies where they are needed most. I'm concerned that the Commission's notice for a proposed rulemaking on window coverings is directing its resources somewhere they are not needed. The statue governing the Commission clearly states that CPSC must rely on the voluntary standard process whenever possible. For the past two years the Financial Services bill has included report language urging the Commission to work cooperatively with industry. The initiation of a rulemaking seems to indicate the Commission is moving away from the voluntary standards process and the direction set forth under statute.

Question: Can you tell me where you are in the Advanced Notice of Proposed Rulemaking process?

Response: On January 16, 2015, the Commission published an advance notice of proposed rulemaking ("ANPR") initiating a rulemaking and seeking information and comment on regulatory options for a mandatory rule to address the risk of strangulation to young children on window covering cords. The comment period for the ANPR was scheduled to end on

March 17, 2015. In a letter dated February 2, 2015, the Window Covering Manufacturers Association ("WCMA") requested a 75-day extension of the comment period to complete multiple WCMA-commissioned studies. WCMA stated that the request to extend the comment period was "based on the need for sufficient opportunity to develop and present a more factual record for CPSC's consideration to permit a well-informed analysis before considering whether the agency can move to the next stage of promulgating such a significant rule." The Commission granted WCMA's request to extend the comment period for the ANPR until June 1, 2015. I voted to extend the comment period somewhat reluctantly because of resulting the time delay. However, I trust the extension will allow WCMA the necessary time to complete its studies related to questions asked in the Commission's ANPR and provide the Commission with answers. Other parties who wish to comment likewise will have additional time.

On the issue of the voluntary standards, rather than walking away, together with Health Canada we have urged the voluntary standards body to work with our staffs on a single, effective update in both jurisdictions. This approach would provide a harmonized approach in both Canada and the United States and finally allow for an effective standard to be developed to address what has been decades of children strangling to death on these products. We cannot re-open the voluntary standards process ourselves. We have repeatedly requested industry do so. To date, despite our continued urging, they have yet to do so.

Question: How have you worked with industry and stakeholders to address existing concerns cooperatively?

Response: CPSC has been working with WCMA since 1995 on the publication and revision of an American National Standards Institute ("ANSI") standard to address accessible cords on window coverings. Over the years, CPSC staff participated in the technical committee and task group meetings, provided technical assistance, and submitted incident data for review and analysis. WCMA published the first version of the ANSI standard in 1996, and then revised the standard in 2002, 2007, 2009, 2010, 2012, and 2014. The last WCMA steering committee meeting was held on November 9, 2011. On July 22, 2014, CPSC staff sent a letter to WCMA, requesting that WCMA reopen the ANSI standard to address the hazard related to pull cords and continuous loops on window coverings, which are the predominant hazard types in the incidents reported to CPSC. Staff suggested proposed language for a revision to the voluntary standard and asked that WCMA consider including the language in the standard. On August 29, 2014, WCMA responded that the association would begin the process of opening the ANSI/WCMA window covering standard. In the interim, we have reiterated our request, along with Health Canada, for industry to reopen the standards process. To date, they have not done so.

Question: It's my understanding that the industry safety standard on window coverings is the most stringent in the world, I'm not sure that a mandatory rule is the answer. What role do you think education plays in addressing this hazard?

Response: While education can and should continue to complement safety efforts with this product, the decades of continued strangulations of children indicate to me that education alone is not sufficient.

Question: What is CPSC doing to educate consumers? Should you be doing more?

Response: Window cord strangulations are among the top five hidden home hazards. Every November, CPSC attempts to partner with the Window Covering Safety Council ("WCSC") to carry out a multimedia public education initiative during Window Covering Safety Month. The joint initiative focuses on the "Go Cordless" message, which CPSC and WCSC promote. CPSC has a special window covering information center on www.cpsc.gov that features videos, publications, safety alerts, a blog, a Neighborhood Safety Network poster, and tweets. While education can and should continue to complement safety efforts with this product, the decades of continued strangulations of children indicate to me that education alone is not sufficient.

Question: How much do you have in your budget to put towards these efforts of educating the consumer?

Response: Most of the agency's budget related to window covering safety education is based on salaries for staff in the Office of Communications (approximately $143,000 in FY 2015). There are no direct costs related to social media postings, blog writing, and earned media interviews, which I have conducted, and will continue to conduct, with local and national media. For contract services, such as the development of safety posters and production of videos, costs can range from $2,000 to $20,000; these types of materials serve multiple purposes and are put to multiple uses.

Question: The ANPR report admits that this is a complex issue that would require a significant cost increase for consumers. Replacing all one billion window coverings would be quite an undertaking. Do you think raising the costs of window coverings by getting rid of the lowest costs corded options would cause consumers to go out and buy new ones or keep their old ones?

Response: I am hoping the comments to the ANPR will help us better understand any impacts on product availability and cost, including how prices might change based on economies of scale in manufacturing significantly more coverings with inaccessible cords.

Question: What data do you have to back this up?

Response: I am hoping the comments and submissions to the ANPR will provide more clarity on this question.

Stakeholder Engagement

The success of the U.S. regulatory system for protecting consumers and minimizing product hazards relies heavily on a cooperative relationship between the CPSC and all affected stakeholders—consumer groups, manufacturers, retailers, importers, state and local governments, Congress, and the list goes on. The Consumer Product Safety Act and the CPSIA, has stressed the importance of a partnership between the CPSC and manufacturers and retailers in protecting consumers.

Question: Are there opportunities to improve your relationship with stakeholders and enhance the overall effectiveness of CPSC?

Response: Since I have become Chairman, I have prioritized finding effective ways to significantly improve the lines of communication with our stakeholders. I think we have made great progress in this area, with even more to come.

Speaking more generally, I think it is important to note that CPSC is one of the most transparent agencies in the federal government. The Commission also annually holds a "Priorities Hearing" where any member of the public may attend and speak directly to the Chairman and the Commissioners about why a specific issue should be on the Commission's agenda for the coming Fiscal Year. I always look forward to hearing from our stakeholders at this event.

In addition, we work hard to meet with stakeholders. When industry groups visit the Washington area, they often meet with my staff and me, Commissioners and CPSC professional staff. I also make it a point to meet with stakeholders at their turf, whether it is at an association's annual conference or at an individual company's manufacturing facilities. As long as I am Chairman, we will continue to welcome comments and input from all of our stakeholders and continue to find ways to maintain a productive dialogue.

Question: Based on the CPSC FY 2015 operating plan, the Commission is expected to issue final rules on the public disclosure of information under section 6(b), recreational off-highway vehicles and voluntary recalls. Yet, none of these rules have been mandated by Congress. The CPSC was directed to identify ways to reduction third party testing burdens by August 2012. How does the Commission determine what efforts to prioritize its work on?

Response: The policy on establishing priorities for Commission action is set forth at 16 C.F.R. § 1009.8. It is the general policy that priorities for Commission action are established by a majority of the Commission members, who vote on all requests for appropriations and vote on the agency's annual operating plan.

In establishing agency priorities, the Commission considers the following general criteria:

- Frequency and severity of injuries associated with consumer products;
- Causality of injuries and the amenability of a product hazard to injury reduction through standard setting, consumer information and education, or other Commission action;
- The risk of chronic illness and the associated estimates of future injuries;
- Costs and benefits of CPSC action;

- The unforeseen nature of the consumer product-related risk
- The vulnerability of the population;
- The probability of exposure to the hazard; and,
- Any other relevant factor staff believes warrants the Commission's consideration.

Question: How is funding prioritized and allocated for each of these areas?

Response: Guided by staff recommendations based on the criteria noted above, the Commission prioritizes work and allocates resources.

Nanotechnology Research Center (+$5 million)

Currently the Commission allocates $2 million annually for nanotechnology work and the fiscal year 2016 request includes an additional $5 million to establish a Commission nanotechnology research center. You indicate in your budget request that the Commission would enter into a 5-year interagency agreement with the National Science Foundation (NSF), modeled on a similarly sized, existing NSF-EPA research center.

Question: How does the CPSC currently work with the NSF in dealing with nanotechnology issues?

Response: The CPSC and NSF develop interagency agreements each year, where CPSC participates in the NSF grant funding process. CPSC has provided funding to NSF-funded centers for research that supports certain CPSC nanotechnology projects. CPSC staff interacts regularly with the NSF through interagency meetings, such as the monthly Nanoscale Science, Engineering and Technology ("NSET") subcommittee and its Nanotechnology Environmental and Health Implications ("NEHI") working group, workshops, and personal communications. The NSF and CPSC have regular communications regarding the proposed center and have identified and discussed key factors needed for development.

Question: There are many other agencies which already study nanotechnology. Why is a CPSC-led R&D center necessary?

Response: The CPSC is the only agency specifically responsible for studying the issue of exposure to nanomaterials from consumer products. Not only does the U.S. government not have a research center dedicated to consumer products or consumer interaction with nanotechnology in the nanotechnology research and development (R&D) portfolio, but also research in this important area is lacking. The absence of significant and coordinated research on nanomaterial exposure due to consumer products has been identified as a critical gap by the National Nanotechnology Initiative ("NNI"). The NNI has involved considerable interagency collaboration to develop this emerging technology. An important component of this initiative includes the development of strategic plans and other documents that outline research needs and data gaps that must be addressed to develop this technology responsibly. Each federal agency participating in the NNI is tasked with identifying the research needed to support its research or regulatory mission. CPSC, as an NNI participant, identified the nanotechnology center to address data gaps specific to CPSC's regulatory mission. This proposal was vetted with NSF, the U.S.

Environmental Protection Agency ("EPA"), and the White House Office of Science and Technology Policy. CPSC's current funding levels do not allow for the development of robust test methodologies to answer questions regarding how exposure to a consumer product could be measured or how any potential identified risks can be addressed. Although CPSC staff possesses knowledge of consumer product use, human factors, testing requirements, and regulatory approaches for chemicals, the proposed Center for Consumer Product Applications and Safety Implications of Nanotechnology ("CPASION") would be the best resource for conducting necessary research into exposure from consumer products containing nanomaterials.

Question: Is there existing infrastructure within the Federal government that can conduct the type of research needed?

Response: No. There is no other federal agency with the necessary authority over consumer products that could pursue a consumer product safety center as proposed.

Question: What is the CPSC's objective and how do you think that $5 million will impact regulation of these materials?

Response: The objectives of the proposed nano center are to: (1) develop robust test methods to determine and characterize human exposure to nanomaterials from consumer products; (2) characterize and understand consumer use of products containing nanomaterials; (3) provide support to manufacturers, especially small businesses, with approaches to testing their products for the release of, and potential exposure to nanomaterials. All of these efforts are critical in ensuring the responsible commercialization of nanotechnology. In addition, these efforts will assist CPSC in assessing nanomaterials in products; assure consumers of the safety of these materials; and provide manufacturers with a robust and reliable means to test and assess these materials when used in products. CPSC's proposed nano center is expected to serve a number of stakeholders, including consumers, manufacturers, retailers, and others, and meet critical data needs identified by these stakeholders, federal agencies, and CPSC staff.

Question: Don't you think that money would be better spent with other agencies already studying this issue and who have already make significant gains in this area?

Response: No. The NNI is nearly 15 years old, and the associated consumer health and safety issues are not being addressed, despite more than $1 billion in government-wide investment. One federal agency cannot take on the mission responsibilities of another federal agency. For example, most of the research supported by EPA has focused on the release of compounds in the environment, as well as impacts on terrestrial and aquatic organisms, not humans. NIOSH has focused on worker exposures, but that agency's research has not focused on the general population, and in particular, vulnerable populations, such as young children and the elderly. The federal government and various stakeholders have discussed the lack of exposure data, and the lack of funding to CPSC has been identified as a primary reason for the absence of critical data for assessing the safety of using nanomaterials in consumer products. CPSC is the only federal agency with broad authority over consumer products and consumer safety. As such, CPSC is responsible, as a member of the NNI, to make a proposal to address the identified health and safety data gap. The CPSC's proposal for a nanotechnology center addresses that gap.

Question: The National Science Foundation's budget request for FY 2016 does not mention this new CPSC-NSF research center. Has the CPSC been in discussions with the NSF over the past year in regards to the development of this center?

Response: Yes. CPSC staff has met with senior NSF staff and continues to discuss the proposed center. The NSF staff has been very supportive and has provided a considerable amount of information on their procedures for developing and managing these centers. In fact, the NSF has expressed an eagerness to begin the administrative work to prepare a solicitation for a CPSC center should Congress make the funding available.

Question: Can you share communications with the Committee indicating that NSF is in complete support of this center?

Response: Senior NSF staff responsible for nanotechnology coordination and initiatives met with CPSC to discuss the proposed CPSC-NSF Center and verified their intent to work with CPSC to develop the center and identified some of the broader criteria for collaboration. CPSC staff has worked closely with NSF staff, including Dr. Nora Savage, PhD, Nano Program Director at NSF to refine the proposal and center scope. The NSF and CPSC communicate regularly regarding the proposed center.

Question: As you have developed your proposal, what formal communications has the CPSC had with manufacturers and others who use nanotechnology in their products?

Response: The CPSC has participated in a number of meetings sponsored by the NNI and other stakeholders that included representatives from industry, especially small businesses, who expressed their desire for federal agency action and support. For example, CPSC staff helped organize a risk assessment "R3" meeting in September 2013, which included roundtables and sessions engaging manufacturing and insurance sector stakeholders. The report is posted on the NNI website at: www.nano.gov/R3report.

Additionally, the NSF would solicit input from potential stakeholders, including manufacturers, to determine specific areas of research how the center can serve as a resource for manufacturers and other stakeholders. A centerpiece of the nanotechnology center proposal is CPSC's dedication to interacting with manufacturers regarding plans for the center. One of the objectives of the CPSC proposal is to provide support to manufacturers, especially small businesses, with approaches to testing their products for the release of, and potential exposure to, nanomaterials.

Chronic Hazard Advisory Panel (CHAP) Report on Phthalates

In developing its report, the CHAP used National Health and Nutrition Examination Survey data available from the Centers for Disease Control and Prevention from 2006. However, additional data was released by the CDC in 2008, 2010 and 2012.

CPSC Chairman Kaye Questions For the Record responses, April 29, 2015
House Financial Services and General Government Subcommittee

Question: Why did the CHAP use data from 2006 and not the most recent data?

Response: My understanding is that the CHAP based their calculations of the hazard index for pregnant women on exposure data in the latest NHANES data that were available at the time of the CHAP's analyses, which is the 2005–2006 data, as revised by CDC in February 2012.

Question: How has the content of phthalates in consumer products changed in the last ten years?

Response: Limited data are available on the contents of consumer products. Manufacturers are not required to provide this information to CPSC. CPSC tested children's products for phthalates in 1998, 2002, and 2008. These studies involved small numbers of products and are not necessarily representative of the marketplace.

Question: Does it concern you that the CPSC has now developed a notice of proposed rulemaking based on data that many argue is outdated and less robust?

Response: The NPR follows the statutory mandate in Section 108 of the Consumer Product Safety Improvement Act of 2008, which was to promulgate a final rule regarding phthalates in children's toys and child care articles based on the CHAP report. It is my understanding that at the time the CHAP performed its analysis, the panel used the most recent, complete dataset that addressed the population of interest (pregnant women). It is also worth noting that the NHANES data does not include children under 6 years of age. In order to undertake an analysis of this population the CHAP used a different dataset which covered 1999-2005 (Study for Future Families). For this vulnerable population, no newer data were available for CHAP to analyze.

Question: Did the Commission hold public meetings before a final report was written so that the peer reviewers could hear from interested members of the public? If no, why not?

Response: No. The Commission did not hold public meetings on phthalates after the draft report was submitted to the peer reviewers. The CHAP independently decided to obtain a scientific peer review of its draft final report as a prerequisite to its submission of a final report to the agency.

During the preparation of its draft report, the CHAP held seven public meetings and six public conference calls. The CHAP sought input from interested members of the public and invited scientific experts on topics relevant to the CHAP report. The CHAP also heard oral presentations and received numerous written comments from interested parties. The information from the public meetings and conference calls is available on the CPSC website. The peer reviewers, who were nominated by the National Academy of Sciences and met the same conflict of interest requirements as CHAP members, independently reviewed the work of the CHAP. The peer reviewers were presented with the CHAP process including public testimony and written comments, and encouraged to view the public record on the CPSC web site (see Peer review report, appendix B, page 68, slide 6, http://www.cpsc.gov/PageFiles/169893/Peer-Review-Report-Comments.pdf). The CHAP did not hold public meetings after the draft report was submitted to the peer reviewers. All peer reviewer comments were included as part of the final CHAP report delivered to the Commission.

Recreational Off-Highway Vehicles

The CPSC is set to issue a final rule implementing a mandatory standard on ROVs. There have been concerns about unintended safety consequences for consumers as well as concerns about significant gaps in the supporting data used to write the proposed rule. I understand a bipartisan group of 12 senators wrote to the CPSC asking to defer the vote on ROVs and work with industry on a voluntary standard.

Question: What has the CPSC done to account for any unintended consequences that may arise from the proposed rulemaking? What testing, what analysis, and what data have been developed? And has that been shared with the public?

Response: Based on compelling market evidence, CPSC staff does not foresee any loss of function or enjoyment of ROVs. Notably, multiple ROVs that are currently and successfully on the market meet many aspects of the proposed standards. These include models that are marketed toward trail use, as well as models marketed for utility use. These ROVs currently meet CPSC staff's proposed handling and rollover-resistance requirements and also meet the demands of ROV consumers who use the vehicles for both utility and recreational purposes. This information was presented in the notice of proposed rulemaking and in the Commission briefing materials, and was discussed in the public hearing. The staff has posted a significant amount of material, including studies, analyses and data on our website for public viewing.

Question: What work has the CPSC performed to determine how the proposed rules will affect the suitability of these vehicles for military use, and was that work and data shared with the military, the industry, and the general public?

Response: Military vehicles are not considered consumer products and are not regulated by the CPSC. As a result, CPSC staff has not studied military use and is not aware of what, if any, modifications are done to ROVs for military use, or their effect on vehicle handling or rollover resistance. CPSC staff has contacted military procurement officials regarding the rulemaking. No concerns were shared as a result of those communications.

Generally with respect to public availability of staff's work, CPSC staff has broadly shared technical work with the industry and the general public, making all technical reports and letters to voluntary standard organizations publicly available. In addition, staff held multiple open meetings during the development of the NPR.

Question: Do you feel confident in the data that CPSC used to base its proposed rule?

Response: CPSC staff determined the hazard patterns of ROV rollover and occupant ejection from 550 reported ROV-related incidents that resulted in 335 deaths and 506 injuries. In addition, CPSC sponsored multiple contractor studies on static and dynamic tests of sample ROVs available in the US market. The dynamic tests include tests to measure the rollover resistance of the vehicles (J-turn test), the steering characteristics of the vehicle (constant radius test), and the occupant protection performance of the vehicles (roll simulation test). Staff also analyzed published technical information sources. CPSC also has had extensive engagement with stakeholders, and we continue to place a priority on working with the industry to develop a

standard that provides the needed safety improvements without undue burden. I believe that each of these efforts contributes to an appropriate foundation for the proposed rule.

Question: Why are you opposed to delaying the proposed rule until concerns regarding unintended consequences and questions about the quality of data are relieved?

Response: I think a delay will unfortunately put the lives of more ROV riders at risk. The type of everyday use of currently produced ROVs that lead to rollover deaths is not necessarily obvious to riders, particularly younger riders. It is these type of hidden hazards that are the kind that product safety standards are best equipped to prevent, and it is why I am hopeful that we can expeditiously achieve a standard, either on a voluntary basis or a mandatory one, that will save these lives sooner rather than later.

In addition, I believe our professional technical staff has worked very hard to meet some of the most stringent regulatory requirements in government during the past six years to reach this point in the process of promulgating a performance standard to keep the public safe from unreasonable risks of harm associated with this product. They continue that work, even today. We have extended our comment period on multiple occasions to allow industry and other outside stakeholders to submit their ideas for the administrative record. That comment period remains open until June 19, 2015. The Commissioners and staff look forward to receiving and reviewing all of those comments.

Question: Why do you believe a mandatory standard is necessary?

Response: My goal is to expeditiously achieve a standard, either on a voluntary basis or a mandatory one, that will save lives. To this end, CPSC staff will be attending an open meeting of ROHVA next week in Chicago to discuss recent technical work done by industry and the voluntary standard. While I am pleased ROHVA has taken this step, I still believe they need to re-open the voluntary standard to provide the best chance for it to be effectively amended.

Questions for the Record Submitted by Congressman Tom Graves

NPRM on ROVs

In regards to the October 2014 Notice of Proposed Rule Making on Mandatory Safety Standards for Recreational Off-Highway Vehicles, can you please describe in detail what specific testing, analysis, and data has been developed to support the Commission's decision to regulate Recreational Off-Road Vehicles as on-road vehicles.

Response: The Commission does not intend to regulate Recreational Off-Highway Vehicles ("ROVs") as on-road vehicles. On-road vehicle regulation is the jurisdiction of the National Highway Traffic Safety Administration. The Commission has issued a notice of proposed rulemaking ("NPR"), to address vehicle rollovers and occupant ejections associated with reports of ROV-related fatalities and injuries. CPSC staff determined the hazard patterns of ROV rollover and occupant ejection from 550 reported ROV-related incidents that resulted in 335 deaths and 506 injuries.

Although CPSC has not proposed regulating ROVs as on-road vehicles, some of the performance tests are proposed to be conducted on an asphalt surface for consistency and repeatability. This approach – calling for testing on asphalt services – is consistent with the approach taken by both of the voluntary standards organizations in setting standards for ROVs. Specifically, both voluntary standards that apply to ROVs, ANSI/ROHVA 1-2014, *American National Standard for Recreational Off-Highway Vehicles,* and the Outdoor Power Equipment Institute (OPEI) developed ANSI/OPEI B71.9, *American National Standard for Multipurpose Off-Highway Utility Vehicles*, also specify testing on asphalt for these same reasons.

Question: What does the Commission foresee the unintended consequences to be for consumers of ROVS if the intent and practical application of the ROV is lost due to the mandatory changes?

Response: Based on compelling market evidence, CPSC staff does not foresee any loss of practical application of ROVs. Notably, multiple ROVs that are currently and successfully on the market meet many aspects of the proposed standards. These include models that are marketed toward trail use, as well as models marketed for utility use. These ROVs currently meet CPSC staff's proposed handling and rollover-resistance requirements and also meet the demands of ROV consumers who use the vehicles for both utility and recreational purposes.

Certificates of Compliance

The CPSC announced it will not move forward with a May 2013 Proposed Rule on Certificates of Compliance, but there have been multiple requests, beginning as early as last spring for the Commission to develop a stake-holder advisory group in order to advise on product safety concerns that are of mutual importance particularly with imported products.

Question: Can you please provide an update as to whether a stakeholder advisory group on the topic of Certificates of Compliance will be formed?

Response: CPSC has taken advantage of the existing Advisory Committee on Commercial Operations to U.S. Customs and Border Protection (COAC) to facilitate a dialogue between CPSC, CBP, and the broader trade community. Using this existing committee, which already has undertaken the effort of complying with the requirements of the Federal Advisory Committee Act, has allowed CPSC to leverage efficiently and cost-effectively the relationships and established communication channels associated with this highly functional committee. Indeed, CPSC's active participation on the COAC has garnered significant feedback from a variety of stakeholders on the flow of information between the trade community, CBP, and CPSC to ensure that any data collected in a PGA message is consistent with the Executive Order on Single Window and CPSC's goals of improving targeting and risk assessment without causing significant disruption in the supply chain.

Questions for the Record Submitted by Congressman Steve Womack

ROV

One issue of importance to many of us on this subcommittee is your commission's recent involvement with the regulation of recreational off-highway vehicles (ROVs). I am referring specifically to ANSI/ROHVA 1-2014.

This is important to my state not only because of the heavy presence of agriculture, but it is also important for the many nature-lovers who come to see the wonders of the Natural State.

Most recently, I understand that CPSC staff met last week with one of the industry leaders so that they could propose an alternative method of testing relating to the understeer mandate, and that method is called divergent instability testing.

Question: Is divergent instability testing a viable alternative to the understeer mandate?

Response: CPSC staff agrees with several large ROV manufacturers that divergent instability is dangerous because it can lead to tripped rollovers in ROVs. The vehicle handling performance requirement in the NPR prevents divergent instability by following the tenets of vehicle dynamics established by the foundational literature on vehicle dynamics. However, CPSC staff is open to learning more about how divergent instability can be prevented by measuring yaw rate to detect divergent instability, as one large ROV manufacturer is researching. On April 6, 2015, CPSC staff sent a letter to ROHVA and OPEI, urging both to engage their voluntary standards stakeholders and evaluate the divergent instability work that a large ROV manufacturer has done so far and to continue to develop the proposed test method.

One of my other subcommittee assignments is on the Appropriations Subcommittee on Defense, so I ask this from that perspective, too. I understand that many of our service members field these ROVs for use in downrange, and that they are by and large the same vehicles that are sold to consumers but that they are kitted out differently to serve the needs of the military.

Question: If your proposed changes are adopted, would they still be suitable for use by our military?

Response: Military vehicles are not considered consumer products and are not regulated by the CPSC. As a result, CPSC staff has not studied military use and is not aware of what, if any, modifications are done to ROVs for military use, or their effect on vehicle handling or rollover resistance. CPSC staff has contacted military procurement officials regarding the rulemaking. No concerns were shared as a result of those communications.

Your regulation could potentially make the sticker price prohibitively expensive to the average owner of an ROV.

Question: Did you take into consideration the increased costs to consumers for the new production line that would have to be opened to serve the two customer bases?

Response: In preparing the regulatory analysis, the staff considered the costs associated with the research and development required to modify the designs of the vehicles and implement those changes, as well as the costs associated with any additional parts and assembly time that would be required. The staff estimated that these costs would be modest: less than $94 per unit sold, given that the average suggested retail price for these vehicles is approximately $13,300. A more detailed discussion is contained in the notice of proposed rulemaking and in the Commission briefing materials.

According to the product name, recreational off-highway vehicles are intended for use off-road. The companies even go so far as posting a big caution sticker in view of the driver from where he or she will sit telling them not to drive the vehicle on paved roads.

Question: I think we can agree that the purpose of these vehicles is to be driven off-road. However, by encouraging the manufacturers to make the ROVs more like on-road vehicles, what do you anticipate the effect being on off-road performance?

Response: CPSC staff believes that the proposed rule would reduce deaths and injuries associated with ROV rollover and occupant ejection in off road use. CPSC staff does not foresee any loss of practical application of ROVs, as the proposed requirements are safety benchmarks that are already met in varying degrees by multiple ROVs currently on the market. These include models that are marketed toward trail use, as well as models marketed for utility use that currently meet many of the proposed requirements and that also meet the demands of ROV consumers who use the vehicles for both utility and recreational purposes.

Question: We are aware of an attempt by the Outdoor Power Equipment Institute (OPEI) to request information on which CPSC based its rulemaking. Your commission's response, however, was a heavily redacted Excel spreadsheet with little discernable information. If facts are facts, why are you averse to supplying them to the industry and public requesting them?

Response: Not only has staff made all technical studies available and held multiple open meetings related to the ROV-related rulemaking, but also please be advised that in response to a Freedom of Information Act request, CPSC provided all information requested with minimal redactions. Specifically, only the identity of the injured persons and persons treating them were withheld, in accordance with applicable statutory requirements. On behalf of the requester, OPEI, Mr. Greg Knott, Vice President of Regulatory Affairs of OPEI, acknowledged receipt of this information on March 11, 2015.

Question: Is there a way that I can obtain this information?

Response: All information that has been conveyed to OPEI also has been posted on the CPSC website at http://www.cpsc.gov/en/Regulations-Laws--Standards/Voluntary-Standards/Recreational-Off-Highway-Vehicles

Question: Congressman Pompeo from Kansas has introduced the ROV In-Depth Examination, or RIDE Act, to require the CPSC to consult with the National Academy of Sciences, Department of Defense, and National Highway Traffic Safety Administration in a study of the vehicle handling requirements proposed by the CPSC. The bill will also prohibit the CPSC from adopting the requirements until the completion of the study. What are your thoughts on this legislation, as it pertains to the CPSC?

Response: I think it would unfortunately put the lives of more ROV riders at risk, and I am not aware that there is a reasonable basis to conclude any resulting literature review would yield credible analyses or data the staff has not already thoroughly considered and relied on, as appropriate. This rulemaking has already been underway for a number of years for a real safety reason. The type of everyday use of currently produced ROVs that lead to rollover deaths is not necessarily obvious to riders, particularly younger riders. It is these type of hidden hazards that are the kind that product safety standards are best equipped to prevent, and it is why I am hopeful that we can expeditiously achieve a standard, either on a voluntary basis or a mandatory one, that will save lives.

Question: Can you provide us with a record of what technical studies similar to the one directed by the RIDE Act that the CPSC has evaluated or conducted in its rulemaking process?

Response: Contractors for CPSC, SEA Limited (SEA) have conducted in-depth studies of vehicle dynamic performance and static rollover measures for ROVs. The following studies are available on the CPSC website:

- "Vehicle Characteristic Measurements of Recreational Off-Highway Vehicles" by Dr. Gary J. Heydinger, P.E., April 2011.
- "Vehicle Characteristic Measurements of Recreational Off-Highway Vehicles – Additional Results for Vehicle J" by Dr. Gary J. Heydinger, P.E., August 2011.
- "Repeatability of J-Turn Testing of Four Recreational Off-Highway Vehicles" by Dr. Gary J. Heydinger, P.E., November 2013.

Liquid Laundry Packet Safety

Chairman Kaye, I want to turn and talk about the good work it seems your Commission is doing with the folks who are producing the new liquid laundry packets. While I understand that this innovation is important to the industry, as a grandfather of two small boys, I – like you – understand that if not properly supervised, children could ingest the chemicals meant for the washing machine. While you have been working with industry on making changes in packaging to improve lid latches and make it less attractive to children, I understand that the Commission and industry are working with the American Society for Testing and Materials (ASTM).

Question: Will you comment on the progress of this collaboration?

Response: The ASTM subcommittee, comprised of representatives from manufacturers, consumer advocacy groups, CPSC staff, and Health Canada staff, has been meeting frequently

in-person and through task group calls to develop performance requirements. On March 23, 2015, the first ballot of the draft standard was submitted to the subcommittee for review, with comments due April 24, 2015. The subcommittee met again in-person on April 20, 2015. While CPSC staff has certainly been doing its part to keep the process moving forward, consumers would benefit from industry moving more quickly in this process.

Question: Do you anticipate that current efforts will ultimately be satisfactorily to the Commission's regulators?

Response: CPSC staff hopes that the subcommittee will soon publish the standard and will continue to develop additional sections and requirements for future versions of the standard. By taking an incremental approach, each section can be published, once agreed upon, and this will allow more time to develop additional sections with lower priority. Staff believes the incremental approach will allow the subcommittee and task groups to focus on addressing the highest priority issues based on the hazard patterns. The current balloted standard includes requirements for packaging and labeling. The next sections under consideration are packet film requirements and alternate packaging testing requirements. All that said, this process is not moving as quickly as I would like, and it is not certain it will conclude with an effective enough standard.

Questions for the Record Submitted by Congressman Mark Amodei

ROHVA NPR FOIA

On February 5, 2015, the ROHVA emailed the CPSC outlining documents missing from the FOIA request in response to the notice of public rulemaking for the mandatory ROHV design standard. More than a month later on March 9, 2015, the CPSC General Counsel confirmed that the FOIA response from CPSC was materially incomplete and that CPSC withheld significant information and materials in relationship to the NPR. The CPSC has given the ROHVA some of the missing information, but some of it won't be received until a little more than a week before the proposed rulemaking date, April 8, 2015. In light of this, the ROHVA has asked to extend the rule making period for 90 days.

Question: In light of CPSCs failure to meet FOIA requests by one of the most impacted stakeholders in the rulemaking, will you extend your deadline for 90 days to allow for a chance to review your materials?

Response: In response to requests from ROHVA and OPEI, the Commission extended the comment period to June 19, 2015, to allow additional time for review and comment.

Question: If not, what will you do to make sure your rulemaking does not reflect information that stakeholders had no time to process?

Response: The comment period was extended to June 19, 2015.

Question: Over the past 6 years, multiple industry stakeholders have characterized the relationship between CPSC as combative. They have described the agency as "aggressive, politically motivated, and unwilling to use industry comment or collaboration in decision making." You only became chairman this summer, but industries remain concerned about the commission and your commitment to stakeholder collaboration. How would you characterize the relationship between the CPSC and stakeholders including manufacturers, retailers and importers, since you've taken over?

Response: In my tenure, I have worked to strengthen relations, focusing on the common goal of ensuring consumer safety, particularly for vulnerable populations, such as infants and children. Efforts include work with standards development organizations to develop voluntary consensus standards, meetings with stakeholders (including manufacturers, retailers and importers), attending conferences and continuing to visit companies on their home turf. I hear on a regular basis, especially from industry stakeholders, that the Commission is far more engaged and accessible now than it has been in a long time. I believe this positive feedback reflects the commitment my colleagues and I on the Commission have regarding stakeholder engagement.

Specific to ROVs, CPSC has had extensive engagement with stakeholders, and we continue to place a priority on working with the industry to develop a standard that provides the needed safety improvements without undue burden. As documented on our ROV website

(http://www.cpsc.gov/en/Regulations-Laws--Standards/Voluntary-Standards/Recreational-Off-Highway-Vehicles/), we have had approximately 15 meetings and sent 10 detailed letters to the industry and standards development organizations, providing our thoughts on the needed steps and industry's proposals. On April 6, 2015, staff sent a letter to ROHVA and OPEI, urging both to reopen their voluntary standards and evaluate recent technical work on vehicle handling being developed by Polaris.

Question: What will you do to improve collaboration between the CPSC and stakeholders?

Response: As long as I am Chairman, we will continue to welcome collaboration with any stakeholder who is genuinely interested in working with us collaboratively to improve the lives and safety of American consumers. I repeat this message to our stakeholders on a regular basis and have been pleased with how it has been received.

Questions for the Record Submitted by Ranking Member José Serrano

Import Surveillance Division

Question: How is the $4 M increase in FY 15 for import surveillance being used?

Response: The FY 2015 $4 million increase to the import surveillance program activity was helpful to the CPSC's goal of incrementally expanding that program. With respect to how the $4 million increment was used, $2 million was allocated to move toward hiring 19 new employees. The 19 new employees will increase the number of co-located ports of entry that the CPSC is able to staff with Customs and Border Protection ("CBP"). In addition, we have added personnel to our National Product Testing and Evaluation Center laboratory to process and analyze the imported product samples collected by our new personnel located at the ports of entry. The CPSC allocated the remaining $2 million to the information technology component of the program, called the Risk Assessment Methodology ("RAM") system. The additional funding is being used to add functionality required by CBP so that data can be exchanged across agencies (called the Participating Government Agency Message Set project) and to refine the technical requirements that will be necessary to expand the RAM system to full production capability.

Question: I see that there is no increase requested for that effort in FY 16. Why is that?

Response: For Fiscal Year 2016, CPSC has requested that Congress authorize a CPSC product safety user fee to fund the agency's import surveillance activities in lieu of additional appropriations. The majority of agencies across the federal government fund their import processing activities with a user fee paid by the importer. The CPSC estimates that a modest user fee of about 7 cents per every thousand dollars of import value could fully fund CPSC's import surveillance program without the need for additional appropriations. The CBP has the infrastructure and capability to collect the user fee on CPSC's behalf; we are simply lacking the legal authorization to implement the proposal.

Question: What percentage of imported products are currently tested? What plans are there to increase that percentage?

Response: Our RAM pilot system currently analyzes only a fraction of import entry lines, representing approximately 2% of consumer product harmonized tariff codes. Increasing staffing levels, as funding permits, in order to expand CPSC staff's presence at the ports of entry will increase the percentage of consumer products screened and tested. A permanent funding mechanism to fully achieve the intent of and direction in CPSIA § 222 would allow CPSC to join in the government wide "single window" approach to import and export filing of all products. A CPSC that is fully integrated into the single window will allow CPSC to transform Congress' vision of a national scope, risk-based, data driven screening at the ports into a reality, a reality that will mean safer products in the hands of American consumers and faster entry for importers of compliant products.

Commission Staffing Levels

Question: The CPSC has seen a pretty steady decline in staffing levels over the years. Staffing levels peaked at about 1,000 in 1980 and now stand at around 567. This year's request would keep the agency at the same level. Is this where you think the Commission needs to be at in order to successfully implement and enforce our consumer protection laws?

Response: No. While CPSC has benefited from an increase in productivity since 1980, as a result of new technology and general efficiency improvements, the globalization of the consumer product marketplace, the faster pace of new product introductions, and the increased complexity of the new technologies found in modern consumer products presents challenges to today's regulator that did not exist in 1980.

Question: In what areas is the Commission in the greatest need of adding staff?

Response: The immediate need has been identified in CPSC's request for additional funding to support an expansion of the agency's import surveillance activity.

Web Site

I appreciate the progress you've made in getting Spanish translations of your web site and the manuals that you produce on-line. I also applaud putting other language translations on-line.

Question: I understand that the process of navigating to those translations is a bit challenging—are you working on improving that? If so, what progress have you made?

Response: Last year, the agency secured the rights to the URL: www.SeguridadConsumidor.gov, which takes you directly to our dedicated site with a new layout and enhanced content. CPSC's Spanish-speaking spokeswoman/Hispanic Community liaison is continuously improving the design and safety content on: www.SeguridadConsumeridor.gov, as well as www.PoolSafely.gov/espanol. All of the agency's Neighborhood Safety Network posters are translated into Spanish; we tweet from the handle @SeguridadConsumidor; and this summer we will be launching a pilot text messaging campaign for the Hispanic community. We appreciate the longstanding support of many Congressional Members for the Neighborhood Safety Network campaign and the encouragement to explore new ways to put lifesaving information into the hands of the Hispanic community.

Questions for the Record Submitted by Congressman Mike Quigley

Working with Stakeholders

There are few things as important as ensuring that the products Americans purchase are safe—especially for our children. That's why we must continue to maintain high standards for consumer product safety and provide the Commission with the resources it needs to deliver adequate oversight. At the same time, the Commission must maintain an open dialogue with the business community to continually refine regulatory and enforcement standards so that businesses that have demonstrated consistent compliance are not overly burdened.

Question: When the Commission seeks to identify ways to improve the processes that help protect consumers and keep harmful products off of shelves and out of the hands of vulnerable populations, what kind of outreach does the Commission undertake with stakeholders, including manufacturers, retailers and consumer groups before proposals are put forth to the public?

Response: CPSC does extensive research and outreach to continue to improve our efforts to protect consumers and keep harmful products off of shelves and out of the hands of vulnerable populations. Before publishing a mandatory standard, we use some variant of the following steps: research hazard and potential modifications needed to address unreasonable risk (often discussing the issues with stakeholders, including public meetings, workshops and/or symposia); work with industry on the development/refinement of a voluntary standard to address the hazard(s) identified; evaluate the adequacy of existing/modified standards (often with input from stakeholders); publish a notice of proposed rulemaking to solicit comments formally; hold a hearing to gather additional inputs; and lastly, to publish a Final Rule.

TV Related Deaths

An American Academy of Pediatrics study, prompted by TV related deaths in my hometown of Chicago, found that one child every 30 minutes is treated in the emergency room due to TVs tipping over. Chairman Kaye, you mention in your testimony that your staff is working to better educate consumers about the dangers of TV tipovers.

Question: Can you please elaborate on these efforts?

Response: CPSC has only two education campaigns with dedicated funding streams: *Pool Safely*, which focuses on drowning and drain entrapment prevention, and *Anchor It*, which is our new effort to prevent tip-overs of furniture and televisions. The Commission allocated $400,000 to the *Anchor It* campaign to prevent the increasing number of tragic child deaths. Last year, the agency contracted with an outside vendor to launch a national and grassroots media and education program this year. The *Anchor It* campaign has already received national media and online recognition, including a video disseminated just ahead of the Super Bowl achieving 1.6 million views on YouTube (www.youtube.com/watch?v=pCpE-KvDEvo). In the coming weeks and months, CPSC will be formally launching the campaign's public service announcements, and various brochures and pamphlets. As we have done with our *Pool Safely* campaign, our

Anchor It initiative will also seek to collaborate with safety organizations and foundations started by parents who have lost children, and industry.

Product Recalls

One of the most important responsibilities of the Commission is to inform consumers about recalled products. According to the Consumer Federation of America, however, the vast majority of consumers who own recalled products never find out about the recall. I was alarmed to read that recall rates are only around 30%.

Question: Can you please explain to me what the Commission is doing to better inform consumers about recalled products?

Response: I believe that it is vital for consumers to have the option of receiving recall announcements communicated directly to them or having the information readily available when the consumer comes to us. In turn, we have developed multiple platforms to inform the public about recalls and encourage consumers to take advantage of the remedies afforded to them. CPSC has more than 300,000 members of our email listserv who receive nearly daily messages; our RSS recall feeds are frequently used; we prominently feature recalls on our homepage; we developed a recall widget; recently enhanced our Application Program Interface; we tweet, post on Google+, use Flickr; we conduct interviews, and produce monthly recall round-up videos. I have conducted national media interviews about high-profile recalls, and I hosted an event to announce four award winners of our very first Apps Challenge: www.cpsc.gov/en/Newsroom/News-Releases/2015/CPSC-Announces-Winners-of-First-Ever-Apps-Challenge-New-Apps-Help-Consumers-Track-Recalls-Product-Safety-Incidents/.

Question: Are you working closely with industry on finding more effective ways on getting the word out?

Response: CPSC works closely with firms to determine the best way to reach consumers who should be targeted for participation in the recall. We are constantly initiating a variety of new techniques to inform consumers of recalls. In recent times, it has become clear that the use of social media is an invaluable asset in achieving this goal. In today's world, the majority of companies use various forms of social media to market their products. As a result of this technology, we are now asking firms to link their recall information (with a photo) to their social media platforms. These platforms consist of, but are not limited to, Google+, Facebook, Twitter, Instagram, Pinterest, Flickr, and YouTube. The outreach to consumers via these platforms is considerably vast and it is not uncommon for large firms to have hundreds of thousands of followers. In conjunction with firms' social media outreach, CPSC also uses its own social media platforms, such as Twitter, Google+, YouTube, Flickr, and blogs in the same fashion.

In addition, many firms have also embraced the mobile consumer by using text messaging, creating custom product or brand-specific applications (or use "apps"), and by developing mobile versions of their websites. Mobile technology is highly customizable and provides targeted delivery for recall information. These new tools are constantly evolving with society's

needs, and provide us with trackable raw data. In turn, we use this data to measure the effectiveness of the recall and aid in process improvement.

CPSC is constantly striving toward discovering new techniques and improvements. We seek input and suggestions from firms and consumers alike to help improve outreach and maintain a consistent flow of communication. With new ideas constantly on the horizon, CPSC will continually strengthen its outreach to the public, aiding in our goal of keeping consumers safe.

Question: On a positive note, I read in a recent report put out by Kids in Danger, a Chicago based non-profit, that since 2007, the number of children's product recalls has continually declined from 232 recalls to 75 in 2014. What do you attribute to the reduction in children's recalls?

Response: The reduction in recalls of children's products is likely the result of many factors. The adoption of numerous durable nursery product regulations has provided increased clarity of the product performance requirements and raised awareness of the regulations among manufacturers and importers. CPSC staff's industry outreach and education efforts have also likely contributed to the improved performance of the industry. Lastly, the increase in CPSC's import surveillance activity plays a significant role in reducing recalls, as a noncompliant product is identified and stopped at the port of entry before being distributed into the marketplace and requiring a recall to remove any potentially hazardous product from the homes of America's consumers.

Safety Standards

According to Kids in Danger, a Chicago based non-profit, over the last 10 years, 9 children's recalls and 14 deaths occurred prior to the adoption of a mandatory standard that could have prevented those deaths.

Question: What are you doing to ensure that standards are implemented sooner to curtail unnecessary deaths?

Response: CPSC continues to make implementation of Danny's Law a priority. This fiscal year CPSC plans to propose five new rules and finalize an additional rule. From my experience, delays that have occurred have mostly been the result of our staff waiting on the voluntary standards body to finish its work before the Commission can act to make that standard mandatory.

Low Income Child Safety

The Consumer Federation of America put out a report which found that unintentional injuries are suffered disproportionately by children in low-income families. This can be due to environmental factors, such as living in older and less safe homes and to human factors, such as less knowledge about product safety.

Question: To what extent is the Commission studying the link between product injuries and socioeconomic status?

Response: CPSC staff is engaged with an external coalition of health and safety specialists and consumer advocates who are committed to researching this issue and developing prevention-based strategies. The agency faces challenges in collecting income-related information as part of our data-gathering on injuries; yet we want to be a part of those groups who are working toward solutions.

Question: And what are you doing to prevent deaths and injuries associated with consumer products that impact low-income children?

Response: I approved a staff proposal earlier this year to embark on an ambitious and exciting new pilot project. Our Community Outreach Resource ("COR") team will be traveling throughout the state of Ohio to engage and collaborate with community leaders as part of a grassroots safety education campaign.

Ohio was selected as the state to pilot our safety education campaign due to demographics and partnership opportunities. Extensive research found that Ohio experienced the nation's third largest decline in median income, leaving 75 percent of African-American and 63 percent of Hispanic children living in low-economic households. Cleveland has the second highest percentage of citizens living below the poverty line, second only to Detroit. Ohio has a large Hispanic population, which according to the 2010 Census, grew by double digits. For these reasons, along with the numerous safety-focused organizations already operating in the state, our staff identified Ohio as its top choice.

This campaign will focus on low-income families. For nearly 5 years, the COR team has traveled the country sharing lifesaving product safety information with community- and faith-based organizations and government agencies. During 2015, our COR team is piloting an Ohio-based information and education campaign with four overall goals:

1. Help prevent deaths and injuries by increasing awareness of four core safety campaigns:
   - Safe to Sleep®: creating a safe sleep environment for all babies;
   - *Pool Safely*: reducing child drownings in pools and spas;
   - "Anchor It": increasing the use of anchors on furniture and TVs to prevent deadly tip-over incidents; and
   - Poison Prevention: protecting children from gaining access to medicines and coin cell batteries and being exposed to deadly carbon monoxide.

2. Combine resources, participate in existing safety activities, and develop new safety activities geared toward educating and informing underserved and vulnerable populations in the community, including African-Americans, Hispanics/Latinos, American Indians, children, and the elderly.

3. Collect data to help measure the effectiveness of our efforts, such as the number of families or individuals reached with prevention information and other information about strategies and programs that have prevented injuries in particular communities.

4. Determine the best practices for collaborating effectively with local safety organizations nationwide around the four safety campaigns mentioned above.

Laundry Detergent Pods

The number of accidents related to children eating laundry detergent pods is a new, but significant problem that needs to be addressed. Last year, poison control centers across the country received more than 11,000 calls about children inhaling or eating laundry pods, which are often confused for candy. Many of these cases result in the need for hospitalization.

Question: It is my understanding that voluntary laundry pod safety standards are currently in place. Does the Commission believe that the voluntary standards are adequately reducing the number of accidents? And if not, is the Commission considering more robust mandatory standards?

Response: The ASTM subcommittee, comprised of representatives from manufacturers, consumer advocacy groups, CPSC staff, and Health Canada staff, has been meeting frequently in-person and through task group calls to develop performance requirements. On March 23, 2015, the first ballot of the draft standard was submitted to the subcommittee for review, with comments due April 24, 2015. The subcommittee met again in-person on April 20, 2015. CPSC staff believes the draft requirements will strengthen packaging requirements and communicate more effectively through improved labeling the hazards to consumers from these products. The subcommittee has decided to take an incremental approach and ballot the current draft standard, which will address labeling and packaging requirements, while developing additional sections for a later version of the standard. CPSC staff believes that once the initial standard is published, the packaging and warning labels will be improved. The standard can be revisited and strengthened, as needed, based on the hazard patterns.

Questions for the Record Submitted by Congressman Sanford Bishop

Nanotechnology

According to your Budget Request, you are seeking a $5 million dollar funding increase to establish the CPSC Center for Consumer Product Applications and Safety Implications of Nanotechnology (CPASION).

Question: Is this amount sufficient for this burgeoning industry?

Response: The $5 million request was developed in consultation with staff from NSF, EPA, and other federal agencies with experience in developing these types of research centers. This amount will support a consortium of institutions, senior scientists, technicians, and post-doctoral fellows who will focus on the research needs identified by CPSC and stakeholders. Given the complexity of nanotechnology and the wide range of materials and product applications, additional resources can always be used. However, the current request will provide sufficient initial funding to address many of the critical research needs and knowledge gaps.

Question: One of the stated objectives of the Center is to "serve as a resource for manufacturers and distributors of nano-enabled products by developing approaches to provide for the safe use of this technology in consumer products." How do you plan to include industry stakeholders in this process to ensure that the "approaches for safe use" you develop are practicable in real-world applications and are not simply theoretical in their application?

Response: One of the stated objectives of the CPSC's proposed nano center is to "serve as a resource for manufacturers and distributors of nano-enabled products by developing approaches to provide for the safe use of this technology in consumer products." CPSC, through the NNI, has been in contact with a number of manufacturers, ranging from corporations to small start-up companies. For example, CPSC staff assisted in organizing a risk assessment "R3" meeting in September 2013, which included roundtables and sessions engaging stakeholders from the manufacturing and insurance sectors, including a small business session. The report can be found at the NNI website: www.nano.gov/R3report. The NSF process for developing a center will solicit input from potential stakeholders, including manufacturers, to determine specific areas of research, and the approaches for the center to serve as a resource for manufacturers and other stakeholders.

Addressing Security Issues

In order to address "*immediate* agency security issues" (emphasis added) identified in a FY 2013 Inspector General audit, you are requesting $1 million for FY 2016. The security deficiencies listed include risk management, identity and access management, contingency planning, physical security, and cyber security.

Question: Considering the 3 year lapse between the identification of these security issues and their inclusion in your budget request, why is there such a long delay and what are your plans to get ahead of future security concerns so as to avoid supplemental budget requests?

Response: In response to the FY 2013 Inspector General audit report, CPSC commenced work to address the issues identified. Notably, in FY 2014 and FY 2015, CPSC increased IT security positions from two to seven FTEs; developed a security operations team; developed a Continuous Monitoring Implementation Plan; and created new major security policies. The delay in requesting the specific items identified in the FY 2016 Budget Request can be attributed, in part, to the lack of commercially available tools and solutions to address Continuous Monitoring. The additional funds were requested when CPSC had the staff with the skill set to manage the additional work.

To address security concerns and limit the need for additional budget requests, CPSC has an Information Technology Infrastructure major investment, of which IT security is a component. Supplemental budget requests will hopefully be minimized by using existing funds for planned IT security needs.

Question: Will $1 million be sufficient to address all of the security concerns?

Response: Our IT staff believes that amount of funding is sufficient.

Import Surveillance Program

Your FY2016 budget requests $17 million for the Import Surveillance program, but you have noted this is $19 million less than the needed funding level. In order to make up this funding gap, you are requesting authorization for a user fee and ultimately plan to completely supplant appropriated funds for this purpose with the requested user fee.

Question: How can you reassure us that an expansion of the program will utilize the user fees efficiently and for their intended purpose?

Response: CPSC is committed to implementing a user fee that is efficient, modest, transparent, and used only for its intended purpose, namely the import surveillance activities of the CPSC. The CPSC has done three things to position the agency to properly implement a user fee.

First, the CPSC has undertaken a yearlong study, in consultation with CBP, to formulate and calculate a potential user fee level that is commensurate with the agency's planned level of work. As a result of this study, a user fee of about 7 cents per $1,000 of import value would collect $36 million annually, recovering all of CPSC's import surveillance program activity costs.

Second, CPSC has a well-defined financial structure and existing accounting methods to account properly for import surveillance costs apart from other agency activities. CPSC uses an Oracle financial system, acquired through a shared service partnership with the U.S. Department of Transportation. This gives CPSC access to a robust financial processing and reporting system, commensurate with the largest federal agencies, a system that has the coding and calculating capability to segregate costs applicable only to the import surveillance program, and thereby, subject to the envisioned user fee. This supports our ability to use and report on the user fee for its intended purpose.

Third, CPSC has completed a multiyear project to implement a robust internal control for financial reporting program. This internal control program adds additional reviews, including internal audits, to provide added assurance that programs are functioning as intended, and that resources are accounted for, and used in accordance with laws, policies, and operating procedures. The CPSC received a clean audit opinion in FY 2014, with no material weaknesses or significant deficiencies evidenced by the independent auditor. This internal control backbone benefits financial management across the CPSC and is an important oversight structure already in place to provide assurance that user fees will be used for their intended purpose.

Third Party Testing Burden Reduction

In 2011, Congress directed the CPSC to seek comment on "opportunities to reduce the cost of third party testing requirements consistent with assuring compliance with any applicable consumer product safety rule, ban, standard, or regulation." The CPSC was then directed that it may prescribe new or revised third party testing regulations by August 2012 if they safely and effectively reduce testing costs. After soliciting comments, CPSC staff recommended 14 ways to reduce third party testing burdens.

Question: To date, why hasn't the CPSC finalized any rules on reducing third party testing burdens?

Response: Congress made it clear that any changes must also assure compliance with the law. Based on stakeholder feedback, the Commission has prioritized our efforts on expanding the list of materials for which third party testing is not required without risking non-compliance. The technical work associated with those determinations has been significantly enhanced by the $1 million that Congress provided for this fiscal year. As a result, I expect the Commission to consider at least three proposals to expand relief in the coming months with more in the works for next year.

In FY 2015, the CPSC was appropriated $1 million to be used exclusively for third party testing burden reduction.

Question: What has the Commission done with these funds so far and do you have a proposed timeline for publishing new rules?

Response: The FY 2015 operating plan, adopted by the Commission in December 2014, included seven initiatives on third party testing burden reduction that I proposed. The $1 million for third party testing burden reduction consistent with assuring compliance has been allocated as follows:

- A staff allocation of $32,000 is being directed to a rulemaking effort regarding testing the elements in Table 1 of ASTM F963-11 at the component part level (16 C.F.R. part 1109); a proposed rule is expected to be presented to the Commission before the end of FY 2015.
- A staff allocation of $100,000 has been directed to developing a proposed rule on materials that are excluded from third party testing for elements in Table 1 of ASTM F963-11. This proposed rule is also expected to be presented to the Commission before the end of FY 2015.

- Two contractor reports on the use of phthalates in consumer products and the presence of phthalates in four specified plastics are expected late in FY 2015. Potential rulemakings based on these reports would likely be undertaken in FY 2016, if the data from the studies support the needed determinations to exclude certain plastics from requiring testing for the presence of phthalates.
- A solicitation for research and development (R&D) services to develop technology for rapid, inexpensive phthalates testing has been developed and is currently being processed by the contracts office. Current off-the-shelf devices and technologies have been evaluated by CPSC but have not proven reliable or repeatable at the 0.1 percent detection level needed. Three to four awards of up to $125,000 each are anticipated before the end of FY 2015, with Phase 1 technology development of the testing device to be completed by the third quarter of FY 2016. Depending on the results of the Phase 1 technology development efforts, a second phase may be pursued in FY 2016, to refine the successful phthalates testing technology(ies) developed during the Phase 1 effort. No rulemaking is associated with this technology development, but commercialization of a certified, reliable, and portable phthalates testing device could result in significant reductions in testing costs. This R&D services effort is anticipated to expend up to $500,000 in contract awards, and $32,000 in staff support.
- Staff has drafted a contract solicitation of $150,000 to research materials that may be excluded from testing for lead content. This contract is in the process of being awarded. Any potential rulemaking based on the contractor's report could be undertaken in FY 2016.
- A staff allocation of $32,000 is being directed to a rulemaking effort to clarify the materials that are not subject to third party testing for lead content (16 C.F.R. §1500.91). A proposed rule is expected to be presented to the Commission before the end of FY 2015.
- The Chairman's staff work on researching equivalency between the most widely used international toy standards is in addition to the funds from the budget allocation for burden reduction consistent with assuring compliance.
- For the remainder of the allocation ($154,000), CPSC staff intends to award a contract task order to research additional specified plastics' compatibility with phthalates. The contract is expected to be awarded late in FY 2015. Depending upon the contractor's findings, staff could submit a proposed rule to the Commission in FY 2016.

Voluntary Recalls

In November 2013, the CPSC proposed an interpretive rule that would make corrective action plans that implement voluntary recalls legally binding, limit a company's ability to include language in recall notices disclaiming defectiveness of the product, authorize the Commission to mandate adoption of compliance programs as part of a voluntary recall, and standardize voluntary recall notices.

Question: Do you have plans to proceed with a final rule and, if so, how have you taken into account the limited means of small businesses to hire lawyers for legally binding recalls to ensure company compliance with the law when drafting this rule?

Response: Although finalizing a rule regarding voluntary recalls is on the Commission's agenda, I believe the Commission should consider other more pressing safety efforts first before turning its attention and resources to this rule.

Question: What standards would you apply to determine if a company will be required to adopt a compliance program in the course of a voluntary recall?

Response: In its proposed rule, the Commission (of which I was not a member at the time the proposed rule was adopted) included criteria during which it would seek the voluntary implementation of a compliance program by a firm that is engaging in a voluntary recall. More specifically the rule noted "[s]uch circumstances might include, but are not limited to: multiple previous recalls and/or violations of CPSC requirements over a relatively short period of time; failure to timely report substantial product hazards on previous occasions; or, evidence of insufficient or ineffectual procedures and controls for preventing the manufacturing, importation, and/or distribution of dangerously defective or violative products."

Voluntary recall announcements must be made using a press release, a prominently displayed in-store poster, and a website posting. In addition to these typical methods, the CPSC would now require at least two additional methods of dissemination, such as Facebook, Twitter, and blogs. If a company uses its website as a means of conveying a voluntary recall notice, then the notice must be prominently placed on the "first entry point" and allow consumers to request a remedy online.

Question: Would these conspicuous notices that may financially burden a company, as well as damage brand reputation, discourage them from participating in a voluntary recall and how would this protect consumer safety?

Response: Today, the majority of companies use various forms of social media to market their products. Because of this technology, we are now requesting firms to link their recall information (with a photo) to their social media platforms. We have had great returns on the efforts invested in using new technology and reaching out to consumers who stay in tune to evolving media applications.

Using social media is a relatively inexpensive means of communicating a message. Because we help firms create the recall message, firms simply adopt the language of the recall. Evidence indicates that prominently displaying your recall notice and reaching the largest audience on a recall generates a higher percentage of recall effectiveness.

Exposing more consumers to the recall message means that more unsafe products are out of their hands. A consumer can't participate in a recall if they don't know about that recall. We must meet consumers where they are; and increasingly, that means reaching consumers online and via mobile and social applications. Using or adding new, up-to-date technology to drive safety messages to consumers makes sense. Limiting our use of communication devices is detrimental to our success in removing dangerous products from consumers.

Free Classified Ads Listing Recalled Products

Recently, you criticized the online classifieds website Craigslist.com as "morally irresponsible" for not setting up filters on its website to prevent recalled items from being posted. Most products listed on the Craigslist website are posted free of charge and do not earn the website any revenue, however, implementing a filter that can weed out recalled items can be very costly.

Question: Have you investigated any other online free classifieds websites or any paid classifieds websites or newspapers for similar shortcomings and what are you doing to work with these companies and organizations to ensure that recalled products can be filtered effectively without being prohibitively costly?

Response: Yes. Our primary focus is on the largest and most popular sites where we have investigators dedicated to Internet-related investigations. The investigative time available to focus simply on searches for sales offers involving previously recalled or banned products is limited. For this reason, we have worked closely to develop collaborative working relationships with sites such as eBay, Amazon, Facebook, Etsy, Overstock, ShopGoodwill, and many more. Routinely, we check other sites and watch for new entrants into classified ad market.

We pursue a two-pronged approach with websites offering consumer products for sale. First, we encourage website management to monitor their own site listings for the safety of their site users. We provide website management with information concerning new product recalls involving items that are typically resold, such as durable children's products like cribs, strollers and toys. When we notice sales offers such as these on a website, we immediately contact the seller to let them know that the product is recalled and provide information to assist the seller in contacting the recalling firm to obtain a refund or other appropriate remedy. If the seller does not respond, we then ask the website owner to remove the listing voluntarily. Due to our ongoing relationships with these large websites, most of these listings are removed immediately. Such direct intervention prevented the resale of nearly 25,000 recalled or banned products last fiscal year.

Second, we work with website owners to assist us in educating consumers who are considering selling a used product or are searching Internet websites to buy used products. Many websites now provide high-profile access to educational messaging about U.S. product safety requirements and prohibitions regarding the sale of publically recalled and banned consumer products, often at the point of listing or sale.

Recent examples include:

1. Alibaba, a Chinese e-commerce company, agreed to block the sales of certain unsafe children's products to U.S. buyers on its online site. A combination of intervention (preventing sales of products to U.S.-based buyers and importers that do not meet U.S. safety requirements) and education is reducing the availability of banned products on the website.

2. Craigslist, primarily a consumer-to-consumer sales website, recently decided to redesign their site to include more specific descriptions of consumer products (manufacturer, make, model number); add links to prohibited items and product recall information on every page; add category-specific recall alerts. Now, Craigslist, when requested by CPSC, immediately (often within minutes) removes listings offering recalled or banned products for sale.

3. EBay, Facebook, Amazon, and other large retail websites closely partner with the CPSC to ensure that banned and recalled consumer products are either filtered from their sites or removed shortly after they are posted.

Engaging Stakeholders

In your FY 2011 – FY 2016 Strategic Plan Summary, you have listed as Strategic Goal 2: "Engage public and private sector stakeholders to build safety into consumer products." The description of your strategy lists different ways that your agency reaches out to stakeholders, including ensuring they receive proper training, reduce the production of unsafe products, and encouraging industry leaders and foreign safety agencies to focus on safety.

Question: Do you review and incorporate feedback from stakeholders in this process and, if so, by what process?

Response: When the CPSC conducts trainings, we generally work with a local partner, either a government agency (when training overseas) or a trade association that acts in a host capacity. The host will conduct a survey of training participants to inform us about the relevance and value of the training. The feedback from the evaluations is reviewed by the program manager and factored into future training events.

Question: How do you prioritize stakeholder concerns when considering possible changes to this engagement process?

Response: To date, our engagement with foreign stakeholders has not resulted in such a number of concerns, such that we need to prioritize in order to be responsive. We engage frequently with foreign government safety agencies and trade associations. We find that the areas in which they perceive the need for training are generally the areas that we also have identified. We adjust our program annually, based on an analysis of the situation with each of the countries where we are engaged.

Financial Services and General Government Subcommittee Hearing on Consumer Product Safety Commission for Commissioner Ann Marie Buerkle

Questions for the Record Submitted by Chairman Ander Crenshaw

Voluntary Recall

For nearly 40 years, the Commission has partnered with manufacturers and retailers of all sizes to ensure that the system of voluntary recalls is effectively reducing the safety risks posed to the public. In fact, the Commission has highlighted the success of program, noting that 90 percent of recalls through the award-winning Fast Track program are implemented within 20 days.

I believe voluntary recalls have been largely successful because of the Commission's opportunity to leverage its resources with industry to help drive education campaigns related to proper use of consumer products. This cooperative relationship with industry has helped save lives and Commission resources. So I am concerned about the Commission's voluntary recall proposed rule issued in November 2013 that would make voluntary recall agreements legally binding. I believe this proposed rule would cripple the highly successful voluntary recall program currently in place.

Question: Do you think the Commission should be focusing on a legally binding recall rule when a highly successful, industry driven, voluntary recall program is currently in place?

Response: I voted against the proposed voluntary recall rule because I believe that several different elements of the rule would undermine our highly successful voluntary recall program. Besides making voluntary recalls legally binding, the proposed rule would also restrict a recalling company's ability to deny the existence of a safety problem, as it is allowed to do under current rules. It also encourages the staff to negotiate programs aimed at improving future compliance and to include them in the binding plans. All of these features of the proposal are likely to embroil the Commission staff and the recalling company in contentious and lengthy negotiations. The result would be to prolong consumer exposure to unsafe products.

Of particular concern would be the potential negative impact on the Fast Track program, which accounts for a high percentage of CPSC voluntary recalls. This concern prompted even former Chairman Ann Brown—a strong consumer advocate appointed by President Bill Clinton—to register her opposition to the proposed rule.

Although the Consumer Product Safety Improvement Act (CPSIA) required the CPSC to promulgate guidelines on recall notices, that requirement applies only to government-ordered involuntary recalls, which are rare, not to voluntary recalls. There is no statutory requirement to promulgate guidelines for voluntary recalls. I believe it was a mistake to go down this road and that the best course for the Commission would be to withdraw the rule.

The public comments you received on the voluntary recall proposal have been overwhelmingly in opposition. A number of Members of Congress have written to the Commission to express their concern about possible implications that the proposed rule would have, particularly its impact on the Fast Track recall program. The Financial Services Appropriations bill had an amendment to prohibit funds for implementing this rule on the House floor. However, your Fiscal Year 2016 operating plan indicates the Commission intends to issue a final rule on voluntary recalls this year.

Question: Does the Commission plan to proceed with a final rule on voluntary recalls despite all the opposition to the proposal?

Response: The Commission's current Operating Plan calls for the Voluntary Recall rule to be finalized in this fiscal year (i.e., before September 30, 2015). In my opinion, the proposed rule is unsalvageable; it should be withdrawn.

Question: Did the Commission consult with representatives of industry and consumer groups when it was developing its proposal to change the voluntary recall process?

Response: I am not aware of any consultation that was done with either industry or consumer groups prior to the proposed rule. The most problematic elements of the proposed rule were not even advanced by the staff but by other Commissioners through amendments to the staff draft. Therefore, it is unlikely that there was even an opportunity for consultation on those topics before the proposal.

Question: Are there plans to work with industry and consumer groups to improve effectiveness in the recall process?

Response: I have not been apprised of any formal plans to work with industry or consumer groups on improving general recall effectiveness. In recalls of specific products, the Compliance staff has been emphasizing greater use of social media by the recalling firms. Staff has also indicated there will be other initiatives to improve recall effectiveness, but these initiatives do not include engagement with industry. Rather they appear to be focused on consumer education and individual recalls.

Question: Has the Commission considered establishing a formal advisory committee that can help maximize the effectiveness of the recall process and could recommend future changes to the Commission and its staff?

Response: I am not aware of any consideration being given by the Commission to a formal advisory committee on this subject.

Window Blind Coverings

The CPSC published an Advanced Notice of Proposed Rulemaking (ANPR) for window coverings in January. It's important we have safe products on the market. We can all agree the safety of our children is foremost. With so many products on the market it's important

we focus our energies where they are needed most. I'm concerned that the Commission's notice for a proposed rulemaking on window coverings is directing its resources somewhere they are not needed. The statute governing the Commission clearly states that CPSC must rely on the voluntary standard process whenever possible. For the past two years the Financial Services bill has included report language urging the Commission to work cooperatively with industry. The initiation of a rulemaking seems to indicate the Commission is moving away from the voluntary standards process and the direction set forth under statute.

Question: Can you tell me where you are in the Advanced Notice of Proposed Rulemaking process?

Response: The Commission has granted the request of the Window Covering Manufacturers Association (WCMA) for a 75 day comment period extension on the Window Covering Advanced Notice of Proposed Rulemaking. The comment period on the ANPR will close on June 1, 2015.

Question: How have you worked with industry and stakeholders to address existing concerns cooperatively?

Response: For many years, CPSC staff has participated in voluntary standard activities to address the strangulation hazards associated with cords on window coverings. The recent 2013 version of the voluntary standard is the sixth iteration.

In 2013, the Commission received a petition requesting initiation of a rulemaking to eliminate accessible cords on window covering products. The Commission issued a notice requesting public comments on the petition. See 78 Fed. Reg. 42026 (July 15, 2013).

In July 2014, the Commission staff expressed its dissatisfaction with the most current 2013 voluntary standard for not being stringent enough in addressing "requirements that will effectively reduce or eliminate the risks associated with potentially hazardous cord and loops."[1] CPSC staff requested WCMA to reopen the voluntary standard to address the agency's concerns.

In October 2014, the staff recommended that the Commission grant the petition for rulemaking. I was willing to commence the process, but only if we began with an Advanced Notice of Proposed Rulemaking instead of moving directly to a proposed rule (as we are now permitted to do under the CPSIA amendments). In my view, an ANPR is prudent because it allows the CPSC staff to gather additional data about these products, to work with industry experts on identifying alternative ways to prevent strangulation deaths and injuries, and to take the staff's economic analysis to the next level, without committing to a mandatory standard. We must understand not only the impact on manufacturing costs and resulting prices but also on the functionality and useful life of window coverings as well as their operability by senior citizens and certain disabled populations.

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[1] http://www.cpsc.gov//PageFiles/170256/WCMA_Ltr_22_July_2014.pdf

Congress has directed the agency to pursue voluntary standards in preference to mandatory standards whenever possible. I strongly support that position. All of us at the Commission are keenly aware of the tragic deaths of young children that continue to occur as a result of corded window coverings. Nevertheless, that does not mean that a mandatory standard is necessary or appropriate. According to the staff's preliminary analysis, the annual risk of a fatal strangulation from the corded window coverings sold from 1996 to 2010 barely exceeds one in one hundred million units. That risk is also declining as older products are gradually being replaced with the better products that are available now. It will continue to decline as even better products become available in the future and safer alternatives become more affordable. Education is the critical component to increase awareness of the risk and hazards, especially in households with small children, as well as informing consumers of the safe alternatives to corded window coverings already available in the marketplace.

It's my understanding that the industry safety standard on window coverings is the most stringent in the world, I'm not sure that a mandatory rule is the answer.

Question: What role do you think education plays in addressing this hazard?

Response: There are approximately one billion window covering products already in U.S. households. A well-crafted, comprehensive educational campaign could do more to save lives than a mandatory standard, which would be limited to newly manufactured products and do nothing to improve the safety of products already in homes. An educational campaign, by contrast, could target those who are most at risk, including those who already have corded products. An education campaign is the appropriate avenue to pursue.

A comprehensive and on-going educational campaign that incorporates: (1) information about the risks and hazards; (2) prevention and retro fit; (3) product alternatives and free market choices could have a significant impact on reducing incidence of deaths and injuries due to window coverings.

A consistent educational campaign that incorporates: (1) parents, guardians, and grandparents; (2) healthcare providers including pediatricians, obstetricians, and family practitioners; (3) educational community and day care centers; (4) realtors; (5) home builders; (6) window covering manufacturers; and (7) government agencies is needed to increase awareness, influence and impact consumer purchasing choices and increase safety for children.

Retailers have expressed great interest in an educational campaign. A very comprehensive public-private campaign would truly address window safety.

Question: What is CPSC doing to educate consumers? Should you be doing more?

Response: Consumers can find information about window covering safety on our website, CPSC.gov. Consumers who seek out window covering information would locate this information under the Safety Education Center sub-heading on our webpage.

October is National Window Covering Safety month. The CPSC works cooperatively with the Window Covering Safety Council sharing the message of window covering safety and awareness. The joint initiative focuses on the "Go cordless" message, which CPSC and WCSC promote.

CPSC reaches out to consumers using social media, such as safety blogs, online chats, a Neighborhood Safety Network poster, and tweets. There is no information available to assess the effectiveness of this currently limited public education campaign.[2]

I strongly believe that the CPSC should be doing far more to raise awareness and educate consumers on window covering safety. We should implement a comprehensive education plan that incorporates the points outlined in the previous question's answer.

Question: How much do you have in your budget to put towards these efforts of educating the consumer?

Response: Currently the agency does not have a comprehensive education campaign to address window covering safety. Education on window coverings is one of many topics included in the overall safety educational program provided by the agency.

I have been advised by staff that currently most of the agency's budget related to window covering safety education is based on salaries for staff in the Office of Communications (approximately $143,000 in FY 2015). There are no direct costs related to social media postings, blog writing, and earned media interviews, which have been conducted with local and national media. For contract services, such as the development of safety posters and production of videos, costs can range from $2,000 to $20,000; these types of materials serve multiple purposes and are put to multiple uses.

The ANPR report admits that this is a complex issue that would require a significant cost increase for consumers. Replacing all one billion window coverings would be quite an undertaking.

Question: Do you think raising the costs of window coverings by getting rid of the lowest costs corded options would cause consumers to go out and buy new ones or keep their old ones?

Response: A mandatory window covering standard will have a significant effect on consumer behavior and spending. Cordless window coverings are already readily available to all consumers who desire them. There are various reasons why they are not universally popular: (1) cordless designs have not been developed in every shape and size (and may not even be technologically feasible in some sizes); (2) some are difficult to operate, particularly for older consumers or those of smaller stature; (3) they are generally more expensive than traditional corded products. Many households in the United States do not have young children, and

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2 http://www.cpsc.gov/Global/Newsroom/FOIA/CommissionBriefingPackages/2015/PetitionRequestingMandatoryStandardforCordedWindowCoverings.pdf p 19

therefore the potential safety benefits of the cordless products do not outweigh their disadvantages. If cordless products are banned by the Commission, therefore, it seems quite likely that many consumers would hold on to their current window coverings for a longer period than usual, including those households with small children.

The economic recovery to the recession has been painfully slow. Sluggish job growth, low wages, and poor consumer confidence have all slowed consumer spending, particularly for discretionary purchases. Creating additional strains on American families whose budgets are already stretched will likely create the unfortunate scenario of parents and caregivers keeping unsafe consumer products longer because of costs to replace them.

Question: What data do you have to back this up?

Response: CPSC staff was unable to provide me with any data showing the impact that higher prices would have on consumers. Given that cordless window products are already available to consumers who want them, I believe that an average price increase would have adverse economic consequences. CPSC staff agreed that raising the price of window coverings (in this case, by eliminating corded options) would tend to reduce the quantity demanded. Further, a price increase would probably lead some consumers to delay the purchase of replacement window coverings.

Stakeholder Engagement

The success of the U.S. regulatory system for protecting consumers and minimizing product hazards relies heavily on a cooperative relationship between the CPSC and all affected stakeholders—consumer groups, manufacturers, retailers, importers, state and local governments, Congress, and the list goes on. The Consumer Product Safety Act and the CPSIA, has stressed the importance of a partnership between the CPSC and manufacturers and retailers in protecting consumers.

Question: Are there opportunities to improve your relationship with stakeholders and enhance the overall effectiveness of CPSC?

Response: There are ample opportunities for the CPSC to improve the agency's relationship with all stakeholders. Increased stakeholder engagement is possible through: (1) active communication with all stakeholders prior to rulemaking; (2) comprehensive education campaigns; (3) increased public-private partnerships; (4) informal and formal advisory groups; and (5) public concerns addressed during the rulemaking comment period, public workshops and more.

As a health and safety agency we are more effective and useful to the American people when we give all stakeholders a seat at the table. While engagement is critical to accomplish genuine understanding of all perspectives, the result of these interactions must reflect compromise and honest negotiations by all parties involved. The genuine inclusion of all ideas and concerns, and the development of a solution is challenging and difficult work but when done well will reap great rewards.

One of my concerns is that our engagement is not consistent. We cannot just talk engagement and then continue to push unnecessary and aggressive rulemaking, while threatening higher civil penalties. Our mission is to keep the American public safe. To that end, we sometimes must resort to strong action, but we will be far more successful if we promote a culture of relationship building rather than an adversarial one.

I have devoted much of my time as a Commissioner advocating for greater engagement and collaboration to accomplish our primary mission of safety. Recently, there has been a noticeable increase in the level of CPSC engagement with stakeholders including the regulated community. This development is attributable at least in part to the consistent encouragement of Congress for greater stakeholder engagement.

Safety is our mission but good governance is our responsibility. To show real leadership in consumer health and safety, we must be more open, transparent and engaging. As a government agency we will only accomplish our mission of safety by taking a measured, reasonable and rational approach to all issues that come before us as well as using the most reliable data; incorporating the hard work of our staff and valuing the contribution of our stakeholders as real partners in our mission.

Based on the CPSC FY 2015 operating plan, the Commission is expected to issue final rules on the public disclosure of information under section 6(b), recreational off-highway vehicles and voluntary recalls. Yet, none of these rules have been mandated by Congress. The CPSC was directed to identify ways to reduction third party testing burdens by August 2012.

Question: How does the Commission determine what efforts to prioritize its work on?

Response: The policy on establishing priorities for Commission action is set forth at 16 C.F.R. § 1009.8 (2015).[3] It is the general policy that priorities for Commission action are established by a majority of the Commission members who vote on all requests for appropriations and vote on the agency's annual operating plan.

> In establishing agency priorities, the Commission considers the following general criteria:
>
> - Frequency and severity of injuries associated with consumer products;
> - Causality of injuries and the amenability of a product hazard to injury reduction through standard setting, consumer information and education, or other Commission action;
> - The risk of chronic illness and the associated estimates of future injuries;
> - Costs and benefits of CPSC action;
> - The unforeseen nature of the consumer product-related risk
> - The vulnerability of the population;
> - The probability of exposure to the hazard; and

[3] http://www.gpo.gov/fdsys/pkg/CFR-2009-title16-vol2/pdf/CFR-2009-title16-vol2-sec1009-8.pdf

- Any other relevant factor staff believes warrants the Commission's consideration.

Once a year, there is an opportunity for stakeholders to come before the Commission to share issues they would like the agency to consider a priority. This input can be helpful, but the meetings are so infrequent, it is necessarily general and therefore limited in its usefulness.

I see the priorities for the Commission as being driven by issues that are important to the chair. These priorities are reflected in the agency's operating plan as well as the agency budget request. My input into the process comes after the operating plan and budget is developed by staff. As a Commissioner I am then able to offer amendments and vote on the final packages.

Often, the chair's priorities are elevated over those directed by Congress. In the case of test burden reduction, for example, we have afforded little relief, despite clear Congressional direction. And in the alternative, we have found time to work on a number of mandatory standards against the wishes of Congress, such as ROVs and window coverings.

Question: How is funding prioritized and allocated for each of these areas?

Response: As outlined in the previous question's answer, funding priorities are directed by the chair and implemented by staff.

Nanotechnology Research Center (+$5 million)

Currently the Commission allocates $2 million annually for nanotechnology work and the fiscal year 2016 request includes an additional $5 million to establish a Commission nanotechnology research center. You indicate in your budget request that the Commission would enter into a 5-year interagency agreement with the National Science Foundation (NSF), modeled on a similarly sized, existing NSF-EPA research center.

Question: How does the CPSC currently work with the NSF in dealing with nanotechnology issues?

Response: As a Commissioner, I have not had any direct dealings with NSF. However, I understand from agency staff briefings that CPSC and NSF have developed interagency agreements each year, where CPSC participates in the NSF grant funding process. CPSC has provided funding to NSF-funded centers for research that supports the CPSC's nanotechnology data needs. CPSC staff interacts regularly with the NSF through interagency meetings, such as the monthly Nanoscale Science, Engineering and Technology ("NSET") subcommittee and its Nanotechnology Environmental and Health Implications ("NEHI") working group, workshops, and personal communications. The NSF and CPSC have regular communications regarding the proposed center and have identified and discussed key factors needed for development.

There are many other agencies which already study nanotechnology.

Question: Why is a CPSC-led R&D center necessary?

Response: In my judgment, the case has not been made that a CPSC-led center is necessary at this time. Additionally, I believe CPSC has other priorities, such as expanding import surveillance, which should be funded before expanding this initiative or any others.

Question: Is there existing infrastructure within the Federal government that can conduct the type of research needed?

Response: There are other government agencies that are already studying nanotechnology. The Federal budget investment in the National Nanotechnology Initiative (NNI) from FY 2001 through the FY 2016 request totals more than $22 billion. The largest allocations have historically gone to DOD, EPA, NIST, NSF, and DOE. CPSC has engaged with these agencies on nanotechnology research since 2005. In my judgment, CPSC should continue using this existing infrastructure and explore ways to enhance our return on such collaboration with other agencies who have already invested significant time and monies into nanotechnology research.

Question: What is the CPSC's objective and how do you think that $5 million will impact regulation of these materials?

Response: In meeting with CPSC staff, my understanding is that the objectives for this project are (1) to develop methods for testing products to determine the presence of various nanomaterials and for evaluating the relationship between nano content and consumer exposure; and (2) to characterize and understand consumer use of products containing nanomaterials.

Question: Don't you think that money would be better spent with other agencies already studying this issue and who have already make significant gains in this area?

Response: There are many other government agencies already studying nanotechnology. CPSC should continue to partner with other Federal agencies, at its current funding levels, as it has done since 2005. I think it would be worthwhile for CPSC to explore ways to better leverage our relationships with other agencies so that we get a greater return on our investment.

I have concerns that the many agencies involved in nanotechnology research are operating in silos and as a result there is a risk of duplication and waste. I respectfully encourage Congress to review how all of the money allocated to nanotechnology research has been spent and what the return on the government's investment has been.

The National Science Foundation's budget request for FY 2016 does not mention this new CPSC-NSF research center.

Question: Has the CPSC been in discussions with the NSF over the past year in regards to the development of this center?

Response: I have not been a part of such discussions firsthand, but I understand from staff that CPSC has had positive discussions with NSF regarding the development of the center.

Question: Can you share communications with the Committee indicating that NSF is in complete support of this center?

Response: I do not have any firsthand communications to share with the committee as I have not had any direct interaction with NSF as a Commissioner. However, I understand from staff that CPSC communicates regularly with NSF regarding the proposed center and that NSF has verified their intent to work with CPSC.

Question: As you have developed your proposal, what formal communications has the CPSC had with manufacturers and others who use nanotechnology in their products?

Response: I have not been a part of such communication firsthand, but I understand from staff that CPSC has participated in meetings sponsored by the NNI and other stakeholders. Additionally, I am told by staff that the NSF will solicit input from potential stakeholders, including manufacturers, to determine specific areas of research.

I am also aware that the Environmental Protection Agency (EPA) has recently proposed a new regulation requiring manufacturers and processors of nanoscale materials to report the use of certain nanomaterials in their products. I will be monitoring the progress of this rule as well as all stakeholders' responses to identify whether or not this may be an avenue for CPSC to consider.

Recreational Off-Highway Vehicles

You voted against proceeding with rulemaking for ROVs. In October 2014, you moved unsuccessfully to postpone the rulemaking for 90 days in order to build on the meeting between CPSC staff and industry engineers. In December 2014 you moved to modify the FY 2015 operating plan to delay the rulemaking. Instead your Democratic appointee colleagues again voted to proceed. At the January 7, 2015 public comments hearing, you proposed delaying the rulemaking in order to develop the factual record. That motion also was rejected.

Question: Please explain why the rulemaking should be delayed, and if you can, explain why there is opposition to a delay in the rulemaking?

Response: I have consistently opposed this premature ROV mandatory rulemaking activity by this agency and have repeatedly encouraged my fellow Commissioners to allow the voluntary standards process to proceed.

The rulemaking should be deferred so that our staff is able to engage further with manufacturers at the technical level. In October 2014, the CPSC Chairman postponed the vote on the proposed standard by one week so that CPSC staff could meet with engineers from the ROV manufacturers. Our staff described that meeting as "productive" and said it yielded "key insights." The industry representatives had much the same favorable view of the meeting; they offered to convene another meeting of engineers within ten business days if the Commission postponed issuing the proposed rule. Yet, as you correctly observe, the Commission refused to

postpone the proposal then and did so twice more (in December 2014 and again in January 2015).

Additionally, the agency has been repeatedly directed by Congress to engage with stakeholders and use the voluntary standard process to develop the safety standards for this consumer product. The voluntary standards process brings industry, consumer groups and government agencies together to develop the best consumer product safety practices. Against the will of Congress, the CPSC has forged ahead with a mandatory rule for ROVs.

Since January, the Commission has twice voted to extend the period for public comment on the proposed rule. In the first instance, this extension was granted because two leading ROV trade associations did not receive all the information they were entitled to under FOIA in a timely manner. The CPSC engineering staff has also held additional meetings with one of the leading manufacturers. (Some see these actions as largely a salutary result of this Committee's oversight.) While these developments are welcome, the rulemaking should be postponed so the engineers can try to build on their progress in further technical meetings. Pushing the deadline back is helpful in one sense, but as long as the comment period remains open, the manufacturers are understandably preoccupied with the comments to our proposal and have substantially less time to engage with the agency's engineers.

It is hard to explain why some of my colleagues have opposed greater technical engagement. Some have suggested that the industry only takes the agency seriously when there is a credible threat of a mandatory standard being adopted. It seems that the ROV industry had been trying to engage the CPSC staff at the technical level for months and even years, but with extremely limited success. Some have suggested that the industry is not sincere in wanting to engage and only wants to delay rulemaking to put off the day a mandatory standard is adopted. The manufacturers may prefer to develop a voluntary standard rather than a mandatory one, but they seem genuinely committed to engage with the CPSC technical staff.

Chronic Hazard Advisory Panel (CHAP) Report on Phthalates

In developing its report, the CHAP used National Health and Nutrition Examination Survey data available from the Centers for Disease Control and Prevention from 2006. However, additional data was released by the CDC in 2008, 2010 and 2012.

Question: Why did the CHAP use data from 2006 and not the most recent data?

Response: The CHAP stated in its report that the 2005-2006 NHANES data were the most recent available "at the time of our analyses." Report, p. 35, footnote. That is not correct. Indeed, the CHAP actually refers to the 2007-2008 NHANES data elsewhere in its report. See, e.g., pp. 74-75. Moreover, the 2009-2010 NHANES data also became available well before the report was complete. Thus, even if the later data had not been available when the CHAP conducted its original analyses, the analyses should have been updated using the later data when they did become available.

Question: How has the content of phthalates in consumer products changed in the last ten years?

Response: The use of phthalates in consumer products has changed substantially over the last ten years. The most significant change is the decline in use of DEHP, which is one of the phthalates that was permanently banned by Congress in certain children's products per the 2008 Consumer Product Safety Improvement Act (CPSIA). Although Congress did not ban the use of DEHP in all products, such as food or cosmetics, the manufacturers have phased out the usage of DEHP in many other products. This trend is apparent from reference to the biennial NHANES data. Average exposures to DEHP haven fallen significantly for adults, adolescents and children.

The drop in exposure to DEHP is of enormous significance to the issues before the CPSC. The CHAP based nearly all of its recommendations on a "cumulative risk analysis" using 2005-2006 NHANES exposure data. The results of that analysis, which used data from before CPSIA was enacted, were completely dominated by DEHP. Several commenters have shown, in submissions to CPSC that if that same analysis is performed using the more recent data, the basis for the CHAP's recommendation completely disappears.

Some have pointed out that exposures of other phthalates, notably DINP, have been increasing while DEHP exposures decline. While this is true, it does not follow that these other phthalates should be banned. These other phthalates are far less potent than DEHP, and so even if all the former use of DEHP were replaced by DINP, the cumulative risk assessment would not warrant a ban on DINP.

Question: Does it concern you that the CPSC has now developed a notice of proposed rulemaking based on data that many argue is outdated and less robust?

Response: I am very concerned that CPSC's notice of proposed rulemaking was developed using outdated data. I urged that the vote on the proposed rule be postponed so that the staff could analyze the later data before determining our best course of action. My position was not supported by a majority of the Commission. The CHAP's reliance on the older data was a major factor in my vote against the proposed rule.

Although the Commission refused to postpone issuance of the proposed rule, the Chairman did agree to my request that the staff be tasked to analyze the more recent data. Unfortunately, that analysis was not completed before the deadline for public comments. The Commission should re-open the comment period so that all interested persons will have an opportunity to respond to the updated analysis.

Question: Did the Commission hold public meetings before a final report was written so that the peer reviewers could hear from interested members of the public? If no, why not?

Response: In my opinion, CPSC should have given the public an opportunity to comment on the CHAP report before it was finalized and before the agency developed its proposed rule. Some have argued that the public can address the CHAP report in comments on the proposed rule, but that opportunity is inadequate.

Questions for the Record Submitted by Congressman Tom Graves

NPRM on ROVs

In regards to the October 2014 Notice of Proposed Rule Making on Mandatory Safety Standards for Recreational Off-Highway Vehicles, can you please describe in detail what specific testing, analysis, and data has been developed to support the Commission's decision to regulate Recreational Off-Road Vehicles as on-road vehicles.

Response: The Commission staff denies that it is the staff's intent to regulate ROVs as on-road vehicles. However, some of the performance requirements appear to assume that ROVs should handle the same way as on-road vehicles do. For example, all or nearly all on-road vehicles employ some degree of "understeer" in negotiating turns. That is not true of all ROVs; some vehicles are designed with a degree of "oversteer" to allow better trail following. The CPSC's proposed standard, however, would mandate "understeer" for ROVs and outlaw "oversteer." It is also true that a large percentage of ROV deaths and injuries occur when they are being driven on public roads, even though they are not designed nor intended for that purpose.

Question: What does the Commission foresee the unintended consequences to be for consumers of ROVS if the intent and practical application of the ROV is lost due to the mandatory changes?

Response: It is difficult to foresee what unintended consequences may result from a regulation, and the proposed standard for ROVs is no exception. Nevertheless, I would anticipate some adverse consequences if a mandatory standard for ROVs reduces their utility for the would-be buyers. First, consumers may simply defer their purchase of new vehicles and hold onto their older ROVs longer. That would be a setback for safety because the newer ROVs are generally safer than the older designs. Alternatively, consumers who find new ROVs unsatisfactory may purchase all-terrain vehicles (ATVs) instead. Again, this would have a negative effect on safety because ROVs in general have lower fatality and injury rates than ATVs.

Questions for the Record Submitted by Congressman Mark Amodei

ROHVA NPR FOIA

On February 5, 2015, the ROHVA emailed the CPSC outlining documents missing from the FOIA request in response to the notice of public rulemaking for the mandatory ROHV design standard. More than a month later on March 9, 2015, the CPSC General Counsel confirmed that the FOIA response from CPSC was materially incomplete and that CPSC withheld significant information and materials in relationship to the NPR. The CPSC has given the ROHVA some of the missing information, but some of it won't be received until a little more than a week before the proposed rulemaking date, April 8, 2015. In light of this, the ROHVA has asked to extend the rule making period for 90 days.

Question: In light of CPSCs failure to meet FOIA requests by one of the most impacted stakeholders in the rulemaking, do you think it's appropriate to extend your deadline for 90 days to allow for a chance to review your materials?

Response: I agree that extending the comment deadline is appropriate under these circumstances, and wisely the Commission has granted the appropriate extension.

Question: If not, what will you do to make sure your rulemaking does not reflect information that stakeholders had no time to process?

Response: Not applicable

Questions for the Record Submitted by Congressman Sanford Bishop

Nanotechnology

According to your Budget Request, you are seeking a $5 million dollar funding increase to establish the CPSC Center for Consumer Product Applications and Safety Implications of Nanotechnology (CPASION).

Question: Is this amount sufficient for this burgeoning industry?

Response: I do not believe the case has been made for a $5 million dollar funding increase at this time.

One of the stated objectives of the Center is to "serve as a resource for manufacturers and distributors of nano-enabled products by developing approaches to provide for the safe use of this technology in consumer products."

Question: How do you plan to include industry stakeholders in this process to ensure that the "approaches for safe use" you develop are practicable in real-world applications and are not simply theoretical in their application?

Response: In my opinion, CPSC's mission is supported by pro-active engagement with all stakeholders. It is my understanding from agency staff that the NSF process for developing a center will solicit some input from potential stakeholders, including manufacturers, to determine specific areas of research.

Addressing Security Issues

In order to address "immediate agency security issues" (emphasis added) identified in a FY 2013 Inspector General audit, you are requesting $1 million for FY 2016. The security deficiencies listed include risk management, identity and access management, contingency planning, physical security, and cyber security.

Question: Considering the 3 year lapse between the identification of these security issues and their inclusion in your budget request, why is there such a long delay and what are your plans to get ahead of future security concerns so as to avoid supplemental budget requests?

Response: The IG audit to which you refer occurred before I joined the Commission. I understand from staff that in response to the FY 2013 Inspector General audit report, CPSC commenced work to address the issues identified. Notably, in FY 2014 and FY 2015, CPSC: increased IT security positions from two to seven FTEs; developed a security operations team; developed a Continuous Monitoring Implementation Plan; and created new major security policies. The delay in requesting the specific items identified in the FY 2016 Budget Request can be attributed, in part, to the lack of commercially available tools and solutions to address Continuous Monitoring. The additional funds were requested when CPSC had the human resources with the skill set to manage the additional work.

To address security concerns and limit the need for additional budget requests, CPSC has an Information Technology Infrastructure major investment, of which IT security is a component. Supplemental budget requests will be minimized by using existing funds for planned IT security needs.

Question: Will $1 million be sufficient to address all of the security concerns?

Response: According to the appropriate staff, with our current resources, this additional request is sufficient to address IT security.

Import Surveillance Program

Your FY2016 budget requests $17 million for the Import Surveillance program, but you have noted this is $19 million less than the needed funding level. In order to make up this funding gap, you are requesting authorization for a user fee and ultimately plan to completely supplant appropriated funds for this purpose with the requested user fee.

Question: How can you reassure us that an expansion of the program will utilize the user fees efficiently and for their intended purpose?

Response: I do not believe the proposed user fee is an appropriate mechanism for funding the expansion of the Import Surveillance Program. Fees should be designed to recover the costs to the government of providing a benefit to the person who pays the fee. Fees that are imposed on one person today for the development of a system that may benefit someone else in the future are unfair and may be unconstitutional.

Third Party Testing Burden Reduction

In 2011, Congress directed the CPSC to seek comment on "opportunities to reduce the cost of third party testing requirements consistent with assuring compliance with any applicable consumer product safety rule, ban, standard, or regulation." The CPSC was

then directed that it may prescribe new or revised third party testing regulations by August 2012 if they safely and effectively reduce testing costs. After soliciting comments, CPSC staff recommended 14 ways to reduce third party testing burdens.

Question: To date, why hasn't the CPSC finalized any rules on reducing third party testing burdens?

Response: In recent years, the Commission has not treated test burden reduction as a priority despite the clear direction from Congress. While consumer product safety is and always will be our top concern, we should also be concerned when our laws and regulations add unnecessary costs that are ultimately paid for by the American people. Some of the burden reduction ideas proposed by the staff could also lower the government's own testing costs, saving taxpayer dollars. For example, if the Commission staff is able to develop cheaper methods to screen for banned phthalates, that would save resources currently being spent by CPSC on more expensive test methods. Burden reduction and safety are not mutually exclusive activities but complementary ones.

In FY 2015, the CPSC was appropriated $1 million to be used exclusively for third party testing burden reduction.

Question: What has the Commission done with these funds so far and do you have a proposed timeline for publishing new rules?

Response: The Commission is spending the funds that Congress dedicated to burden reduction. The March 17, 2015 Staff Report, submitted in response to the Explanatory Statement accompanying the FY 2015 appropriations bill, summarizes the CPSC efforts currently being funded. The agency's FY 2015 Operating Plan includes a Notice of Proposed Rulemaking for burden reduction. I am not aware of a firm timeline for additional rulemaking on any burden reduction projects other than the FY 2015 Operating Plan.

Voluntary Recalls

In November 2013, the CPSC proposed an interpretive rule that would make corrective action plans that implement voluntary recalls legally binding, limit a company's ability to include language in recall notices disclaiming defectiveness of the product, authorize the Commission to mandate adoption of compliance programs as part of a voluntary recall, and standardize voluntary recall notices.

Question: Do you have plans to proceed with a final rule and, if so, how have you taken into account the limited means of small businesses to hire lawyers for legally binding recalls to ensure company compliance with the law when drafting this rule?

Response: The Commission's current Operating Plan calls for the Voluntary Recall rule to be finalized in this fiscal year (i.e., before September 30, 2015). I voted against the proposed rule. To my knowledge, the Commission never considered how small businesses might be harmed by

a regulation making voluntary recalls legally binding. The Commission should withdraw the rule.

Question: What standards would you apply to determine if a company will be required to adopt a compliance program in the course of a voluntary recall?

Response: I voted against the proposed rule. I do not think we should require compliance programs as part of a voluntary recall.

Voluntary recall announcements must be made using a press release, a prominently displayed in-store poster, and a website posting. In addition to these typical methods, the CPSC would now require at least two additional methods of dissemination, such as Facebook, Twitter, and blogs. If a company uses its website as a means of conveying a voluntary recall notice, then the notice must be prominently placed on the "first entry point" and allow consumers to request a remedy online.

Question: Would these conspicuous notices that may financially burden a company, as well as damage brand reputation, discourage them from participating in a voluntary recall and how would this protect consumer safety?

Response: I voted against the proposed rule in part because I have not been persuaded that we should have "one size fits all" rules for voluntary recalls, which involve many case-specific variables.

Free Classified Ads Listing Recalled Products

Recently, Chairman Kaye criticized the online classifieds website Craigslist.com as "morally irresponsible" for not setting up filters on its website to prevent recalled items from being posted. Most products listed on the Craigslist website are posted free of charge and do not earn the website any revenue, however, implementing a filter that can weed out recalled items can be very costly.

Question: Have you investigated any other online free classifieds websites or any paid classifieds websites or newspapers for similar shortcomings and what are you doing to work with these companies and organizations to ensure that recalled products can be filtered effectively without being prohibitively costly?

Response: I have not had any direct involvement in this process, but I understand from CPSC staff that we have a strong focus on internet-related investigations, with the primary focus being on the largest and most popular sites. Additionally, it is my understanding that we have worked closely with major online retailers - such as eBay, Amazon, Facebook, Etsy, Overstock, and ShopGoodwill – to limit the sale of recalled or banned products.

Staff pursues a two-pronged approach with websites offering consumer products for sale. First, they encourage companies' website management to monitor their own site listings for the safety of their site users. Staff provides website managers with information concerning new product

recalls involving items that are typically resold, such as cribs, strollers and other durable children's products. When staff notices sales offers of such products on a website, it immediately contacts the seller to let them know that the product is recalled and provide information to assist the seller in contacting the recalling firm to obtain a refund or other appropriate remedy. If the seller does not respond, staff then asks the website owner to remove the listing voluntarily. Due to ongoing relationships with these large websites, most of these listings are removed immediately. Such direct intervention prevented the resale of nearly 25,000 recalled or banned products last fiscal year.

Second, staff works with website owners to assist in educating consumers who are considering selling a used product or are searching Internet websites to buy used products. Many websites now provide high-profile access to educational messaging about U.S. product safety requirements and prohibitions regarding the sale of publically recalled and banned consumer products, often at the point of listing or sale.

Engaging Stakeholders

In your FY 2011 – FY 2016 Strategic Plan Summary, you have listed as Strategic Goal 2: "Engage public and private sector stakeholders to build safety into consumer products." The description of your strategy lists different ways that your agency reaches out to stakeholders, including ensuring they receive proper training, reduce the production of unsafe products, and encouraging industry leaders and foreign safety agencies to focus on safety.

Question: Do you review and incorporate feedback from stakeholders in this process and, if so, by what process?

Response: I was not present for the development of the FY2011-2016 Strategic Plan Summary as my tenure as a Commissioner with CPSC began in July 2013.

Since I have become a Commissioner, I have committed much of my time advocating for greater engagement and collaboration to accomplish our primary mission of safety. Safety is our mission but good governance is our responsibility. To show real leadership in consumer health and safety, we must be more open, transparent and engaging. As a government agency we will only accomplish our mission of safety by taking a measured, reasonable and rational approach to all issues that come before us as well as using the most reliable data; incorporating the hard work of our staff and valuing the contribution of our stakeholders as real partners in our mission.

I have been apprised by staff that when the CPSC conducts trainings overseas, we generally work with a local partner, either a government agency or a trade association that acts in a host capacity. The host will conduct a survey of training participants to inform us about the relevance and value of the training. The feedback from the evaluations is reviewed by the program manager and factored into future training events.

Question: How do you prioritize stakeholder concerns when considering possible changes to this engagement process?

Response: My position is that stakeholder engagement in the development of a strategic plan only enhances our chances of success in accomplishing our mission of consumer safety.

I understand from staff that our engagement with foreign stakeholders has not resulted in such a number of concerns, such that we need to prioritize in order to be responsive. We engage frequently with foreign government safety agencies and trade associations. We find that the areas in which they perceive the need for training are generally the areas that we also have identified. We adjust our program annually, based on an analysis of the situation with each of the countries where we are engaged.

TUESDAY, MARCH 24, 2015.

FEDERAL COMMUNICATIONS COMMISSION

WITNESSES

HON. TOM WHEELER, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION

HON. AJIT PAI, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

Mr. CRENSHAW. The meeting will come to order. I want to welcome our witnesses Chairman Tom Wheeler, and Commissioner Ajit Pai, from the Federal Communications Commission. This will be the second time, exactly 364 days, since you were both here before, but who is counting? Welcome, and thank you for being here today. The focus of the day's hearing is the FCC's fiscal year 2016 budget request. The Commission has requested a total of $413 million, or a $73 million or 21 percent increase over the current level of funding. Within your fiscal year 2016 request is a $25 million transfer from the Universal Service Fund to augment the commission's funding. A large part of your requested increase is for a potential move from your current location, and I have some questions for you regarding the cost of this move. But a 21 percent increase is far more than most agencies have seen in recent years.

While the FCC is fee-funded, these fees are directly passed on to consumers, as is the funding for the Universal Service Fund. Because of this, I believe the committee's oversight over the FCC activities is especially important and I take this very seriously. This committee has held the FCC's funding at a flat level since 2012, because we believe that the commission can and should do less with less. We believe you all should do a better job of managing your resources and focusing on your core operations. Unfortunately, the commission seems to be pursuing politically charged issues, rather than the mission-critical work of the FCC.

I heard Angela Merkel talk about the difference between Europe and the U.S. in terms of Internet regulation, and one of the things that she said was, in Europe, we tell them what they can do; and in the U.S., you tell them what they cannot do. And I think that is interesting, because when there is a lot of competition there is not as much need for regulation. The Internet has been an unparalleled catalyst for innovation, yet the FCC, just a month ago, voted to constrain and control something that has brought about innumerable technological advances and American jobs. The recent rule-making puts both broadband Internet and wireless Internet under a 1930s-era, utility-style regulation regime, which I believe is outdated, backwards, and most importantly, stifles job creation and innovation. These rules will slow down critical broadband investment at a time where our economy is still rebounding.

Today's U.S. Internet market exceeds Europe's in both competition and investment. American Internet users have more choices than our European counterparts, and yet we are moving toward more onerous and restrictive regulation. I do not think anyone could imagine where the Internet would be just five years ago. The idea that the FCC is capable of anticipating all possible future innovations, to me, is implausible, and I believe this rule will result in damaging, unintended consequences.

Aside from the recent rule-making, we have a number of other significant topics to cover with you all today. Commissioner Wheeler, you are asking for $117 million auction administration cap to implement the largest incentive auction of our lifetime. Just last year the AWS–3 Spectrum auction closed after 341 rounds of bidding with a record $41.3 billion in revenue raised. The upcoming 2016 incentive auction will match broadcasters who have underused commercial spectrum with wireless companies, who need more spectrum due to the so-called "spectrum crunch". This kind of auction has never been done before at this level of either complexity or size. The committee fully supports this auction, as it is expected to generate billions of dollars of revenue for deficit reduction. However, we are concerned with transparency within the auction administration funds. We also expect this to be a fair and open auction so all interested parties can fully participate, and to generate the biggest bang for our buck.

While I understand net neutrality rules and the incentive auction have dominated the headlines recently, I am eager to hear from you about the cost of your headquarters move, the Universal Service Fund oversight, and structural reforms of the commission. The FCC has significant work to do, and I hope that today we can talk about how this agency can be run in an effective and efficient manner. So I thank you both for the work that you do. Thank you to your staffs. I look forward to your testimony. And now I would like to turn to my distinguished ranking member, Mr. Serrano, for any opening statement he might make.

Mr. SERRANO. Thank you, Mr. Chairman. Before I start, you were quoting a European nation telling us how to behave?

Mr. CRENSHAW. I was telling you what a foreign nation said about regulation.

Mr. SERRANO. Okay. Just checking.

Mr. CRENSHAW. And evidently, we are doing better than they are.

Mr. SERRANO. Yeah, just wanted the record straight. Thank you, Mr. Chairman. I would like to join you in welcoming Chairman Wheeler and Commissioner Pai back before the subcommittee. We had an interesting hearing last year, and I expect this year's will be as lively as well. The Federal Communications Commission plays an increasingly important role in our society and in our economy. As new technologies have developed, entire new industries and methods of communications have emerged for television, radio, satellite, and the Internet, the FCC is the vital link in ensuring fair competition, media diversity, and expanded access to these vital parts of our economy.

Unfortunately, the subcommittee has hampered the ability to meet these challenges by forcing the FCC to operate with the same

level of funding for the last two years. This is having serious negative effects on the FCC's enforcement capacity, as well as its abilities to meet the demands of a rapidly changing environment. The agency is now operating at its lowest level of personnel in more than 30 years. That is incredible. If you think about it, over the past 30 years the FCC has had to regulate entire new industries, but we are only providing enough resources to regulate those that existed 30 years ago. The FCC has had to do much more with much less than is needed, and if we make matters even worse and go back to sequester levels, then we are only courting disaster. In this context, I believe that your budget request is reasonable and necessary.

It should be obvious over the past few months, there are numerous important and pressing issues that the FCC is dealing with beyond struggling with artificially low funding. I, for one, strongly applaud the commission's actions last month to ensure net neutrality and an open Internet. I firmly believe that it is of the utmost importance for consumers and businesses that they have assurances that their Internet content and access will be treated the same way as everyone else's. This principle is of crucial importance to innovation in our country, and to consumers as well.

In particular I wanted to compliment your efforts to ensure that mobile devices are treated in the same manner as wired devices. A large number of Latinos and African Americans only have access to the Internet via their smartphones, and rules without these protections could have negatively affected their access to the Internet. Additionally, I hope we have a chance to discuss smartphone theft and kill-switch technology. Since last year's hearing there has been some important progress on this issue, both at the FCC and within private industry. While I am pleased with these important steps forward, I believe having a clear, enforceable standard is the best way to ensure that smartphone theft continues to decline, and along with Senator Klobuchar, I plan to reintroduce a smartphone theft prevention act in the near future.

I understand that you both have testified for Congress several times in the past few weeks. I can tell by the looks on your faces. Thank you for the laughs. So some of these issues may be very familiar ground; however, I welcome you to this hearing, I look forward to this testimony, and before I close, let me tell you that I clogged the airwaves this morning, because on my iPad, I just said that we were at this hearing both on Facebook and Twitter. So, we are working together. Thank you so much, and thank you, Mr. Chairman.

Mr. QUIGLEY. Were you neutral about it?

Mr. SERRANO. I was very neutral about it.

Mr. CRENSHAW. Thank you, Mr. Serrano. And I know that our witnesses have been busy for the last couple of weeks, but they have had a weekend to rest up, so they are here today. So, Chairman Wheeler, I would like to recognize you for any opening statement you might make. If you could keep your remarks within the five-minute limit that will give us more time for questions. The floor is yours.

Mr. WHEELER. Thank you, Mr. Chairman. Mr. Crenshaw, Mr. Serrano, members of the committee, thank you very much for the

opportunity to be here 364 days later, sir. You know, I am a businessman and you are my board of directors, and I would like to present this in kind of the way that I would present to boards of directors when I was in my previous life. So, there are hopefully slides in front of you that I would like to walk through. [Slide]

The first chart labeled Executive Summary, on the left shows the current state of affairs for the agency. Our headquarters space is too large and too expensive, our field footprint is too large and inefficient, and we have major opportunities to reduce our operating expenses through the use of technology. We also have inappropriate allocations of costs that are burdening those that do not benefit from those expenses. So what we are proposing over on the right side, our response, is a budget with the lowest number of full-time employees in 20 years, the first full-time employee reduction in 10 years, the first review of field operations in 20 years, and a reduction of the big ticket items associated with the headquarters and contractors.

Yes, it is up $84 million dollars; 70 percent of that is unavoidable kinds of expenses that we will talk about in detail, I am sure; 20 percent of that is for investment that will reduce costs; 10 percent are things you told us to do, but did not fund. And as I said, we tie our expenditures to our activities. [Slide]

Quickly, the next two slides show how the agency funding has been flat while the FTEs have been declining. [Slide]

The next one shows the volume growth in activities while FTEs have been declining. [Slide]

But the important slides then are five and six, because on five we talk about the cost savings that are underway; that the FTEs are the lowest because we are not filling vacancies; that the field office update is crucial. Nobody has looked at it for 20 years. We can cover 80 percent of the U.S. with eight offices, and pre-positioned equipment, rather than the current 24 offices. We are eliminating in the process very high per capita operating expenses. We are cutting the number of contractors through the use of technology. Contractors, as you know, are significantly more expensive than FTEs. And we are going to continue this kind of approach going forward. [Slide]

So, if you look at slide six and how we build the budget, the columns are the three sources of revenue, if you will: that which we generate from fees on those we regulate; then revenue generated from the auction; and from the Universal Service Fund. The first three items, office move, inflation, and inspector general request, which are what I have categorized as unavoidable; actually, if you take those unavoidable expenses out of the bottom line you will see that we actually would be requesting a decrease. [Slide]

Slide seven is what those expenses look like on a proportional basis, and as you can see, 71 percent of them are associated with things that we have to do. The next largest is IT, which is how you save money going forward: 5 percent for the broadband map and a Do Not Call Registry for 9–1–1 providers, which we were mandated to do but were not funded to do; 4 percent to begin the broadcast relocation work for the incentive auction; and 2 percent for cyber security. [Slide]

Since IT is the next biggest expense after the move, take a quick look if you would, please, at page eight, which is what the IT expenditure allows us to do, in terms of infrastructure, to move to the Cloud, which will save us between $1 million and $2 million a year; allow us to have a single architecture for our data, which also will increase productivity and reduce operating costs; and allow us to move to a core platform, which again, will save another $1 million to $2 million a year. But the big-ticket item, the big enchilada, is the move and the impact of that is discussed in slide nine. [Slide]

Here is why it needs to happen. We need to move to a smaller space, and we need to pay less per square foot. We are currently in about 650,000 square feet. We should be in about 475,000 square feet. We are currently paying about $60 a square foot. We should be paying about $55 a square foot. This requires an up-front investment to save $190 million, $119 million net, but you can see the impact over time of what this investment would get us.

And then lastly, the last chart, is we looked at, what if we did not move, what if we downsized in place, and what would that cost? And it actually ends up costing us more because the rent goes up even higher, the relocation expenses associated with it, details of the cost associated with shrinking offices, office sizes, et cetera. So, I look forward to discussing this and any other issues with you. Thank you very much.

Statement of
Chairman Tom Wheeler
Federal Communications Commission

Hearing on the FCC's Fiscal Year 2016 Budget Request

Before the
Subcommittee on Financial Services and General Government
Committee on Appropriations
U.S. House of Representatives

March 24, 2015

Chairman Crenshaw, Ranking Member Serrano, and members of the Financial Services and General Government Subcommittee, I am pleased to appear before you to present the Federal Communications Commission's Fiscal Year (FY) 2016 Budget Request.

Since first initiating a top-to-bottom management review last year, the FCC's team has sought ways to streamline work, leverage assets, and create more efficiencies. We have not shied from making difficult choices, and you can see the results in our proposed FY 2016 budget. This proposal reflects improvements in the FCC's operational efficiency and a corresponding reduction in our FTE levels. Our requests for increased investments are largely short-term costs like IT modernization efforts that will deliver long-term savings and improvements in the agency's efficiency and effectiveness. Most notably, this year's budget contains one significant cost where we have very limited control – the agency's lease is expiring in 2017, and we must initiate plans to transition to a less expensive real estate option or "footprint." With the pending lease expiration, this is no ordinary budget cycle, and adjustments will be necessary.

Before diving into the FY 2016 details, it is important to acknowledge some baseline facts. Few, if any, government agencies deliver a better return on investment than the FCC. We do not require a direct appropriation because we are funded entirely by fees collected from those we regulate. The Commission not only pays its own way, we also generate significant revenue for the Treasury. Since 1994, our financial return to the government has equaled 13 times our combined operational costs. For every dollar generated by the FCC, our agency uses only eight cents for its operations.

The Commission's spectrum auctions are one of the most significant policy innovations of the past 25 years, and they continue to generate billions of dollars and unleash massive benefits for our economy and consumers. Already in the current fiscal year, we completed the most lucrative spectrum auction in history. The AWS-3 auction generated $41 billion in net bids, and is expected to deliver over $20 billion toward deficit reduction, as well as billions of dollars of funding for nationwide public safety communications under FirstNet, and a range of other programs mandated by Congress in the Middle Class Tax Relief and Job Creation Act of

2012. The first-in-the-world Incentive Auction is slated for 2016 and holds similar promise to spur economic growth and innovation while raising billions for deficit reduction.

To build on this progress, and fulfill our statutory responsibilities, the Commission is requesting $388,000,000 in general spending authority derived from Section 9 regulatory fees for our overall non-auction costs, up from $339.8 million in FY 2015. In addition, we are requesting an auctions cap of $117,000,000, an $11 million increase from last year, as well as the transfer of $25,000,000 from the Universal Service Fund (USF) to cover our costs for that program. These are well considered requests that reflect necessary operational demands and the unique circumstances of this budget cycle.

If the Commission's lease were not expiring in 2017, our budget proposal would look different and my presentation today would be limited to a discussion of our team's better management practices, significant IT improvements, and internal structural and processing reforms. We would have been asking for a modest increase over last year's funding level dedicated to completing the modernization program of our IT systems – so we could start reaping the benefits of lower costs and better services.

But our lease is expiring, and that is the biggest reason we are requesting a budget increase, so let me address this issue up top. We owe it to the American taxpayer to find the most cost-effective solution for our housing costs. In the near-term, that will cost money – an estimated $51 million for FY 2016. These costs are similar to recent agency moves like NIH and NLRB. Long-term, we will use the move as an opportunity to create greater cost savings and efficiencies by significantly reducing the Commission's footprint and instituting new management techniques that encourage greater use of shared space. Current projections show $13 million in annual savings under the new lease and net savings of $119 million over the life of the new lease. Yes, the costs will be significant for the coming year, but they are unavoidable and will result in a better overall deal for the American people. The new lease is just the latest example of the agency's commitment to reviewing all of our policies and processes to improve efficiencies and make sure the American people are getting the most bang for every buck.

Overall, the agency's operations are the leanest they've been in recent history. During the past six years – beginning after FY 2009 – the FCC has operated under essentially flat funding levels for our non-auctions activities. In fact, calculating the flat funding levels in light of inflation and sequestration impacts shows that we have suffered actual reductions in the purchasing power of our budget. Although our auctions cap increased in FY 2013 – FY 2015 after a nine-year flat cap, auctions monies only offset auctions operations. We have mostly directed these increases toward additional costs related to the broadcast incentive auctions process.

Flat funding has led to difficult decisions on staffing. Make no mistake; the FCC's greatest asset is its people. While the professional quality is the highest it's ever been, the quantity is at historic lows. We are currently at 1,708 FTEs, well below the 20-year average of 1,877. Nonetheless, <u>our FY 2016 budget request is the first FCC budget in a decade that does not seek more FTEs</u>. Our FY 2016 projections include a net 37 FTE reduction, including an overall non-OIG reduction of 45 (offset by an OIG increase of 8 FTEs). At this stage, our

Managing Director's Office is using a flexible process and only fills positions opened through attrition after a complete analysis of staffing needs.

We have also recently received a report detailing potential FTE position eliminations in our field offices, where we have in many cases a one-manager-to-four-employee ratio and oversized rental facilities, which are draining our resources. After analyzing a contractor report on field office use, we have determined that we can more efficiently deploy staff using a "tiger team" approach and make better use of regional offices. This plan, if accepted by my fellow commissioners, will lead to 16 field office closures and annual savings of $9 million without diminished productivity.

We will continue to seek efficiencies that allow the FCC to continue to perform its mission, but there are limitations. Seeking even lower FTE levels could have adverse operational effects. While the Commission's staffing and resources have been steadily shrinking, the industries we oversee have continued to grow at a healthy clip. The result is an increasing workload for a declining FTE base. For example, in the licensing operations area since 2010, our FTE levels have declined by more than 25 across several bureaus, versus steady growth in licensing activity over that same time, so at some point licensing operations could slow.

There are other reforms under way to reduce costs and increase efficiency. We're steadily reducing our use of expensive contractors. We are currently at 483, down from over 600 in 2012, and trending down to 435 by the end of FY 2016.

We are aware that the Commission's licensees will bear the brunt of our programming costs, and we are continuing to ensure that we assess fees in a fair and equitable manner. This past year, we reduced the burden of regulatory fees on smaller businesses by increasing the *de minimis* payment level. This action relieved approximately 2,500 small licensees – those owing less than $500 – from having to pay fees. We also have recalculated the amounts due by different licensees to ensure regulatory fairness, and we will continue to revise this process as warranted by industry developments.

Here's an important point about all of these reforms: these are management efficiencies we would be pursuing regardless of budget levels. I am committed to modernizing and streamlining all agency operations, because it's the right way to run an agency, not because budget constraints demand it.

Building on this foundation of reforms, we are requesting an $84 million increase for FY 2016. This increase has three key components. First, there are "unavoidable" costs that account for 70 percent of this overall increase. Chief among these is the $51 million that I mentioned for the agency's pending move. This amount also includes adjustments for inflation, and a $1 million requested increase for the Office of the Inspector General, bringing their budget to $12.2 million.

Second, we are seeking an additional $17 million for Information Technology (IT) investments. Our commitment to improving the agency's effectiveness goes hand-in-hand with

the need to improve our IT systems: numerous paper-based, manual processes exist at the FCC, resulting in hidden, human-intensive costs that could benefit from automation. Moreover, the costs of continuing business as usual with these IT systems will undermine the financial stability of the Commission. The Government Accountability Office has noted that federal agencies currently spend more than 70 percent of their IT budgets on maintaining legacy systems. The FCC, like other agencies, has been caught in this legacy trap; as of the end of FY 2013, we were trending well above even the federal average of 70 percent. We have tackled this problem head-on and targeted all available resources toward modernizing our IT systems. We pulled together our remaining funds at the end of FY 2014 and reprogrammed $8.75 million to support this process.

We identified our ongoing IT modernization as a management imperative, both to support process reform efforts as well as to improve cost efficiency, and our FY2016 budget request reflects this emphasis. Our IT-focused management strategy – made possible by the reprogramming granted by this Subcommittee – has delivered solid, early results. We are well on our way toward making the necessary changes to ensure that our FCC.gov website is accessible and user friendly for consumers and stakeholders. We have initiated a process to move all onsite IT infrastructure to a secure, lower cost, off-site service provider ahead of our 2017 required move, to realize cost savings and improve system resiliency. We also rolled out the new Consumer Complaint Database at one-sixth the traditional cost for such a project, epitomizing many of the agency-wide changes that we hope to implement – inexpensive, off-the-shelf solutions, combined with resiliency, user-friendly options, and the potential to improve our internal data collection methods to increase transparency and inform policy-making decisions.

Still, limited funds have delayed many improvements and threaten to cost us more each day that we are unable to move ahead. The specific funds required are outlined in our FY 2016 budget: $5.8 million to replace the FCC's legacy infrastructure with a managed IT Service provider, as well as one-time infusions of $9.6 million to rewrite the FCC's legacy applications as part of a modular "shift" to a modern, resilient, cloud-based platform. Without this infusion of funding in FY 2016, we face the prospect of being unable to follow-through on critical upgrades, costing those who we license more – with far fewer benefits.

The third area of requested budget increases – about $7 million – are aimed at satisfying Congressional mandates. We seek $2.5 million to ensure a smooth and legally compliant process for administering the $1.75 billion fund for relocating broadcasters after the incentive auction. We have asked for $250,000 to support the start-up of the Do-Not-Call Registry and $600,000 for yearly maintenance. We also requested $3,000,000 a year for updates and upkeep for the National Broadband Map. Before the FCC inherited the program, NTIA had a direct funding stream for this key nationwide broadband deployment resource. The map attracted over 2.5 million hits in 2014 and we expect it to be an important resource going forward. Funding for the FCC's programmatic takeover will leverage previous investments with new approaches to providing open access to government data.

In addition to these requested increases, the budget also proposes aligning sources of funds with uses to maximize fairness. Given the special circumstance of the large, move-based increase, the Commission determined that FY 2016 would be the optimal time to properly align

our USF expenditures with cost outlays. Accordingly, the FY 2016 budget proposes shifting USF funds to cover our salary and compensation expenditures directly related to universal service activities. With this funding realignment, we will make USF pay for USF. It will reduce by $25,000,000 the Section 9 regulatory fee burden on licensees with no universal service relationship. USF will pay these costs instead of forcing entities such as small, local broadcasters and marine licensees to pay for USF FTE activities at the Commission. It will take the pressure off of our other licensees at a critical juncture and it will ensure that there is adequate enforcement of USF programs. Overall, it would reduce Section 9 fee burdens by about six percent. For example, the impact on a large market broadcaster would be several thousand dollars per year.

The $25 million transfer will go a long way toward making certain that we have a reliable funding stream for program oversight. Although regulatory fairness supports this transfer request, the importance and ongoing complexity of our universal service work underscores the need for this funding. Universal access to communications has been at the core of the FCC's mission since the agency was established 80 years ago. With broadband increasingly necessary for full participation in our economy and democracy, connectivity for all is more important than ever. While the private sector must play the leading role in extending broadband networks to every American, there are some areas where it doesn't make financial sense for private companies to build. That's why the Commission modernized USF to focus on broadband, establishing the Connect America Fund – a process that this Subcommittee has recognized as an essential activity. Already, the Connect America Fund (CAF) has made investments that will make broadband available to 1.6 million previously unserved Americans.

During that same month, the Commission approved the first major modification of E-rate – another universal service program and America's largest education technology program. We refocused the program away from funding 20th century technologies like pagers and dial-up phone service toward supporting 21st century high-speed broadband connectivity. In the process, we moved to close the Wi-Fi gap by ensuring that over the next two years an additional 20 million students will have Internet access at their school or library desk. Importantly, we took steps to improve the cost-effectiveness of E-rate spending through greater pricing transparency and by enabling bulk purchasing to drive down costs.

Conclusion

I am proud of the Commission's FY 2016 Budget Request. It reflects our commitment to an efficient workforce, IT modernization and returning resources to the Treasury. During the next fiscal year, the Commission will have unprecedented opportunities to become a model for excellence in government. At the same time, we will manage an essential $8.8 billion USF program that brings broadband services to all Americans. We will continue our work in developing and deploying spectrum resources, while providing billions of dollars for important public safety programs. With this Subcommittee's support, we will make that happen.

I appreciate this Subcommittee's attention to the Commission's funding for the next fiscal year, and I look forward to answering your questions. Thank you.

Executive Summary

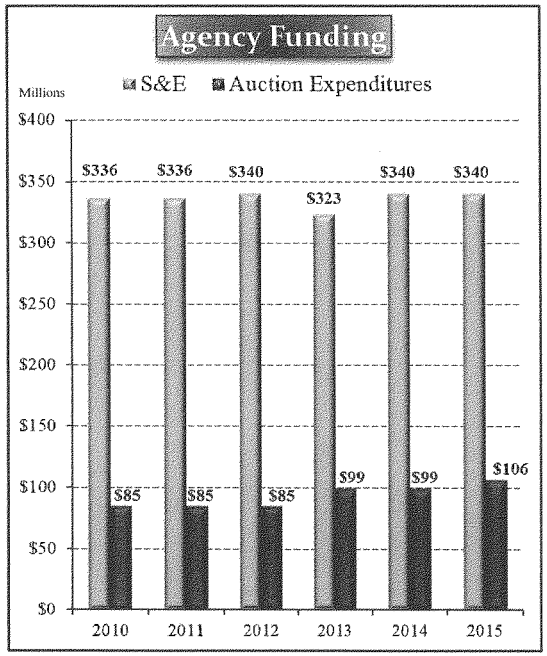
Current State

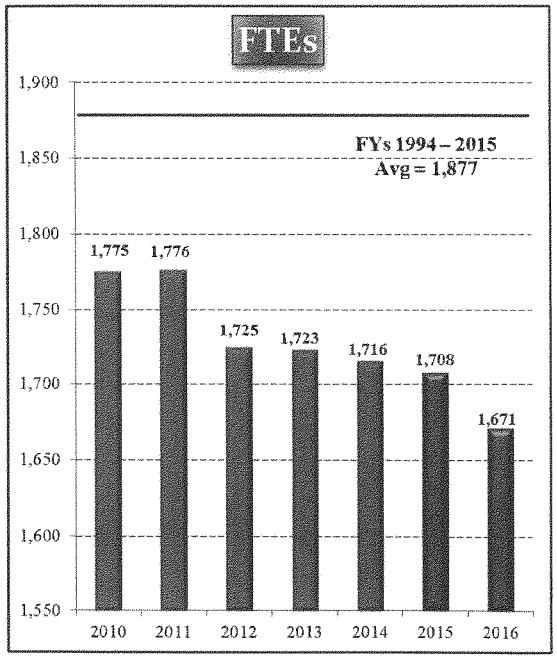
- **HQ space too large and expensive**
  - Too much space per employee
  - Too expensive per square foot
- **Field footprint too large and inefficient**
  - Field cost per FTE are 2x HQ costs – high real estate and support costs for very small offices
  - More mobile, technology-enabled deployment model can significantly improve productivity
- **Major opportunities to reduce recurring opex with technology**
  - Over reliance on expensive contractors
  - Very expensive to maintain aged IT (many systems more than 10 years old)
  - Using expensive downtown Washington real estate for back-office functions that could be offsite
- **Section 9 fee payors shouldering lion's share of requested budget increase**

Proposed Response

- **Relentless attention to cost efficiency:**
  - Manage to even lower FTE levels – decline by 37 for 2016, first FCC budget in a decade to not ask for more
  - Proposed consolidation of our field offices – saving $9m annually without diluting mission effectiveness
  - Reduce contractors; down from 483 to 435 by 2016
  - Reduce HQ lease cost; save $119m over 15 years
- **$84m requested increase for 2016 has 3 components:**
  - Unavoidable (70%) – $60m for move, inflation, OIG
  - IT (20%) – $17m to modernize and close security gaps
  - Mandates (10%) – $7m for broadcaster repacking, National Broadband Map, and PSAP registry
- **Align sources of funds with uses to maximize fairness:**
  - Base collections from general regulatory fees ($388m)
  - Auctions costs from auctions proceeds ($117m)
  - USF costs from USF fees ($25m)

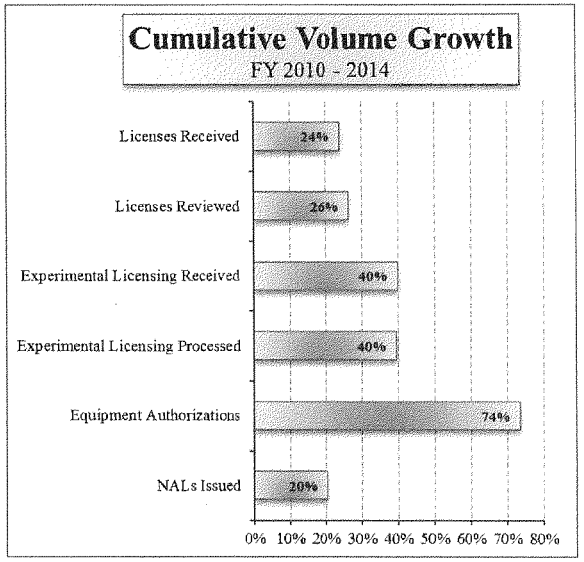
Non-Auctions Funding Has Been Flat Since 2010, and FTEs Continue to Trend to New Historic Lows





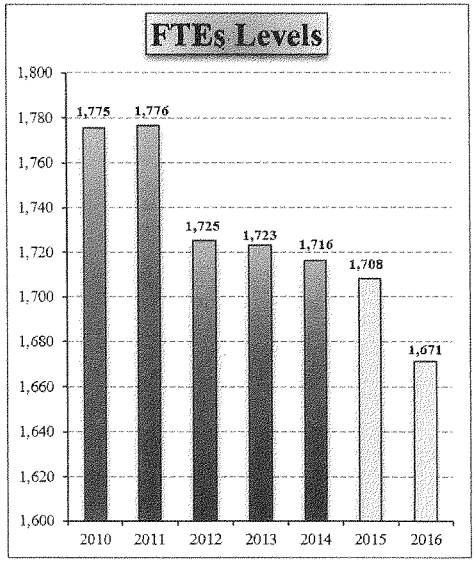
FYs 2015 & 2016 Projected

Workload Volume Grows While FTEs Decline



Equipment Authorizations includes FCC Preauthorized and TCBs

NALs issued increased 20% but the overall EB actions decreased by 22%



FTEs for FYs 2015 and 2016 are estimates.

Cost Saving Steps Underway Today

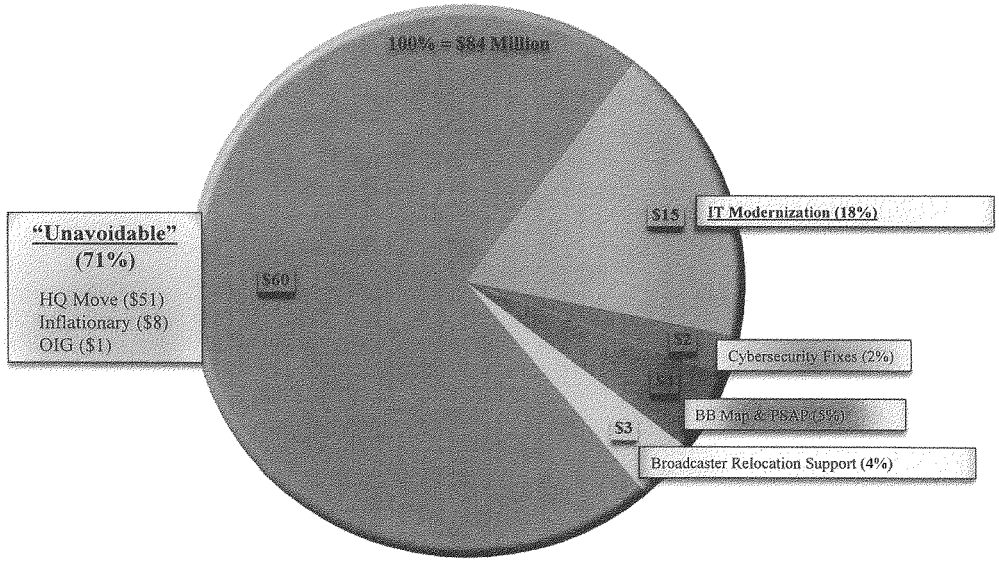
- **FTE reductions**
  - Attrition management (no automatic backfills) – since Jan 2014, 199 staff have left, only 145 replaced
  - Additional efforts underway to identify available workforce restructuring opportunities
- **Field offices consolidation**
  - Proposal currently on circulation to Commissioners to reduce from 24 to 8 field offices
  - $9m in annual savings from reduced real estate, administrative overhead, and support costs
  - Post-restructuring, FCC would retain engineers/vehicles on the ground combined with a "tiger team" based in the Maryland suburbs that would be quickly deployable anywhere in the U.S.
    - One-day response time for 80% of U.S. population
    - Higher coverage than today for the rest of the country
- **Contractor drawdown**
  - FCC-wide contractors currently at 483, down from over 600 since 2012, and trending to 435 in 2016
  - IT modernization investments essential for continued progress; will support significant reduction in expensive (2x), on-site contractors for infrastructure management and software development
  - Additional contractor reductions available via use of IT automation to replace labor-intensive processes
- **Continuing, ongoing efficiency review**
  - Office of Managing Director is assessing every part of the FCC for additional efficiency opportunities

Building the Budget

$millions

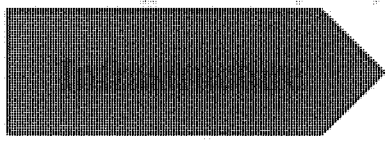
	Fee-generated	Activity-generated	
		Auction	*USF*
FY2015 Budget Authority	**340**	**106**	**N/A**
Requested FY2016			
▪ Office move (to save $119m)	44	7	
▪ Inflation/contractual cost increases	7	1	
▪ OIG request	1		
▪ IT Modernization	15		
▪ Cybersecurity fixes	2		
▪ Reallocation of USF support	(25)		25
▪ Mission mandates			
▪ National Broadband Map	3		
▪ PSAP do-not-call registry	1		
▪ Broadcaster relocation fund oversight		3	
Total	**388**	**117**	**25**

More Than 70% of Requested FY 2016 Spending Increase* Is for "Unavoidable" Costs



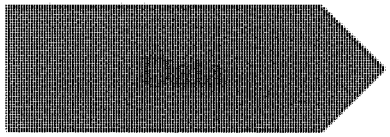
* Note: Total $84m requested spending increase is the sum of requests for Salary & Expenses ($48m, from $340m to $388m), Auctions ($11m, from $106m to $117m), and USF Transfer ($25m). Without USF Transfer, S&E requested level would grow from $388m to $413m.

IT Investments Pay for Themselves Over 5 Years and Significantly Improve Speed, Security, and Quality



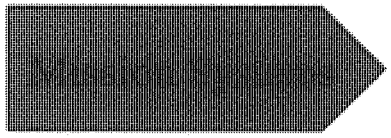
From: Over 200 on premises, antiquated servers occupying expensive downtown real estate

To: 100% off-premise, cloud-based deployment in a secure multi-agency facility; savings of $1-2m per yr



From: 100,000 unique data objects, 43 Tb of stove-piped, inaccessible and non-reusable data

To: Single data architecture for ALL internal and external data, significantly enhanced transparency

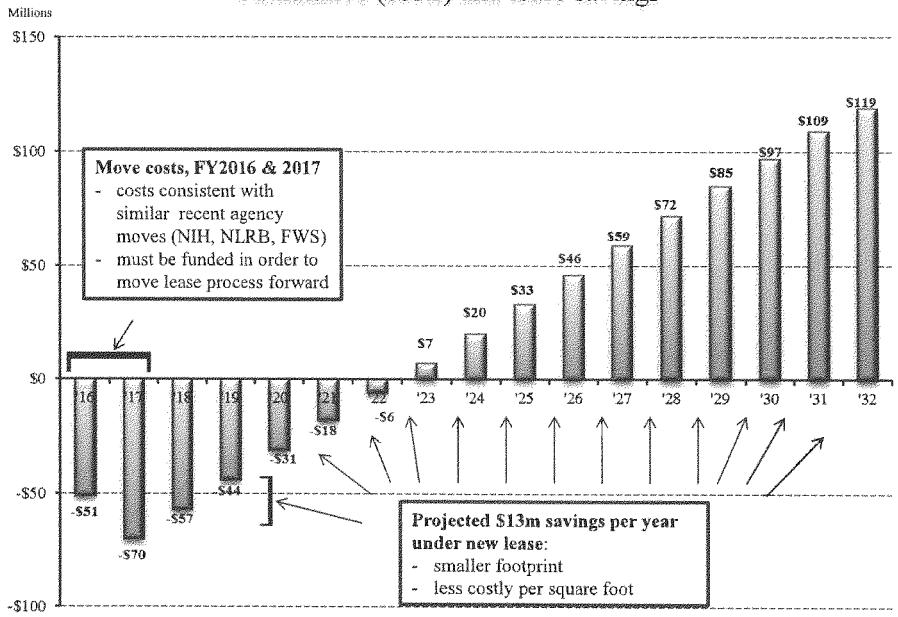


From: 207 systems, typical $600,000 cost for new projects, 6 months to complete, very high ongoing maintenance/support

To: Handful of core systems supporting multiple front end applications, 50-75% lower cost / faster timelines per project; savings of $1-2m per year

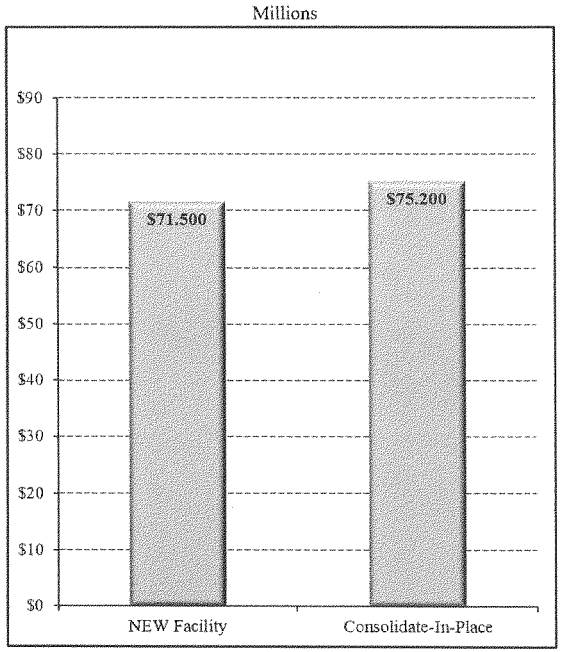
New FCC Lease Projected to Save $119m over 15 Years

Cumulative (costs) and lease savings



Total Move Costs Lower for New Facility Versus Stay-in-Place

Estimated move costs



Note: assumes utilization rate = 180; estimated tenant improvement allowance of $13m

Chairman Tom Wheeler

Tom Wheeler became the 31st Chairman of the Federal Communications Commission (FCC) on November 4, 2013. Chairman Wheeler was appointed by President Barack Obama and unanimously confirmed by the United States Senate.

For over three decades, Chairman Wheeler has been involved with new telecommunications networks and services, experiencing the revolution in telecommunications as a policy expert, an advocate, and a businessman. As an entrepreneur, he started or helped start multiple companies offering innovative cable, wireless, and video communications services. He is the only person to be selected to both the Cable Television Hall of Fame and The Wireless Hall of Fame, a fact President Obama joked made him "The Bo Jackson of Telecom."

Prior to joining the FCC, Chairman Wheeler was Managing Director at Core Capital Partners, a venture capital firm investing in early stage Internet Protocol (IP)-based companies. He served as President and CEO of Shiloh Group, LLC, a strategy development and private investment company specializing in telecommunications services and co-founded SmartBrief, the internet's largest electronic information service for vertical markets. From 1976 to 1984, Chairman Wheeler was associated with the National Cable Television Association (NCTA), where he was President and CEO from 1979 to 1984. Following NCTA, Chairman Wheeler was CEO of several high tech companies, including the first company to offer high speed delivery of data to home computers and the first digital video satellite service. From 1992 to 2004, Chairman Wheeler served as President and CEO of the Cellular Telecommunications & Internet Association (CTIA).

Chairman Wheeler wrote *Take Command: Leadership Lessons of the Civil War* (Doubleday, 2000) and *Mr. Lincoln's T-Mails: The Untold Story of How Abraham Lincoln Used the Telegraph to Win the Civil War* (HarperCollins, 2006). His commentaries on current events have been published in the *Washington Post*, *USA Today*, *Los Angeles Times*, *Newsday*, and other leading publications.Presidents Clinton and Bush each appointed Chairman Wheeler a Trustee of the John F. Kennedy Center for the Performing Arts, where he served for 12 years. He is also the former Chairman and President of the Foundation for the National Archives, the non-profit organization dedicated to telling the American Story through its documents, and a former board member of the Public Broadcasting Service (PBS).

Chairman Wheeler is a proud graduate of The Ohio State University and the recipient of its Alumni Medal. He resides in Washington, D.C.

Mr. CRENSHAW. Thank you. I would like to recognize Commissioner Pai.

Mr. PAI. Thank you. Chairman Crenshaw, Ranking Member Serrano, and members of the subcommittee. It is privilege to appear before you today. Thank you for inviting me to testify on the FCC's budget request. Although all commissioners are asked to vote on a budget proposed by the chairman that is delivered to the Office of Management and Budget, I have not been asked to participate in the development of the agency's budget request. Unfortunately, after reviewing this proposal, I am unable to support it. To be clear, this subcommittee should give the FCC the resources necessary to carry out its core responsibilities. The FCC staff is filled with talented individuals who are dedicated to serving the American people, and we tackle a wide variety of tasks assigned by Congress, from freeing up more spectrum for mobile broadband to protecting public safety.

But the Commission is requesting a baseline budget of $413 million, a 17 percent increase over last year. That is dramatically higher than it has been at watershed moments in the FCC's history. For instance, the agency's baseline budget after adjusting for inflation was only $277 million when it faced the monumental task of implementing the Telecommunications Act of 1996. In that light, the current request is not fiscally responsible, and so I would like to offer three specific suggestions for improving it.

First, I do not favor transferring $25 million from the Universal Service Fund to the Commission. Put simply, this is a stealth tax increase on the American consumer. The money that goes into the Fund comes out of the pockets of consumers when they pay their telephone bills each month, and this proposal would require those consumers to pay an additional $25 million this year. That amount would be on top of the $1.5 billion annual tax increase that the FCC adopted last December to fund additional E-Rate spending, which will go into effect later this year. Since the beginning of 2009, the Universal Service contribution rate, that is the FCC-imposed consumer tax rate, has already jumped over 83 percent. Congress should not take action to push it even higher.

Second, funds for moving the FCC's headquarters or reorganizing how we use our existing facilities should not be included within the FCC's general budget authority. Over the long term, moving or reorganizing is likely to save money, but the funds that we spend on that effort will be a substantial one-time expense. I therefore believe that it makes sense for Congress to give us specific budget authority for this purpose. If these funds are included within our general appropriation amount, it may paint a misleading picture of our baseline budget and make it harder to reduce that budget when there is no longer the need to spend money on moving expenses.

Third, Congress should forbid the FCC from using any funds to implement or enforce the plan it just adopted to regulate the Internet. Not only is this plan bad policy, absent outside intervention, the Commission will expend substantial resources implementing and enforcing rules that are wasteful, unnecessary, and affirmatively detrimental to the American public. Heavy-handed regulation does not come cheap. The FCC has already wasted millions of dollars on this unprecedented action, and we are on course to waste

millions more. The implementation and enforcement of these new rules will not only impose significant burdens on the nation's thousands of Internet service providers and harms on consumers; they will also consume substantial FCC resources.

In my limited time I will offer just one example. The order allows parties to seek advisory opinions from the FCC's Enforcement Bureau. Given the breadth and vagueness of many of the new regulations, especially the new Internet conduct standard, I expect that many parties will seek clarification. Drafting advisory opinions will require careful consideration of the circumstances involved in each and every request. This inevitably will be resource-intensive. The Bureau must process each request, review the facts behind each filing, make a decision, and then draft an opinion, which will undergo layers of review. And since the Bureau lacks specialized expertise in this particular area, it will likely rely heavily on the expertise of other Bureaus especially those that helped craft the order.

At a time when the FCC is struggling to fulfill some of its core responsibilities under the Communications Act, it should not spend millions of dollars to regulate the Internet. This subcommittee is well aware that budgets are finite. Funds spent on regulating the Internet are by definition funds that cannot be spent on critical priorities. So instead of trying to fix something that is not broken, let us use our limited budget to fix something that is broken, such as the FCC's information technology systems or its widely-panned, user-unfriendly website.

Chairman Crenshaw, Ranking Member Serrano, members of the subcommittee, thank you once again for inviting me to testify. I look forward to answering your questions and to working with you and your staffs in the time to come.

STATEMENT OF FCC COMMISSIONER AJIT PAI
BEFORE THE SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT OF THE UNITED STATES HOUSE OF REPRESENTATIVES COMMITTEE ON APPROPRIATIONS

"BUDGET HEARING—FEDERAL COMMUNICATIONS COMMISSION"

MARCH 24, 2015

Chairman Crenshaw, Ranking Member Serrano, and Members of the Subcommittee, it is a privilege to appear before you today. Thank you for inviting me to testify on the Federal Communications Commission's budget request for Fiscal Year 2016.

Prior to becoming a Commissioner, I had the privilege of serving on the agency's staff. Every member of my Office has also previously been a Commission staffer. And I have friends who currently work in the Commission's Bureaus and Offices. There will probably be disagreement over some of the issues that we will discuss today. But I hope that we will be able to agree on one thing: The FCC's staff is filled with talented individuals who are dedicated to serving the American people.

Although all Commissioners are asked to vote on a budget proposed by the Chairman that is delivered to the Office of Management and Budget, I have never been asked to participate in the development of the agency's budget request. And after reviewing this proposal, I am unable to support it. To be clear, this Subcommittee should give the FCC the resources necessary to carry out its core responsibilities. We tackle a wide variety of tasks assigned by Congress, from freeing up more spectrum for mobile broadband to protecting public safety.

But in its request, the FCC asks for a 17% increase in its overall budget authority. In all, the Commission is requesting a baseline budget of $413 million. That is dramatically higher than it has been at watershed moments in the agency's history. For instance, the agency's baseline budget, after adjusting for inflation, was $277 million (or 33% less than this budget request) when it faced the monumental task of implementing the numerous requirements in the Telecommunications Act of 1996.

At a time when domestic discretionary spending is generally scheduled to remain flat under the current budget caps, I do not believe that this request is fiscally responsible. And at a time when so many Americans in this country are struggling to make ends meet in this stagnant economy, federal agencies should be looking for ways to tighten their belts.

For these reasons, I would like to offer three specific suggestions as the Subcommittee crafts the FCC's Fiscal Year 2016 budget.

1. Do Not Transfer $25 Million from the Universal Service Fund

I do not favor transferring $25 million from the Universal Service Fund (USF) to the Commission to fund the FCC's work on universal service issues. Put simply, this is a stealth tax increase on the American people. The money that goes into the USF comes out of the pockets of consumers when they pay their telephone bills each month. And this proposal would require those consumers to pay an additional $25 million into the USF. That amount, moreover, would be in addition to the $1.5 billion per year tax increase that the Commission adopted last December to fund additional E-Rate spending, which will go into effect later this year. Under this Administration, the universal service contribution rate has already jumped over 83%, from 9.5% to 17.4%. Congress should not take action to push it even higher.

Furthermore, this $25 million transfer from the USF masks the amount of the spending increase contained in this budget request. At first glance, it would appear that the Commission is seeking to boost its base budget from $339.8 million to $388 million. The new base budget, however, is actually $413 million. That is because the additional $25 million from the Universal Service Fund would be used to pay for activities that last year were funded out of our $339.8 million general appropriation.

2. Target Budget Authority for Moving or Reorganizing FCC Headquarters

I do not believe that funds for moving the FCC's headquarters or reorganizing how we use our existing facilities (known internally as "restacking") should be included within the FCC's general budget authority. Instead, I believe that Congress should provide us with specific budget authority for this purpose.

With our lease expiring in a couple of years, the FCC will need to spend money either to move our headquarters to a new location or to reorganize our existing facility so that we use substantially less space. I am not in a position to vouch for the specific amount requested for moving or reorganizing contained in the FCC's budget request. But I do agree that over the long term, either moving or reorganizing is likely to produce meaningful cost savings.

The funds that we spend on that effort will be a substantial, one-time expense. I therefore believe that it makes sense for Congress to provide us with specific budget authority for this purpose. If these funds are included within our general appropriation amount, it will give many a misleading picture of the Commission's base budget and make it harder to reduce that budget when there is no longer the need to spend money on moving expenses. Moreover, the money Congress allocates for moving expenses must be spent for that purpose and that purpose only. It should not be used to subsidize other agency activities.

3. Do Not Fund Implementation and Enforcement of Internet Regulation

Congress should forbid the Commission from using any appropriated funds to implement or enforce the plan the FCC just adopted to regulate the Internet. Not only is this plan bad policy; absent outside intervention, the Commission will expend substantial resources implementing and enforcing regulations that are wasteful, unnecessary, and affirmatively detrimental to the American public.

Heavy-handed regulation does not come cheap. The FCC has already wasted millions of dollars developing these regulations, and we are on course to waste millions more each year on this unprecedented governmental power-grab. The implementation and enforcement of these new rules will not only impose significant burdens on the nation's 4,462 Internet service providers and harms to American consumers (more to come on the latter); they will also consume substantial FCC resources. Three specific examples from the FCC's *Order* illustrate this point. They involve the so-called "Internet Conduct" standard; the Enforcement Bureau advisory opinion process; and the appointment of an "Ombudsperson."

"Internet Conduct" Standard.—The *Order* ereates a never-before-seen Internet Conduct standard, which empowers the Commission to police a provider's offering of broadband Internet access service specifically insofar as it might "unreasonably interfere with or unreasonably disadvantage" end users or edge providers. The *Order* does not clarify what that standard entails. FCC leadership has admitted that "we don't really know" what it means and that "we don't know where things go next." We cannot expect providers or consumers to understand a standard that we do not understand ourselves, and I fear that the Commission will be inundated by complaints under this expansive and fuzzy rule. Indeed, the *Order* does not just allow parties to file formal and informal complaints; it also explicitly authorizes the Enforcement Bureau to initiate investigations on its own. Enforcement of this rule will eat up substantial resources, both wasting money and diverting funds away from the Commission's core responsibilities.

Advisory Opinions.—The *Order* establishes a system by which entities may seek advisory opinions from the FCC's Enforcement Bureau. Especially given the breadth and vagueness of many of the new regulations, I expect that many will seek clarification and counsel from the Bureau. How does the Bureau expect to respond to this wave of requests? By drafting advisory opinions, which will necessarily entail careful consideration of individualized facts and circumstances. This will inevitably be a resource-intensive effort. The Bureau must process each request, review the facts behind each filing, formulate a decision, and then draft an opinion which will be subject to layers of review and editing.

Given that the Bureau does not have specialized expertise in this area, it will likely rely heavily upon other Bureaus—especially those that helped craft the *Order*. (It bears noting that these decisions will *not* be made by the Commissioners but by the Enforcement Bureau, at the Chairman's direction; the *Order* leaves unclear whether the Commissioners will have any input during the deliberative process or even access to the advisory opinions after the fact.)

This is a costly endeavor for the agency, one that will end the permissionless innovation that has spurred the Internet's explosive growth up until today. Internet service providers are always innovating—whether it's improving their networks or offering novel service plans. A provider seeking to bring a new advancement online now faces a choice. If it chooses not to run the gauntlet of the new advisory opinion process, it may be subject to citations, monetary forfeitures and refunds, cease and desist orders, revocations, and referrals for criminal prosecution if the Enforcement Bureau decides it doesn't like the practice. If, on the other hand, it seeks the Enforcement Bureau's permission first, it's not going to be in a much better spot. The Bureau might veto the proposed business practice. Even if it blesses the offering, the *Order* makes clear that the Commission could nonetheless ultimately penalize the provider—even if the provider deployed its service consistent with the Bureau's guidance. That's a lose-lose proposition for companies and consumers.

Ombudsperson.—The *Order* also provides for the appointment of an "Ombudsperson." Among other things, the *Order* states that the Ombudsperson could analyze complaints and, more broadly, market conditions and summarize them in reports to the Commission. The Ombudsperson could also investigate matters and refer them to the Enforcement Bureau for potential further investigation along with assisting outside parties who wish to file complaints. The Ombudsperson obviously must be compensated. And given his or her wide range of responsibilities, I would not be surprised if the Ombudsperson ends up hiring additional staff to help with his or her duties, thus costing even more money.

All of this additional spending to regulate the Internet is not only wasteful, it is counterproductive. The Commission's decision last month to apply Title II to the Internet overturned a 20-year bipartisan consensus in favor of a free and open Internet. It was a consensus that a Republican Congress and a Democratic President enshrined in the Telecommunications Act of 1996 with the principle that the Internet should be a "vibrant and competitive free market . . . unfettered by Federal or State regulation." It was a consensus that every FCC Chairman—Republican and Democrat—had dutifully implemented for almost twenty years. And it was a consensus that led to a thriving, competitive Internet economy and more than a trillion dollars of investment in the broadband Internet marketplace—investments that have given Americans better access to faster Internet than our European allies, and mobile broadband speeds that are the envy of the world.

The truth is this: The Internet is the greatest example of free-market innovation in history. The Internet empowers Americans to speak, to post, to rally, to learn, to listen, to watch, and to connect in ways our forefathers never could have imagined. The Internet is a powerful force for freedom, at home and abroad. America's Internet economy is the envy of the world.

In short, the Internet is not broken. And it didn't need the FCC to fix it.

But last month, the FCC decided to try to fix it anyway. It reclassified broadband Internet access service as a Title II telecommunications service. It seized unilateral authority to regulate Internet conduct, to direct where Internet service providers put their investments, and to determine what service plans will be available to the American public. This was a radical departure from the bipartisan, market-oriented policies that have served us so well for the last two decades.

With the Title II decision, the FCC voted to give itself the power to micromanage virtually every aspect of how the Internet works. The FCC can now regulate broadband Internet rates and outlaw pro-consumer service plans. As the Electronic Frontier Foundation (EFF) wrote us, the FCC has given itself "an awful lot of discretion, potentially giving an unfair advantage to parties with insider influence," which

is "hardly the narrow, light-touch approach we need to protect the open Internet." Or as EFF's cofounder wrote after the decision, "Title II is for setting up monopolies, not tearing them apart. We need competition, not regulation. We need engineers not lawyers."

And that's precisely the problem. When I talk to people outside the Beltway, what they want isn't more regulation. It's more broadband deployment and more competition. But this "solution" takes us in precisely the opposite direction. It will result in less competition and a slower lane for all. Monopoly rules from a monopoly era will move us toward a slow-moving monopoly.

For regulating the Internet under Title II is sure to reduce competition and drive smaller competitors out of the business. That's what our nation's scrappiest Internet service providers told us. That's what we heard from 142 wireless ISPs who've deployed broadband service using unlicensed spectrum, without a dime from the taxpayer. That's what we heard from 24 of the nation's smallest ISPs, each with fewer than 1,000 residential customers. That's what we heard from 43 municipal broadband providers—including Cedar Falls Utilities, which President Obama promoted during a personal visit in January. And that's what we heard from the National Black Chamber of Commerce, the National Gay & Lesbian Chamber of Commerce, the U.S. Hispanic Chamber of Commerce, and the U.S. Pan Asian American Chamber of Commerce. The small upstarts that give millions of Americans a choice for broadband—often their *only* choice—will be squeezed, and perhaps squashed, by these heavy-handed regulations. Indeed, neither small nor big providers will bring Americans online if it's economically irrational for them to do so. As a result, Title II's utility-style regulation will simply broaden the digital divide.

The FCC's Title II decision is a raw deal for consumers in other ways, too. For one thing, their broadband bills will go up. The plan explicitly opens the door to billions of dollars in new taxes on broadband. One estimate puts the total at $11 billion a year—with $4 billion a year on top of that if the Internet Tax Freedom Act isn't extended (or better yet, made permanent).

For another thing, their broadband speeds will be slower. The higher costs and regulatory uncertainty of utility-style regulation have stymied Europe's broadband deployment, and America will follow suit. Just look at the data. Today, 82% of Americans, and 48% of rural Americans, have access to 25 Mbps broadband speeds. In Europe, those figures are only 54% and 12% respectively. In the U.S., average mobile broadband speeds are 30% faster than they are in Western Europe. And broadband providers in the U.S. are investing more than twice as much per person and per household as their European counterparts. Their model has not succeeded, as even leading European regulators and legislators concede. We shouldn't have made the same mistake.

In sum, at a time when the FCC is struggling to fulfill many of its core responsibilities under the Communications Act, it is irresponsible for the Commission to spend millions of dollars to regulate the Internet. This Subcommittee is well aware that budgets are finite. Funds spent on regulating the Internet are funds that can't be spent on critical priorities. So instead of trying to fix something that isn't broken, let's use our limited budget to fix something that *is* broken, such as the Commission's information technology systems or its widely panned, user-unfriendly website.

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Chairman Crenshaw, Ranking Member Serrano, and Members of the Subcommittee, thank you once again for holding this hearing and allowing me the opportunity to speak. I look forward to answering your questions, listening to your views, and working with you and your staffs in the days ahead.

Commissioner Ajit Pai

Ajit Pai was nominated to the Federal Communications Commission by President Barack Obama and on May 7, 2012 was confirmed unanimously by the United States Senate. On May 14, 2012, he was sworn in for a term that concludes on June 30, 2016.

Commissioner Pai's focus is on creating a regulatory environment in which competition and innovation will flourish, thus benefitting American consumers. He believes that it is vital for the FCC to adopt policies that will give private firms the strongest incentive to raise and invest capital; to develop new products and services; and to compete in established and new markets. Specifically, Commissioner Pai is working to remove uncertainty that can deter businesses and investors from taking risks, to revisit outdated regulations, and to set clear, modernized rules for the road. These steps will result in consumers enjoying better products at lower prices and the communications industry contributing to faster economic growth and more job creation.

Commissioner Pai also believes that the FCC must act with dispatch to reflect the pace of change in today's marketplace. Faced with an industry as vibrant and dynamic as today's communications sector, the Commission must be careful not to cling to twentieth century approaches in addressing the technological landscape of the twenty-first century. Thus, for example, it is a priority of Commissioner Pai to increase promptly the availability of spectrum for high-value uses.

Commissioner Pai's regulatory approach has been shaped by his decade and a half of experience in communications, law, and policy.

Between 2007 and 2011, Commissioner Pai held several positions in the FCC's Office of General Counsel, serving most prominently as Deputy General Counsel. In this role, he had supervisory responsibility over several dozen lawyers in the Administrative Law Division and worked on a wide variety of regulatory and transactional matters involving the wireless, wireline, cable, Internet, media, and satellite industries.

Commissioner Pai's career outside of the FCC has spanned the private and public sectors. With respect to the private sector, Pai worked in the Washington, DC office of Jenner & Block LLP, where he was a Partner in the Communications Practice until being sworn in as a Commissioner. Years earlier, he served as Associate General Counsel at Verizon Communications Inc., where he handled competition matters, regulatory issues, and counseling of business units on broadband initiatives.

Commissioner Pai also has served in all three branches of the federal government. After moving to Washington, DC in 1998, his first post was with the United States Department of Justice's Antitrust Division as an Honors Program trial attorney on the Telecommunications Task Force. There, he worked on proposed mergers and acquisitions and on novel requests for regulatory relief following the enactment of the Telecommunications Act of 1996. He later returned to the Department of Justice to serve as Senior Counsel in the Office of Legal Policy. Pai has worked on Capitol Hill as well, first as Deputy Chief Counsel to the United States Senate Judiciary Committee's Subcommittee on Administrative Oversight and the Courts, and later as Chief Counsel to the Senate Judiciary Committee's Subcommittee on the Constitution, Civil Rights, and Property Rights. Immediately following law school, he clerked for the Honorable Martin L.C. Feldman of the United States District Court for the Eastern District of Louisiana.

Commissioner Pai received a B.A. with honors from Harvard University in 1994 and a J.D. from the University of Chicago in 1997, where he was an editor of the *University of Chicago Law Review* and won the Thomas J. Mulroy Prize. In 2010, Pai was one of 55 individuals nationwide chosen for the 2011 Marshall Memorial Fellowship, a leadership development initiative of the German Marshall Fund of the United States.

The son of immigrants from India, Commissioner Pai grew up in Parsons, Kansas. He now lives in Arlington, Virginia, with his wife, Janine, son, Alexander and daughter, Annabelle.

Mr. CRENSHAW. Well, thank you very much. And let us begin the questions. We have got a full house, and I know there are a lot of questions, so let us try to observe the five minute rule both from the questioner's standpoint, as well as the responder's standpoint.

Let me talk a little bit about net neutrality, and ask first of all, Chairman Wheeler, this question. It has been pointed out that you have been here on Capitol Hill testifying quite a bit recently, and you know that Chairman Upton and Chairman Thune are working on legislation in this area. But ultimately, the funding that allows the FCC to work on any rules, like net neutrality, comes from this committee. That is where the money comes from. And we have kept your funding purposefully low for a few years in hopes that the limited funding would push you all toward prioritizing the most important work of the agency. But instead, it seems that this agency has prioritized politically polarizing rule makings at the expense of some of the statutorily mandated and other important work that this agency has to do.

Let me give you a couple examples of statutorily mandated work that seems to be taking a second seat. There is a mandate that requires the commission to annually report to Congress on the status of competition in the market for the delivery of video programming, and the Commission did not issue such report last year, even though the statute mandates that. There is another section of the Telecommunications Act that says that you have to annually initiate a notice of inquiry concerning the availability of advanced telecommunications capable to all Americans. Now that notice was initiated in August of 2012, but the report was not finalized for another two years. And then lastly, there is a mandate that requires the commission to report every three years on statutory and regulatory barriers to small businesses, and the last report was back in 2011.

And so it seems to me that this net neutrality rule may have bumped into a lot of the statutory requirements that are there on the books. So I have to ask you, Chairman Wheeler, can you figure out how much time, how much energy, how much money was spent on working on these net neutrality rules, and then the question is, do you believe that you have spent some of the resources on this rule at the expense of some of the other work that this commission is supposed to do? Chairman Wheeler.

Mr. WHEELER. Thank you, Mr. Chairman. You know, you mentioned, for instance, the video competition report, which was a reality that I walked into where there were not votes on the commission. The report got done, but there were not the votes on the commission to adopt it. So what I said was, okay, let us stop the process and let us go to the next iteration, meaning we have to start again as to how do we find consensus inside the commission on this report; and that I promised to the Congress that this would be done in less than the requisite time for a new report. And so we will have the new iteration of that to the Congress in June of 2016.

But you know, one of the challenges we have, is we do need to get the requisite number of votes. As I said at another hearing that Commissioner Pai and I were at, five type A individuals, but just to discuss specifically open Internet order. I mean, the fact of the matter is that the Internet is the most powerful and pervasive plat-

form in the history of society and there becomes a basic question of do you have rules and do you have a referee? In reviewing the transcript it appears that Representative Crenshaw asked a question regarding the status of the Video Competition Report. Chairman Wheeler's response was related to the Media Ownership Quadrennial Review item. With respect to the Video Competition Report, the Commission recently released that item on April 2, 2015.

Mr. CRENSHAW. Let me encourage you all to be concise because the question is, I mean, I assume you do not think that you have spent any time, and money, and energy on the rule that would have been better spent on other priorities.

Mr. WHEELER. I think we have prioritized correctly, sir, if that is your question.

Mr. CRENSHAW. Okay, thank you. So and then let me just ask Commissioner Pai to respond to that, not only the overall rulemaking, how it is going to impact consumers, but also do you think there are some other things that might have been prioritized instead of the time and energy spent on this rule?

Mr. PAI. I do, Mr. Chairman. I would respectfully disagree with our chairman in terms of the priority that net neutrality received. I think that by definition net neutrality took our eye off the ball of some of the other critical priorities, from removing barriers from infrastructure investment, embracing the IP transition, getting more spectrum into the commercial marketplace, both licensed and unlicensed. I think the staff that spent an inordinate amount of time and effort on net neutrality could have been focusing on those priorities. And ironically enough, the Title II net neutrality order takes us in the opposite direction. It adds barriers to innovation and investment, and it will actually reduce competition in the marketplace.

Mr. CRENSHAW. Thank you. Mr. Serrano.

Mr. SERRANO. Thank you. I was not going to speak about net neutrality at this point, because I did not think it would come up this early. Silly me.

First of all, I have been in Congress 25 years and, most of the time, I would say, high amounts of time, when the other party does not agree on an issue, I may not agree with them, but I understand what the issue is and what their complaint is. I really do not understand the opposition to net neutrality. To make it open, to make it better, to diversify it, to give people at the bottom a shot at having the same protections and the same freedoms as people who are more powerful in this society. I do not understand what the argument is. And in addition, I do not understand the argument or the conspiracy theory that in some way the President had inappropriate influence on the net neutrality rules that were just released to give Internet users the strongest protections possible.

So I would like, Chairman Wheeler, for you to please talk a little about the public input and how it influenced the Commission's decision. And just let me tell you that in front of me, and for the record, Mr. Chairman, although they were addressed to us, I have letters from the Alliance for a Just Society, Black Alliance for Just Immigration, Black Lives Matter, Center for Community Change, Center for Media Justice, National Rule Assembly, and they all

were in favor. So what role did the public play, and is it the way I think, that the public played the major role in the input for the final decision?

Mr. WHEELER. Thank you, Mr. Serrano. I mean, I think it is fair to say that this is the most open and transparent proceeding in the history of the Commission. We had 4 million comments from Americans, and never had any of that kind of outpouring before. Basically, it seems as though things have boiled down to a situation where you have three major companies, Comcast, AT&T, and Verizon, differing with other Internet service providers, such as Sprint, T–Mobile, Cablevision, Frontier, small rural carriers, the competitive carrier association, and the small wireless carriers. And differing from what we heard from thousands of entrepreneurs who said they needed to have an open Internet, and investors saying that they could not invest if there was not an open Internet, and those millions of inputs. So there was a full discussion of the issues involved, and I think the American people fully expressed themselves as to the importance of this, the most important network we have ever seen.

Mr. SERRANO. Thank you. Mr. Pai, I will give you an opportunity to disagree with everything he said.

Mr. PAI. Thank you, Congressman, for the question. I begin from the proposition that everybody believes in a free and open Internet. And the good news is the Internet has been free and open for some time. One of our Democratic colleagues put it well in hearing last week: Our Internet economy is the envy of the world. And I would argue that we have reached this stage precisely because of the bipartisan consensus that started in the Clinton administration that the Internet would thrive free from government regulation. And I think that's what part of the problem is that the FCC in this case is regulating to solve a problem that simply does not exist. Now, the question is: How do we incentivize more broadband competition? That is a topic on which I think there are critical policies that we should be adopting. That goes to some of the policies that I mentioned in my response to the Chairman. Those are things that could give people more choices, better speeds, lower prices.

Unfortunately, Title II, the FCC's order, takes us in the opposite direction. It saddles some of the smaller providers with the regulatory burdens that they are going to be unable to comply with, and it disincentivizes some of the bigger ones, the ones who are responsible for the majority of our capital expenditures, from taking those risks. And we see the example in the comparison with Europe, which I know you referenced in your colloquy with the Chairman. Over the last three years, United States capital expenditures have been 73 percent higher than Europe's in terms of broadband investment. And I would argue that is precisely because we have historically had a more free-market approach, whereas Europe has embraced the utility-style approach which, ironically, the FCC just adopted.

Mr. WHEELER. Could I just do one clarification on that, because the difference between us and Europe comes down to the concept of unbundling. What Europe does, wrongly, I believe, is to say that somebody goes out and builds the infrastructure, and then they have to turn around and unbundle it. We specifically say that we

do not do that in this order, and specifically remove from the order that part of Title II which authorizes a future Commission to be able to do that.

Mr. SERRANO. Right. Mr. Chairman, I know my time is running out here, but let me give you my personal view on something. You know, there is a big statement that is always made. If it is not broke, do not fix it. But some things are so important to us that even if we think they are not broke, they need tweaking, they need adjustments, they need oversight, they need support, and they need growth.

And I give you as an example the New York subway system. For years, it ran so well that everybody said, Leave it alone. And then it got into crises. Why? Because it got old, the infrastructure got old, and no one had paid attention to it because it ran so well. And now it is running much better, but so I think that even if the Internet is the greatest in the world, to make it better and more available and safer for use is only to our advantage. And that is why I believe that what was done by the Commission is the right thing to do and we should all embrace it. I thank you, Mr. Chairman.

Mr. CRENSHAW. Thank you. Mr. Yoder.

Mr. YODER. Thank you, Mr. Chairman. Well, I do not know how expanding government's reach and control over this great economic boom we have had with the Internet will somehow make it better. And I cannot imagine that turning the Internet into a regulated utility somehow will unleash investment and job growth in a way that has not already occurred. In fact, I think it will precisely do the opposite.

Commissioner Wheeler, I would like to continue to your budget proposal, and I thought Chairman Crenshaw asked a very important question regarding what the priorities of the FCC are, and where our dollars are being spent. And his question related to all the resources that were expended and an estimate, maybe you could give, regarding the resources expended to regulate the Internet like a common carrier over these past few years that result in the rulemaking. But I would like to know, as we go forward, I think your statement was you expect lots of litigation, "the big dogs to sue", I think was your quote at one point.

Knowing of that litigation risk, do we know what that will cost the FCC, will cost the government? What are the future expenditures? Chairman Crenshaw asked about the past expenditures, I am interested in the future expenditures, and will that fall under your pie chart here, under unavoidable costs? What are those unavoidable costs to taxpayers?

Mr. WHEELER. Thank you, Mr. Yoder. We maintain a litigation staff at the agency because no matter what we decide on whatever issue, people turn around, as they have a right to, and ask the court to review it. That litigation staff is in place and that is the same litigation staff that would be used to handle things.

Mr. YODER. Mr. Pai.

Mr. PAI. I do think that the litigation component is one part of the costs that will be involved, but I think there are also other important elements as well. The subsequent rulemakings, the FCC order tees up a number of other regulations that are going to have to be adopted, the adjudication of any complaints that are filed

with the Commission, as well as any advisory opinions the Enforcement Bureau is called upon to render.

Mr. YODER. So if the FCC could at some point estimate what they think, and we might have different estimates of what this will cost, but we would appreciate to know because we will have to figure out a way to pay for the expense of implementing these rules and litigation.

One of the other concerns I have heard from many relates to taxes that may go up related to the government's designation of the Internet as a regulated utility, therefore making it eligible to be taxed under the Universal Service Fund. And I would be interested to know, does the Commission intended to use its new powers to impose these USF fees on the Internet?

Mr. WHEELER. Well, as you know, Congressman, there is an exemption from making that decision. We did not make that decision in this order. There is underway a review of the contribution schedule for Universal Service Fund that is being done by a committee of both state regulators and federal regulators. They will be giving us a recommendation. I think it is incorrect, however, to say that anything in what we have done will lead to an increase in universal fee contributions because the amount of the fund is set by the agency. It is not set by what happens in terms of a Title II determination. And that is the important thing to bear in mind, that that number remains fixed, that that number does not increase because of the fact that we have done a Title II reclassification.

Mr. YODER. So just so I understand your answer, the Commission has not decided whether to apply the USF taxes to the Internet?

Mr. WHEELER. And if it did, based on the federal state board recommendation, it would be not changing the numerator but changing the denominator.

Mr. YODER. It would change who pays?

Mr. WHEELER. Which would have a negligible effect on consumers, if at all.

Mr. YODER. Well, at this point, those fees are not being charged on Internet services and they would be. Do you know what that total would be?

Mr. WHEELER. You would have a reduction in one area that may be accompanied by an increase in the other that should end up washing out because the gross number is the same.

Mr. YODER. Mr. Pai.

Mr. PAI. I do think that the order explicitly opens the door to the imposition of Universal Service Fund taxes, and the only thing the order assures the public is that those taxes will not increase on the effective date of the order itself. But I do think the writing is on the wall with respect to the Universal Service Fund, given some of the promises the agency has made with respect to the programs that are administered under the Universal Service Fund, you know, E-rate, for example.

Secondly, also it is important to remember that the reclassification of broadband as a telecommunications service itself triggers a number of other taxes: state and local property taxes, for example. Heretofore unclassified broadband providers are now going to see a boost in their property taxes, which will have to be borne by the

consumer. Additionally, there are a number of other fees that are going to have to increase, pole attachment rates, for example. Those, too, will be passed on, and so reclassification is the first step down the hill, if you will, in terms of the tax rates that Americans pay for broadband.

Mr. YODER. Thank you, Mr. Chairman. And I would just ask if the FCC could somehow calculate the increase in costs and fees, local, state, and federal, that will be passed on to taxpayers and users and to be able to pass it on to the Committee.

Mr. PAI. If I may, one independent study from the Progressive Policy Institute has put that figure at $11 billion per year.

Mr. YODER. Thank you.

Mr. WHEELER. And if I may, that specific study was given three Pinocchios by The Washington Post.

Mr. YODER. Sounds like we will have time to continue to discuss this. Thank you, Mr. Chairman.

Mr. CRENSHAW. Thank you, Mr. Yoder. And let me recognize the Chairman of the Communications and Technology Subcommittee of Energy and Commerce, Mr. Walden, who is joining us today. Appreciate your interest. Now let us recognize Mr. Quigley.

Mr. SERRANO. I would also like to welcome him.

Mr. QUIGLEY. Thank you, Mr. Chairman. It is good to see the Pinocchio caucus is in session.

Gentlemen, thanks for being here. A couple quick points: Mr. Chairman, the auction that needs to take place. The allocation to handle this is about $1.75 billion to the television broadcaster relocation fund. Estimates we are hearing now it is about $1 billion short. Our concern is who is going to have to make this up. Your thoughts on that?

Mr. WHEELER. Thank you, Mr. Quigley. Congress said that the max that we can spend is a $1,750,000,000 and we will adhere to those rules. Some broadcasters have estimated that it could be more, you know, everybody has their own set of figures, if you will. It is possible that Congress could adjust that number, but our challenge is we have to live within the number we were given in the legislation.

Mr. QUIGLEY. If it fails to be enough, are the broadcasters the ones that would have to make this up, on your thoughts?

Mr. WHEELER. Well, the fascinating thing is that it really is going to depend on how many broadcasters sell and how many broadcasters stay, and it is something where the variables that go into the equation determine what the outcome of the equation is. And so anybody picks any set of variables and then come out with a number that they want.

Mr. QUIGLEY. Well, what would you recommend if there is this kind of shortfall? Congress come out with more?

Mr. WHEELER. There have been efforts that we have been engaged in to see if the wireless industry could create some kind of an insurance fund, if you will, because after all they are the ones who are going to be ending up getting this spectrum. And they have, thus far, been unwilling to do that. But I think that clearly, if we end up in that kind of a situation, then we have to look at what those solutions might be. That is one, the Congressional approach that you suggested is another, but I understand the reality

that you are saying, and again, it is the variables in the equation that end up determining the answer.

Mr. QUIGLEY. And given the short period of time, can you give me a couple minutes on how we have done improving different topic positive train control issues that you have play a role in implementing that?

Mr. WHEELER. Thank you, Congressman. You know, when I was before you last year, we had our hands full so far as how we were dealing with the necessity for the railroads to get approval to have towers for positive train control along their tracks. We had made spectrum available, we had facilitated spectrum license changes, but the problem of the poles was a big one. And this is because there were requirements that Native Americans have the ability to approve the placement of those poles.

The FCC, working with the tribal communities and others, developed an expedited process and I am really proud to say we are now in a situation where we have the capacity to handle more applications for those clearances required by law than the railroad industry has been able to fill the pipeline with. So I think that we are over the hurdle. It was a serious challenge that I do not want to make light of.

Mr. QUIGLEY. No, and it is very important to my passenger and the freight industry across the country. Mr. Pai, if you want to add to this your thoughts?

Mr. PAI. No, I commend the Chairman for the steps he has taken and I agree that it is a critical matter that requires a lot of disparate parties to work together. And the good news is that we do seem to be working toward a common end.

Mr. QUIGLEY. Yeah, and at some point we have got to come to the realization that people are not going to meet the deadline at the end of the year. We are extraordinarily concerned about the safety issues. We are going to have to find a way to move forward that does not blindside the industry and hurt our passenger rail as it moves forward. And just briefly, for both of you, I appreciate your thoughts on net neutrality. I know the passion that is out there is extraordinary, and as Chairman, I tend to agree with where you are on net neutrality. But I am listening to everyone, even those emailing me from their parents basement with a Star Wars figurine staring back at them. I have never seen such intensity about this issue, but we have got to get it right. Thank you, Mr. Chairman. I yield back.

Mr. CRENSHAW. Thank you. Mr. Graves is recognized.

Mr. GRAVES. Thank you, Mr. Chairman. Gentlemen, good to see you today. And I appreciate Mr. Quigley's comments there, and certainly this issue will talk about today. And you guys have made your tour, I know that, around Capitol Hill. And I want to just drill down a little deeper, if I could today. So Mr. Chairman, forgive me for directing my comments or questions to Mr. Pai, but I would like to do that because Mr. Pai, you have been on the record, very vocal recently, and a lot of different statements in opposition to net neutrality. And I think you will find there are many members of this panel that agree with your position there as well.

But I wanted to see if you could help us a little bit more with more detail and more specifics because your quotes are very bold.

In fact, you said the Commission's decision to adopt President Obama's plan marks a monumental shift toward government control of the Internet. It gives the FCC the power to micromanage virtually every aspect of how the Internet works. You also said the claim that President Obama's plan to regulate the Internet does not include rate regulation is flat out false. You have also said it is detrimental to the American people, that was in your statement.

But then, on the other hand, we have the Chairman and Mr. Serrano and others, and I mean Chairman Wheeler and Mr. Serrano and others, who disagree with your statements. And they say this not the case, that the FCC will not be able to rate, regulate, control the speeds and services, and the Chairman briefly mentioned that there are only three major companies in opposition that have been outspoken. So if you could just help this panel hear more from your perspective and drill deeper with the specifics as to your statements and away from the platitudes but a little bit deeper: how will this impact the American people, and business, and the economy negatively in your viewpoint here?

Mr. PAI. Thank you for the question, Congressman. I will tackle each of them as I understood them. First, in terms of the breadth of the FCC's Internet regulations, it does in fact regulate every part of the Internet. Now, traditionally, net neutrality was meant to encompass the relationship between Internet service provider and a customer, the so-called last mile of connectivity. But this plan goes far beyond that. For example, it sweeps into its regulatory ambit interconnection: the relationship between Internet service providers and edge providers, going into the very core of the network. It applies to that relationship, Section 201 of the Communications Act, which allows the FCC not just to regulate rates, which I will get to in a second, but also to even specify the physical connections that have to be made and the through routes as they are called over which traffic has to ride. And that is in the text of Section 201 itself. That is something that the FCC, no government agency, has ever done.

Similarly, with respect to service plans, forget about the infrastructure itself, the agency is now arrogating to itself an incredible amount of power that is going to be wielded in uncertain ways. And so, for example, under the Internet conduct standard, the FCC now puts on the chopping block various service plans that have generally been beneficial to the American consumer, things like T-Mobile's Music Freedom, for example, which allows customers to stream music under their smart phones exempt from any data caps. The FCC explicitly says that this is a practice that may or may not violate net neutrality.

And so if you are a wireless entrepreneur going forward, especially one trying to make a splash in the marketplace against the big guys, your ability to compete is going to be restrained because you do not know whether or not that service innovation may be proscribed. And I think it is telling that after the FCC adopted the order, the agency admitted itself, "We do not really know how this particular standard is going to play out."

The second thing you mentioned was in terms of rate regulation. Now the order goes to great pains to say that we do not engage in ex-ante regulation, regulation before the fact, tariffing, the adop-

tion of a cost methodology, and so forth. But it explicitly leaves on the table ex-post rate regulation. It invites complaints, for example, both to the Commission and to federal court, about the justness and reasonableness of rates. And I think what you saw last week before the Senate Commerce Committee was an acknowledgment that, yes, the FCC determining whether or not rates were just and reasonable is essentially rate regulation. That is ultimately going to be to the detriment of the American consumers.

Additionally to the point with respect to who is opposing this, we have not just heard from the big boys, as has been said, we have heard from a great many small providers. Twenty-four small ISPs, for example, each with less than 1,000 customers, wrote to us and told us that Title II would be the wrong solution, including Main Street Broadband in Cannon Falls, Minnesota, which has four customers.

We heard from a great variety of municipal broadband providers, government-owned projects, including some that the president himself endorsed, who said that Title II would be a "tremendous mistake." We heard from countless wireless ISPs, who, without a dollar of federal subsidies, give people in my home state of Kansas and the state of Missouri all kinds of options they would not have otherwise. And so I think from the standpoint of competition, ironically enough, Title II takes us in the opposite direction from where we want to go. I hope I answered the questions that you teed up to your satisfaction.

Mr. GRAVES. No, it is very helpful, and I appreciate your explanation there. And then as we go through this proceeding I would hope that both of you would really help us with the specifics as to how this impacts the American consumer, take it from the political partisan side and move it into the details, and I appreciate your specific answer. Thank you very much.

Mr. CRENSHAW. Thank you. Mr. Bishop.

Mr. BISHOP. Thank you very much, Mr. Chairman. And I, again, welcome our witnesses. I would like to explore something: minority participation in the spectrum auctions. According to your budget requests, the FCC has conducted 85 spectrum auctions, which landed 39,780 licenses for a total of over $53 billion between Fiscal Year 1994 and Fiscal Year 2014. I am concerned that small businesses, in particular minority owned businesses, may not have the same access to take advantage of these high-capital public auctions to the extent that large corporations do. Do you have a plan to encourage the participation of minority-owned businesses and what is this plan? What information do you have on the participation of minority-owned businesses in past auctions and what are you doing with this information when planning future auctions?

And I will just go ahead and add a second question on a somewhat different topic, and you can address both of them in the interest of time. It is recently come to my attention that the reclassification of the ISPs under the new open Internet rules may lead to an increase in the fee that cable companies pay for attaching their lines to utility poles. What is your take on this, and how do you think that this will impact consumers?

Mr. WHEELER. Is that to either one of us?

Mr. BISHOP. It is to both of you.

Mr. WHEELER. Okay. So let me see. I will handle the first one. I know you have spoken on the second one, so you can handle the second one, okay? The Congress has said to us, insofar as unique so-called designated entity groups are concerned, that we need to make sure that there are opportunities in the auction. This was a decision that Congress made in 1993. There have been significant changes in the market since then. You know, in 1993, anybody could create a wireless company, and go out and compete. Today, the chances of, you know, the Bishop Wireless Company being successful against the behemoths is pretty slim and nonexistent.

So, we have to ask ourselves the question: how do we maintain the mandate of Congress, or the instructions of Congress, to create these opportunities in a changing environment? And so, last November, I think it was, I moved a proposed rulemaking to address this, specifically with the upcoming incentive auction in mind. Yesterday, I issued, or sent around to my colleagues for their vote, a public notice making sure that, in that inquiry, we are addressing key questions that have been raised, as to the operation of the designated entity process in the most recent AWS–3 auction. We need to get through those processes before we begin the spectrum auction next year. We will get through those processes, and I think that the Commission—I will not speak for my colleague—but I think the Commission is united in its belief that we do need to make sure that our rules are updated for designated entities.

Mr. PAI. Congressman, I would agree with the Chairman. I would add that the AWS–3 auction, in particular, highlights the danger of not implementing serious reforms of our designated entity rules. In that auction, as you may know, a Fortune 500 corporation gamed the system and used two shell corporations, essentially, to claim $3.3 billion in taxpayer subsidies. That is a bad deal for the taxpayers. But, critically, going to your question, it also squeezed out a number of small businesses, many of whom might have been minority-owned, we are not sure, who either did not get a license altogether or had to just relegate itself to other areas of the country where it could compete. And I have listed in a public statement a number of those companies who were seeking a license but got outbid, essentially, by this Fortune 500 corporation. And so I think it is critical for us to implement some strict controls to make sure that this program, so long as it remains on the books, really benefits small businesses, in particular, the disadvantaged businesses you identified.

The second part of your question was a very important one that regards the rates that cable companies and others pay to attach broadband equipment to utility poles. One of the unfortunate things about the FCC's order is that, instead of those companies having to pay what is called the 224(d) rate, which is a cable-broadband rate, they are now considered to be telecommunications providers, and so, they are going to pay the higher 224(e) rate that applies to pole attachments by telecom providers. And there is one estimate that small cable providers in particular, as mentioned by the American Cable Association, will have to pay $150–200 million each and every year for those higher pole attachment rates. That rate is going to have to be passed on to the consumer, and a lot

of these companies serve underserved communities that already lack broadband options as it is.

Mr. BISHOP. Mr. Wheeler, you got 30 seconds.

Mr. WHEELER. Thank you. The interesting thing is that I was involved, when I was president of the National Cable Television Association, in passage of the pole attachment law, because the cable operators were not being allowed on. Now, what we are finding is that cable operators are saying to new competitors, and others are saying to new competitors, You cannot get on, because you are not a telecommunications provider. And so, the fascinating thing is what we are doing is opening up access to poles. That the current incumbents have been behaving exactly how the anti-cable people were behaving 20, 30 years ago. And what we have done is open it up, so that competitors do have a chance to get on the poles.

Mr. BISHOP. Thank you, Mr. Chairman.

Mr. CRENSHAW. Thank you. Mr. Rigell.

Mr. RIGELL. Thank you, Mr. Chairman. Thank you, both, for being here. I had the opportunity to meet with Chairman Wheeler privately, and I appreciate the time that you spent with me. It was helpful to me. So, I wanted to direct my questions to Commissioner Pai, and thank you for being here today, and your service on the Commission. And I do so, these questions are designed really to test my understanding and to improve my knowledge about this topic. It is not to make a point.

But I got a call a couple days ago from a good friend of mine. He is in this industry. I respect him greatly; he is well-read. And he was really livid; I had to kind of hold the phone away from my ear because he was just livid about this decision. And he was really focusing on the process by which the rule was advanced. And, you know, he was saying this was basically unprecedented. And especially, the final rule, how it was actually rolled out without a comment period. Yet, I also know, I heard from Mr. Chairman Wheeler, we went into this extensively, you know, 3 million people provided their input here. So, help me to understand what, if anything, was unprecedented. Let us set aside the allegations about the administration. I want to set that aside for a moment. Just look at the rest of the process. Was there anything in it that you were very troubled by? And if so, what? I noted that it was not in your written testimony today.

Mr. PAI. Thank you for the question, Congressman. And I would be happy to include it in the record, my dissent, which includes a full list of some of the procedural problems that I see.

Mr. RIGELL. Just one or two substantive ones, because I do not have a lot of time.

Mr. PAI. Sure, absolutely. First and foremost, the FCC never proposed Title II as a solution to this alleged problem. The original proposal in May 2014 was based on Section 706 of the Telecommunications Act, which is a somewhat lighter solution. Moreover, after the President made his announcement on November 10th, even then, the FCC was considering a so-called hybrid proposal. Only on February 5th did it become clear that Title II was going to be the course the agency pursued.

Mr. RIGELL. Is this a substantive difference? I mean, I am not a lawyer, but I mean, when people were commenting, I guess this

would be somewhat directed to Chairman Wheeler, I can roll back around here, but were they commenting on the rule that is now before us? And that we are commenting on? Or were they commenting on something that was not relevant to the final rule?

Mr. PAI. By and large, they were commenting, over the spring and summer of last year, on what they thought the proposal was or should be. No one in the public was able to see the proposal.

Mr. RIGELL. The full scope?

Mr. PAI. I am sorry?

Mr. RIGELL. The full scope was not out there.

Mr. PAI. The FCC never made the plan public until a couple of weeks after it voted on it.

Mr. RIGELL. Well, I am on a relentless pursuit of the facts around here. And I think other members are as well, so I do not, believe that I am the only one, but it is really tough to get to the bottom of some of these things. Because 3 million is very compelling if you do not hear it in context. But you make a good point.

I want to move over to this substantive side of this thing for a moment. You know, regulation of the Internet is unprecedented, but so is this notion of providers throttling and blocking. Now, let us just give you a hypothetical scenario rule setting, where the capacities is run at maybe 60 percent. People are watching Netflix, everything else. Everything is just running smoothly. Now, do you believe that that single source provider, they do not have any other options, that provider should be able to throttle or block, because they got a good deal with Netflix, and to be able to charge more because of that. Is that your view?

Mr. PAI. Congressman, that is an important question. First, there is no evidence in the record that that actually occurs. So that is from a standpoint of regulatory rulemaking.

Mr. RIGELL. But the notion that some providers would throttle or block, this is not just a hypothetical. I mean, it has been talked about by major providers, has it not?

Mr. PAI. It has not been.

Mr. RIGELL. I mean, is throttling and blocking just something I imagined?

Mr. PAI. It is nowhere in the order, Congressman.

Mr. RIGELL. Not in the order, but, I mean, I am talking about the marketplace. I am a proponent of a marketplace environment, but that is not often the case with broadband providers, especially in rural markets. This is why I am really trying to get this right and work through it. In fairness to the Chairman, I think I owe him at least 30 seconds. Chairman, if you would address this idea that the comments were not really about, you know, the substance of the rule. That would be troubling to me, because you are quoting it as if it is.

Mr. WHEELER. Thank you very much, Congressman. During my tenure, what I have tried to do is to put forward a rebuttable presumption, the key thing being rebuttable. And then, to raise all kinds of other issues in the notice, and say, "We want your comment on this". Because what a rulemaking should be is an evolutionary process; as you say, that gets everybody's input into it, not that which comes down and says, "This is what it is going to be". And so, what we wanted and had was a very evolutionary process,

and the question of Title II was asked repeatedly in the notice of proposed rulemaking, number one, and commented upon, repeatedly, by members of Congress and all of those who filed in the proceedings. So there were no surprises in that regard.

And let me, if I can go to the blocking and throttling question really quickly. Congressman Walden, I guess, has left, but in his bill, he says no blocking, no throttling, and no paid prioritization. A Republican Commission, in 2002, started this whole thing by saying to Comcast, "You are blocking, and you should not". Last August, Verizon moved to throttle wireless speeds, and I had to go to them and say, "Wait a minute, this is not right". And they, to their credit, backed off. But they were starting to say, If you buy unlimited service, I am going to throttle you".

And on the question of paid prioritization, there are two things that are worthy of note. One is that Verizon's lawyer, in court, said specifically, I have been instructed by my client that I may say that one of the reasons we are appealing the earlier rules is we want to do that. And secondly, in response to a specific request from Senator Leahy, the major ISPs refused to say they would not prioritize for pay.

Mr. RIGELL. I thank you, both. I am well over my time. The Chairman's been very gracious. I yield back.

Mr. CRENSHAW. Thank you. Mr. Fattah.

Mr. FATTAH. Thank you, Chairman. Chairman Wheeler, let me start at a different place. ConnectED, which is an effort that, I think, should be applauded throughout the land, in terms of connecting up our young people in their schools with access. And you got a lot of private sector partners, and it seems to be well on track. If you could take about 60 seconds and tell me anything that is important for us to know about where you are in this.

Mr. WHEELER. Well, we have finished a rulemaking in the last three or four months that expanded the E–Rate program to connect schools. About two-thirds of the schools in America did not have high-speed connections. And so, we are facilitating those connections down to the students desk, because it is not just the fiber to the school, it is the Wi-Fi to the desk.

Mr. FATTAH. The administration just announced a broadband summit. I was with the President yesterday at Select USA, and some 2,700 people, guests from around the world, were interested in direct investment in our country. And one of the selling points that the President made was the tremendous expansion of broadband in our country, in rural and areas that heretofore have not been served. And it was a major selling point. Some $13 billion was invested by these friends, these guests, in companies here. And in part, your work is laying the foundation for that. How will your role, the FCC's role, be in this effort to further expand broadband?

Mr. WHEELER. So, our goal, Congressman, in the whole Open Internet proceeding was not only to make sure that the Internet stays open, but also to make sure that there are incentives for business people to want to invest in competitive, ever-faster broadband. And that is why we specifically did not rate regulate and patterned what we did after what has been so wildly successfully, insofar as wireless voice services were concerned, where the wireless voice in-

dustry asked to have Title II in forbearance and were wildly successful thereafter.

Mr. FATTAH. And the last point is that I represent Philadelphia, I represent Comcast. It is the largest employer in my district, so I understand that they have a viewpoint on these matters. But Americans have expressed some viewpoint on net neutrality. You took in public comment, and was it 3 million? Or how many people commented on both sides?

Mr. WHEELER. It was roughly 4 million total. And the comments ran basically 3 to 1 in favor of Open Internet.

Mr. FATTAH. So, you know, I would just stop here, Mr. Chairman, and ask your counterpart, who I understand represents the different point of view in this. Do you think that these 3 million Americans, that their voices should be heard on this matter?

Mr. PAI. Absolutely, Congressman. I think all of them should be heard.

Mr. FATTAH. Even someone in my position, I represent a city in which one of the largest business concerns does not think this is a great idea, but 3 million Americans is pretty substantial.

Mr. PAI. I agree, Congressman, but I think, what is critical is providing more competition in the marketplace, rather than heavy-handed regulation, which counterintuitively would disadvantage many of those 3 million consumers.

Mr. FATTAH. Are you saying that you want to think on their behalf, in this matter? You think they are wrong?

Mr. PAI. Well, what I think is the Title II takes us in the opposite direction from the goals that they espouse.

Mr. FATTAH. You think that their views should be honored by the Congress? They have a position that is contrary to yours and on a 3 to 1 basis. I am saying, do you think we should take into consideration in the United States of America?

Mr. PAI. Congressman, as you and your colleagues know, might does not make right in Congress, and same with a regulatory commission.

Mr. FATTAH. You think we should overrule, them?

Mr. PAI. I do. I think that the agency should focus on broadband priorities.

Mr. FATTAH. Thank you. I appreciate you, and I appreciate you standing up for what you believe. Thank you, Mr. Chairman.

Mr. PAI. Thank you, sir.

Mr. CRENSHAW. Also, I will just point out, we did not hear from 307 million Americans, so we do not know what they said either.

Mr. FATTAH. Mr. Chairman, you are absolutely right. And I remember when the President said in the last election, two-thirds of the people did not vote. But the ones who did said you are going to chair this committee.

Mr. CRENSHAW. I believe in democracy.

Mr. SERRANO. I also remember an election that was decided in Florida by 500 votes, even though the other guy had gotten half a million more votes.

Mr. CRENSHAW. Ms. Herrera Beutler, you are recognized.

Ms. HERRERA BEUTLER. On that, one thing, you know, we had this whole argument about who spoke up and who did not speak up. Unfortunately, because of the Commission's actions, it seems to

have been rendered moot. Because what I understood from the timeline, and this was one of my questions for Commissioner Pai, is that the commenters and the people who spoke up did not even get to see what they were talking about. I mean, what I was just told was that we, Members of Congress, weighed on this, but we were not even really released the rule until after you voted. So, to argue that you are somehow coming against 3 million Americans, they did not get to talk about this. It was hidden. It was withheld. It was not disclosed. Is that accurate?

Mr. PAI. Congresswoman, I believe it is accurate. I think that many of the emails and letters we got, they had no idea of the full range of this Title II plan because it was not disclosed to the public. They had no idea exactly how we would cover interconnection; that it would tee up service plans for net neutrality violations; that it would include ex-post rate regulation; that it would include a lot of these different rules, which, now, we are seeing now the plan is public, some of the very same people, such as Netflix's CFO, Google's Chairman, just last week have said, I am a little antsy now about the government injecting itself into the Internet. And unfortunately, we had to pass it for the American people to see it.

Ms. HERRERA BEUTLER. I have heard this before: We have to pass it to see what is in it. And the last time I heard that, I shook my head, because I thought, this is not a good idea. And now, we are finding out what is in it. You know, along that same line, you know, aside from the President's declaration, I want to know, specifically, if there are any events that led to the policy, I would say, policy shift at the Commission. And we heard a timeline, May, November, and then February, and then the vote. And then we see it. In the spirit of transparency, is there a specific Commission meeting that I can point my constituents to and say, "This is where it happened." This information was unearthed, and we had to evolve from point A to point B behind closed doors. Is there something I can point to them, and show them?

Mr. PAI. Unfortunately, and I say this as somebody who both, as a commissioner and a staffer, cherishes the agency's independence, the seminal moment was the President's announcement on November 10th. That he had to plan for net neutrality, and he was asking the FCC to implement it. And that was the defining feature, I think, of this entire proceeding.

Ms. HERRERA BEUTLER. That is so disappointing. I have heard a very good discussion on, and I heard you mention, there are ways to make sure that consumers have choices, that they have better speeds, that they have better prices. We want to see that. We want to empower the consumers. And that is what actually has made the Internet great, is that it empowers consumers. It is not the government empowering them. It is not us choosing, picking, in choosing winners and losers. It is a free market tool that allows someone in their parents' basement, as was quoted over here, to compete, because of their idea and their innovation, with a well-established company. That is an amazing tool. And the reason you see such vigor defending it is because we do not want to screw it up. I mean, the reason I believe this country is where it is, is because of the free market opportunity. It levels the playing field, right?

Mr. PAI. Right.

Ms. HERRERA BEUTLER. One of the things I am concerned about and, you know, we have talked about, I kind of want to put a different spin is everybody uses the Internet for different reasons. A grandmother in Castle Rock, in my district, small, rural area, may get online a couple times a week to check Facebook, to see pictures of her grandbabies. When I think about my mom, that is one of her uses, is to check up on her grandbabies. While a student at W.C. Vancouver may get online and want to download HD movies. Maybe they have 10 hours until their paper is due, and they need to do some serious research. Right? They need to spend some quality time on the Internet. What could the Open Internet Order's general conduct standard mean for service providers who want to offer varying pro-consumer plans to meet each individual's meets? I mean, are we raising the rates on grandma?

Mr. PAI. I think, ultimately, Congresswoman, that is a key question. The Internet conduct standard is so vague that nobody knows exactly what it will proscribe and what it will permit. And I think, essentially, every Internet service provider in America is now going to have to funnel whatever creativity they have through the regulatory bottleneck of the FCC to figure out whether or not it is going to be allowed or not. The order itself tees up seven vaguely worded factors, such as the impact on free expression that any service plan might have. But if you are a small ISP in a rural area, first of all, you do not have the cash to hire lawyers and accountants to comply with these regulations. But second of all, even if you did, the time it would take for you to get an answer back from the FCC could be prohibitive. And ultimately, it is going to be to the detriment of those consumers who lack broadband options as it is.

Ms. HERRERA BEUTLER. Totally switching thoughts, question for Chairman Wheeler, you talked about reducing the number of field director positions from 21 to five, and the number of field offices from 24 to eight. I am very concerned, living on the West Coast, because it said you are going to have the tiger team in Maryland. They can get on a plane, but if you ever had to catch a plane last minute, or in inclement weather here, you are lucky if you get out and get to the West Coast, which is on a completely different time schedule. And as you can imagine, that is a major concern for me.

I understand the field offices played significant role when we are talking about FAA administration, experiencing interference when it comes to our Doppler weather systems. How will the Commission continue to perform these important functions with this new plan? Particularly, in the Pacific Northwest, where, now we are going to have zero offices.

Mr. WHEELER. Great. Thank you very much, Congresswoman. That is an excellent question. As you know, we have a field office in Seattle, today, staffed by one person. And that person costs $190,000 a year to maintain there, and has the second fewest cases of any field office in the country.

Ms. HERRERA BEUTLER. How many? How many?

Mr. WHEELER. One R.F. case per week. We have one person.

Ms. HERRERA BEUTLER. So, about 52 cases in a year. And they serve all of Washington, or the whole Pacific Northwest?

Mr. WHEELER. Pacific Northwest.

Ms. HERRERA BEUTLER. Okay.

Mr. WHEELER. But, as I say, it is the second fewest of any. So, the question is, if we pre-position equipment there, and we can fly people in, what we are trying to do is to say, how do we evolve? Because 20 years ago, when this plan was put together, what the offices did was they went out, and they inspected broadcast records. Well, those are online now, so you do not have to do it. They went out and they made sure that the lights were on, and antennas. Well, there is now automated monitoring of that. And from those old style kinds of activities, the new responsibility has increasingly become spectrum.

Ms. HERRERA BEUTLER. So, those cases you are talking about, they are primarily spectrum cases?

Mr. WHEELER. Spectrum cases. And those can get dealt with. There is a concern, you go in, and you deal with it, and then you move on to the next concern. Because they are not all in Seattle, as you know. They are all over the place. And so, today, we are flying people, or driving people, to deal with those cases. And we can do it from California, you know, as efficiently as we can, more efficiently, than we can from the other 24 offices.

Ms. HERRERA BEUTLER. I am going to watch this issue, because I have never wanted to be lumped in with California when it comes to dealing with any major concerns. They tend to really house their own challenges, and they need all their people to take care of their challenges. So, we like to maintain our autonomy. This is an issue I am going to be following closely. Thank you.

Mr. CRENSHAW. Thank you. And I think we have time for another round of questions, if people have questions. I mentioned in my opening remarks that our Internet market exceeds Europe's, both in competition and in investment. And Americans have more choices than their European counterparts. So that is a good point of comparison, I think in terms of global competition. But they have restrictive rules just like the ones that we are adopting, and yet, when you look, I think we have had four times as more capital investment, and twice as much investment in mobile. In Europe, there is less competition, less access. So, let me ask a question, Chairman Wheeler: you used to be president of, I think it is called the Cellular Telecommunications Internet Association, the CTIA.

Mr. WHEELER. Yes, sir.

Mr. CRENSHAW. And that is the trade association for the wireless industry.

Mr. WHEELER. Yes, sir.

Mr. CRENSHAW. And a lot of people are surprised that, as that was your former job, that you would support not only classifying broadband Internet under Title II, but also wireless Internet. So, I am just curious, if you were still the CEO of CTIA, what would you be telling your membership about these rules?

Mr. WHEELER. Thank you very much, Mr. Chairman. Let me just clarify one thing. You said, I think, that Europe has rules just like the ones we are adopting.

Mr. CRENSHAW. Not just like. But I would say they have more restrictive rules than we do.

Mr. WHEELER. Yes, and these rules do not move us towards that. We do not have rate regulation. We do not have Terrafin. We do not have unbundling. We do not have all those kinds of intrusive

things. We do propose here is the same kind of concepts that Mr. Walden and Mr. Upton and others are saying, which is the no blocking, no throttling.

Mr. CRENSHAW. But more restrictive, you would admit to that, than we have now.

Mr. WHEELER. And I hope that we are not going to have blocking and throttling, and that it is nothing like Europe. Two weeks ago, I met with all the European regulators, and I can assure you, it is nothing like what they have. But, let me answer your question.

One of my "Ah ha" moments in this whole evolutionary process was my realization that Section 332, which while I was the president of CTIA I was advocating in behalf of the wireless industry for in this body, had done exactly what we ended up doing here, which was to declare wireless voice a Title II Common Carrier, and to forbear from unnecessary regulation from the old style of Title II. And that was a huge success. And so what we are doing is building on that model, and the success of that model, and saying that we think that will work for the Internet as well. Now, you ask the question, Why cover mobile? Because 55 percent of the access to the Internet is now from mobile. And if mobile is going to be the Internet's future, which we all believe it is, then we need to make sure that there is one set of rules, and that there is openness. I know from personal experience that in the early days of the mobile industry, in mobile data, that the carriers tried to build walled gardens, and that you could only get on the network if you agreed to pay some kind of tribute, in terms of revenue sharing. We cannot have that imposed on the Internet. And so the openness that all consumers have a right to, I believe, on the Internet, is not constrained by whether you get it by wire or over the air.

Mr. CRENSHAW. Thank you. Let me just ask, Commissioner Pai to comment on that. In your view, do these rules seem to restrict competition? Are they more restrictive? I mean, in terms of competition, do you see them as a step back? And, I do not mean to say we are looking just like Europe, but comment on where you think that leads us in terms of competition and in terms of restrictions.

Mr. PAI. That is a great question, Mr. Chairman. I think, with respect to the comparison, the mobile aspect is highly telling. In the United States, 86 percent of Americans have access to 4G/LTE. In Europe, that is only 63 percent, despite the fact that they have significantly higher population density. That 63 percent is up from where it was just a couple of years ago. Secondly, in America, we have 30 percent faster speeds than you do in Europe. Now also, with respect to the regulatory framework as applied to Europe, Europe does not have any mobile unbundling, all that kind of thing. So I think the regulatory comparison there is pretty apt.

Secondly, in terms of competition, the American wireless marketplace is highly competitive. You see a great deal of competition on price. You see carriers spending billions of dollars upgrading their networks. You see spectrum auctions raising a lot of money, and the reason is, not because mobile voice was classified as a Title II service, I mean, voice is the least important driver of the mobile revolution. It is mobile data. And mobile data has been historically unregulated. It has not been a Title II service. And especially with

the inception of the smart phone in 2007, what you saw was consumers realizing, "Ah ha" This device that I can take with me is suddenly a substitute for all kinds of other wired Internet connectivity. So now you see people streaming video on their iPads and the like. It is the mobile data revolution, driven by a light regulatory touch, that has really spurred all this investment in innovation. And that is what we are putting at risk when we say, Lump it in with the wired Internet access providers. We are essentially saying mobile is just another, you know, pipe, so to speak. It should be treated like the water company or the electric company. I do not know about you, but I certainly do not think of those companies as innovative as some of the wireless companies that have delivered us the ability to do all kinds of things on the smart phone. That they were unthinkable just a decade ago.

Mr. CRENSHAW. Thank you very much. Mr. Serrano, do you have any further questions?

Mr. SERRANO. Chairman Wheeler, my Republican colleagues, and I say this with all due respect, gave Commissioner Pai a lot of time to speak about his opposition to net neutrality. I would like to give you a chance to respond to his comments. Also, can you comment on the public round tables you had? I understand there were six, and the reports and other information that was released by the FCC, regarding Title II, even before the President's announcement.

Mr. WHEELER. Thank you very much, Mr. Serrano. A couple of things that I was lifting my finger for a moment ago. You know, I was an entrepreneur in my earlier life. I spent the decade before taking this job as a venture capitalist backing early stage Internet protocol-based companies. Through this process, I met with hundreds of innovative start-up companies and their financiers. And they were all uniform in the comment that permissionless innovation is what is key. That I do not have to go to the gatekeeper and say, Well, is this the kind of service that you will let through? Or is there a potential that you are going to charge my competitor something that will give him a leg up on me? And so, on the question that Commissioner Pai was asked earlier about the impact on innovation, the key to innovation is open access. And that is what we provide here.

Secondly, there was a question about rates for Grandma. We are not going to regulate rates. Carriers are free to provide whatever packages they want. If they want to have an email only package, and all the way up to some kind of super-duper online real-time game playing package, I mean, that is fine. That is terrific. We hope to encourage that. And then, insofar as the other comments you made about round tables, we had half a dozen round tables. I was the only commissioner that was at every single one of them for every single minute. We brought in advocates on all sides, and had many hearings, if you will, to sit down and talk about technical issues, talk about legal issues, and talk about marketplace impact issues. And those were very helpful in informing the process.

Mr. SERRANO. Let me do something a little different, Mr. Chairman. For me to say that I did not know that this was going to turn into a net neutrality hearing would have been foolish, because I know that that is the issue of the day. It did turn into that. But

let me end on perhaps an interesting note: what is next? To both of you, what new gadgets, what new toys?

We know there is a watch coming. We know there is a car that is going to park itself, wash itself, run itself, and the whole thing. What is next, that the FCC will have to be looking at, and be ready for?

Mr. WHEELER. You want to go first, or you want me to go first? Let us flip a coin. Go ahead.

Mr. CRENSHAW. Mr. Serrano, you better be careful. This is going to be some inside information.

Mr. WHEELER. This is, you know, we got a couple.

Mr. SERRANO. But I am not investing in this, so.

Mr. CRENSHAW. Neither are we, just for the record.

Mr. WHEELER. We got a couple of tech freaks up here.

Mr. PAI. One of the things I am most excited about, Ranking Member Serrano, is unlicensed spectrum. I think the five gigahertz band in particular holds special promise for delivering some of these high bandwidth applications. Right now, we have some very complex issues related to the so-called U–NII–2B, and U–NII–4 bands, that if we can resolve them, will deliver a 195 megahertz of high delivery rate spectrum that could really revitalize Wi-Fi across the country. That is the thing that I am most excited about, in terms of the tech sector.

Mr. WHEELER. I think it is the marriage of two things. One, the power of Moore's Law, and how computer chips are doubling in processing capacity every two years. Which means that, 15 years from now, they will be a thousand times more powerful than today, which is an amazing kind of thought. And secondly, wireless. And that those two coming together are the greatest transformational force that the planet has ever seen. And that it will enable the kinds of things that use the kind of spectrum that Commissioner Pai was talking about. That it will enable the things you and I have never even begun to contemplate. And everything will be connected. And everything will talk to everything else. And the most interesting things that flow out of that, then, are that creates new information. And so this becomes a network that by the provision of services creates a new asset, and that is the first time in history that has ever happened. And secondly, it creates great privacy issues that we collectively, in the Congress and in the Commission, are going to have to deal with.

Mr. SERRANO. And then, closing, Mr. Chairman, I know my time is up. We have questions for the record which we never go to, and I was part of it by asking the last question. I just hope that you do two things: that you continue to do the work you are doing, but that you also, both, the whole Commission, pays attention to our schools, pays attention to those who do not still have in this country access to the Internet, to provide it for them. And remember not to set the Territories apart from the United States. They get left behind on many occasions. You knew I had to get that in. So thank you so much. And I must tell you that my Twitter stream has a lot of people watching because they have called us a lot of names, and they are mostly positive.

Mr. CRENSHAW. Thank you, Mr. Serrano. Now, Mr. Yoder has another question.

Mr. YODER. All right. Thank you, Mr. Chairman. I want to commend both of you on, I think, doing a very nice job today of laying out opposing viewpoints on an issue that is of critical importance to our country, and I think it is been nice to watch the interchange and debate, and I appreciate your testimony, both of you today. You articulated issues that, I think, have given both parties in this Congress things to think about, on the other side.

I will say that what continues to give me pause, and I think the net neutrality debate is a very interesting one, is the potential camel's nose under the tent regarding future regulation. And I think even Chairman Wheeler, you would be wary of the FCC expanding these powers, I hope. And so whatever the FCC can do, you know, obviously, I have raised the issues of taxes and the USF fund. I have raised the issue of the cost to implement, but the potential to expand and control rates, and all these things, I think, would make many of the proponents of this net neutrality proposal regret that the FCC took those actions to get there, because it could ultimately be a net loss in terms of freedom and opportunity here.

So it is not just net neutrality, I think that debate has been very interesting, it is what else could happen. And we have seen agency after agency in this government take very limited powers and figure out ways to expand them. It happens at the EPA. It happens at every federal agency. And we wonder how the regulatory agencies end up getting away with all this power, and they usually justify it by saying, well, someone gave us a broad power long ago, and we have the power to expand that within our own rules. And so I think Congress will really have to look at making sure that this expansion of power does not occur to some of these other potential problems that even proponents of net neutrality would be opposed to.

That being said, I want to change the subject a little bit to the repacking spectrum issue. And Mr. Chairman, I think we can all agree that the broadcast incentive auctions are a very important process for spectrum allocation, public safety funding, and debt reduction. However, when Congress authorized the incentive auction we intended that local television stations that continue to serve their viewers and communities would be held harmless. Accordingly, Congress allocated $1.75 billion to the Television Broadcaster Relocation Fund, to cover the reasonable costs that stations will incur as a result of changing channels. Some have estimated though, using the FCC's own expert report as a basis, that repacking more than 13,000 stations to clear 84 megahertz of spectrum may cost more than $2.6 billion, leaving a shortfall of over a billion from the relocation fund, or more than $600,000 per station. If that is the case the auction was intended to be voluntary, but if stations are forced to cover the repacking costs, it does not seem very voluntary. So I guess my questions are, is there anything the FCC can do to limit the television station repacking to $1.75 billion, and if the incentive auction clears 84 megahertz of spectrum, will the relocation fund be sufficient to prevent broadcasters from being forced to go out of pocket?

Mr. WHEELER. Do you want to try that?

Mr. YODER. Either way.

Mr. WHEELER. In short the answer is that, as you point out, $1.75 billion is a statutory number that we have to live with. Many broadcasters have said to us that it is insufficient. We have worked with broadcasters and with the wireless industry to say, Is there a way we can have an insurance fund? We cannot redirect auction revenues to do that. So we said to the wireless industry, You guys are going to be the beneficiaries here. You are buying it, okay? Understanding that it is going to result in a decrease probably in what you would pay overall, but why don't you guys create some kind of an insurance fund? They have not been interested in doing that. This is an issue that we are going to have deal with. We have a whole set of rule-makings that will percolate over the next half a dozen months leading to an auction this time next year. And the other part about it is if Congress can help us with this, raise your hand and say, "We would love to work with you on it".

Mr. CRENSHAW. Commissioner.

Mr. PAI. I would add that this simply accentuates the importance of structuring the auction in a way that tailors the repacking to that $1.75 billion budget because for every dollar above $1.75 billion that comes out of the broadcasters' pocket will get taken out on the viewers of the stations, who have to see less local news, et cetera, and so I think it is important for us $1.75 billion as a marker, unless and until there are other initiatives that Congress sees fit to adopt.

Mr. YODER. Thank you. Thank you, both. Thank you, Mr. Chairman.

Mr. CRENSHAW. Mr. Graves.

Mr. GRAVES. Thank you, Mr. Chairman. And I would like to agree with Mr. Yoder on your discussion today. Each of you have done a wonderful job of explaining your positions eloquently. And you clearly know the other person's opposing views very well, too.

Mr. WHEELER. Mr. Graves, we are getting a lot of practice.

Mr. GRAVES. You are getting a lot of time together. But you have been very respectful. I know each of you have to one another. And this is a very passionate issue for a lot of different reasons. And in my case, I mean clearly, I appreciate Mr. Pai's position, your advocacy, and side with you on that, and the reason primarily is I believe whenever you have very difficult, challenging decisions, such as the Commission was faced with in this, it is better to err on the side of less government intrusion in the marketplace. I just do not think you can go wrong when you lean in that direction, you err in that direction, when there is clearly a lot of questions out there.

But, if I could just follow up with one other item, and then make a statement, Mr. Chairman, because I think it is about transparency. A lot of this debate has been about transparency and, you know, in our district, my constituents want to know things are transparent, and they feel the overbearing federal government and particularly here, as an appropriator, transparency is going to be extremely important to us as a committee. And so Commissioner Pai, you have said in the past orders issued by bureau of the FCC could always go to the full Commission for a vote. Is that still the case today?

Mr. PAI. It can, yes, if there is an application for review that is filed, the agency can address the bureau's decision.

Mr. GRAVES. And so transparencies will exist in that case?

Mr. PAI. I certainly hope so, and I think in addition to transparency, dispatch is a critical part of it. We cannot just let that application sit there forever. And so that is something that, working together, we have been able to accomplish.

Mr. GRAVES. Well, I believe Ms. Herrera Beutler brought up a great point about how there was a lack of transparency. It is the appearance and perception and probably likelihood that the Commission votes on something that is not released until a few weeks later, and that causes a lot of questions. And so, Chairman Wheeler, just know that the sentiment among my constituents is distrust. It really is. It is with the President, it is with the administration, and I know Mr. Serrano had a point earlier. I mean, Mr. Pai had a point earlier about, it was three to one supported this process. Well, if I remember right, it was entitled Open Internet Order. Who is not for an open Internet?

And so that is where transparency and distrust sort of collide. Because you feel like, yeah, I am for an open Internet, and now, there is this collision of ideas out there that say, "No, it is not that". It is going to destroy the Internet, or it is going to create these burdens or barriers out there. So in this case with the FCC, I do not believe technology should be partisan whatsoever. This should be a bi-partisan effort. And it is my belief that if there were changes made to the process, if there were perimeters in place to ensure transparency, then it would be much easier for myself, and I know my colleagues here on this panel, and the Chairman of the Committee here, to embrace the budget request as you have presented. But lacking that I imagine there are going to be some changes made, or suggestions, and we are going to continue this debate in the future. So, Mr. Chairman, I appreciate the time today.

Mr. WHEELER. Do you want me to respond?

Mr. CRENSHAW. Feel free.

Mr. WHEELER. I thank you for very valid point, Mr. Graves. I think there is a misunderstanding about the process that we followed. The process we followed insofar as the release of the item is the process that has been followed for every other preceding at the FCC, large and small, you know, whatever it is. And the information leading up to it was the most open and transparent debate that we have had. I mean, we had full involvement from members of Congress. I mean, I was constantly up here, being told what to do. And I appreciate entirely your point about openness because it is the key to credibility.

Mr. CRENSHAW. Commissioner Pai.

Mr. PAI. Thank you, Mr. Chairman. I think transparency is a critical issue because it goes to the basic question of can citizens trust their government. And in this case, part of the reason why I said that the plan should be made public so that the American public can weigh in on it, on its particulars, not just the concept, was because it affects something so critical to American life. And that is why I think it is significant that, for example, Peter Hart, a respected Democratic pollster, found that 79 percent of Americans, regardless of what they thought of the actual rules, thought that the net neutrality plan should be made public. And tellingly

by a 23 percent margin, they believed that they order itself was inappropriate, that we should have gone a different way.

Now moving forward, the question is, how do we change our processes if at all? And one of the things I have heard a lot about, and I agree with, is that going forward the FCC should do something similar to what Congress does. When you drop a piece of legislation you put it on the website. People can comment on it. Then you have a markup for everything. All the language is out there for people to see. Well, what if the FCC did something similar? Three weeks before a scheduled FCC vote, we say, Here is the proposal we are going to be voting on. The actual document. America, tell us what you think, and we would be happy to get your input. And then by the time we vote no one can say that they were not apprised fully of all the particulars. That is something where, even if people do not agree with what the FCC ultimately does, nonetheless, they would have the ability to say that they were informed about what was about to happen, and that can go a long way to restoring trust.

Mr. CRENSHAW. Thank you. And, I have one last question about direct appropriations. I think, as Mr. Serrano pointed out, we have talked a lot about net neutrality, which is a rule. But as we said early on this is the committee that decides where the money comes from to go to do things, like proposing rules. So let me get back to just one last specific, appropriations aspect. And that is the move, the restacking, or the move. There is a $44 million request there, and I think it points out that it will cost $71 million over a two year period to move, and ultimately, that will save $119 million over a 15 year period. So just for the record, tell us a little bit about how you come up with those numbers? Does GSA? Where do those numbers come from, and where are we? I think OMB is reviewing that now.

Mr. WHEELER. Thank you, Mr. Chairman. This is a process that we are working through with GSA. I mean, we are not the landlord experts here.

Mr. CRENSHAW. Not the real estate people.

Mr. WHEELER. We are not the real estate people. But our Office of the Managing Director, working together with GSA, has developed these numbers. And we are following the processes of GSA in terms of what you do about location/relocation, or whatever.

Mr. CRENSHAW. Got you. Well, if there are no further questions, let me just add my words. Mr. Serrano.

Mr. SERRANO. Can I just say, very briefly, because I do not want to take advantage of the Chairman. Are we getting any closer to the kill switch on smart phones? For those who may not remember, the kill switch is an issue where phones are stolen here, are sent overseas in many cases, they restart it over there. And the kill switch would not allow that to happen. I know some manufactures are doing it on their own. Are we getting any closer? I know you guys have been talking about it.

Mr. WHEELER. So Mr. Serrano, July of this year, carriers have told us that all phones going forward will have remote lock, wipe, and restore capabilities. Beyond that, however, there is a standards group in the wireless industry called 3GPP, which has said that they will come back by the end of this year with an identification

system that is even better than that, and becomes like the non-wipeable vehicle identification number that we now have on automobiles, that were so successful on automobile thefts. So we are making progress.

Mr. SERRANO. Yeah, what we are hoping for is, you know, close to this, that it is the kind of technology that does not allow someone to just wipe it and locks it, and does not allow anyone anywhere else to restart it. Mr. Chairman, Commissioner Bratton from New York at a press conference we had with the Attorney General of many states, says that 30 percent of all robberies in New York City were with smart phones.

Mr. CRENSHAW. Well, again, thank you for your testimony today. Thank you for the important work that you do. And we appreciate you being here to share that with us today. This hearing is adjourned.

Financial Services and General Government Subcommittee
Hearing on the Federal Communications Commission
For Chairman Tom Wheeler

Questions for the Record Submitted by Chairman Ander Crenshaw

Net Neutrality / "Open Internet"

The funding that allows the FCC to work on rules—like net neutrality—comes from this Committee.

As such, we have purposefully kept funding for the FCC flat for a few years now in hopes that limited funding would push the Commission toward prioritizing the most important work of the agency. Instead, it seems that the Commission has prioritized politically polarizing rulemakings at the expense of the important work that this agency has to do.

Question: Can you tell this Committee how much the Commission has spent working on the net neutrality rules?

Answer: As with any Commission rulemaking, the Commission relied on existing staff resources to produce new Open Internet rules. On January 14, 2014, the U.S. Court of Appeals for the D.C. Circuit struck down most of the Open Internet rules that the Commission adopted in 2010 and remanded the case to the Commission for further consideration. The Commission adopted a Notice of Proposed Rulemaking in response to the court remand on May 15, 2014, which initiated a public comment period that ended on September 15, 2014. On February 26, 2015, the Commission adopted new Open Internet rules. While various staff around the agency participated in producing the new rules, only a handful of staff devoted their time exclusively to the rulemaking.

Question: Do you believe you have spent resources on this rule at the expense of other work before the Commission?

Answer: There is no question that responding to the court's remand of Open Internet rules required use of internal resources. But I am proud of our hard-working staff's ability to keep other priorities on schedule during this time – including (to name just a few) work on the AWS-3 auction, which netted some $41 billion in net revenue for a nationwide interoperable public safety network and for deficit reduction; the upcoming broadcast incentive auction, 911 location accuracy; technology transitions; rural broadband experiments; and continued consideration of major pending transactions.

Question: How do you expect the recent rules to affect capital investment and consumer choice over the next decade?

Answer: I believe that new Open Internet rules will have a positive impact on the economy over the next decade. This positive impact flows from the virtuous circle of innovation that an open Internet fosters – facilitating innovation at the edges of the network, which drives increased consumer demand for broadband, which, in turn, fuels additional broadband investment. *See Verizon v. FCC*, 740 F3d at 623, 628 (D.C. Cir. 2014) (upholding the Commission's finding that open Internet rules "will preserve and facilitate the 'virtuous circle' of innovation that has driven the explosive growth of the Internet" as reasonable and supported by the evidence). In other words, the *2015 Open Internet Order* enhances the economy by ensuring that the Internet remains open, which furthers both broadband investment in the network and innovation at its edges.

While the 2010 open Internet rules were in effect, broadband capital expenditures increased from $64 billion in 2009 to $75 billion in 2013, an average of $2.75 billion annually. And venture capital financing of "Internet-specific" businesses (i.e., companies with a business model fundamentally dependent on the Internet) doubled, from $3.5 billion in 2009 to $7.1 billion in 2013, an annual average of $900,000,000. While these figures can of course be attributed to multiple factors in each instance, we believe such growth could not have been achieved if the Internet were not an open platform for investment and innovation. By re-establishing strong Open Internet protections, the Commission's action will have a positive effect on the economy in the coming decade.

Member Comment:
Chairman Wheeler, you were previously the President and CEO of the Cellular Telecommunications and Internet Association (CTIA), the trade association for the wireless industry. As such, it is especially surprising that you would support to not only classify broadband internet under Title II regulation, but also wireless internet.

Question: As someone who ran CTIA—why would you chose to hamstring wireless internet?

Answer: We believe that establishing and enforcing clear rules of the road for an open Internet will not hamstring wireless Internet but, instead, will foster continued innovation and investment as consumer demand for faster broadband and more innovative services increases. It was my experience with CTIA and Title II that convinced me that we could properly apply this section of the Act and obtain the most optimal results.

Question: If you were still CEO of CTIA now, what would you tell your membership about these rules?

Answer: I would remind the membership that wireless voice has been subject to a similar light-touch Title II regime for more than two decades. In particular, between 1993 and 2009 (while voice was the primary driver of mobile revenues), consumer demand for better and more services grew significantly, with industry revenues increasing by 1300 percent and subscribership by more than 1600 percent, and the industry responded by investing over $270 billion in their networks.

More recently, Verizon Wireless has invested tens of billions of dollars in deploying the latest mobile broadband services in the 700 MHz Band where it is subject to rules very similar to the open Internet rules. Finally, even with a serious consideration of Title II rules, there was record-breaking bidding in the recent AWS-3 auction, as well as significant indications of interest in participating in the upcoming Incentive Auction.

Budget

In your FY 2016 budget request, you are asking for an additional $25 million transfer from the Universal Service Fund (USF) to support USF activities within the Commission.

Question: Please explain to this Committee why you cannot fund these activities out of your regular appropriation.

Answer: Given the special circumstances of the large move/restacking effort included in the FY 2016 Congressional budget request, the Commission determined that FY 2016 would be the optimal time to properly align USF expenditures with cost outlays. Accordingly, the FY 2016 budget proposes shifting USF funds to cover our salary and compensation expenditures directly related to USF activities. This realignment will reduce by $25M the Section 9 regulatory fee burden on licensees with no USF relationship. USF will pay these costs instead of forcing entities such as small, local broadcasters and marine licensees to pay for USF FTE activities at the Commission. Note that without this realignment of USF costs the Commission's FY 2016 budget request would have been $413M instead of $388M.

Question: Please tell us about the ways you and your staff are actively working to make the Commission more efficient, especially with regard to how you allocate your appropriation. Please provide concrete examples and dollar amounts.

Answer: The FCC continues to act as a careful steward of appropriated dollars to ensure that these funds are used for purposes that are appropriate, cost effective and important to the core mission of the Commission. From the beginning, the Chairman has made it clear that the Commission must become more efficient and effective.

Listed below are concrete examples and dollar amounts of projects that the Commission has implemented or is working to implement to make the FCC more efficient and effective.

1) Move/restack Headquarters ($119 million savings) --- The FCC headquarters lease will expire on October 1, 2017. The Commission continues to work closely with GSA and OMB to develop and issue a request for lease proposal (RLP) to either move or restack the current leased facility. GSA has estimated that the utilization rate for space will decrease by 33 percent. GSA has estimated the total savings for this project over 15 years will be $119 million. The Commission has requested funds for this project in the FY 2016 congressional budget

2) IT Modernization ($7 million to $13 million savings) --- The Commission continues its IT modernization effort which includes replacing the legacy infrastructure with a managed IT service provider to generate efficiencies and savings; rewriting legacy applications as part of a modular "shift" to a modern, resilient cloud-based platform; and improving the IT resiliency of the Commission enterprise. If requested project investments are made during fiscal year 2016, these measures are estimated to realize cost savings between $2 million and $3 million dollars by FY 2017 and an additional $5 million to $10 million over the next five years. The Commission has requested funds for this project in the FY 2016 congressional budget.

3) Enforcement Bureau (EB) Field Modernization ($9 million to $10 million savings) --- The Commission embarked on an EB field modernization project as part of a broader effort to examine the Commission's performance and eliminate inefficiencies, modernize operations, and conserve scarce financial resources. The final report on this project estimated annual savings at $9 million to $10 million per year after implementation. Currently, the FCC is working with stakeholders to determine the best approach for how some of these efficiencies can be reinvested into the new field-related capabilities. As such, a portion of the $9 million to $10 million in annual savings will be reinvested over time into the new field-related capabilities required for future needs such as shared spectrum enforcement.

4) Relocate FCC Staff from Portals One ($3.2 million savings) --- the Commission is actively assessing the potential to relocate staff from the Portals One headquarters building into the Portals II building to reduce leased costs in advance of the scheduled move. It is estimated that the move of staff from Portals One could be completed in the fall of 2015 for an annual savings of $3.2 million per year.

5) Consumer Complaint Database ($2.7 million avoided costs) --- The Commission fully rolled out a new consumer complaint database after an October 2014 test launch at 1/6 the normal cost for such a system. The new system improved the ease of filing a complaint with the Commission, leading to a more efficient process of handling complaints that will speed up responses to consumers. The new system was an off the shelf product with a low cost and minimal upkeep costs. Instead of investing $3M, the Commission paid less than $400,000 for this project or an estimated $2.7 million in avoided costs.

6) Call Center Processing ($2 million savings) --- the Commission recently rolled out a new Consumer Complaint Database that simplifies the consumer experience, streamlines processing of complaints and makes more data available to consumers and stakeholders. Currently the Commission is reviewing the total costs associated with call center processing and a more efficient and effective process that can be implemented. A rough estimate of total savings is $2 million.

7) Treasury Paperless Lockbox Process ($190,000) --- The Commission is working closely with Treasury to implement a paperless lockbox process for collection of funds. This effort will save the Government $190,000 annually.

8) Administrative Operations reductions ($180,000 savings) --- in FY 2014 we reduced overtime utilities at headquarters and reduced equipment costs. Annual savings of $180K.

9) Human Capital Review and constant analysis of need to fill positions (FTE reduction by 45 FCC employees or 37 with Office of Inspector General increase for Fiscal Year 2016) --- the FCC continues to examine its workforce to ensure that it is making optimal use of its staff and hiring the most highly qualified staff available; internal human resource procedures require an analysis of a specific position before re-filling it if it is opened through attrition.

Headquarters Move / Restacking

Your FY 2016 budget request asks for $44 million for a potential move or restacking at your current headquarters location. My understanding is that you are working with GSA and that the prospectus is currently at OMB for review. Your FY 2016 budget estimates a total of $71 million over the course of two years for a move or restacking.

Question: Can you explain to this Committee how you or GSA came up with this total?

Answer: We included in the FY 2016 Congressional budget request a total of $51 million for the move/restacking project and $44 million of the request was for Salaries and Expense and $7 million was for Auctions. In the FY 2017 Congressional budget we plan to request the remainder of the funds to complete the move/restacking project or approximately $20 million. The estimated number for the move was provided to us by GSA is $71 million and the detailed breakdown of the GSA numbers is as follows.

Real Property Cost – $40 million

- Construction cost – $40 million
- Design cost – $2 million
- Lessors fee – $3 million
- Contingency – $3 million
- Escalation – $4 million
- Financed by lessor – ($14 million)
- GSA Management Fee – $2 million

Personal Property Cost – $31 million

- Move – $2 million
- AV/Cabling/IT/Telecom – $7 million
- Security – $3 million
- Furniture – $9 million
- IT costs – $2 million

- Contingency – $2 million
- Escalation – $2 million
- GSA Management Fee – $1 million
- Wayfinding & Culture Change Consulting – $2 million
- Other – $1 million

Question: Can you confidently say at this point that the $71 million request is accurate?

Answer: GSA provided the $71 million level and we used this estimate when we prepared the FY 2016 Congressional budget. The GSA figure is actually $84 million, but includes a $13 million tenant improvement credit to be covered by the lessor, resulting in a $71 million estimated cost to the Commission. We will continue to work with GSA and OMB to obtain the most efficient and effective solution for the Government and the FCC.

Question: When do you expect OMB to approve the agency's prospectus and send it to the Hill for review?

Answer: GSA is working with the FCC and OMB to finalize the prospectus for submission to Congress. We were told some that it would take place in the spring but we do not have a definite date from OMB for the submission of the prospectus to the Hill for review.

Question: Please give this Committee some examples of how you are working with GSA to further decrease your overall rent costs in the future with this move or restacking, aside from just moving from your current location where the rent is increasing.

Answer: It is the goal of the FCC to reduce its footprint as mandated by OMB and GSA. To reduce our footprint, our current Utilization Rate (UR) of 270 is planned to be reduced to 180 with the move or restacking, which is a 33 percent space reduction. We are actively developing plans to realize this UR reduction, including reconfiguring office sizes and layouts; rethinking common areas; and expanding our telework program. The planned move to a new location is estimated to save the Commission approximately $119 million over the life of the new 15-year lease. Alternatively, we understand that staying at the current headquarters will cost at minimum an additional nine million dollars per year.

Spectrum Auctions

This Committee has been supportive of increasing the spectrum auctions administrative cap, especially since the passage of the Middle Class Tax Relief and Job Creation Act of 2012, which mandates incentive auctions. We want to make sure the Commission has the resources to make sure these critical auctions are successful, and that they are done in a timely manner. It is imperative that these auctions work so that spectrum is used in the most efficient way to keep up with consumer demand.

Question: Can you give us a timeline as to when the incentive auctions are expected to take place?

Answer: We are on track to receive auction applications in the fall of 2015 and conduct the Incentive Auction beginning in the first quarter of 2016. The Commission adopted the Incentive Auction Report and Order in May, 2014. The Report and Order established the basic policies and rules for the auction. Since then, the Commission has moved forward on numerous fronts to address the range of auction implementation issues.

Question: Are you on schedule?

Answer: Yes.

Question: Do you expect auction administration costs to decline after the incentive auction? Please explain.

Answer: Incentive auction-related administrative costs will decline after the incentive auction. There will be additional administrative costs following the conclusion of the incentive auction, however, such as the administration of the TV Broadcaster Relocation Fund, but such costs will diminish over time. It is important to note that the Commission has a number of other auctions in the pipeline, including a number of FM licenses, certain frequencies to be used for air-to-ground broadband services, licenses in a new Citizens' Band Radio Service, and other possible future auctions that will all impose auction administrative costs.

Member Comment:
Due to the sensitive and voluntary nature of these auctions, it is imperative that the design of these auctions engender participation from all groups.

Question: Is the Commission actively engaging with both the broadcasters and wireless industry on this?

Answer: Yes. The success of the auction depends on voluntary participation by all broadcasters and the wireless industry. On the broadcaster side, we started our outreach with the creation of the "Learning Everything About Reverse Auctions Now" (LEARN) program that is designed to provide valuable information about the incentive auction and the potential financial opportunities it offers broadcasters who voluntarily decide to participate.

Additionally, last October, the Commission sent a detailed information package prepared for the FCC by the Greenhill investment firm to all television broadcast stations eligible for the auction. That material described the incentive auction and options for stations, provided FCC staff estimates on high end compensation that could be paid to stations that choose to participate, and included a letter from the IRS that outlined tax implications of the incentive auction. In February 2015, we released an updated information package that provided additional detail on different bid options, including channel sharing and UHF-to-VHF bids, and the Commission's proposed opening bid prices for going off-air.

Since February 2015, Commission staff has been, and continues to travel nationwide to key markets to hold informational sessions for broadcasters. After these general sessions, stations are encouraged to meet confidentially with Commission staff to discuss specific issues.

Wireless providers are more familiar with the Commission's auctions and these providers are often experts. But since the Incentive Auction has several new features, the Commission has been talking to wireless providers on a frequent basis to help formulate appropriate policies. We will continue to conduct outreach with wireless providers as we move closer to the auction. Additionally, we will hold mock auctions as part of the planning before the auction.

Question: What are you hearing from them? Do you have any concerns with regard to participation?

Answer: We believe there is significant broadcaster interest in participating in the incentive auction. Notably, stations that voluntary elect to participate in the auction will have a variety of options: (1) return their license entirely; (2) relinquish their spectrum and choose to channel share with another station; or (3) choose to move from UHF to a VHF channel. Discussions with a broad range of broadcasters have focused on the second and third options.

The results of the recent AWS-3 auction also are informative. The AWS-3 auction demonstrated the potential value of and likely demand for broadband spectrum. We anticipate wireless carriers will have ample interest and the financial capability to participate vigorously in the incentive auction.

Member Comment:
We have heard concerns that the broadcaster relocation fund set aside to help compensate those who have to repack their spectrum is not enough to cover the costs of repacking and moving channels. If the incentive auction is successful, many broadcasters will have to be repacked.

Question: What have you heard from broadcasters and wireless folks on this issue?

Answer: The National Association of Broadcasters has raised concerns about the size of the fund that Congress established for the repacking portion of the incentive auction. The wireless industry did not specifically comment on whether the size of the fund is sufficient, but CTIA – The Wireless Association did submit comments to the Commission that the size of the fund should not be treated as a cap on the costs of repacking.

Question: What do you think is the most fair outcome for this situation?

Answer: We have no reason, at this point, to believe that the $1.75 billion broadcaster relocation fund established by Congress will be insufficient to cover the eligible costs and expenses reasonably incurred by broadcasters and MVPDs associated with the relocation of stations after the incentive auction.

Question: If relocation costs exceed available funds by hundreds of millions of dollars, and broadcasters are forced to shoulder that expense, is that a voluntary auction?

Answer: Yes. Although reassignment to a new channel is not voluntary for the stations that choose not to participate in the auction, every eligible station that chooses not to participate will be assigned a channel in its pre-auction band that preserves its coverage area and population served, and those stations will be eligible for reimbursement from the $1.75 billion relocation fund that Congress established for the reasonable costs and expenses associated with relocation.

The Commission has proposed a number of steps intended to minimize relocation costs, including maximizing the number of stations that do not need to change channels and avoiding reassignments of stations with high anticipated relocation costs.

Question: What percentage of broadcasters not selling spectrum in the incentive auction will be forced to re-packaged or move channels?

Answer: We do not have specific percentages regarding how many stations will be affected in the repacking process, because it depends on how many stations choose to participate in the reverse auction itself.

Question: When does the Commission plan to outline how the funds will be allocated?

Answer: In the May 15, 2014, Incentive Auction Report and Order, the Commission established the reimbursement process for the initial allocation of funds to broadcasters and MVPDs based on their estimated costs. Under this process, entities seeking reimbursement are required to provide an estimate of their eligible costs within three months after the Commission releases the final channel reassignments.

The Media Bureau will review the estimates based on a Catalog of Eligible Expenses, and entities will be issued an initial allocation up to 80 percent of their estimated eligible costs (or up to 90 percent for noncommercial stations). Prior to the end of the three-year reimbursement period, entities will provide information regarding their actual and remaining estimated costs and will be issued a final allocation, if appropriate.

Organizational Structure Report

Since FY 2013, the House report has included language directing the FCC to review its organizational structure. This Committee continues to have strong concerns that the Commission is not currently set up to respond quickly to current technology marketplace changes, nor does it necessarily reflect what the Commission actually does today. For instance, within your FY 2016 budget you have continued to ask for more staff and funding under the Wireline Bureau than your Wireless Bureau. I understand that this is for USF support staff, but in your organizational structure this is not clearly reflected. In your last report to Congress, you stated that the Commission uses a number of "task forces" to provide flexibility within and between Bureaus. But perhaps a wholesale reorganization of the FCC's structure would provide better long-term organizational stability. If the Commission was reorganized, bureaus could be combined, collapsed, or created to better reflect the FCC's current priorities.

Question: Do you think the Commission's current structure appropriately reflects the industry you regulate and the activities of the agency you oversee?

Answer: As noted in the report we submitted in July, 2014, the Commission maintains a flexible structure that permits cross-agency task forces and teams to combine resources and benefit from synergies on subjects requiring a multi-disciplined approach. A key example of this approach has been the Incentive Auctions Task Force, where we have used staff from numerous offices and bureaus to deal with repacking, international treaty issues, engineering concepts and legal matters. We also have used this approach successfully with the Technology Transitions Policy Task Force.

Question: Are there any structural changes you would like to see that you think would make the Commission function more effectively and efficiently?

Answer: The Commission currently operates efficiently, but we are constantly re-examining and reviewing our management to realize more costs savings and efficiencies. We have pared down staff and continue to reduce reliance on contractors, focusing most of our efforts on providing adequate tools and resources for highly qualified staff. Our request to fund Information Technology (IT) programs is linked to our desire to exert maximum efficiency and these requested upgrades are essential to supporting the Commission's work in all bureaus.

Importantly, the Commission is attempting to undertake an essential change to upgrade and modernize its Enforcement Bureau field offices, and we look forward to working with this subcommittee to address any concerns related to this matter.

Question: Is the Commission working on the FY 2015 report and can the Committee expect that this report will be submitted on time?

Answer: Yes. The Commission will submit the report on time.

Universal Service Fund (USF) Reform

The Universal Service Fund (USF) has grown 20 percent in the last 6 years to almost $9 billion. Just like the Commission's funding, USF is funded by assessments on companies who pass that cost on to consumers, so continued increases in the program are a very real hit to American pocketbooks.

Question: Does the Commission have plans to reform the fund before new increases to programs are approved?

Answer: We have no plans to increase the size of the Universal Service Fund and are mindful of the burden increased contributions place on consumers. At the same time, we continue to be proactive in identifying and implementing reforms that serve to increase fiscal accountability and remain committed to eliminating waste, fraud, and abuse in all Universal Service Fund programs.

Question: Why does the E-rate program need a $1.5 billion increase?

Answer: We raised the E-rate cap in order to ensure affordable access to high-speed broadband that meets the digital learning needs of schools and robust connectivity needs of libraries. Demand for E-rate funding has consistently been greater than available funding, and schools' and libraries' need for broadband services has only continued to grow.

Before raising the cap, however, we imposed substantial financial discipline on the program. In July 2014, we adopted the first E-rate Modernization Order to refocus the program on schools and libraries need for 21st century broadband services. We phased out support for legacy services such as paging, began a phase down of support for voice services, adopted transparency rules that will assist applicants in making more cost effective purchases, and adopted five year budgets for schools and libraries seeking E-rate support for Wi-Fi services along with a host of other reforms aimed at improving the program.

Once we had made these needed reforms, we determined the cost of ensuring that all schools and libraries, including schools and libraries in rural areas, have sufficient E-rate funding to purchase high-capacity broadband to their buildings and robust Wi-Fi within their buildings and raised the cap to ensure we can meet those needs over time.

Question: How will this increase access to schools and libraries? What are your performance measures?

Answer: The increase in available E-rate funding, combined with the substantial steps we took to modernize the program, will ensure that there is sufficient E-rate funding available so that schools have access to high speed broadband sufficient to support digital learning and that libraries' have robust connectivity.

We will evaluate our progress in meeting that goal by comparing school and library connectivity to widely accepted targets we established in the E-rate Modernization Order. For example, for schools we adopted a short term connectivity target of at least 100 Mbps access per 1,000 users and a longer term target of Gbps access per 1,000.

For libraries, we adopted a recommendation put forth by the American Library Association of one Gbps for libraries serving populations of more than 50,000 people and 100 Mbps for smaller populations. Through an improved E-rate application process, we will collect the data necessary for us to evaluate our progress in reaching those targets.

Question: What about the rest of USF—where do you believe there are areas for savings, or do you think that the fund should just continue to balloon?

Answer: Significant strides have been made to increase fiscal accountability across all Universal Service Fund programs, and we continue to be vigilant in identifying and implementing additional reforms.

For example, with respect to the Lifeline program, the recent controls implemented to detect and eliminate duplicative support have significantly reduced waste, fraud and abuse in the program, thereby reducing the burden on consumers and businesses alike. Specifically, through November 2014, the Commission eliminated approximately 3.48 million duplicate Lifeline subscriptions through targeted audit reviews and the National Lifeline Accountability Database, saving the program approximately $432 million on an annualized basis.

Likewise, for the High-Cost program we established a uniform national framework for accountability to ensure appropriate use of support and to determine whether the program is achieving its goals efficiently and effectively.

These are just some examples of important measures we have implemented to ensure federal universal service funds are spent responsibly, and moving forward we will continue to search for innovative ways to further this objective. Finally, and as noted above, we have no plans to increase the size of the Universal Service Fund.

USF Enforcement

The Commission has recently touted its enforcement activities in response to public and congressional concerns about the Lifeline Program within USF. While no level of fraud is ever acceptable, enforcement actions appearing disproportionate or overly punitive produce disincentives for legitimate providers to remain in the low-income space, leading to fewer benefits and higher costs in the program.

Question: What steps or criteria are used to determine the size of the fines?

Answer: The Commission's forfeiture authority is set forth in Section 503 of the Communications Act of 1934, as amended. This authority provides that any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.

To impose such a penalty, the Commission must issue a "notice of apparent liability" or NAL, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed. The Commission may then issue a forfeiture if it finds, based on the evidence, that the person has violated the Act, or a Commission rule or Order.

The Commission is authorized by law to assess a forfeiture against a telecommunications carrier of up to $160,000 for each violation or each day of a continuing violation, up to a statutory maximum of $1,575,000 for a single act or failure to act. The Commission is further authorized to assess a forfeiture of up to $16,000 for each day of a continuing violation, up to a statutory maximum of $122,500 for a single act or failure to act for other providers.

In determining the appropriate forfeiture amount, the Commission considers the factors enumerated in Section 503(b)(2)(E) of the Act, including "the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require," as well as our forfeiture guidelines, set forth in Section 1.80(b)(8) of the Commission's rules. In addition, the Commission is guided by past precedent in enforcement of the relevant rules when it calculates a proposed forfeiture.

The Commission's most recent Lifeline enforcement actions were NALs proposing forfeiture penalties formulated according to the factors described above, and they afforded recipients the necessary due process rights, including the opportunity to respond with reasons why the proposed forfeiture should not be imposed. We are currently assessing the arguments put forth by the recipients.

In all our enforcement actions, we are guided by the governing statute and rules, as applied to the facts in the investigative record. Because the Lifeline program provides critical communications services to those who are least likely to be able to secure these services themselves, it is essential that we protect against fraud, waste and abuse to ensure the program's future viability. The Commission's enforcement policies always aim to ensure adequate deterrence without harming the legitimate service these providers bring to their subscribers.

Question: What oversight does the Commission apply to its investigations and enforcement actions?

Answer: The Commission is committed to ensuring that there is a focused and effective system for identifying and deterring program abuse. Accordingly we developed a uniform audit program to ensure USAC audits eligible telecommunications carriers (ETCs) in their first year of providing Lifeline service. The requirement for biennial independent audits for larger ETCs, combined with stepped-up enforcement, will strengthen our existing oversight process to reduce improper payments and mitigate the potential for program violations.

The Enforcement Bureau, acting under authority delegated by the Commission's rules, serves as the primary FCC entity responsible for enforcement of potential violations of the Act and the Commission's rules and orders, including investigations related to waste, fraud, and abuse in the Lifeline program.

The Commission exercises comprehensive oversight regarding these investigations and enforcement actions in at least three significant ways. First, any notice proposing or order issuing a forfeiture of more than $100,000 must be referred to the full Commission for an up or down vote. Second, any enforcement action that raises a novel question of law, fact, or policy that cannot be resolved under existing precedents and guidelines must come to the full Commission for consideration. Third, and finally, any target of an enforcement action is entitled to file an application for review to appeal administratively any forfeiture order issued to it by the Enforcement Bureau, and the Commission reviews and votes on the disposition of those applications.

Question: How often does the Commission work with the Department of Justice to ensure investigations are well tailored and not duplicative?

Answer: In every instance where the Enforcement Bureau is aware of an ongoing Department of Justice (DOJ) investigation related to the Universal Service Fund where the Bureau is also investigating, the Bureau makes every effort to coordinate our parallel investigations in a manner that assists our respective investigative mandates. Understanding that the Enforcement Bureau and DOJ have different enforcement obligations and certain restrictions on categories of information that can be shared (e.g., information derived through the grand jury), we have focused on coordination on issues such as joint witness interviews or depositions, shared discovery requests in the civil context, execution of global tolling agreements that toll the statute of limitations on the applicable statutes, rules and regulations, and when possible, global settlement discussions with the targets we have in common for our respective investigations.

Process Reform

Question: What process reforms do you think would make the most difference at the FCC?

Answer: When I first arrived at the Commission, I asked for a report within 60 days on what process reforms should be a priority at the FCC. A staff working group developed a comprehensive report that was released publicly in February of last year. This report identified a long list of reforms that would make the FCC more transparent, effective and efficient. Over the last year, there has been an aggressive effort to address those recommendations through working groups, IT initiatives and other activities. As a result, the Commission has made substantial, significant progress in reforming its internal processes.

One of my highest priorities has been and continues to be to increase the speed and effectiveness of decision-making at the Commission. I know from my personal experience how frustrating it is for stakeholders to wait for longer periods than necessary for resolution of matters at the FCC, and that uncertainty is not conducive to the innovation and investment we seek to encourage.

Many of the process reform efforts have focused in this area, including:

- Improved tracking of our internal processing metrics, and a 37% reduction in backlogged matters over the latter part of 2014;
- Closing of 1500 open dockets;
- Significantly expanded online filing in recent months, so that now the vast majority of licenses and other filings can be submitted electronically, saving time and expense for external and internal stakeholders;
- Working with my fellow Commissioners, we agreed on two mechanisms to speed the processing of routine matters through the Commissioner voting process: a Consent Agenda and a process for accelerated processing of certain Applications for Review; and
- We have moved many major rulemaking proceedings quickly through the process, providing clear guidance to parties on the Commission's rules and policies.

I also placed a high priority on ensuring that our process for interacting with consumers is as user-friendly and efficient as possible. After a great deal of work on the part of staff, including extensive outreach to various consumer constituencies, we launched a new Consumer Help Center Complaint Database. We deployed this new system at one-sixth the traditional cost for such a project, epitomizing many of the agency-wide changes that we hope to implement – inexpensive, off-the-shelf solutions, combined with resiliency, user-friendly options, and the potential to improve our internal data collection methods to increase transparency and inform policy-making decisions.

We also improved many of our processes relating to consumers with disabilities, including the establishment of a process to provide individualized assistance to consumers with telecommunications and advanced communications accessibility problems. Importantly, we have improved our online FOIA data and transparency and we are well on our way to revamping and modernizing the Commission's website.

Question: Are there any other reforms that you think are critical in order for the FCC function more efficiently?

Answer: One of the keys to improving the agency's effectiveness is reforming our IT systems. We still have many paper-based, manual processes at the FCC, resulting in hidden, human-intensive costs that could benefit from automation. Moreover, the costs of continuing business as usual with the FCC's legacy IT systems will undermine the financial stability of the Commission. The FCC, like other agencies, has been caught in an unfortunate cycle of having to maintain outdated and expensive legacy equipment and databases; as of the end of FY 2013, we were trending well above even the federal average of 70 percent of IT expenditures for this purpose.

Our ongoing IT modernization must be a management imperative, both to support process reform efforts as well as to improve cost efficiency. We have tackled this problem head-on and targeted all available resources toward modernizing our IT systems, and as you know our FY2016 budget request reflects this emphasis. We are well on our way toward making the necessary changes to ensure that our FCC.gov website is accessible and user friendly for consumers and stakeholders.

In addition, we are in the process of updating and improving our Electronic Computer Filing System (ECFS) so that it is easier to use, more transparent and more resilient. We urgently need the funding requested in our FY 2016 budget in order to follow up on these and other critical upgrades, which will offer not only cost savings, but increased efficiency and transparency to licensees and others who do business with the FCC.

Also, as I stated during one of the hearings in March, I believe Commissioner O'Rielly has raised some good questions about the long-standing processes of the FCC that have been in place for many years, for both Republican and Democratic administrations. To address some of the specific issues that Commissioner O'Rielly and others have raised, I have asked my colleagues to appoint a representative from their offices to work with my staff on a task force that would

review procedures in similarly-situated agencies, evaluate our procedures in that context, and recommend any changes that would improve our processes.

Video Relay Service

In response to our FY 2015 QFRs, you reported that the Commission had recently taken a number of steps to improve Video Relay Service functional equivalence pursuant to its 2013 VRS Reform Order.

Question: What has the Commission done since last year to improve functional equivalence in the VRS program?

Answer: First, the Commission has moved to establish a VRS access technology reference platform to ensure the interoperability and portability of VRS access technologies. In this regard, VRS providers also have reported making substantial progress in their efforts to arrive at consensus-based video access technology standards.

Second, the Commission recently entered into an arrangement with the MITRE Corporation, a systems engineering company that operates Federally Funded Research and Development Centers, to conduct independent research and make recommendations on technologies and efficiencies that can improve the functional equivalence of telecommunications relay services (TRS). As part of this effort, MITRE will establish a Center of Expertise (COE) consisting of technical experts and other TRS stakeholders, who will be a key contributor to MITRE's recommendations on how to foster innovation and improvements in TRS technologies.

Third, the Commission recently established a Disability Advisory Committee (DAC), the purpose of which, in part, is to make recommendations to the Commission on TRS issues. This body will be used to help educate the Commission about the extent to the various forms of TRS are meeting the needs of people with disabilities, as well as to offer proposals regarding new technologies that can improve TRS for its users.

Finally, the Commission is pursuing an initiative to promote wider availability of direct American Sign Language (ASL) communication, by video, between consumers who use ASL and entities with which such consumers have frequent communications. In June 2014, the Commission's Disability Rights Office launched an ASL Consumer Support Line, which allows ASL users to make video calls directly to the Commission to obtain assistance and information covering a wide breadth of communication issues under the Commission's jurisdiction.

An analysis of calls received reveals that nearly all have resulted in very high consumer satisfaction – likely because of the direct communication these calls enabled. When video communication is direct (as compared to when it is conveyed through relay services), it allows an ASL user to communicate naturally and fluently in his or her native language, ensures the accuracy of information shared, and guarantees privacy, the latter of which is a major concern

when communicating with fiduciary institutions or federal agencies about financial matters, including benefits and pensions.

By hiring or contracting with deaf or hard of hearing individuals fluent in sign language to handle customer service video calls, federal agencies also can further efforts to increase employment opportunities for this population. The Commission has approached other federal agencies and plans to approach some state agencies and major corporations about the benefits of using direct video communication. Such direct ASL communication represents a step beyond functional equivalence, toward full equality of communications.

Question: In your response you said the FCC "recently released a request for proposals for a neutral VRS access technology reference platform to achieve interoperability," what is the status of that RFP?

Answer: We synopsized the VRS access technology reference platform RFP on June 12, 2014, and originally issued it on June 26, 2014. A number of amendments (including questions and answers) were issued prior to receipt of proposals. The last amendments were published on August 14, 2014. We received initial proposals on August 27, 2014. Oral presentations concluded on September 17, 2014. We established a competitive range on January 26, 2015. Further agency action, including source selection, is currently under consideration.

Question: How many bids were submitted? What were the bid prices?

Answer: The agency would not normally make available this source selection information out of concern that such disclosure could compromise the competitive procurement process.

Question: When will the Commission implement the access technology reference platform?

Answer: Implementation will occur in stages over the course of a year following a contract award. Thus, if an award is made by May 1, 2015, the access technology reference platform should be implemented by May 1, 2016.

Member Comment:
In addition the Commission noted it will be establishing a national outreach coordinator for VRS.

Question: What progress has the Commission made on establishing a national outreach coordinator?

Answer: The Commission is working on identifying the appropriate path and specific qualifications for selecting this coordinator. It is envisioned that this Coordinator will integrate current efforts taken by other outreach efforts on Commission programs, such as the National Deaf Blind Equipment Distribution Program, other contracts, and the MITRE effort to ensure we are providing effective and efficient outreach to individuals, businesses and organizations. The purpose of this outreach will be to improve knowledge about and the effectiveness of relay services for its users. In the interim, as part of their contract, MITRE has stood up a Center of

Expertise. This body is comprised of stakeholders within the deaf and hard of hearing communities and representatives from some of the current TRS providers, who have technical expertise related to TRS. This body is empowered to make recommendations to MITRE on priorities for research related to improving TRS services.

Question: What is the Commission's anticipated timeframe for completion?

Answer: Since the Commission has identified the appropriate path for selecting this coordinator, we expect to conclude this initial process for moving ahead with the contract in approximately one month.

Member Comment:
In September of 2014 the D.C. Circuit vacated the speed-of-answer requirement for VRS.

Question: Does the Commission intend to pursue an alternative approach to increasing the speed-of-answer requirement? If so, what is the timetable for those actions?

Answer: The Commission plans to issue a follow-up report and order and further notice of proposed rulemaking in the VRS Reform rulemaking (released in June, 2013). We expect that the speed-of-answer issue will be revisited in that item. We recently directed the newly formed Disability Advisory Committee to develop recommendations in this area.

Question: Has the Commission taken into consideration the added costs associated with a speed of answer requirement?

Answer: Any action the Commission takes in response to the D.C. Circuit decision will consider such costs.

Member Comment:
The 2013 VRS Reform Order stated that "outreach and registration verification components of VRS will not be handled by VRS providers."

Question: What is the status of user registration verification? Are providers still handling registration verification?

Answer: Currently, providers are handling registration verification. The TRS User Registration Database is expected to be ready to begin handling registration verification for VRS by November 2015.

Member Comment:
The Commission's 2013 VRS Reform Order described its declining rate schedule as an "interim" step towards transition to a "market-based compensation methodology."

Question: What is the status of that transition?

Answer: In the 2013 VRS Reform Order, the Commission set forth a four-year rate schedule to improve the predictability of reimbursements and assist providers in planning efficiently for the transition to a new ratemaking approach that would use competitive bidding to establish market-based rates. In the Notice of Proposed Rulemaking (NPRM) portion of that order, the Commission sought comment on proposals to use auctions and other methods to establish such market-based rates. In the next report and order and NPRM in the VRS Reform proceeding, the Commission expects to further address these issues.

Question: When does the Commission plan to implement VRS compensation rates based on competitively established pricing?

Answer: The Commission expects that the timetable for implementing a new compensation rate methodology will be addressed in the next R&O/NPRM in the VRS Reform proceeding.

Member Comment:
The FCC's selection of allowable costs does not include VRS provider costs incurred for equipment.

Question: Why did the Commission decide to exclude equipment costs, such as the phone, from its allowable cost calculation?

Answer: Equipment costs have been excluded from the cost basis for VRS rates since 2006. As the Commission then explained, the expenses for which providers are compensated "must be *the providers'* expenses in making the service available and not the customer's costs of receiving the equipment. Compensable expenses, therefore, do not include expenses for customer premises equipment—whether for the equipment itself, equipment distribution, or installation of the equipment or necessary software." *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Memorandum Opinion and Order, 21 FCC Rcd 8063, 8071, ¶ 17 (2006) (emphasis original).

In this regard, we noted that consumers increasingly access VRS using their own general purpose, off-the-shelf equipment, such as smart phones and tablet computers, rather than dedicated equipment offered by VRS providers. As the court of appeals stated in upholding the Commission's VRS rate determination, this reliance on off-the-shelf equipment "will make provider-funded video equipment even less relevant to the provision of VRS." See *Sorenson Communications, Inc. v. FCC*, 765 F.3d 37 (D.C. Cir. 2014).

Question: If consumers were required to purchase their videophones, would that charge run afoul of the ADA's mandate telecommunications services be functionally equivalent?

Answer: As noted above, consumers are not required to purchase videophones, because they can access VRS using general purpose, off-the-shelf equipment such as smart phones and tablet computers. Moreover, in general, the principle of functional equivalence addresses the quality of the service provided, not its cost.

Question: How many VRS providers have permanent certifications? How many applications for certification are pending?

Answer: Currently, none of the VRS providers has a permanent certification.

- Six providers have conditional certifications, and each of them has an application for certification pending.
- Two additional providers who were previously denied certification have filed new applications for certification, which are pending.
- Two other providers who were previously denied certification filed petitions for reconsideration of the denial of their certifications, which are pending.
- In summary, there are eight pending applications for certification and two pending petitions for reconsideration of denials of applications for certification.

Question: What is the average amount of time between an application filed and determination made?

Answer: For determinations on full certifications, the average time between application filing and determination made is 107 days. For determinations on conditional certifications, the average time between application filing and determination made is 75 days.

Question: How many VRS providers have conditional certification?

Answer: Six providers have conditional certifications.

IP Relay Services

My understanding is that the cut in IP Relay compensation rates forced all but one provider to exit from providing the service, and then the Commission had to raise the rate in order to keep that one provider from exiting the market entirely. In December of 2014 the Commission, through emergency circumstances, made a mid-year adjustment of the per-minute rate of compensation from the TRS Fund for the provision of IP Relay service.

Question: What is the current status of IP Relay Services?

Answer: IP Relay service is a form of Telecommunications Relay Service (TRS) that enables an individual who is deaf, hard of hearing, deaf-blind, or has a speech disability to communicate in text using an Internet Protocol-enabled device via a communications assistant (CA) contacted via the Internet, rather than using a text telephone (TTY) and the public switched telephone network. One IP Relay provider, Sprint Corporation (Sprint), is currently certified by the Commission to provide IP Relay service. Pursuant to the December 2014 IP Relay rate adjustment order, this provider is currently compensated from the Interstate TRS Fund (TRS Fund) at the rate of $1.37 per minute, except that, for monthly minutes in excess of 300,000 during the period from

November 15, 2014, through May 15, 2015, compensation is at the rate of $1.67 per minute. Prior to July 1, 2015, the Commission will be issuing an order setting the IP Relay rate for the period from July 1, 2015 through June 30, 2016.

As with other forms of TRS, IP Relay service can provide a vital communications link for individuals with hearing or speech disabilities in the United States. Despite the Commission's best efforts, for many years this service fell prey to abuse by individuals abusing the anonymity of IP Relay service to hide their identity, as well as the fact that they were calling from a location outside the United States, in order to commit fraud. In addition to draining the TRS Fund, such abuse undermined the value of IP Relay service to legitimate consumers, by encouraging victims of such abuse—businesses and individuals that have been defrauded—to reject all IP Relay calls, including those that may be legitimate.

The Commission has taken numerous measures to eliminate IP Relay misuse, including: (1) establishing a mandatory numbering system requiring IP Relay users to be registered and assigned ten-digit telephone numbers linked to the North American Numbering Plan; (2) requiring IP Relay providers to obtain and verify each user's name and mailing address before issuing a ten-digit telephone number to new or existing users; and (3) requiring IP Relay providers to obtain a statement from each user self-certifying that they have a medically recognized hearing or speech disability necessitating their use of TRS.

The Commission currently has an open proceeding on additional measures that are under consideration to further prevent the misuse of IP Relay service.

Question: Why did the Commission have to order an emergency adjustment?

Answer: The Commission's Consumer and Governmental Affairs Bureau (CGB), pursuant to delegated authority, typically establishes TRS Fund compensation rates before the commencement of the July 1 – June 30 Fund Year, and the rates remain effective throughout that Fund Year. IP Relay rates are determined pursuant to a price cap methodology, which contemplates a three year rate cycle with predictable adjustments of the rate in the second and third years, in accordance with specific adjustment factors. On occasion, however, situational changes occurring during a Fund Year have required CGB to make mid-term adjustments in TRS Fund compensation rates or contribution factors.

In 2013, after the Commission investigated the user registration and verification practices of a number of IP Relay service providers, three providers terminated their provision of IP Relay service. In October 2014, one of the two remaining IP Relay service providers announced that it too was terminating its provision of the service, effective November 15, 2014. The remaining provider, Sprint, filed a request seeking a temporary adjustment of the per-minute compensation rate for IP Relay service, arguing that the existing, averaged compensation rate did not reflect its individual costs and that its costs would increase due to the need to quickly ramp up service to accommodate users migrating from another provider – Purple's service.

On December 29, 2014, CGB adopted a mid-year adjustment to ensure that Sprint is reasonably compensated for providing service to eligible users, including those who migrated from Purple.

This adjustment was deemed necessary to ensure that IP Relay service will continue to be provided without interruption, especially those who rely on IP Relay service as their sole or primary source of functionally equivalent telephone service.

Question: What percentage increase did the Commission agree to in compensation rates in the emergency order?

Answer: In the 2014 TRS Rate Order, CGB, by delegated authority, established a compensation rate of $1.03 per completed conversation minute for IP Relay service for the 2014 to 2015 Fund Year. The $1.37 rate that is applicable to most minutes pursuant to the December 2014 order represents an increase of 32.89 percent over the pre-existing $1.03 rate. The $1.67 per minute rate applicable to monthly minutes in excess of 300,000 for the period from November 15, 2014 through May 15, 2015, represents an increase of 61.99% over the pre-existing $1.03 rate.

Question: How many providers currently provide IP Relay?

Answer: There is one provider, Sprint, currently providing IP Relay service.

Question: How many providers provided IP Relay at the current compensation rate before IP Relay was cut to $1 per minute?

Answer: In the 2012-13 Fund Year, the rate of compensation for IP Relay providers was $1.29 per completed conversation minute. A new three year cycle began in the 2013-14 Fund Year. For that year, CGB established the base rate as $1.01 but later raised it to $1.03. When CGB initially established the base rate for the 2013 to 2014 Fund Year, five providers provided IP Relay service.

Questions for the Record Submitted by Congressman Mark Amodei

Translators

The FCC is in process of an incentive auction for spectrum. The Nevada Association of Broadcasters particularly the Public Broadcasters are concerned about their ability to use translators to reach our rural communities in the event that spectrum is auctioned off to major companies. If the spectrum their transmitters current rely on is reassigned, they will have to move their towers, adjust antennas or go digital and work out sharing agreements. All of those options are costly and the NAB is concerned about the effects this auction will have on their ability to operate.

Question: Is the Commission planning on recovering more spectrum in Western states than in the most congested markets where demand for new wireless spectrum is highest? Why?

Answer: No. The band plan adopted in the Incentive Auction Report and Order does not call for more spectrum to be recovered in rural areas than in urban areas. To the extent possible, we intend to create a contiguous spectrum band across the country. Although in certain border and particularly congested areas we may be able to offer less spectrum than elsewhere, in no case will the Commission offer more spectrum in an area than the amount we offer in most markets nationwide. Rather, the Commission will offer the same amount of spectrum nationwide in all areas where sufficient spectrum is available.

Question: How many translators need to go off the air in Western states to get this additional spectrum even though demand for new spectrum is low there?

Answer: It is unclear exactly how many low power TV (LPTV) and TV translator stations will be affected by the incentive auction until the auction is completed.

Congress did not provide LPTV and TV translators with any additional protections, nor did it permit such stations to participate in the incentive auction. The Commission has worked with the low power industry to help mitigate the potential impact. We adopted rules to allow a station to stay on their existing channel until notified by a new licensee that it is commencing operations causing harmful interference to the primary service in an area where the licensee intends to commence operations (except for stations located in the guard bands, which must cease operations on those frequencies by the end of the post-auction transition period). We also will open a special filing window for displaced stations to request new channels. In addition, we have initiated a proceeding to explore other means of mitigating the potential impact of the incentive auction and repacking process on LPTV and TV translator stations.

Question: Why isn't the FCC focusing on urban and congested markets?

Answer: The Commission is focused on creating a uniform, contiguous band of spectrum for wireless use in the 600 MHz band across the nation. As all parties to the incentive auction rulemaking proceeding have recognized, there are critical advantages to having a generally consistent band plan, including limiting the amount of potential interference between broadcast and wireless services and helping wireless carriers achieve economics of scale when deploying their new networks. As a result, the Commission is in fact looking to recover spectrum in urban as well as rural areas.

Repacking

As a part of the auction process, the FCC has been directed and authorized to repack broadband for use, in this case, for wireless technology as well as broadcast television. It is important the FCC avoids interference between wireless and broadcasters and that broadcasters are appropriately reimbursed for relocation during the repacking process.

Question: Does the FCC's expert report say that in some cases, repacking could take 41 months, assuming a best case scenario?

Answer: The base conclusion of Widelity, Inc., the entity engaged by the Commission to evaluate and provide cost estimates regarding the repacking portion of the incentive auction, is that "[t]he process will be complex, but we feel that it can be achieved." Within the Widelity report, it provided case studies, the last of which presented a "super-complicated" scenario site in San Francisco – the Mount Sutro tower. This specific case study estimated a total time of 41 months to complete modifications, assuming no unforeseen problems. For all other case studies, however, the estimated time for modifications was 14 months or less.

Question: Given all the challenges stations may face in terms of vendor availability, weather, and other issues, will the FCC force broadcasters off their old channels even if they delay is not their fault? If so, does the FCC feel that is appropriate?

Answer: In the May 15, 2014, Incentive Auction Report and Order, the Commission determined that stations required to repack will receive a construction period based on their specific circumstances, but that each station will not have more than 39 months after the end of the incentive auction to file their applications to change their channels and construct their new facilities. The Commission considered the goal of a smooth, non-disruptive transition for broadcasters and viewers, as well as the goal of making repurposed spectrum available for new services rapidly. Stations will have the opportunity to request a one-time, six month extension of construction permits if they experience delays or unexpected challenges. The Commission will work with stations to help mitigate any service disruptions if construction of post-auction facilities is not completed prior to the 39-month deadline for all stations to cease operating on their pre-auction channels.

Question: As I understand it, this auction's going to be highly dependent on software. Is the FCC going to seek stakeholder input on vetting that software?

Answer: Yes. In order to perform interference analyses to calculate television stations' coverage areas and populations served using the methodology described in OET-69, as required by the Spectrum Act, the Commission developed a new computer program called *TVStudy*. That program will be used to identify new channels for stations that are repacked after the auction is over. The Commission has sought – and will continue to seek –public input on the *TVStudy* software and the inputs used with TVStudy, such as more recent population data and more precise terrain data. The *TVStudy* software was first publicly released in February 2013, and we have provided updates since that time to correct minor errors and improve functionality. FCC staff will finalize the software well in advance of the auction.

The Commission is also actively working to develop, refine, and test the software that will be used in the reverse and forward auction to generate bid prices. The public has had an opportunity to comment on the proposed methodologies and data the software will implement. After the Commission staff has finalized and tested the software, we will hold mock auctions to give bidders hands-on experience with using the bidding software before the auction actually begins.

Question: How far along is the FCC in developing the software that you will use to run the auction?

Answer: The *TVStudy* software was released and updated prior to the adoption of the May 15, 2014, Incentive Auction Report and Order. Additional refinements may be made consistent with the Report and Order, but the Commission's Office of Engineering and Technology (OET) was directed to finalize the *TVStudy* software no later than the release of the Auctions Procedures Public Notice that will establish the final auction procedures and provide detailed explanations and instructions for potential auction participants.

The Commission has made tremendous progress in developing software for the forward and reverse auction. Commission staff continues to work to refine and improve the software so it will be ready in advance of the incentive auction.

Question: Is the FCC going to test it publicly and seek feedback? When?

Answer: The *TVStudy* software was released and updated prior to the adoption of the May 15, 2014, Incentive Auction Report and Order, and OET will finalize it no later than the release of the Auctions Procedures Public Notice that will establish the final auction procedures. The Commission also directed its Office of Engineering and Technology to provide an opportunity for public input on baseline coverage area and population served data generated by the software for each station to be protected in the repacking proeess.

The Commission is aetively working to develop, refine, and test the software that will be used in the reverse and forward auction. The public has had an opportunity to comment on the proposed methodologies and data the software will implement. After the Commission staff has finalized and tested the software, we will hold mock auctions to give bidders the opportunity to familiarize themselves with the software before the auction.

Questions for the Record Submitted by Ranking Member José Serrano

Sequestration & Budget

Chairman Wheeler, it's been made clear that the President will not accept a budget that reverses the economic gains we've made by locking in sequestration. The FCC has been flat-funded since FY 14.

Question: Between sequestration and the flat-funding of your agency--what has the effect been to the FCC? And what would happen if the sequester were to be put back in place?

Answer: The Commission's general budget, except for the Office of Inspector General, has been flatly funded since FY 2010. In FY 2013 sequestration redirected $17 million in Section 9 regulatory fees paid by our licensees to the Treasury. Flat funding has undercut basic modernization efforts related to Information Technology, creating a legacy system backwash that has threatened the Commission's core mission.

As a result, we have re-directed all funds to IT system modernization. We can no longer sustain the IT status quo and if we do not receive our funding request this year, we risk backsliding on essential upgrades. Importantly, we are already unable to power-up core Congressional mandates, such as the Public Safety Answering Point or "PSAP" Do Not Call List database, and the Broadband Map.

One of the Commission's most important assets is its highly qualified, expert staff. From FY 2010 – 2015 we have reduced our FTEs by almost 70, leading to a 30 year staffing low at the Commission. The Commission's staff numbers continue to trend even lower, and in FY 2016, the Commission is going to lose 37 overall FTEs, accounting for 45 scheduled reductions with an OIG request for additional staff.

If sequestration occurs again, the Commission would be faced with the likelihood of crippling cuts leading to RIFs, furloughs; powering down IT systems; and general operational reductions leading to increased backlogs for license applications. Sequestering the FCC could potentially lead to serious, adverse economic consequences for the telecommunications sector.

Universal Service Fund

You're requesting a transfer of $25 M from the Universal Service Fund. Please tell us why you are proposing this.

Question: Does OMB support it and has this been done before?

Answer: OMB supports the transfer of $25 million from the Universal Service Fund (USF) to the Commission to pay for USF-specific activities. In that way, USF will pay for itself instead of taking funding from licensees paying section 9 regulatory fees. In FY 2008 Congress appropriated $21.5 million in USF to be transferred to the Commission's Office of Inspector General. In FY 2009 Congress again appropriated $25 million in USF to be transferred to the Commission's Office of Inspector General.

Enforcement Bureau Closures

I understand that you're losing 58 positions nationwide in enforcement and some offices, like the one in San Juan, Puerto Rico, are closing entirely.

Question: What do you expect the impact on enforcement to be? If you were given your full request would you still have to lose these positions?

Answer: We embarked on the field modernization project as part of a broader management effort to examine the Commission's performance and eliminate inefficiencies, modernize

operations, and conserve scarce financial resources. An independent consultant study determined that the Field structure needs significant changes – we have office space that is too large and too expensive, outdated equipment, too many layers of management, and staff spending too much time on work that is not central to the FCC's core responsibilities.

As a result, we have proposed reducing the size of the Enforcement Bureau's field operations by 48 positions, from its current level of 98 positions to 50 positions. Nearly half of these reduced positions are management and administrative positions – we're reducing our managers from 21 to 5, and our administrative support positions from 8 to 3. Although we will have a smaller field presence overall, we do not anticipate any decline in enforcement of our primary mission – protecting the licensed use of radiofrequency spectrum.

We are refocusing our field enforcement on responding to complaints and shifting our routine inspection and compliance work to a "tiger team" of agents in Columbia, Maryland. Indeed, our radiofrequency spectrum enforcement will be enhanced, as we are focusing on having electrical engineers as the resident agents in the field offices, and they will have access to improved technical equipment and training.

Although financial considerations played a role in our modernization decision, our proposal would not be altered if we received our full request. If adopted, our plan would modernize the Field's equipment and skill-sets, use our resources more efficiently, and refocus the Field on the protection of radio-frequency spectrum.

Questions for the Record Submitted by Congressman Mike Quigley

Net Neutrality

I'm a strong supporter of net neutrality because I believe that a fair and open internet is essential to our economy. But the only way to ensure a fair and open internet for all is through reasonable regulation. That's where the FCC comes in.

Americans expect their government to keep commerce flowing freely and efficiently on our nation's highway system. They expeet lawmakers to put in place reasonable traffic laws and police to enforce them.

Question: Shouldn't the same be true for our nation's information super highway?

Answer: Over the past year, I have come to believe that there are three simple keys to our broadband future. Our broadband networks must be fast; our broadband networks must be fair; and our broadband networks must be open.

Utilizing the combined authority of Title II of the Communications Act and Section 706 of the Telecommunications Act, the rules adopted in the Open Internet Order are rooted in long-standing regulatory principles, marketplace experience, and public input received over the last year.

The Order establishes bright-line rules banning paid prioritization, blocking, and throttling of legal content, along with a general conduct rule that can be used to stop new and novel threats to Internet openness. These rules apply to both fixed and mobile broadband Internet access services. This approach provides clear rules of the road for all stakeholders, while ensuring there is a referee in place to keep the Internet open.

The FCC's new rules, grounded in strong Title II authority coupled with appropriate forbearance, carry the support of millions of Americans, and are poised to keep the Internet open and free for consumers and innovators for years to come.

Question: What do the FCC's new net neutrality rules do to encourage competition?

Answer: We believe that establishing and enforcing these clear rules of the road for an open Internet will foster competition among networks that will allow continued innovation and investment as consumer demand for faster broadband increases.

By way of example, wireless voice has been subject to a similar light-touch Title II regime for more than two decades. Between 1993 and 2009 (while voice was the primary driver of mobile revenues), consumer demand for better and more services has grown, with industry revenues increasing by 1300 percent and subscribership by more than 1600 percent, and the industry responded by investing over $270 billion in their networks.

More recently, Verizon Wireless has invested tens of billions of dollars in deploying the latest mobile broadband services in the 700 MHz Band where it is subject to rules very similar to the open Internet rules. Finally, even with a serious consideration of Title II rules, there was record-breaking bidding in the recent AWS-3 auction, as well as significant indications of interest in participating in the upcoming Incentive Auction.

Spectrum Auctions

Mr. Chairman, we can all agree that the broadcast incentive auction is a very important process for spectrum allocation, public safety funding, and debt reduction. However, when Congress authorized the incentive auction, we intended that local television stations be held harmless. Accordingly, Congress allocated $1.75 billion to the Television Broadcaster Relocation Fund to cover the reasonable costs that stations will incur as a result of changing channels, but estimates now put the cost of repacking more than 1300 stations at more than $2.6 billion, leaving a shortfall of over $1 billion from the Relocation Fund.

Mr. Chairman, I'm very concerned that local stations are going to be left footing the bill.

Question: Is the FCC aware of the potential shortfall, and what can it do to mitigate this cost burden while still ensuring a successful auction?

Answer: We have no reason, at this point, to believe that the $1.75 billion broadcaster relocation fund established by Congress will be insufficient to cover the eligible costs and expenses reasonably incurred by broadcasters and MVPDs associated with the relocation of stations after the incentive auction. The Commission has proposed a number of steps intended to minimize relocation costs, including maximizing the number of stations that do not need to move and avoiding reassignments of stations with high anticipated relocation costs.

Question: Are there actions that Congress should consider?

Answer: The Commission is implementing the intent of Congress as enacted by the Middle Class Tax Relief and Job Creation Act. We will continue to work with Congress as the Incentive Auction process moves forward.

Positive Train Control Implementation

I have some serious concerns with the timeline and processes currently in place for the implementation of positive train control, especially for the commuter railroads like METRA in my Chicago district.

Question: Can you give me an update on the progress the FCC has made on this issue since the last time you were before the subcommittee?

Answer: The Commission has made great progress in facilitating its role in PTC area and I am pleased to report that we are continuing to support this legislative mandate. There are two major components to PTC deployment that involve the FCC: (1) completing the historic preservation and environmental review required by statute, and (2) satisfying spectrum needs. I outline below our work in both of these areas.

Historic Preservation and Environmental Review

In May 2014, the Advisory Council on Historic Preservation approved a "Program Comment" to streamline the FCC's historic preservation review processes for PTC poles. Since then, the Commission has had the capacity to receive submissions for 1,400 poles every two weeks. As of the end of March 2015, the seven Class 1 freight railroads had submitted applications for fewer than 7,150 poles, which is less than 25 percent of the Commission's total aggregate capacity of more than 31,000.

With respect to environmental review under National Environmental Policy Act (NEPA), Commission staff work directly with the railroads to ensure expeditious review and processing. Based on our experience to date, the vast majority of PTC poles fall within categorical exclusions under which they are not subject to the Commission's NEPA submission and review process.

Spectrum Acquisition

FCC staff has been working directly with the freight and passenger railroads (including commuter railroads) to facilitate spectrum acquisition through secondary markets transactions and to provide for flexible use of spectrum for PTC deployment through technical rule waivers and other regulatory relief. Most recently, on March 13, 2015 the Wireless Telecommunications Bureau eased power level and tower height restrictions to facilitate PTC deployment, particularly in areas with congested spectrum.

Also in March 2015, the Commission renewed a Chicago-area license held by PTC-220 (a consortium of the nation's seven Class I freight rails). Using that and other spectrum licenses, PTC-220 is prepared to meet the spectrum needs of all 11 rails, including METRA, in the nation's busiest rail market. METRA is in active spectrum lease negotiations with PTC-220. In addition, on February 27, 2015, the Wireless Telecommunications Bureau approved the assignment and lease of spectrum to Amtrak to enable its PTC deployment along the Northeast corridor.

We anticipate that there will be sufficient spectrum available for commuter railroads' use, particularly through secondary markets arrangements with PTC 220, which holds nationwide spectrum for PTC use, and the Commission will continue to facilitate spectrum transactions with those railroads that do not yet have enough to meet their PTC needs.

Television Broadcaster Relocation Fund

Mr. Chairman, we can all agree that the broadcast incentive auction is a very important process for spectrum allocation, public safety funding, and debt reduction. However, when Congress authorized the incentive auction, we intended that local television stations who continue to serve their viewers and communities be held harmless. Accordingly, Congress allocated $1.75 billion to the Television Broadcaster Relocation Fund to cover the reasonable costs that stations will incur as a result of changing channels. These are not stations who are selling in the auction; these are stations that are serving their communities today, and intend to do the same once the auction is over.

Question: If the incentive auction clears 84 megahertz of spectrum, will the Relocation Fund be sufficient to prevent broadcasters from being forced to go out of pocket?

Answer: We have no reason, at this point, to believe that the $1.75 billion broadcaster relocation fund established by Congress will be insufficient to cover the eligible costs and expenses reasonably incurred by broadcasters and MVPDs associated with the relocation of stations after the incentive auction.

Question: Is there anything the FCC can do to either reimburse these additional costs, or limit the television station repacking to $1.75 billion?

Answer: The Commission has proposed a number of steps intended to minimize relocation costs, including maximizing the number of stations that do not need to move and avoiding reassignments of stations with high anticipated relocation costs.

Member Comment:
Some have estimated, using the FCC's own expert report as a basis, that repacking more than 1300 stations to clear 84 megahertz of spectrum may cost more than $2.6 billion, leaving a shortfall of over $1 billion from the Relocation Fund or more than $600,000 per station. This auction was intended to be voluntary – but if stations are forced to cover their repacking costs, that doesn't seem very "voluntary".

Question: Mr. Chairman, is the FCC aware of the potential shortfall and what can it do to mitigate this cost burden while still ensuring a successful auction?

Answer: We have no reason, at this point, to believe that the $1.75 billion broadcaster relocation fund established by Congress will be insufficient to cover the eligible costs and expenses reasonably incurred by broadcasters and MVPDs associated with the relocation of stations after the incentive auction. The Commission has proposed a number of steps intended to minimize relocation costs, including maximizing the number of stations that do not need to move and avoiding reassignments of stations with high anticipated relocation costs.

Question: Are there actions that Congress should consider to ensure that broadcast participation is truly voluntary?

Answer: The statute ensures voluntary broadcaster participation in the incentive auction. Although reassignment to a new channel is not voluntary for the stations that choose not to participate in the auction, every eligible station that chooses not to participate will be assigned a channel in its pre-auction band that preserves its coverage area and population served, and those stations that are reassigned to new channels will be eligible for reimbursement from the $1.75 billion relocation fund.

Member Comment:
Mr. Chairman, thank you for your work towards a successful incentive auction – I think that's a goal that is bipartisan and that we can all agree upon. When it comes to broadcasters being treated fairly though, the expert report the FCC commissioned found that three years would be insufficient for some broadcasters to complete their relocation. Specifically, that report suggests that in a best case scenario, without taking into account delays due to weather, mishaps, competing vendor demands, or unforeseen events, it could take *41 months* or more for some broadcasters to move to new channels.

Question: Mr. Chairman, is the FCC aware of the potential shortfall and what can it do to mitigate this cost burden while still ensuring a successful auction?

Answer: The base conclusion of Widelity, Inc., the entity engaged by the Commission to evaluate and provide cost estimates regarding the repacking portion of the incentive auction, is that "[t]he process will be complex, but we feel that it can be achieved." Within Widelity's

report, they provided case studies, the last of which presented a "super-complicated" scenario in San Francisco – the Mount Sutro tower. This specific case study estimated a total time of 41 months to complete modifications, assuming no unforeseen problems. However, for all other case studies, the estimated time for modifications was 14 months or less.

In the May 15, 2014, Incentive Auction Report and Order, the Commission determined that stations that are required to repack will be provided a construction period based on their specific circumstances, but that each station will not have more than 39 months after the end of the incentive auction to file their applications to change their channels and construct their new facilities. The Commission considered the goal of a smooth, non-disruptive transition for broadcasters and viewers, as well as the goal of making repurposed spectrum rapidly available for new services.

Stations will have the opportunity to request a one-time, six month extension of construction permits if they experience delays or unexpected challenges. The Commission will work with stations to help mitigate any service disruptions if construction of post-auction facilities is not completed prior to the 39-month deadline for all stations to cease operating on their pre-auction channels.

Questions for the Record Submitted by Congressman Sanford Bishop

Spectrum License User Fee

You are requesting to set user fees on unauctioned spectrum licenses as a spectrum management tool. In order to determine the fee levels that you will impose, your budget request states that "fees would be phased in over time to determine the appropriate application and level for fees."

Question: What process will you use to determine the "appropriate application and level" and how will you incorporate feedback from the companies bearing these fees to ensure they aren't set at a level that discourages infrastructure investment?

Answer: The President's budget proposes the Spectrum User Fee. The Commission is not considering this proposal in any active proceeding.

Repurposing 1675-1680 Megahertz Spectrum

You seek to repurpose spectrum frequencies between 1675-1680 megahertz for wireless broadband use. Currently, the spectrum is being used for weather balloons (radiosondes).

Question: If this proposal is enacted, what would be the effect on existing weather balloons and how much will it cost the federal government, as well as private entities, to adjust their equipment to work on a new allocated frequency.

Answer: The President's budget contains a legislative proposal to repurpose the 1675-1680 MHz band using an auction or fee authority. The Commission is not considering this proposal in any active proceeding.

Question: By what methods do you determine which spectrum will be repurposed and how do you ensure that spectrum repurposing doesn't negatively affect industries reliant on existing spectrum allocations?

Answer: Whenever the Commission reallocates a particular spectrum band, it does so through an open and transparent notice and comment rulemaking process allowing for input from all relevant stakeholders, including NTIA, which represents federal spectrum users. Final rulemakings include a comprehensive analysis of public interest standards.

Administrative Use of the Universal Service Fund

For the first time, the FCC is requesting funds from the Universal Service Fund (USF) to pay for the Commission's oversight costs of the USF, at the amount of $25 million.

Question: If you are granted authority to transfer these funds, what do plan on doing with the funds that would have otherwise been used to oversee the USF? In other words, what do you plan on doing with the cost savings associated with the transfer?

Answer: Given the special circumstances of the large move/restacking effort included in the FCC's FY 2016 budget request, the Commission determined that FY 2016 would be the optimal time to properly align USF expenditures with cost outlays. Accordingly, the FY 2016 budget proposes shifting USF funds to cover our salary and compensation expenditures directly related to USF activities.

This realignment will reduce by $25 million the Section 9 regulatory fee burden on licensees with no USF relationship. USF will pay these costs instead of forcing entities such as small, local broadcasters and marine licensees to pay for USF FTE activities at the Commission. Note that without this realignment of USF costs the Commission's FY 2016 budget request would have been $413 million instead of $388 million. There will be no cost savings associated with the transfer because this is a realignment of funds, as mentioned above.

Member Comment:
In your budget request, you state that "it is expected that these additional investments will return substantially more than they cost in the form of reduced and recovered improper payments."

Question: What do you view, in your eyes, was the problem with how the USF was previously overseen and how do you think these additional funds allocated to the FCC will correct this?

Answer: The Commission has continually worked to oversee USF in a cost effective and efficient manner in an effort to reduce waste, fraud and abuse. With continued reform efforts of the USF programs and stronger enforcement of rules, the Commission will improve its oversight of the USF programs. The transfer of funds from USF to the FCC is a realignment of funds as mentioned above and it is not an increase in the FCC budget to oversee the USF programs.

Preempting State Laws Restricting Community Broadband

It has almost become cliche to talk about the positive impacts the Internet has had facilitating education, work, and keeping in touch with loved ones, particularly in rural areas like my district. However, to realize the benefits of some higher bandwidth applications, like tele-health, faster speeds are needed. The Commission recognized this in January when it changed the definition of broadband to 25 megabits/second and 4 megabits/second for download and upload speeds, respectively, as well as by increasing the bandwidth requirement for the receipt of Connect America funding. Unfortunately, many rural Georgians are stuck with speeds below this threshold.

Question: Can you discuss the efforts that the FCC has undertaken, as well as any future plans you may have, to help close the gap between rural and urban America and ensure that this large segment of our population isn't locked out of education and business opportunities?

Answer: Recently the Commission has implemented significant reforms to the federal universal service high-cost and E-rate programs. These reforms specifically target the digital divide between rural and urban America. The high-cost reforms, in particular, were designed to ensure that consumers in rural and high-cost areas have access to modern communications networks capable of providing voice and broadband services at rates that are reasonably comparable to those in urban areas.

Last year, we implemented significant reforms to modernize and streamline the schools and libraries universal service support program, known as the E-rate program, by working to ensure that all schools and libraries have affordable access to high-speed broadband sufficient to support digital learning connectivity and funding for robust Wi-Fi networks. We adjusted the annual E-rate spending cap to appropriately fund this objective and addressed the connectivity gap facing many schools and libraries, particularly in rural areas, by maximizing the options available for gaining access to affordable high-speed connectivity.

With respect to future plans, the Commission this year intends to move forward with additional reforms to the high-cost program. In particular, we expect to move forward with the Connect America Fund Phase II in the near future. My fellow Commissioners and I have also expressed our commitment to Senator Thune that we will reform the portion of the high-cost program that provides support to "rate-of-return" carriers by the end of the year. We have engaged

stakeholders on this issue in an effort to develop a plan that meets our shared goal of closing the rural digital divide.

Students and consumers everywhere – both urban and rural – will benefit from these significant reforms and we will continue to search for new, innovative ways to proactively address the digital divide through the Universal Service Fund programs.

Member Comment:
Last month the Commission adopted a Memorandum Order and Opinion that found provisions of North Carolina and Tennessee laws to be barriers to broadband deployment, investment, and competition and therefore preempted those state laws. Large parts of my district in Southwest Georgia are rural and are difficult for broadband providers to provide adequate coverage and speeds, and it is, therefore, a prime candidate for the deployment of municipal broadband. In fact, many such municipal broadband companies already exist in my district.

Question: Does the Commission have any plans on expanding the Order and Opinion to other jurisdictions than the two specifically named and what are you doing to ensure that it doesn't preclude private broadband companies from investing in rural markets?

Answer: Preemption of state laws is something the Commission does not take lightly. In this area, the Commission responds to specific petitions regarding individual state laws. There are no petitions seeking preemption of state laws that restrict municipal broadband before the Commission at present, but if any are filed, such as one raising questions about Georgia's laws, they would be considered by the Commission and decided on their merits, looking at the specific issues and circumstances they raise.

In the Commission's decision to preempt certain challenged provisions of Tennessee and North Carolina laws restricting municipal provision of broadband service, we concluded that preemption removed barriers to overall broadband infrastructure investment and promoted overall competition in the telecommunications market in those two states, consistent with our Congressional directive under Section 706 of the Telecommunications Act of 1996. The Commission also found that the experience of the two petitioners — Wilson, North Carolina, and the Electric Power Board of Chattanooga, Tennessee — suggested "that the threat of entry or actual entry of a municipal provider spurs positive responses by the incumbent broadband provider," thereby leading to a "virtuous cycle of competition."

Minority Participation in Spectrum Auctions

According to your budget request, the FCC has conducted 85 spectrum auctions and has granted 39,780 licenses for a total of over $53 billion between FY 1994 and FY 2014. I am concerned that small businesses and, in particular, minority-owned businesses may not have the same access to take advantage of these high-capital public auctions to the extent that large corporations do.

Question: Do you have a plan to encourage the participation of minority-owned business? What is this plan?

Answer: I remain committed to providing small businesses, including minority-owned businesses, a meaningful opportunity to participate in our auctions while also protecting the integrity of the FCC's auction program. The Commission's competitive bidding rules must achieve the balance of objectives Congress established and reflect today's wireless marketplace realities. The Commission initiated a proceeding in October 2014 to revisit our competitive bidding rules, including rules designed to allow small businesses an opportunity to participate in spectrum auctions, prior to next year's historic incentive auction.

The Notice of Proposed Rulemaking (NPRM) recognizes that the wireless industry has changed significantly since the Commission last comprehensively updated its competitive bidding rules in 2006. The NPRM proposals specifically address the challenges new entrants face today, including raising capital to compete in an auction; finding a revenue stream to support network construction and business expansion; and developing a business model based on market needs.

The NPRM also recognizes the challenge faced by small businesses entering the wireless marketplace, in which today more than 95 percent of existing customers are served by the top four provides, which combined serve approximately 300 million consumers. The Commission extended the Competitive Bidding NPRM comment deadline three times so that interested parties could take into account lessons learned from the AWS-3 auction as they advocate for maintaining or modifying rules that will apply in future auctions, including the incentive auction.

Initial comments were due on February 20, 2015, and replies were due on March 6, 2015. In addition, to further inform our decision making, the Commission recently adopted a Public Notice seeking additional comment on proposals raised by commenters in the rulemaking record.

Question: What information do you have on the participation of minority-owned businesses in past auctions and what are you doing with this information when planning future auctions?

Answer: In landmark 1993 legislation, Congress instructed the Commission to create a competitive bidding system that promotes economic opportunity and competition by disseminating license among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.

Since that authority was granted, businesses qualifying for bidding credits have successfully participated in numerous auctions. Based on Commission data, in Auction 66 (AWS-1), two businesses owned by women each won a license, and 40 rural telephone companies won 120 licenses. In addition, in Auction 73 (700 MHz), four businesses owned by minorities won seven licenses, and 31 rural telephone companies won 60 licenses.

We are keenly aware that we must look to lessons from previous auctions in order to improve opportunities for applicants. Public input, in addition to ongoing staff review of bidding data from the AWS-3 auction, will inform any changes to our current competitive bidding rules that I may present to my fellow commissioners in the coming months before the incentive auction commences.

SGRITA Activities

As you know, six counties in my district participate receive E-Rate Support funding under the FCC's Schools and Libraries program, which supports our ongoing efforts to provide broadband service throughout our entire district, but particularly, within our persistent poverty counties.

This program has been extremely beneficial to our efforts and I'd like to ask you to briefly provide the Subcommittee an update on the program and your activities nation-wide, particularly in terms of supporting the expansion of access to broadband, but I'd also like to invite you down to my district to see firsthand how these funds are being put to use and the tremendous amount of unmet need which still exist.

As you know, providing broadband access to those remaining rural counties without broadband will ultimately be the most costly portion of service to provide, primarily because all the low hanging fruit (in more urban areas) has been taken.

Question: How can we ensure that the Universal Service Fund and other resources be further dedicated to finishing our broadband infrastructure in our rural areas?

Answer: The Commission will be increasing investment in rural areas by over $500 million annually in the coming year with the implementation of Phase II of the Connect America Fund. Last December, the Commission unanimously chose to focus the offer of Phase II support on those areas lacking even rudimentary Internet access, and it concluded that extremely high-cost census blocks that are ineligible for model-based support will be eligible in the Connect America Phase II competitive bidding process. Already, in its rural broadband experiments, the Commission solicited and received bids to serve some of those extremely high-cost locations. Through these efforts, and ongoing efforts to reform the support mechanisms available for smaller rate-of-return carriers, the Commission will be taking significant steps to create a climate for investment in broadband infrastructure in rural America.

Financial Services and General Government Subcommittee Hearing on Federal Communications Commission for Commissioner Ajit Pai

Questions for the Record Submitted by Chairman Ander Crenshaw

Net Neutrality / "Open Internet"

I'd like to hear from you about what your key concerns are with the recent net neutrality decision.

Question: How do you think this rulemaking will specifically hurt consumers?

Answer:

When I talk to people outside the Beltway, what they want—what they need—is more broadband deployment and more competition. The recent Title II decision takes us in precisely the opposite direction. It will result in less competition and slower broadband for all. What have our nation's scrappiest Internet service providers told us? What did we hear from 142 wireless ISPs who've deployed broadband service using unlicensed spectrum without a dime from the taxpayer? What did we hear from 24 of the nation's smallest ISPs, each with fewer than 1,000 residential customers? What did we hear from 43 municipal broadband providers, including Cedar Falls Utilities? What did we hear from the National Black Chamber of Commerce, the National Gay & Lesbian Chamber of Commerce, the U.S. Hispanic Chamber of Commerce, and the U.S. Pan Asian American Chamber of Commerce? That regulating the Internet under Title II is sure to reduce competition and drive smaller competitors out of the business. Monopoly rules from a monopoly era will move us toward a monopoly.

The FCC's Title II decision is a raw deal for consumers. Broadband bills will go up—the plan explicitly opens the door to billions of dollars in new taxes on broadband. One estimate puts the total at $11 billion a year—with $4 billion a year on top of that if the Internet Tax Freedom Act isn't extended (or better yet made permanent). And broadband speeds will be slower. The higher costs and regulatory uncertainty of utility-style regulation have stymied Europe's broadband deployment, and America will follow suit. Just look at the data. Today, 82% of Americans, and 48% of rural Americans, have access to 25 Mbps broadband speeds. In Europe, those figures are only 54% and 12% respectively. In the U.S., average mobile broadband speeds are 30% faster than they are in Western Europe. And broadband providers in the U.S. are investing more than twice as much per person and per household as their European counterparts. The European model has not succeeded, as even leading European regulators and legislators concede. Indeed, neither big nor small providers will bring rural and low-income Americans online if it's economically irrational for them to do so. In short, Title II's utility-style regulation will simply broaden the digital divide.

Question: What other work would you have prioritized instead of net neutrality? Do you believe this was the best use of Commission resources?

Answer:

I do not believe that all of the time and money spent on net neutrality was the best use of Commission resources. As I have said many times, net neutrality is a solution that won't work to a problem that doesn't exist. There are many other areas where the Commission should have focused its attention. For example, I would have prioritized our work on universal service reform over net neutrality. Instead of concentrating on regulating the Internet, we should be focusing on expanding digital opportunities for those in rural America. Had we devoted the amount of time spent on net neutrality on

creating a Connect America Fund (CAF) for areas served by rate-of-return carriers and/or establishing a Remote Areas Fund, we could have made substantial progress towards achieving both of those important goals. Other areas which would have benefited from our attention involve the IP Transition, CAF reforms for price-cap carriers, wireless infrastructure, and 5 GHz unlicensed spectrum.

Question: Can you tell us any concerns you have specifically about classifying wireless internet under Title II?

Answer:

My primary concern is that Title II's application to mobile broadband is both unnecessary and counterproductive. The wireless marketplace in the United States is the envy of the world. Over the past decade in particular, the private sector has spent hundreds of billions of dollars building and upgrading wireless networks, buying wireless spectrum, and innovating to keep up with rapidly increasing mobile data traffic. As a result, American consumers are benefiting from intense price competition, faster broadband speeds, and ever-more advanced devices. All of this is due in significant part to the FCC's decision long ago not to regulate mobile data under the clunky, slow-moving monopoly regulations of Title II. Especially when it comes to wireless Internet, there is simply no problem for the FCC to solve.

Indeed, the FCC's decision to apply Title II to wireless Internet services will create a problem. This decision produces inherent uncertainty, as everyone agrees there is no precedent for imposing Title II regulations on mobile data services. The myriad regulatory questions will bog down the pace of wireless innovation. What kinds of network management are "just and reasonable"? What approach will the FCC take to wireless interconnection? Under the wide-ranging, inchoate "Internet conduct" standard, which wireless business models and pricing plans will be outlawed? Companies will have to secure FCC permission before taking pro-competitive risks. In short, Title II undermines the success story that is our bipartisan, light-touch regulatory approach to the wireless Internet.

Budget

I know the budget is put together by the Chairman's office, but I would like to know:

Question: Do you think the $25 million transfer from USF would be the best way for the Commission to provide oversight of the Universal Service Fund?

Answer:

I do not favor transferring $25 million from the Universal Service Fund to the Commission to fund the FCC's work on universal service issues. Put simply, this is a stealth tax increase on the American people. The money that goes into the USF comes out of the pockets of consumers when they pay their telephone bills each month. And this proposal would require those consumers to pay an additional $25 million into the Fund.

Question: Where do you think the Commission could cut spending or increase spending in order to improve the overall functionality of the FCC?

Answer:

I believe that the FCC is spending a substantial amount of money on activities that are wasteful and don't serve the public interest. For example, in addition to all of the money spent on regulating the Internet, the Commission expended considerable resources preempting state laws regulating municipal broadband projects. In my view, all of the time and money spent on this topic was wasteful because the FCC lacks the legal authority to preempt such state laws. Additionally, the Commission has devoted

many resources to collecting detailed special access data from every single provider in the country. In my view, it would have been much more efficient to collect such data using a representative sample.

In terms of improving the overall functionality of the FCC, I believe that the Commission should prioritize making improvements to our information technology systems. I agree with many who have argued that our IT systems are outdated and inefficient.

Spectrum Auctions

I would like to hear your thoughts on how you believe the incentive auction development is progressing.

Question: Is there anything you are concerned about? Please explain.

Answer:

Yes, I have several concerns about the direction of the incentive auction proceeding. Most importantly, I believe that the Commission is making the incentive auction much more complicated than it needs to be. For example, in the forward auction, much of the complexity comes from the Commission's efforts to restrict participation. These efforts, in my view, are misguided and will only serve to depress auction revenues. Much of the complexity also comes from the Commission's apparent desire to have a highly variable band plan. The Commission developed its design for the forward auction on the premise that wireless carriers would be bidding for generic and interchangeable blocks of spectrum. This, however, no longer appears to be the case. Now the Commission is contemplating having carriers bid on two different types of spectrum: blocks that are less than 15% impaired and blocks that are between 15% and 50% impaired. Our goal should be to minimize the variability of our band plan so that we can minimize the impairments that are placed on auctioned spectrum. That would both encourage participation in the forward auction and reduce the auction's complexity.

Question: Are you pleased with the Commission's outreach to industry? Do you have any concerns?

Answer:

I believe that the Commission's outreach to industry has improved substantially over the course of the past year. For example, the information packet prepared for broadcasters that included estimates of the high-end compensation that could be paid for spectrum rights in each market has been very helpful in spurring broadcaster interest in the auction. I am concerned, however, that the Commission is not doing an adequate job of incorporating the feedback we are receiving from industry into our decision-making process. To give just one example, there is widespread opposition to our dynamic reserve price proposal among both broadcasters and wireless carriers. Unfortunately, the Commission to date has continued to stick by this problematic idea that will deter broadcaster participation and increase the variability of the band plan.

Universal Service Fund (USF) Reform

The Universal Service Fund (USF) has grown 20 percent in the last 6 years to almost $9 billion. Just like the Commission's funding, USF is funded by assessments on companies who pass that cost on to consumers, so this increase is a very real hit to American pocketbooks and if consumers are paying for this, I think that the program should be held accountable for results.

Question: Can you explain to the Committee what is at the heart of the problems with USF?

Answer:

I agree that USF spending has grown significantly over the past few years—the Lifeline program, for example, has doubled in size since 2008. The problem is that there is no statutory cap on the size of the Fund, and so the Commission has no legal obligation to keep growth in check. Notably, the USF contribution rate has already jumped over 83%, from 9.5% to 17.4%, under this Administration.

Question: Please explain your concerns regarding the recent increase of $1.5 billion to the E-Rate program.

Answer:

Last summer, the FCC adopted a two-year Wi-Fi pilot program amidst concerns that it was spending money the E-Rate program did not have. As I noted in my statement then, "several outside parties have already told me they've been promised a post-election increase in the E-Rate budget. They even told me the specific month it was coming: December." In December, after the midterm elections, the FCC decided to spend an additional $1.5 billion each year to pay for those promises. That's an unnecessary 17.2% telephone tax increase for American families that are still struggling to make ends meet in this lackluster economy.

In other words, rather than engaging in real reform of the E-Rate program—reform that would have simplified and streamlined the program, empowered local schools to make their own decisions, and put small, rural schools on an equal footing with schools in the nation's largest cities—the FCC decided to just pour more money into a broken system. That's not what American students and parents wanted or deserved.

Question: How can the Commission do a better job of keeping USF funding in check?

Answer:

The single most important thing the Commission could do to keep USF spending in check would be to cap the overall size of the Fund at its current level.

Question: What wholesale changes would you implement in order to provide better oversight and functionality within USF?

Answer:

The complexity of the Universal Service Fund's four programs, each of which consists of two or more funding mechanisms, leaves ample room for arbitrage and abuse. Streamlining and simplifying the Fund as a whole would close opportunities for abuse and allow the Commission to track how effectively it is spending the public's money. For example, streamlining the E-Rate program through a student-centered approach would minimize the incentives for abuse, simplify oversight, and stretch our federal dollars further.

Question: What would you like to see the Commission prioritize with regard to USF in the coming year and why?

Answer:

The Commission should prioritize continuing reforms of its high-cost program, such as implementing the second phase of the Connect America Fund for areas served by price-cap carriers and adopting a mechanism to support stand-alone broadband in rate-of-return areas.

Question: How can the Commission reform USF in order to better expand broadband connectivity to all Americans?

Answer:
Reforming the high-cost program for rate-of-return carriers to support stand-alone broadband would allow such carriers to better expand broadband to all Americans. Moving forward with the second phase of the Connect America Fund promptly would similarly increase broadband connectivity in price-cap areas.

Process Reform

Question: What process reforms do you think would make the most difference at the FCC?

Answer:
The most helpful process reform, in my view, would be for the Commission to conduct its business in a more transparent manner. For example, I agree with Commissioner O'Rielly's suggestion that the FCC should publicly release drafts of items no later than three weeks before our monthly meetings. I also believe that reforms must be instituted to ensure that important decisions are made by all Commissioners, rather than staff acting at the direction of the Chairman's Office.

Question: Are there any other reforms that you think are critical in order for the FCC function more efficiently?

Answer:
We should also create an FCC Dashboard on the Commission's website to track the FCC's performance on key metrics. In my view, more accountability and transparency would encourage the Commission to become more efficient and act more quickly. I also believe that we need to establish more deadlines. Too often, matters languish at the Commission for years. I have therefore suggested establishing specific deadlines for ruling on applications for review, petitions for reconsideration, and waiver requests. It shouldn't matter whether an issue involves a Fortune 500 company or a single consumer; everyone's concerns should be addressed promptly by the FCC.

Video Relay Service

Question: What has the Commission done since 2013 to improve functional equivalence in the VRS program?

Answer:
I am not aware of any specific actions of the Commission since 2013 to improve the functional equivalence in the VRS program.

The 2013 VRS Reform Order described its declining rate schedule as an "interim" step towards transition to a "market-based compensation methodology."

Question: What is the status of that transition?

Answer:
As a Commissioner, I do not set the agenda and do not have a status update, but the Chairman should be able to provide one.

Question: When does the Commission plan to implement VRS compensation rates based on competitively established pricing?

Answer:
As a Commissioner, I do not set the agenda and do not have a status update, but the Chairman should be able to provide one.

The FCC released a request for proposals for a neutral VRS access technology reference platform to achieve interoperability.

Question: What is the status of that RFP?

Answer:
As a Commissioner, I do not set the agenda and do not have a status update, but the Chairman should be able to provide one.

Question: When will the Commission implement the access technology reference platform?

Answer:
As a Commissioner, I do not set the agenda and do not have a status update, but the Chairman should be able to provide one.

Questions for the Record Submitted by Congressman Scott Rigell

Spectrum Auction

Commissioner Pai, in your dissent to the Commission's June incentive auction "framework" order, you argued that the Commission should have treated the $1.75 billion relocation fund as a budget for repacking. You questioned the auction could truly be called voluntary if broadcasters that stay on the air after the auction cannot recover their relocation costs.

Question: If relocation costs exceed available funds by hundreds of millions of dollars, and broadcasters are forced to shoulder that expense, is that a voluntary auction?

Answer:
Forcing broadcasters to pay some of their relocation costs out of their own pockets places financial pressure for broadcasters to participate in the incentive auction and makes the auction less voluntary.

Question: Should the FCC have done more to protect those stations that elect not to participate, or that do participate but do not have their bids accepted?

Answer:
Yes, the FCC should have treated the $1.75 billion relocation fund as a budget for repacking so that broadcasters wouldn't have to pay repacking costs out of their own pockets. I also believe that the FCC should have taken additional steps to protect the coverage area and population served of broadcasters after the auction by hewing more closely to the methodology described in OET Bulletin 69, the methodology Congress directed the Commission to use in determining how to preserve broadcasters' coverage areas and population served.

Question: If broadcasters are critical to the success of the auction, shouldn't we be assuring them we will treat them fairly?

Answer:
I agree that broadcasters are critical to the success of the incentive auction and that the FCC should treat broadcasters fairly in the incentive auction proceeding.

Questions for the Record Submitted by Congressman Sanford Bishop

Spectrum License User Fee

You are requesting to set user fees on unauctioned spectrum licenses as a spectrum management tool. In order to determine the fee levels that you will impose, your budget request states that "fees would be phased in over time to determine the appropriate application and level for fees."

Question: What process will you use to determine the "appropriate application and level" and how will you incorporate feedback from the companies bearing these fees to ensure they aren't set at a level that discourages infrastructure investment?

Answer:
The discussion about spectrum license user fees comes from the budget proposed by Chairman Wheeler. I was not asked to participate in the development of the budget request. I do not know what process the Chairman envisions using.

Repurposing 1675–1680 Megahertz Spectrum

You seek to repurpose spectrum frequencies between 1675–1680 Megahertz for wireless broadband use. Currently, the spectrum is being used for weather balloons (radiosondes).

Question: If this proposal is enacted, what would be the effect on existing weather balloons and how much will it cost the federal government, as well as private entities, to adjust their equipment to work on a new allocated frequency.

Answer:
The discussion about spectrum between 1675–1680 MHz comes from the budget proposed by Chairman Wheeler. I was not asked to participate in the development of the budget request. I am not familiar with the specifics of any such proposal.

Question: By what methods do you determine which spectrum will be repurposed and how do you ensure that spectrum repurposing doesn't negatively affect industries reliant on existing spectrum allocations?

Answer:
The discussion about spectrum between 1675–1680 MHz comes from the budget proposed by Chairman Wheeler. I was not asked to participate in the development of the budget request. I am not familiar with the specifics of any such proposal.

Administrative Use of the Universal Service Fund

For the first time, the FCC is requesting funds from the Universal Service Fund (USF) to pay for the Commission's oversight costs of the USF, at the amount of $25 million.

Question: If you are granted authority to transfer these funds, what do plan on doing with the funds that would have otherwise been used to oversee the USF? In other words, what do you plan on doing with the cost savings associated with the transfer? In your budget request, you state that "it is expected that these additional investments will return substantially more than they cost in the form of reduced and recovered improper payments."

Answer:
The discussion of transferring funds from the USF comes from the budget proposed by Chairman Wheeler. I was not asked to participate in the development of the budget request. I am not familiar with the specifics of the Commission's plans for the alleged cost savings associated with the transfer. For several reasons, I do not favor this proposal.

Question: What do you view, in your eyes, was the problem with how the USF was previously overseen and how do you think these additional funds allocated to the FCC will correct this?

Answer:
I do not see how funding USF oversight with USF funds rather than funds from regulatory fees would solve any problem with USF oversight.

Preempting State Laws Restricting Community Broadband

It has almost become cliche to talk about the positive impacts the Internet has had facilitating education, work, and keeping in touch with loved ones, particularly in rural areas like my district. However, to realize the benefits of some higher bandwidth applications, like telehealth, faster speeds are needed. The Commission recognized this in January when it changed the definition of broadband to 25 megabits/second and 4 megabits/second for download and upload speeds, respectively, as well as by increasing the bandwidth requirement for the receipt of Connect America funding. Unfortunately, many rural Georgians are stuck with speeds below this threshold.

Question: Can you discuss the efforts that the FCC has undertaken, as well as any future plans you may have, to help close the gap between rural and urban America and ensure that this large segment of our population isn't locked out of education and business opportunities?

Answer:
Last December, the Commission adopted the final rules for the Connect America Fund Phase II, which will provide billions of dollars to deploy broadband in unserved areas. These funds will first be offered to price-cap carriers and then a competitive bidding process will occur in those areas where price-cap carriers decline the Commission's offer. However, there is more that the Commission must do to close the digital divide between rural and urban areas. For instance, we must adopt a mechanism to support stand-alone broadband for rate-of-return carriers.

Last month the Commission adopted a Memorandum Order and Opinion that found provisions of North Carolina and Tennessee laws to be barriers to broadband deployment, investment, and competition and therefore preempted those state laws. Large parts of my district in Southwest Georgia are rural and are difficult for broadband providers to provide adequate coverage and speeds, and it is, therefore, a prime

candidate for the deployment of municipal broadband. In fact, many such municipal broadband companies already exist in my district.

Question: Does the Commission have any plans on expanding the Order and Opinion to other jurisdictions than the two specifically named and what are you doing to ensure that it doesn't preclude private broadband companies from investing in rural markets?

Answer:

For the reasons set forth in my dissenting statement, I do not believe that the FCC had the legal authority to preempt Tennessee and North Carolina laws regulating municipal broadband projects. Any future Commission action on this issue must be consistent with the Constitution and laws of the United States.

Minority Participation in Spectrum Auctions

According to your budget request, the FCC has conducted 85 spectrum auctions and has granted 39,780 licenses for a total of over $53 billion between FY 1994 and FY 2014. I am concerned that small businesses and, in particular, minority-owned businesses may not have the same access to take advantage of these high-capital public auctions to the extent that large corporations do.

Question: Do you have a plan to encourage the participation of minority-owned business? What is this plan?

Answer:

Yes. The FCC must take immediate action to end abuse of our designated entity program and ensure that the program is not used by large corporate interests to shut out legitimate designated entities, including minority-owned businesses seeking to provide a competitive alternative in the wireless marketplace. What was once a well-intentioned program designed to help small businesses has become a playpen for corporate giants. Small business discounts are now being used to give billions of dollars in taxpayer-funded subsidies to Fortune 500 companies and to make it harder for legitimate small businesses to compete in the wireless market.

The FCC's recent AWS-3 spectrum auction is a shocking case in point. Last month, the FCC disclosed that two companies, each of which claimed it was a "very small business" with less than $15 million in revenues, together won over $13 *billion* in spectrum licenses and are now claiming over $3 billion in taxpayer-funded discounts. DISH Network Corp. has an 85% ownership stake in each (not to mention highly intricate contractual controls over each). Allowing DISH, which has annual revenues of approximately $14 billion and a market capitalization of over $34 billion, to obtain over $3 billion in taxpayer-funded discounts makes a mockery of the small business program. Indeed, DISH has now disclosed that it made approximately $8.504 billion in loans and $1.274 billion in equity contributions to those two companies—hardly a sign that they were small businesses that lacked access to deep pockets.

The abuse of the program has had an enormous impact on small businesses in rural states across the country. My analysis shows that there were over 440 licenses in the auction for which the DISH entities outbid smaller companies, or ones that were not providers of nationwide service, that had been winning the licenses. That's more than three times as often as those providers were outbid by AT&T, Verizon, and T-Mobile *combined.*

The FCC must close any loopholes in our rules to ensure that that the small business program benefits legitimate designated entities, including facilities-based minority-owned businesses, rather than large corporate interests.

Question: What information do you have on the participation of minority-owned businesses in past auctions and what are you doing with this information when planning future auctions?

Answer:

The FCC's auctions website provides information about the participation of designated entities in the FCC's past auctions, including information about the number of designated entities that sought to participate in an auction and the licenses, if any, that they ended up winning. *See* http://wireless.fcc.gov/auctions/default.htm?job=auctions_home. I am using this information to help identify ways the FCC can close any loopholes in our rules and ensure that the program is not being abused by large corporate interests to the detriment of legitimate designated entities.

SGRITA Activities

As you know, six counties in my district participate receive E-Rate Support funding under the FCC's Schools and Libraries program, which supports our ongoing efforts to provide broadband service throughout our entire district, but particularly, within our persistent poverty counties.

This program has been extremely beneficial to our efforts and I'd like to ask you to briefly provide the Subcommittee an update on the program and your activities nation-wide, particularly in terms of supporting the expansion of access to broadband, but I'd also like to invite you down to my district to see firsthand how these funds are being put to use and the tremendous amount of unmet need which still exists....

As you know, providing broadband access to those remaining rural counties without broadband will ultimately be the most costly portion of service to provide, primarily because all the low hanging fruit (in more urban areas) has been taken.

Question: How can we ensure that the Universal Service Fund and other resources be further dedicated to finishing our broadband infrastructure in our rural areas?

Answer:

A core component of E-Rate's mission is to give rural students the same tech-driven tools as urban and suburban students. Congress had the right idea in the 1990s, but E-Rate today isn't achieving its intended goals. The reality is that E-Rate is leaving students in rural America behind. And it's not a matter of how much we spend, but how we spend it.

We need a student-centered E-Rate program. That starts with simplifying the process by reducing the paperwork needed to apply for funding and distributing aid to schools on a more equitable basis (one that treats small, rural schools fairly—unlike the current formula). And that means giving schools the flexibility to spend E-Rate funds on technologies that directly benefit students. A student-centered E-Rate program would give smaller schools in rural areas a better chance to compete with their urban and suburban counterparts.

WEDNESDAY, APRIL 15, 2015.

SECURITIES AND EXCHANGE COMMISSION

WITNESS

HON. MARY JO WHITE, CHAIR, SECURITIES AND EXCHANGE COMMISSION

Mr. CRENSHAW. The meeting will come to order.

I want to welcome today our witness, SEC Chair Mary Jo White. We thank you for being here today. The committee always likes to see you, and I am sure there will be a lot of things that we will want to discuss.

The Securities and Exchange Commission plays a particularly important role of encouraging capital formation, maintaining fair markets, and protecting investors. A well-functioning SEC is critical to keeping U.S. markets sound and operating efficiently.

For the fiscal year 2016 the SEC is requesting a $222 million increase, or a 15 percent increase over 2015. And while the SEC is fee funded, I take our oversight responsibilities seriously, and as we have seen with other agencies, including the SEC, it is not always just how much money that you receive, but it is how you spend that money that you receive. And as you recall, in 2015 this subcommittee was fairly generous. There was a $150 million increase, or about 11 percent, and I think since 2001 the agency has received an increase of about 255 percent, which is probably more than most other agencies in the Federal Government.

So as we discuss your fiscal year 2016 request, we want to hear from you exactly how you are going to spend that money, and why last year's increase didn't carry you through. On a positive note, for the last 2 years this committee has set aside funding to fully fund the Division of Economic and Risk Analysis. We think that cost-benefit analysis of SEC rulemakings is very important, and I am glad to hear these funds have been used to do more analysis of the Commission's activities.

While we have a lot to talk about today, I am especially interested in hearing your thoughts on market liquidity or illiquidity, and what the SEC is doing to address this issue. I have heard that burdensome and overlapping regulations are creating a lack of liquidity in the U.S. markets and on our job creators, and if we don't address that in a timely and consistent manner, then illiquidity could introduce potentially damaging volatility to our markets that could have far-reaching impacts on our ability to grow the economy, and, quite frankly, would be contrary to the SEC's mission of fostering access to capital.

I am also concerned a little bit by certain decisions made by the Financial Stability Oversight Council, the so-called FSOC. You are a member of that. FSOC's regulations affect entities under the

SEC's supervision. And I am not sure that all of the FSOC's actions are matching its mission. Because the process of designating systematically important financial institutions is important, and it has some troubling implications. Entities should be given the opportunity to address the systemic risk before they are designated. I don't think you should just be in the business of only designating more SIFIs. You should be looking for ways to mitigate systemic risk for the good of our economy as a whole.

I want to bring one more thing to your attention, two letters that I sent, along with my counterpart in the Senate, Senator Boozman. We wrote a letter that talked about believing the SEC should take the lead on addressing the Department of Labor's proposed rule to amend the definition of fiduciary. I would argue that Dodd-Frank gave the SEC the responsibility of studying and potentially developing a uniform fiduciary standard of care for broker-dealers and investment advisers, not the Department of Labor. But I have read that you believe that broker-dealers and investment advisers should be held to a similar fiduciary standard and maybe are working on crafting a rule on this important issue. So I hope we can discuss that as we move forward.

I also sent a letter to Chairman Ketchum of the Financial Industry Regulatory Authority, the so-called FINRA, on their proposed central database rule. Now, they are a self-regulatory organization, a so-called SRO, and I am concerned that the SEC sometimes addresses critical market structure issues by delegating the responsibility to SROs. I am sure that part of the reason may be that you want to protect your resources. But, again, just more money is not the only way to solve problems. I think you could have reforms as simple as allowing affected market participants to provide meaningful input. That could improve the governance structure, and I hope to learn more about that.

You are the securities regulator and expert. I expect the SEC to be leading the charge to help further grow our economy. You have a central role in helping businesses and investors gain access to capital and participate in securities markets, as well as protecting U.S. investors from the bad guys. That is an important responsibility, and I know you take it very seriously.

So we appreciate what your staff does, and appreciate you being here today. I look forward to your testimony.

Now I would like to turn to my good friend and ranking member, Mr. Serrano, for any open statement that he might like to make.

Mr. SERRANO. Thank you, Chairman Crenshaw. I join you in welcoming Chair White back before the subcommittee to testify on the fiscal year 2016 budget request for the Securities and Exchange Commission.

Usually we have the IRS visit us on tax day, but we have changed it up a bit this year. Besides, they scare everybody in the room regardless.

The SEC plays a pivotal role in ensuring fairness, openness, and truth in our financial markets. As the markets have grown more complex, and as new technologies have taken root, the needs of the agency have grown as well. I am pleased that last year this committee was able to come together and provide a substantial in-

crease in funding for the agency, with a total of $1.58 billion in fiscal year 2015, an increase of $150 million over fiscal year 2014.

Although the funding increases were helpful in enabling the SEC to rigorously enforce the law, last year's appropriations process was a source of much concern as well. In fiscal year 2015, a series of controversial riders were added to this portion of the bill, which limited SEC activities in a whole host of areas.

Additionally, one amendment made in committee, which I oppose, was simply the legislative text of authorizing legislation. Although most of the riders were removed, the authorizing language remained in the final text of the bill. That language opened up loopholes in Dodd-Frank and once again allowed certain types of risky financial transactions to be made by financial institutions without sufficient protections from the Federal Government.

Many House Democrats opposed the omnibus bill last year because of this provision, including myself. And I must say that we were on our way to having a bill which probably was going to be as bipartisan as we have had an appropriation bill in years, and this one provision stopped us from doing that, which is so important. It was the single biggest impediment to bipartisan agreement in the House. I believe that further attempts to limit the SEC's ability to protect financial markets and the economy would greatly harm the prospects for a Financial Services appropriations bill.

This year's request asks for further targeted investments that will help the SEC protect consumers and investors. I always like to say that the SEC is the cop on the beat for Wall Street. If I may extend the analogy, the amount of territory the SEC is required to cover grows each year, and the agency needs more cops to enforce the law properly.

Chair White, I fully support your request to increase the number of personnel in enforcement and compliance, as well as in other key areas. Your proposed budget is key to ensuring the safety and security of America's financial markets and the economy as a whole, and I hope that this subcommittee takes your request seriously.

Lastly, before I finish, I think everyone here needs a reminder about the problems that sequestration caused the SEC. The agency was severely hampered by these mandatory budget cuts, and that put our economy needlessly at risk. We cannot allow another sequester to return. Otherwise we simply increase the risk of another financial meltdown. The SEC is a vital piece of our efforts to ensure the safety, security, and fairness of our financial system. We have given the agency significant new responsibilities over the past few years, but without the proper resources they cannot adequately enforce the law.

Chair White, once again welcome, and I look forward to your testimony.

And thank you, Mr. Chairman.

Mr. CRENSHAW. Thank you.

We now turn to Chair White for your opening statement. The floor is yours.

Ms. WHITE. Thank you very much, Chairman Crenshaw, Ranking Member Serrano, and members of the subcommittee. Thank you for inviting me to testify today in support of the President's fiscal year 2016 budget request for the Securities and Exchange Com-

mission. I appreciate the opportunity to discuss both what I believe is the compelling basis for funding the agency at a level of $1.72 billion and how the SEC would effectively use the requested funds in the coming fiscal year.

The U.S. securities markets are complex and constantly evolving, and the activities within our jurisdiction are not static. Understanding the growth in the size and complexity of the SEC's responsibilities and in our markets, market participants, and investment products is critical to assessing the agency's funding needs.

From fiscal year 2001 to the start of this fiscal year, for example, assets under management of SEC-registered investment advisers increased approximately 254 percent, from $17.5 trillion to approximately $62 trillion. Assets under management of mutual funds grew by 143 percent, from $6.4 trillion to $15.6 trillion. And annual trading volume in the equity markets more than doubled, in excess of $67 trillion.

During this same time the scope of the SEC's responsibilities also dramatically increased. The agency now currently oversees more than 25,000 market participants and has new or expanded jurisdiction over securities-based swaps, private fund advisers, credit rating agencies, municipal advisors, and clearing agencies, among others. There are also longstanding agency needs, including having sufficient resources to examine the 11,600 investment advisers regulated by the SEC.

Improvements to technology and operations have made the agency more efficient and effective, but to continue to fulfill our mission we must be able to keep pace with the size and complexity of our markets and the entities participating in them.

The SEC's fiscal year 2016 budget request would allow us to build on our recent progress and advance several key priority areas, including increasing examination coverage of investment advisers and other key entities who serve retail and institutional investors. A decade ago the SEC had approximately 20 examiners per trillion dollars of assets under management, while today we have only 7.

We would also be able to further leverage technology to increase the efficiency and effectiveness of our programs, increase the protection of investors by expanding our enforcement programs investigative capabilities and strengthening our ability to hold wrongdoers accountable, strengthen the SEC's economic and risk analysis functions, critical functions for the agency, and hire the experts necessary to enhance the agency's ability to meet its expanded and increasingly complex responsibilities.

Since I testified before this committee last April, the SEC has accomplished a great deal. Over the last year, the Commission has adopted a series of very important rulemakings, including a number mandated by the Dodd-Frank Act and the JOBS Act. Completing critical reforms to money market funds, credit rating agencies, and asset-backed securities, and significant enhancements to market resiliency and Regulation A were among the agency's accomplishments this past year.

In other core areas, we advanced our assessment of U.S. equity market structure to ensure that our markets remain the deepest and fairest in the world, and intensified our efforts to improve the

market structure for trading fixed income securities. SEC staff also significantly progressed in developing measures for enhancing risk monitoring and regulatory safeguards for the asset management industry, advanced our initiative to improve the effectiveness of the public company disclosure regime, and neared completion of its comprehensive review of the accredited investor definition.

Our Division of Enforcement also achieved very significant results, bringing 755 enforcement actions and obtaining orders for more than $4.16 billion in disgorgement and penalties in fiscal year 2014, both at record levels.

These accomplishments represent substantial achievements for the agency, but more remains, and there are significant funding challenges as we strive to maintain and intensify this momentum.

As I have outlined in detail in my written testimony, the SEC's 2016 budget request seeks to address those challenges really head-on by providing the resources that will allow the SEC to hire an additional 431 staff in core areas, including 180 for investment adviser exams and to further advance our information technology.

The SEC's funding mechanism is deficit neutral, which means that the amount Congress appropriates to the SEC will not have an impact on the Nation's budget deficit, will not impact the amount of funding available for other agencies, and does not count against the caps set in the bipartisan congressional budget framework for 2015 and 2016.

Nonetheless, and responsive to the chairman's comment, I fully understand that we have an important responsibility to be effective and prudent stewards of the funds the agency is appropriated, and I believe we have demonstrated that we take that responsibility quite seriously.

I want to thank this subcommittee's support for the agency's vital mission, and I would be happy to answer your questions.

Testimony on the Fiscal Year 2016 Budget Request of the U.S. Securities and Exchange Commission

by

Chair Mary Jo White
U.S. Securities and Exchange Commission

Before the
Subcommittee on Financial Services and General Government
Committee on Appropriations
United States House of Representatives
April 15, 2015

Chairman Crenshaw, Ranking Member Serrano, and members of the Subcommittee:

Thank you for inviting me to testify today in support of the President's fiscal year 2016 budget request for the Securities and Exchange Commission.[1] I appreciate the opportunity to describe the compelling basis for funding the agency at a level of $1.722 billion to help it fulfill its obligation to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.[2]

The U.S. securities markets are complex and constantly evolving, and the activities within our jurisdiction are not static. Understanding the growth in the size and complexity of the agency's responsibilities and in our markets, market participants, and investment products is critical to assessing the agency's funding needs. From fiscal year 2001 to the start of this fiscal year, for example:

- Assets under management of SEC-registered investment advisers increased approximately 254 percent from $17.5 trillion to approximately $62 trillion;

[1] A copy of the SEC's FY 2016 Congressional Budget Justification can be found on our website at http://www.sec.gov/about/reports/secfy16congbudgjust.shtml.

[2] The views expressed in this testimony are those of the Chair of the Securities and Exchange Commission and do not necessarily represent the views of the President, the full Commission, or any Commissioner. In accordance with past practice, the budget justification of the agency was submitted by the Chair and was not voted on by the full Commission.

- Assets under management of mutual funds grew by 143 percent from $6.4 trillion to $15.6 trillion; and
- Annual trading volume in the equity markets more than doubled to in excess of $67 trillion.

During this same period, the SEC's responsibilities have also dramatically increased, adding or expanding jurisdiction over securities-based swaps, private fund advisers, credit rating agencies, municipal advisors, and clearing agencies, among others. Improvements to technology and operations have made the agency more efficient and effective, but to continue to meet our mission, we must be able to keep pace with the current and growing size and complexity of our markets and the entities participating in them.

The agency today currently oversees more than 25,000 market participants, including nearly 12,000 investment advisers, approximately 10,500 mutual funds and exchange-traded funds, nearly 4,500 broker-dealers, and about 450 transfer agents. The agency also oversees 18 national securities exchanges, 10 credit rating agencies, and eight active registered clearing agencies, as well as the Public Company Accounting Oversight Board (PCAOB), Financial Industry Regulatory Authority (FINRA), Municipal Securities Rulemaking Board (MSRB), the Securities Investor Protection Corporation (SIPC), and the Financial Accounting Standards Board (FASB). The SEC also has responsibility for reviewing the disclosures and financial statements of approximately 9,000 reporting companies and for enforcing compliance with the federal securities laws.

The SEC's FY 2016 budget request seeks to address our current needs and the challenges we face by providing resources to allow the SEC to hire an additional 431 staff in critical, core areas and enhance our information technology. Specifically, as described in more detail below,

the requested budget level would allow the SEC to advance several key and pressing priorities, including:

- Increasing examination coverage of investment advisers and other key entities who service retail and institutional investors;
- Further leveraging cutting-edge technology to permit the SEC to better keep pace with the entities and markets we regulate;
- Protecting investors by expanding our enforcement program's investigative capabilities and strengthening our ability to litigate against wrongdoers;
- Strengthening the SEC's economic and risk analysis functions; and
- Hiring additional market experts to enhance the agency's capability to fulfill its expanded and increasingly complex responsibilities.

As the Subcommittee is aware, the SEC's funding mechanism is deficit-neutral, which means that the amount Congress appropriates to the agency will not have an impact on the nation's budget deficit, nor will it impact the amount of funding available for other agencies.[3] Our appropriation also does not count against the caps set in the bi-partisan Congressional budget framework for 2015 and 2016. Nonetheless, I deeply appreciate that we have a serious responsibility to be an effective and prudent steward of the funds we are appropriated, and I believe we have demonstrated how seriously we take that responsibility.

Last year was one of important achievements for the SEC, but more remains to be done. Below is a summary of the accomplishments of the SEC in the past year and of the significant challenges ahead, as well as a more detailed description of key aspects of the FY 2016 budget request.

[3] Section 991 of the Dodd-Frank Act requires the SEC to collect transaction fees from self-regulatory organizations in an amount designed to directly offset our appropriation.

Significant Achievements, But More Remains

Since I testified before this Subcommittee last April, the SEC has accomplished a great deal in many areas important to our mission and in fulfilling Congressional mandates. Over the last year, informed and supported by rigorous and robust economic analyses, the Commission has adopted a series of critical reforms, including rules that directly respond to the financial crisis and that protect the integrity of our markets. We have made substantial progress implementing the rulemakings mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) and the Jumpstart Our Business Startups Act (JOBS Act). The rules on which the Commission has taken action in the last year include:

- *Asset-Backed Securities.* The Commission completed rules requiring significant enhancements to registered offering disclosures for asset-backed securities, a market with $4.8 trillion in issuances over the past decade that includes the types of securities backed by residential and commercial real estate that played a central role in the financial crisis.

- *Credit Rating Agencies.* The Commission finalized over a dozen rules that will reduce conflicts of interest and strengthen the integrity of nationally recognized statistical ratings organizations and the transparency of their ratings. The Commission also continued to remove references to credit ratings, bringing the total of removed references to 30 and leaving only four rules and one form with references to be removed.

- *Money Market Funds.* The Commission completed reforms designed to enhance the structure and operation of the $3.7 trillion money market fund market to enhance the protection of investors and to support financial stability.

- *Security-Based Swaps.* The Commission proceeded with the next critical phase of its implementation of Title VII of the Dodd-Frank Act, adopting new rules for previously unregulated derivatives by mandating the parameters for covered entities and establishing registration and reporting requirements for security-based swap data repositories. In particular, in June 2014 the Commission adopted the threshold series of key rules and guidance on cross-border security-based swap activities for market participants, and earlier this year adopted rules that require security-based swap data repositories to register with the SEC and prescribe reporting and public dissemination requirements for security-based swap transaction data.

- *Capital Formation.* On March 25 of this year, the Commission voted to adopt a potentially transformative rule under the JOBS Act to significantly enhance the existing Regulation A exemption from registration for small offerings of securities. The

Commission also advanced rules to implement JOBS Act provisions concerning registration and reporting thresholds under Exchange Act Section 12(g).

- *Risk Retention.* As required by the Dodd-Frank Act, the Commission approved a joint agency rule requiring sponsors of securitization transactions to retain risk in those transactions.

- *Market Stability and Oversight.* The Commission adopted Regulation Systems Compliance and Integrity (Regulation SCI), creating for the first time mandatory technology and systems standards and reporting for significant market participants intended to reduce systems issues and improve the overall resiliency of our markets. On March 25 of this year, the Commission also voted to propose rule amendments to enhance the supervision of large proprietary trading firms, including those engaged in high frequency trading, which would require that broker-dealers trading in off-exchange venues become members of a national securities association.

- *Executive Compensation.* As required by the Dodd-Frank Act, the Commission proposed rules for enhancing corporate disclosure of hedging policies for officers and directors.

Progress has also been made in our assessment of U.S. equity market structure to ensure that our markets remain the deepest and fairest in the world and optimally serve investors and companies of all sizes seeking to raise capital. In addition to the adoption of Regulation SCI and the proposal to enhance the supervision of large proprietary trading firms, we have published for notice and comment a proposal by the self-regulatory organizations (SROs) for a pilot to assess the impact of different tick sizes on the quality of the equity markets for small capitalization issuers. In response to my request, the exchanges conducted and have now completed an in-depth analysis of order types and reported on their findings, and have filed proposed rule changes to improve disclosures about how they use securities information processor (SIP) feeds and direct feeds. The exchanges and SIPs, at my request, are also expected to incorporate by June a time stamp in their data feeds to facilitate greater transparency on the issue of data latency. And

we have brought a number of significant enforcement actions for violations of market integrity rules, including against exchanges and dark pools.[4]

In addition, we have established an equity market structure advisory committee to focus on the structure and operations of the U.S. equities markets (including Regulation NMS) and provide a formal mechanism through which the Commission can receive advice and recommendations specifically related to equity market structure issues. The membership of the committee reflects a diversity of backgrounds, expertise, and viewpoints on our current equity market structure that we expect will provide valuable input as SEC staff continues to pursue a broad market structure agenda focused on high frequency trading and fairness, market transparency, trading venue regulation, mitigating broker conflicts, and critical market infrastructure. Staff also continues to pursue efforts to improve the market structure for trading fixed income securities, including municipal and corporate bonds, and is developing a far-ranging package of measures for enhancing the asset management industry's risk monitoring and regulatory safeguards.

We are also advancing our initiative to improve the effectiveness of the public company disclosure regime for investors and companies, where the staff has sought input from a broad range of market participants and is developing recommendations for the Commission's consideration. In addition, consistent with the Dodd-Frank Act, staff is currently engaged in a comprehensive review of the "accredited investor" definition.

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[4] *E.g.*, Press Release No. 2014-263, *Wedbush Securities and Two Officials Agree to Settle SEC Case* (Nov. 20, 2014), *available at* http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370543504806; Press Release No. 2014-87, *SEC Charges NYSE, NYSE ARCA, and NYSE MKT for Repeated Failures to Operate in Accordance With Exchange Rules* (May 1, 2014), *available at* www.sec.gov/News/PressRelease/Detail/PressRelease/1370541706507; and Press Release No. 2014-114, *SEC Charges New York-Based Dark Pool Operator With Failing to Safeguard Confidential Trading Information* (June 6, 2014), *available at* http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370542011574.

The Division of Enforcement continued to achieve significant results, filing 755 enforcement actions and obtaining orders for more than $4.16 billion in disgorgement and penalties in fiscal year 2014. Notable actions include the first series of cases involving violations of the "market access" rule, the first action enforcing the rule against investment advisers participating in "pay to play" arrangements, the first action against a private equity firm relating to its allocation of fees and expenses, and the first anti-retaliation case to protect a whistleblower who reported improper trading activity. Structural and strategic enhancements – including increased recruitment of industry experts, the augmentation of our data analytics capacities, and bolstered new training programs – within our Office of Compliance, Inspections and Examinations have led to a more effective, efficient examination program.

Despite this and other significant progress, there is much that the SEC still needs to do: from further implementing our mandated rulemakings, to continuing the initiatives outlined above, to further strengthening our economic and risk analysis functions, to hiring additional market and quantitative experts to further address our expanded responsibilities, to continuing to improve our technology and operations to make the agency more agile and effective. Outlined below is a brief overview of some of the key components of our request.

Expanding Oversight of Investment Advisers and Strengthening Compliance

Our current level of resources is not sufficient to permit the SEC to adequately examine investment advisers in a way that investors expect and deserve. The number of registered advisers has increased nearly 35 percent over the last decade, and the assets managed by these advisers have more than doubled. At the same time, the industry has become more complex, as evidenced by the increasing use of new and sophisticated products such as derivatives and

structured products; the increased use of technologies that facilitate high-frequency and algorithmic trading; and the growth of complex families of financial services by companies with integrated operations that include both broker-dealer and investment adviser affiliates.

Even with the SEC's efficient use of limited resources to improve its risk assessment capabilities and focus its examination staff on areas posing the greatest risk to investors – efforts that helped to increase the number of investment adviser examinations approximately 20 percent from FY 2013 – the SEC was only able to examine 10 percent of registered investment advisers in FY 2014. A rate of adviser examination coverage at that level presents a high risk to the investing public.

Under the FY 2016 request, a top priority will be to hire 225 additional examiners, primarily to conduct additional examinations of investment advisers. Once fully on-board and trained, the investment adviser examiners would assist the agency's National Examinations Program (NEP) in increasing its examination coverage of advisers to an anticipated rate of approximately 14 percent per year.

The NEP also would add positions to improve oversight and examination functions related to broker-dealers, clearing agencies, transfer agents, self-regulatory organizations, swap data repositories, municipal advisors, and, in the future, crowdfunding portals, among others.

Continue to Leverage Technology

In FY 2016, the SEC plans to build on the substantial progress made over the past few years to modernize its technology systems, streamline operations, and increase the effectiveness of its programs. The SEC's FY 2016 budget request, which includes full use of the Reserve Fund, would support a number of key information technology (IT) initiatives, including:

- *Data analytics tools*, to assist in the integration and analysis of huge volumes of financial market data, employing algorithms and quantitative models that can lead to earlier detection of fraud or suspicious behavior.

- *Electronic Data Gathering, Analysis and Retrieval (EDGAR) modernization*, an ongoing, multi-year effort to simplify the financial reporting process to promote automation and reduce filer burden. With a more modern EDGAR, both the investing public and SEC staff will benefit from having improved access to better data.

- *Examination improvements*, aimed toward improving risk assessment and surveillance tools that will help the staff monitor for trends and emerging fraud risks, as well as improving the workflow system supporting SEC examinations.

- *Tips, Complaints, and Referral (TCR) system enhancements*, to bolster the flexibility, agility, and adaptability of the system. TCR enhancements will provide more flexible and comprehensive intake, triage, resolution tracking, searching, and reporting functionalities, with full auditing capabilities.

- *Enforcement investigation and litigation tracking*, to support enforcement teams with handling the substantial volume of materials produced during investigations and litigations. Among other initiatives, the SEC hopes to build the capability to permit the electronic transmittal of data for tracking and loading (versus the current practice of receiving content via the mail); implement a document management system for Enforcement's internal case files; and revamp the tools used to collect trading data from market participants.

- *Enterprise Data Warehouse (EDW)*, a centralized repository for the SEC to organize its various sources of data and help SEC staff gain easier access to more usable market data. The EDW is the SEC's primary effort to bring together data from different divisions and offices for easier and more efficient analysis across the agency.

- *SEC.gov modernization*, to make one of the most widely used Federal Government websites more informative, easier to navigate, and secure for investors, public companies, registrants and the general public.

- *Information security*, to further automate controls, continue the transition to continuous monitoring, and build the agency's risk management capabilities.

- *Business process automation and improvement*, to build workflow applications that will improve the efficiency and effectiveness of the entire agency in serving the public.

The FY 2016 request includes 14 new positions for the Office of Information Technology (OIT) to better execute these and other technology initiatives. These staff will serve as project managers, business analysts, and technical resources who will improve technology and data

management support for the SEC's business areas. In addition, the positions will enhance information security through monitoring, and drive further improvements in IT equipment management and reporting.

Bolster Enforcement

It is vital to the SEC's mission to bring timely, high-quality enforcement actions when violations of the federal securities laws are identified. The agency must adapt its enforcement function to keep pace with the growing size and complexity of the nation's markets and to send strong messages to wrongdoers that misconduct will be swiftly and aggressively addressed. For FY 2016, the SEC is requesting 93 new positions for the Division of Enforcement in three areas: staff proficient in conducting intelligence processing and analysis; investigative staff to permit the agency to more swiftly and effectively identify and respond to the high volume of securities-related misconduct; and litigation staff to address the growing number of contested enforcement matters nationwide.

Analysis of large datasets, including SEC filings and trading data in equities, options, municipal bonds, and other securities, helps to limit investor harm by permitting earlier detection of misconduct. The SEC's Enforcement program expects that both an increasing number of high-quality TCRs and its improved data analysis capabilities will yield additional case leads through FY 2016. The Enforcement program anticipates dedicating 20 of the requested positions to further develop its data analytic function, increase the number of staff responsible for reviewing and triaging incoming TCRs, and bolster the number of staff to whom TCRs are sent for further investigation.

The Enforcement program also requires increased staffing to promptly detect complex frauds and other difficult-to-detect misconduct; respond to misconduct involving the changing equity markets, including misconduct related to algorithmic trading or dark pools; address large-scale insider trading or stock manipulations; investigate potential accounting or reporting fraud; and generally keep pace with a rapidly growing and evolving industry. As a result, the Division is seeking 50 new positions in FY 2016 to reinforce its investigative functions. These new positions will help the Division continue progress on existing investigations and handle its increasing case load, while quickly investigating and bringing emergency actions in matters where investors' money may dissipate if immediate action is not taken.

In addition, in recent years an increasing percentage of enforcement actions have been filed as contested matters, as opposed to being fully settled at the outset. This has led to more trials than in the past, a volume that is expected to continue to grow. Therefore, the Enforcement program needs additional resources to handle an expansive and sophisticated docket of litigation and trials, often against well-funded adversaries. Enforcement requests 23 new positions in FY 2016 to reinforce its litigation operations nationwide.

Continued Prioritization of Economic and Risk Analysis to Support Rulemaking and Oversight

The SEC remains committed to strengthening the economic and risk analysis functions housed in its Division of Economic and Risk Analysis (DERA), our fastest growing division. For FY 2016, the SEC plans to add six new positions to DERA, building upon the 14 positions being added in FY 2015. Specifically, in FY 2016, DERA is seeking three positions to expand the agency's capability to provide high quality economic data in support of risk assessment and policy initiatives across the SEC. These employees would continue to expand DERA's ability to

support SEC programs with data cleansing, normalization, and analysis; statistical programming, text analytics, and risk modeling; and quantitative research services. We are also requesting three additional positions for DERA to provide economic analytical capabilities to support enforcement litigation, particularly in the SEC's regional offices.

Meet Expanded Rulemaking and Oversight Responsibilities

The agency also is requesting 12 additional positions in FY 2016 for its Division of Trading and Markets (TM). As the SEC's oversight of regulated entities and analysis of market events become more data-driven, TM is expanding its use of advanced quantitative skills, tools, and data to assess evolving markets. The Division therefore is expanding its efforts to recruit professionals with expertise in quantitative analysis, risk management, and equity and fixed income market structure. The additional positions will enhance supervision of securities markets, securities market infrastructure, securities intermediaries, and other market participants. Recent legislation and rulemaking – including relating to over-the-counter derivatives, clearing agencies, and crowdfunding – also have substantially expanded TM's responsibilities. As registration requirements for these rules become effective, scores of new entities will require Division oversight.

In addition, the SEC is seeking 12 new positions for its Division of Investment Management to operationalize new rulemaking requirements, offer enhanced guidance to registrants, expand the disclosure review program's ongoing analysis of industry trends, and provide additional oversight of private fund advisers. The new positions would also monitor money market funds' compliance with the new requirements adopted in FY 2014 by the Commission, as well as assist in adopting – and ultimately operationalizing – the package of

measures for enhancing the asset management industry's risk monitoring and regulatory safeguards.

Conclusion

Thank you for your support of the agency's vital mission and the opportunity to present the President's FY 2016 budget request. I would be happy to answer your questions.

SEC Chair Mary Jo White

Mary Jo White was sworn in as the 31st Chair of the SEC on April 10, 2013. She was nominated to be SEC Chair by President Barack Obama on Feb. 7, 2013, and confirmed by the U.S. Senate on April 8, 2013.

Chair White arrived at the SEC with decades of experience as a federal prosecutor and securities lawyer. As the U.S. Attorney for the Southern District of New York from 1993 to 2002, she specialized in prosecuting complex securities and financial institution frauds and international terrorism cases. Under her leadership, the office earned convictions against the terrorists responsible for the 1993 bombing of the World Trade Center and the bombings of American embassies in Africa. She is the only woman to hold the top position in the 200-year-plus history of that office.

Prior to becoming the U.S. Attorney for the Southern District of New York, Chair White served as the First Assistant U.S. Attorney and later Acting U.S. Attorney for the Eastern District of New York from 1990 to 1993. She previously served as an Assistant U.S. Attorney for the Southern District of New York from 1978 to 1981 and became Chief Appellate Attorney of the Criminal Division.

After leaving her U.S. Attorney post, Chair White became chair of the litigation department at Debevoise & Plimpton in New York, where she led a team of more than 200 lawyers. Chair White previously was a litigation partner at the firm from 1983 to 1990 and worked as an associate from 1976 to 1978.

Chair White earned her undergraduate degree, Phi Beta Kappa, from William & Mary in 1970, and her master's degree in psychology from The New School for Social Research in 1971. She earned her law degree in 1974 at Columbia Law School, where she was an officer of the Law Review. She served as a law clerk to the Honorable Marvin E. Frankel of the U.S. District Court for the Southern District of New York.

Chair White has won numerous awards in recognition of her outstanding work both as a prosecutor and a securities lawyer. The 2012 Chambers USA Women in Law Awards named her

Regulatory Lawyer of the Year. Among other honors she has received are the Margaret Brent Women Lawyers of Achievement Award, the George W. Bush Award for Excellence in Counterterrorism, the Sandra Day O'Connor Award for Distinction in Public Service, and the "Women of Power and Influence Award" given by the National Organization for Women.

Chair White is a fellow in the American College of Trial Lawyers and the International College of Trial Lawyers. She also has served as a director of The NASDAQ Stock Exchange and on its executive, audit, and policy committees. Chair White is a member of the Council on Foreign Relations.

Mr. CRENSHAW. Well, thank you very much.

Mr. Serrano, do you have a thought?

Mr. SERRANO. Mr. Chairman, I apologize for interrupting you and I thank you.

I think one of the things that makes this country great is that we deal with our past and we try to correct mistakes we have made in the past. I would just like, as a baseball fan and as an American, to remind people that on April 15, 1947, Jackie Robinson took the field for the first time. Some would say he integrated baseball. I think he played a major role in integrating America, and I think all of us owe him and his memory and his legacy a great debt of gratitude.

So I know at a hearing for the SEC the farthest thing from our mind is baseball, but I think April 15 is not just tax day. It is the day that Jackie Robinson changed America forever.

Thank you.

Mr. CRENSHAW. Well, thank you. And I can assure you that Chair White appreciates that as a big baseball fan. Unfortunately, she is a Yankees fan, so she is struggling this year.

Ms. WHITE. Already.

Mr. SERRANO. So am I.

Mr. CRENSHAW. So am I. Well, thank you for that.

Let's start with some questions. I mentioned in my opening statement about the fiduciary standard, that I wrote a letter to OMB Director Donovan. I am concerned about the Department of Labor deciding they are going to amend the definition of fiduciary. In my view, Dodd-Frank gave the SEC the responsibility to do that, to study it, to potentially develop a uniform definition, and DOL seems to be moving on their own. In my view, the SEC ought to move first because my concern is that you end up with, like we have on occasion, regulatory conflict; two different rules. And I don't know what the impacts are going to be on ordinary investors.

So what I want to know is, is this something that you all are aware of, that you are making a priority, that you are doing the necessary work on, and are you coordinating with DOL as they move along ahead of you. Because here is the thing: it seems like everybody wants to protect investors from market risk, and inherently markets are risky. So I am not sure that you can protect investors against all losses just because you have a different standard in terms of fiduciary relationship. So we want to be reasonable.

Tell us a little bit about how closely you are looking at the existing regulations, why they are not sufficient, why we need to amend that definition, and primarily what kind of impact might it have on low- to moderate-income investors if all of a sudden they get priced out of the brokerage services.

Ms. WHITE. And I think, Mr. Chairman, that it is an extraordinarily important area and potential rulemaking for the benefit of investors, fairness of our marketplace, and particularly as our investors, our retail investors in particular, have their retirement savings much more invested in the market than ever before.

This is an issue the SEC has been looking at for actually many, many years and has sought and received a lot of very useful data. I think I said at the time of my confirmation hearing, when I was introduced to this issue, that I thought that, knowing that we had

the authority, not a mandate—under Section 913 of Dodd-Frank to impose that uniform fiduciary duty on broker-dealers and investment advisers, really to act in the best interests of the investor, putting the professional's interest secondary to that, that I thought as a regulator you had to think long and hard when you are really talking about essentially identical activity, providing advice, securities advice, personalized advice to investors, particularly in the retail space. You had to think long and hard about not having identically high standards. So that is sort of where I come from on that.

Now, having said that, we have continued to study it. I have intensively studied this really throughout my tenure with the staff. It is a hard, complex issue. And I do think, my own view, and I am speaking for myself now, because this is something to be advanced within the Commission, and Commissioners have different views on a number of topics, but I think we should proceed with it. I think we should proceed under Section 913, which itself contains a number of parameters that really are addressed to the existing marketplace, and particularly the existing broker-dealer model. For example, it is not to be considered a per se violation of any fiduciary standard that you charge a commission.

Achieving the right balance is very, very difficult to do. And obviously if at the end of the day what we succeeded in doing was applying a new standard, but we essentially deprived investors, particularly the smaller investors, the mid-size investors, of reliable, reasonably priced advice, we would have failed in that effort. So those are issues that we have been focused on and we will be focused on as we go forward.

The other part of this, and I have said this publicly, is that I think what we need to be sure of is that we are sufficiently examining those investment advisers that I spoke about earlier. And so I have asked the staff to actually provide a recommendation on some kind of program of third party exams to supplement what we can do there, because if you have a uniform fiduciary duty, you have to ensure compliance and enforcement with that.

The Department of Labor, what we have done on that front is we provided pretty extensive, at the staff level, technical assistance as they have gone through their process. They had a proposal, as you know, in 2010. I think yesterday the reproposal was published. So we provided extensive technical assistance to them on that, bringing our expertise of the broker-dealer space to bear on that.

But they are a separate agency, and so they have to decide under their own statutory mandate, which is an important one, over the ERISA retirement accounts, how and when to proceed. I agree with you, though, that it is very important for the agencies to continue to consult and coordinate.

Mr. CRENSHAW. So you are working to coordinate that, you are giving them assistance, but they are proceeding. You are proceeding a little more cautiously and more, I would hope, in depth. They just decided they are going to run out and pass a rule.

Ms. WHITE. Well, I would say this. I mean, the staff provided the technical assistance. The staff reported to me that the Department of Labor was responsive to receiving that assistance. We really are at the beginning of this process with my decision to advance it within the Commission. I am one of five votes, obviously. But we

will proceed if we are proceeding, and that is my intent, to proceed very carefully, balancing all of the considerations.

Mr. CRENSHAW. Thank you.

Let me ask you a question about the budget. I mentioned a $222 million, 15 percent increase. That is 431 new staff positions. Now, last year you got a pretty generous increase, and this subcommittee was happy to help in that regard. I looked at the last quarter report and the SEC has $69 million in carryover funding left over from fiscal year 2015. I am going to ask if that is still the case. Then you have got this reserve fund that you can tap into, $100 million, anytime you want to that is outside the appropriations process, that is there for you.

So the point is you have a lot of resources, and as I pointed out earlier your budget has increased even long before you got there, but over a 13-, 14-year period it has gone up 255 percent.

So maybe tell us a little bit how you go about, when you put your budget together, what do you look at in terms of your ability to be more efficient, more effective, cut costs, and things like that.

Ms. WHITE. We go through a very thorough budget process, and since I arrived at the Commission have looked really across the agency for both what are our most compelling needs, as well as for cost savings. And so we are doing that across the agency. We have achieved a number of savings by our investment in technology, other changes to our business practices, and I think that is very important to do.

And again I very much appreciate the subcommittee's support on last year's budget. What we had requested was, I think, 639 positions. I think we got 208. But, again, very appreciative of what we did get. But I just want to assure the subcommittee that before we put that budget or this budget together, I went over it in great detail and tried—I use the word surgical, and that is the word I mean—to really try to pinpoint what we are asking for.

One of the reasons I went through, and I think it is in my written testimony as well, some of the metrics about our responsibilities and how our markets have evolved and our added responsibilities is to try to show the case, the compelling case, for precisely what we have asked for.

I mean, the one subject we talk about, and I think we did last year as well, that kind of has sort of jumped out at you, is our ability, even with those increases, to cover or not be able to sufficiently cover examinations of investment advisers. Our current budget request, and I think I mentioned this, I did mention this in my oral testimony, 180 of those positions that we asked for would go precisely to that clear stark need.

Our other needs are also ones where I think we have shown the value add from what we are seeking to further invest in and really further to continue, for example, the requests for additional resources for our Division of Economic and Risk Analysis. Our DERA group is a huge success story at the SEC. It is our fastest growing division. It not only helps us on our rulemakings, which I think everyone talks about and knows about, makes us a better rulemaker, but they are also managing a large amount of data risk metric tools for all of the divisions. And so that is another area that we are very focused on.

We do have new responsibilities to implement, as I indicated in my oral testimony. So we have tried to make it a conservative statement of what our real compelling needs are.

Mr. CRENSHAW. Do you ever have a problem, like with 431 new positions, is that hard to fill in a short period of time?

Ms. WHITE. It certainly can be a challenge. And, again, one of the things that I spend a lot of personal time on when we do our request is assessing if we are given the funding for this, which we think we so badly need, can we hire them. We are an agency unlike many of the other Federal agencies that have no-year funds.

So one of your points, about balances, and I can talk to that as well, if we get to the end of the year, and to some degree it depends on when we get our appropriations, as to when we are able to spend money, but if we get to the end of the year where we haven't spent all the money we have been appropriated, we can actually have it carry over.

So we are doing smarter hiring, frankly. The last thing we want to do is just fill those positions and not with the right experts and the right people.

And so we attend to the balances that we have, they have been going down over time. I think about $21 million of the balances for this year are actually from great financial planning, from de-obligating moneys on completed contracts. So that is $21 million of it.

But we do take into account those balances in planning the budget request and planning the next budget year. One of our requests in this budget year, as it has been in at least a prior year since I have been here, is to add the necessary HR resources so we really could hire that many people smartly. It depends to some extent on when we would get our appropriation.

Mr. CRENSHAW. Do you ever—and I know you don't have a crystal ball because you would invest in the market if you did—but do you ever see, when you look down the road, do you see a time when there won't be as great a need for increased funding, is that something you think about, or do you just take it year by year? Will there be a time when the budget stops growing, or is that hard to tell?

Ms. WHITE. I mean, we certainly don't have a number that we say once we are at that additional resources aren't needed. And, again, that kind of goes back to the fact that we have got evolving, increasingly large, complex markets to deal with. If that changes, we may get new additional responsibilities. We certainly aren't asking for resources in order to grow for growth's sake.

I mean, for example, on the investment adviser front, clearly our planning is a multiyear plan. It is not as if we won't be here next year trying to further close that gap. I think if we got the funding we are seeking this year, we think we could increase our exam coverage from 10 percent to 14 percent. But if you look on the broker-dealer side, with our resources and FINRA's, we are about 50 percent a year in terms of who we examine.

I can't tell you that isn't an area, as well as a number of the others, where we are going to need for at least some years to come additional funding, but we look at that very, very closely because we are not in the business of just saying let's grow to grow.

Mr. CRENSHAW. Got you. Thank you so much.

Mr. Serrano.

Mr. SERRANO. Thank you, Mr. Chairman.

Chair White, you have been at the SEC in very uncertain budgetary times. Can you remind us the effects that sequestration had on the SEC and what cuts would you have to make to get to sequestration levels? What would you not be able to do if the SEC budget was reduced back down to that level?

And let me just say that I am still one of the perhaps few believers that it was a lack of oversight by the SEC that helped cause part of the problem on Wall Street that has led us into the situation that we still find ourselves in. In fact, I tell a story which changes a little bit every year, but is still sticking pretty much to the truth. The SEC is the first agency I have ever seen in my 41 years of public office, both in the state assembly and here, to come before us one year and basically tell us they didn't need any more money. And later we found out it was because they weren't using any money for oversight.

And so on the long term, what do you see? And on the short term, what do you have to deal with?

Ms. WHITE. Let me be clear that wasn't me that came and said we don't need any more money.

Mr. SERRANO. Oh, no, no. That was quite a while ago.

Ms. WHITE. Because, again, I am obviously trying to carry out the responsibilities, and they are critical ones, to the investing public and our markets with sufficient fundings, and the resources are a significant challenge.

Sequestration clearly had a significant negative effect on the SEC, and it would again. I think everything you see us prioritizing in this budget request and the last one either were compromised or would be compromised if sequestration were to occur again. It means there is not staff to do those exams where something, some huge fraud may be occurring, and because we are not there, we don't have the resources to be there, we don't catch it as soon as we would otherwise. And that is true of enforcement, as well as our exam program.

Our technology projects, which are so critical to getting the SEC to where it needs to be to keep pace with the market and the market participants, a number of those projects had to be what I would call underfunded and clearly retarded and slowed that progress. I think everybody—maybe not everybody—but most people agree that having the SEC raise our own technology bar is necessary to keep up with the markets. I think I read something recently where four of the largest investment banks spend $7 billion to $10 billion a year on IT alone. Our whole budget request is $1.7 billion. And, obviously, those are our registrants, those are the people that we are proceeding against.

So really every priority area that you see we had to cut back and slow down our spending and therefore our progress on those. Obviously, we always try to do the least damage to our core mission priorities when we are faced with a situation like that.

Mr. SERRANO. Notwithstanding all these problems, do you think we are in better shape now? And maybe this is just a question, a softball. Are we in better shape now than we were before meltdown? Are we more vigilant? Or is this something like a street sit-

uation where every day I am amazed at how people on the street find a new way to come up with something outside the law. Is Wall Street the same way? As we speak now, are some folks trying to figure out a way to get around the system?

Ms. WHITE. Well, as a cop on the beat, and also as a person who has been around the securities industry either on the public side or the private side for about 40 years, I mean, you always have to keep up. There is always innovation. Some of that innovation is very good for capital formation and otherwise, but some of it is a new form of very complex wrongdoing, that you have to be able to be there with the right tools, the right personnel to be able to address that.

Are we better off? I think we are better off. I mean, to go back to your initial question, certainly in terms of some of the systemic risks we have talked about, that is something that all the regulators are very, very focused on. I think in terms of enforcement, in sort of catching the next big fraud that may contribute to a crisis or certainly investor harm, at the SEC we certainly are in a better position.

We have our TCR automized system to deal with tips and complaints and referrals in a way that we were not able to do before the crisis, or at least were not doing before the crisis. That has been enormously successful. Our whistleblower program I think has been enormously successful.

So we are stronger than we were, but one does not rest easy on that.

Mr. SERRANO. Right.

Let me ask you something very quickly. You are requesting 93 new positions in enforcement, 225 in compliance, 7 in corporate finance, and 12 each in trading and markets and investment. Could you please explain briefly what function these will serve and why they are needed?

Ms. WHITE. And, again, these are all core areas. I have talked a bit about already in terms of the inspections and examinations. We seek a total, I think, 225 positions there, and we examine, besides investment advisers that we have talked so much about, the 11,600, broker-dealers, SROs, exchanges, clearing agencies. So that is really just to be able to carry out those critical examination functions that are rightly assigned to the SEC, and mean so much to investor protection, both retail and institutional. So that is a critical need and it is the largest number you see in our budget request.

Enforcement. There are three areas that we consider to be critical to enhance. One is in our intelligence analysis that we do in enforcement. That relates to how much more complex the products are becoming, the strategies are becoming, in order to keep up with those in, if not real-time, near real-time, to be able to detect them, prevent them, prevent them more quickly. It is the same for the request within that 93 for additional investigative personnel.

And then we are going to trial more than we have in the past. I think last year we had 30 trials compared to 17 the year before. Why is that? Hard to say. But it is something that I think may be a function of the fact that we have targeted individuals more. Individuals tend to go to trial more than institutions do. I think we

have sought more aggressive remedies, including admissions, as you know. You must have a credible, strong litigation arm in order to be able to do everything else you do in that space.

Mr. SERRANO. Right.

Mr. Chairman, I just going to ask one more question very quickly. It is part of my mantra, which is the territories. Whenever we think about what Congress does, it is the 50 States, and then the territories are left out.

When it comes to the SEC, is the vigilance the same as it is for the 50 States, both in help and in watching out for wrongdoing?

Ms. WHITE. We have tried to prioritize that, to be sure that is the case. And certainly we are very focused on Puerto Rico now and the bondholders there in terms of the crisis that has occurred there. We do a lot of outreach to the territories. Maybe not enough, but we certainly try to focus as many resources on it as we can.

Mr. SERRANO. Now, when you say maybe not enough, is that just part of the usual behavior that Congress and the Federal Government has had towards the territories or was there something unique to the SEC?

Ms. WHITE. No. When I say that, it is really kind of my same theme of we have to use our resources wisely. They are scare resources. I do think we are underresourced, and we try to deploy them as effectively as we can. So if I were to say are we spending enough time with investors in a particular State, I would say the same thing, we do as much as we can with the resources we have.

Mr. SERRANO. All right. Thank you, Mr. Chairman.

Mr. CRENSHAW. Thank you.

Mr. Womack, and then Mr. Bishop.

Mr. WOMACK. Thank you, Mr. Chairman.

And, Madam Chair, it is always great to have you here. Always look forward to your testimony. Thanks for the work that you do.

Just a couple of questions here up front that are totally separate.

One: As you know, a few years ago we had several trading glitches that occurred because of different types of mistakes. Whether it was the "flash crash," as we know it, the night trading mistake, or problems caused by what a lot of people refer to as "fat fingers," errors highlighted gaps that existed in the SEC's regulatory regime.

As a result of these treading errors, two separate industry groups were formed to examine what could be done to address them—one by the DTCC, the other by the New York Stock Exchange. These two industry groups developed a number of suggestions for addressing the problems.

Would it be a good alternative to have the SEC establish a uniform core set of detailed policies across the trading venues?

Ms. WHITE. There could not be a higher personal priority that I have in terms of increasing the resiliency of our critical market infrastructures. One of the—and I think I mentioned it in my oral testimony—one of the rulemakings that I was very pleased to have done in this past year is our Regulation SCI, which basically for the first time makes the SEC rules mandatory across those critical market infrastructures to increase the resiliency if something occurs, including how to respond and where to respond. It increases our oversight as well.

I would also say that when we had the incident with the NASDAQ SIP in, I think, August of 2013, I called in the CEOs of the various exchanges and really quite collaboratively urged them to review not only the SIPs for greater resiliency, to audit them and assess what changes should be made, but also to review all other critical market infrastructures. What do you do at the close? What do you do on IPOs? And a longer list.

And we got back, I think in November of that year, a number of short-term, and long-term initiatives, that they either have carried out, in consultation with the SEC, or are in the process of carrying out. I mean, that again is something that we can't be complacent about because the marketplace changes all the time, as well. And I think the input from the New York Stock Exchange and DTCC has been enormously helpful.

Mr. WOMACK. So has the SEC implemented all of the recommended changes? I assume not.

Ms. WHITE. I think not all of the changes. I mean, I have to go back and sort of see which ones of ours we have encompassed in the various undertakings, what we have done. So I can't detail those as I sit here today. But we are really in constant dialogue with them and other market participants, I think, in a very constructive way.

It is a market confidence issue as well, and one of the things that you find is, I think, folks will jump to conclusions as to what is causing a particular systems issue. Is it high-frequency trading? Is it something else? It may well have nothing to do with that. But whatever it is, it decreases confidence.

Mr. WOMACK. Honestly, I would like to have just a list, kind of checklist of the things that have been recommended and those that have been implemented just for my own personal information.

SEC Chair White's Responses to Questions Posed during the House Appropriations Subcommittee on Financial Services and General Government Hearing April 15, 2015

Response to Representative Womack

In response to the Nasdaq UTP securities information processor ("SIP") outage in August 2013, I asked the equities and options exchanges, as well as FINRA and the clearing corporations, to work together with other market participants to identify a series of concrete measures designed to address specific areas where the robustness and resilience of market systems could be improved. Specifically, I asked the self-regulatory organizations ("SROs") to:

- Provide comprehensive action plans addressing the improved resilience and robustness of the SIPs;
- Identify and provide assessments of the robustness and resilience of other critical infrastructure systems;
- Provide SIP plan and/or rule amendments addressing the issuance, effectiveness, and communication of regulatory halts;
- Review, and amend as necessary, rules relating to the trade break process and procedures to reopen trading following a trading halt; and
- Provide rule amendments to implement "kill switches" that would allow exchanges to shut down trading in the event of technological failures, and review and consider other potential risk mitigation mechanisms.

SIPs

The UTP, CTA, and OPRA SIPs have been implementing the measures they identified as necessary to minimize technology issues and increase capacity levels. As with any software and hardware systems, we expect technological improvements to the SIPs to be an ongoing endeavor, and the continued development of resilience and robustness for these systems falls under the requirements of Regulation SCI, which classifies the SIPs' systems that provide consolidated data as critical SCI systems.

In June 2014, the SIPs established hot/warm backup processes whereby failover from the primary to the backup SIP sites can occur in ten minutes or less. The SROs are working on a potential alternative SIP feed which would carry all regulatory-related messages.

The UTP SIP has filed an updated UTP Plan with the Commission that provides greater clarity and certainty regarding administration of the UTP SIP and enhances SIP oversight. It also incorporates new trading halt provisions in coordination with the exchanges' new trading halt rules. I expect the trading halt amendments to be incorporated in the CTA SIP Plan in the near future.

Other Critical Market Infrastructure

The exchanges have been working on increasing resilience in market system areas they have identified as potential single points of failure (e.g., the exchanges' responsibility for calculating and disseminating limit up/limit down and short sales restriction message, market opening and closing). As with the SIPs, we expect this to be an ongoing process. For example, in light of this summer's NYSE outage, the NYSE and Nasdaq are now working on an arrangement whereby they will serve as each other's backups if they are unable to run their respective closing auctions.

Going forward, the continued development of these systems and backup arrangements for and among the exchanges will be subject to the requirements of Regulation SCI. In particular, Regulation SCI defines "critical SCI systems" to include such systems that directly support functionality relating to, among other things: opening, reopenings, and closing on the primary listing market; trading halts; initial public offerings; and exclusively-listed securities. Regulation SCI also requires each SCI entity (including each stock and options exchange, and each registered clearing agency) to designate certain key members to participant in testing of the SCI entity's business continuity and disaster recovery plans.

Trading Halts/Reopens

The equity exchanges are finalizing rule text that would clarify, among other things, the circumstances under which a SIP outage or impairment would trigger a regulatory halt and that has been coordinated with the trading halt provisions filed as part of the Nasdaq UTP Plan. I expect that rule to be filed with the Commission shortly. The options exchange trading halt rule will be drafted based on the equity markets rule, once filed, and modified to address the issues specific to the options markets.

Trade Breaks – Errors

The markets have the authority to break trades that are "clearly erroneous" (for equities) or "obvious errors" (for options). The equity markets have implemented their harmonized "clearly erroneous" rules, which clarify the circumstances in which trades will be broken. The options exchanges also each have adopted largely harmonized "obvious error" rules.

Kill switches/Risk mitigation mechanisms

The equity exchanges have adopted rules and procedures to establish kill switches that would allow exchanges to notify an exchange member and shut down trading in the event that the member exceeds a pre-determined risk threshold. The options exchanges have revised their risk mitigation rules to establish and/or enhance a number of risk mitigation mechanisms, including price filters to reject orders that are displayed or executed at extreme prices and automated processes for a member to notify an exchange to cancel or block all of that member's quotes.

Mr. WOMACK. I want to move over to what is referred to as market fragmentation in the trading of equities. Are you at all concerned that access fees and rebates are contributing to the fragmentation of the market?

Ms. WHITE. Those, among other issues. One of the things that I spoke about it at length last year, but probably since then as well, one of the things our Trading and Markets Division is doing for the equity markets is really, some call it a holistic review, I call it a comprehensive review of the entire market structure. Fragmentation is an issue. Conflicts of interest based on compensation is an issue.

We have some short-term initiatives that I expect us actually to carry forward this year, as well, that will increase, for example, transparency of ATS's, dark pools. We have taken a number of enforcement actions in the last 18 months where in fact the rules that we have in place now are not followed in those very same spaces.

So all of those issues are not only of interest, but of concern in the sense that what we want to do is optimize our markets for investors and for the companies seeking to raise capital. But it is something that you want to be data driven about, and we are being data driven and thoughtful about that as well, because you have some interrelationships of some of those issues, and the last thing you want to do is sort of decide precipitously to make one change that may seem superficially to make sense but which doesn't, given how it is integrated. But those are issues we are very much focused on.

Mr. WOMACK. Well, specifically have you looked at whether or not access fees or rebates actually serve to distort the price discovery process, and if they do, whether those fees should be reduced, whether those fees should go to zero, and if that would serve to increase transparency across the board?

Ms. WHITE. Yes. We are looking at that. And as you know, the industry is as well.

Mr. WOMACK. Yes. Thank you.

I am out of time, and I yield back.

Mr. CRENSHAW. Thank you.

Mr. Bishop.

Mr. BISHOP. Thank you very much.

And welcome, Chair White. I was interested in Mr. Serrano's reference to Jackie Robinson. And I have to say that in your industry, in your career, you are a superstar also. Incidentally, Jackie Robinson was born in my district in Cairo, Grady County, Georgia.

Let me ask you a question about virtual currencies. With the expanding prevalence of virtual currencies, including the popular bitcoin, the SEC has encountered an increasing number of securities issues from companies that either facilitate the sale or trade of the currencies or from companies that use these currencies to purchase securities.

What is the Commission's position on virtual currencies? And what major issues, if any, do you think stem from the use of these currencies?

Ms. WHITE. It is in several spaces. I mean, we have brought enforcement actions, as you may know, involving bitcoin and other

virtual currencies when they are used as a part of an investment fraud. We have done, I think, two separate investor alerts on this subject matter, virtual currencies, because it is obviously one of those kind of hot fire issues that investors are intrigued by, kind of the excitement and the novelty benefits of it. So we want to just make sure they are very focused on what it is that is being claimed in terms of some of those benefits if they are wrapped into investments or offerings. So we have done that.

We also continue to look at whether bitcoin currency is an investment contract. If it were an investment contract, then it would be a security, and various regulatory measures on our part, oversight on our part, would flow. We have not made that conclusion, but it is something that we have, what I could call at least, if it is not a formal working group, I certainly meet with them often from our New York office, as well as our Washington office and across the divisions to see how that is developing. And one really must keep your eye on how it is developing, and what more, if more, the SEC should be doing.

Mr. BISHOP. Thank you.

The SEC and the Commodity Futures Trading Commission are both required under Dodd-Frank to complete rules to increase transparency in the swaps market by having trades conducted on exchanges or other swap execution facilities. It is our understanding, however, that the CFTC has faced some concerns with respect to the international reach of this rule, particularly from counterparts in Europe and Asia, with respect to the CFTC's cross-border guidelines.

What is the SEC's experience with foreign regulatory agencies, and are there any specific examples of potential conflicts between our laws and regulations, including Dodd-Frank, with the laws and rules of foreign governments? And if so, has any government officially expressed concern or has this been primarily driven by the U.S. investment banking community?

Ms. WHITE. One of the, I think, more significant sets of provisions in the Dodd-Frank Act was really to bring in that over-the-counter derivatives market. Our piece of it at the SEC is, I think, about 5 percent of it, but nevertheless it is a market that was not regulated before. It is good that it is now. We have, I think, 29 separate congressional mandates where we have adopted about 17 of those or in the process of completing those. It is a high priority for this year.

We coordinate very closely as you must in this marketplace. It is uniquely global with both our international regulators and the CFTC. And those discussions are still going on, as you know. There are particular issues that the CFTC, but also the SEC is dealing with, with our international counterparts on recognition, and substituted compliance, so that you don't have regulatory arbitrage in one place. The market will flow there, could flow out of the U.S. if the standards abroad are not high enough. But it is still a work in progress, a very important work in progress.

Mr. BISHOP. Have any governments expressed concerns?

Ms. WHITE. Certainly the regulators have expressed concerns.

Mr. BISHOP. From Europe, Asia? From where?

Ms. WHITE. I think all over, that consistency really is essential. I think from our point of view we want to make sure that we are carrying out the strength of the mandates that Dodd-Frank gave us and gave to the CFTC and that we don't lower that bar. And even if our international counterparts have provisions that may not comply with Dodd-Frank, we don't want to lower those standards that are intended to protect us from all that risk within or flowing back to the United States.

Mr. BISHOP. Thank you very much.

Mr. CRENSHAW. Thank you.

Mr. Yoder.

Mr. YODER. Thank you, Mr. Chairman. I was listening intently to your discussion about the New York Yankees and other baseball teams. And I just thought, for the record, Mr. Chairman, it ought to reflect that the Kansas City Royals are undefeated and 7–0 in this season, and hope everyone will cheer for American's team going forward.

Chair White, welcome back to the committee.

Ms. WHITE. Thank you.

Mr. YODER. As you are aware, there is a bill moving through Congress that would deal with the issue of email privacy. We have had this discussion before this committee before. And for the sake of background, we know there is a 1986 law that essentially says when digital correspondence is stored for more than 180 days, or once it is opened, if it is an email, that it is considered essentially abandoned and searchable and seizable by the government without due process, without probable cause. And many agencies, not just your own, have utilized that provision in the past.

Most, if not all of these agencies have determined that after State v. Warshak and other court hearings, and just the modern use of email, that it is an inappropriate use of governmental power to read Americans' emails without due process, without probable cause, using the power of a civil subpoena that doesn't have any protections for the account holder.

There is legislation going through Congress that has over 250 co-sponsors, including every member of this committee that is here present today. There are a variety of organizations, entities, ideological groups, from the far left to the far right. This is probably one of the issues that unifies Congress and the country more than anything. And then there is the SEC against the whole world.

And so I guess I would ask you, Chair White, if the SEC is continuing the practice of using an administrative subpoena to subpoena third party Internet service providers to review the digital correspondence of Americans.

Ms. WHITE. Let me start on a positive note. I am from Kansas City. So I like the Royals as well.

Mr. YODER. All right. Check that box.

Ms. WHITE. Okay. Okay. They used to be the Yankees' farm team, though. I had to add that. Sorry. And did great last year. Almost got there, right?

Mr. YODER. Right.

Ms. WHITE. We have discussed this issue, I think, several times. I don't think it is actually just the SEC. The concern is what it does to civil law enforcement, not a quarrel with making certain

that the privacy protections are sufficient. And, again, we have civil law enforcement powers. We do not have the warrant power. So if a bill were to pass that required a warrant to actually obtain emails that have been deleted by the subscriber from the ISP, we could not get them.

Mr. YODER. And I just if I could clarify, that is not what the legislation does.

Ms. WHITE. Okay. All right. I know it has taken various iterations, but it does at least as I have seen it. We do have it. Again, I know we discussed it. I am sorry.

Mr. YODER. Madam Chair, because I am short on time, the legislation essentially says for criminal proceedings you have to use a warrant, and for civil proceedings, when you use the subpoena process, the subpoena is served on the individual, not on the Internet service provider. It is served on the person who holds the documents.

And I guess the question that a lot of Americans are asking is, why does the SEC or any other Federal agency somehow decide that they want to treat email differently than paper mail when it comes to that civil subpoena? Why can't the SEC use the same process? Why can't they use what they have in law that allows their powers to go to the Internet service providers and to put a protection to make sure no emails are deleted? They can use that power today. There is no deletion of information.

Why can't the SEC serve a subpoena like they serve on individuals for paper documents the same way as email documents? And I know what many of us believe to be the answer is that civil agencies like the SEC have used this as a shortcut to get around the traditional notions of civil subpoena process.

And so my questions are twofold. One, why does the SEC believe that they can shortcut the traditional notions of the civil subpoena process when it comes to email and not treat it like paper mail or paper documents? And, two, is the SEC still currently engaging in this practice, and can you give me examples of where this is occurring and how you have utilized it after State v. Warshak?

Ms. WHITE. Two responses to that. First, I think we don't and haven't used the civil subpoena authority in that way. I think, as we discussed last year, what the SEC does, I can't speak for every other agency, obviously, but when the SEC would subpoena an ISP for emails, the typical course is to go first to the subscriber. The subscriber may tell you, I have deleted my emails or otherwise can't produce them.

And so then typically the pattern would be to subpoena the ISP for those. They may be there or may not be there, obviously, in compliance with the existing ECPA law. And the SEC gives notice to the subscriber that we have done that so they can object. In fact—you get notice and the ability to come in—to object to that. So I don't think there is any due process issue with respect to that. I think the SEC has been very, very careful about that.

When I arrived at the agency, these discussions we are talking about now, Warshak had occurred, and while the discussions have been going on—I don't think, by the way, Warshak does invalidate the procedure the SEC has used, the civil subpoena authority, certainly as we have used it. But while these discussions have been

going on to try to sufficiently balance the privacy and the law enforcement interests, we have not to date, to my knowledge, proceeded to subpoena the ISPs.

But that is something that I think is critical authority to be able to maintain, done in the right way and with sufficient solicitousness, and it is very important to the privacy interests, which I do think can be balanced. But what I think would harm civil law enforcement, particularly securities fraud law enforcement, is if we in effect were unable—and I would again say we would need longer to debate the legal issues, but I don't think we do anything differently with respect to mail and ISP. We follow that lawful, Supreme Court-endorsed civil subpoena authority.

But, again, we have been and remain very interested in working with you and others to balance those interests so that we are not disabled from getting evidence that may not exist elsewhere with regard to securities fraud.

Mr. YODER. Mr. Chairman, I will utilize the next segment to maybe continue this conversation.

But what I will say just in closing on this thought, you do treat it, the SEC does treat email and paper mail different. You are following the law, the 1986 law, but the majority of this Congress, including everyone sitting here in this committee, has cosponsored a bill to say that that 1986 law that doesn't protect email the same way we treat paper mail is inappropriate and is in effect a violation of the Fourth Amendment. We think that an email ought to be secure.

And so just when your testimony is that you treat them the same way, that is incorrect. If I have a paper document sitting in my possession, you subpoena me, and if I don't produce it, you have a whole sort of process in order to be able to go forward and have me produce that document. There are many rights that you would use to get paper documents.

All this legislation is saying is you have to use that same process for email. If I don't produce the email, then you can compel me to produce it. If I have deleted it, I can permit the SEC to go forward and go to the Internet service provider.

But the entirety of this issue is the service of a subpoena on an Internet service provider and not on the individual is a violation of Americans' privacy rights. It is certainly a violation of what many believe the Fourth Amendment stands for. And it is inconsistent—at least I want to clarify this—with how we treat paper mail. You can't serve an Internet service provider for paper documents. You can't serve a third party. You serve the person who holds the documents.

Ms. WHITE. We can serve a third party with a subpoena, if it is paper or physical.

Mr. YODER. But not if I hold the documents, ma'am. If I am holding a document right here, there is no such thing—if I hold the only copy of it, and I am the one who holds the document, you serve the subpoena on me.

Ms. WHITE. We should have a longer conversation on that because I think we do differ on that legal point. What we don't differ on is making certain we are protecting those privacy interests that you and others and all of us care about.

Mr. YODER. And I will just conclude by saying, reading Americans' emails by serving a subpoena on an Internet service provider is violating their privacy rights.

And I will yield back, Mr. Chairman.

Mr. CRENSHAW. We will have a little more time on the next round, but let's go now to Ms. Herrera Beutler.

Ms. HERRERA BEUTLER. Thank you, Mr. Chairman.

So when I came in, I apologize, I was actually at another subcommittee markup, 'tis the season, so I came in on the tail end of your responses to the chairman about a question that I am going to be asking, was hoping to get your thoughts on it. So I apologize if you have already heard it. I didn't get to hear the whole thing.

In discussing your belief that the SEC should propose the fiduciary standard for broker-dealers, you have indicated the need to harmonize the standards that govern how the retail brokers offer advice to investors. And more clarity could be used to ensure that the individual investors are understanding the differences between registered investment advisers and broker-dealers. I think that makes sense. It is worth noting that the separate regulatory infrastructure has worked really well for the past 70-plus years.

So my question is, do you see the SEC's involvement in the fiduciary standard as a first step in a broader effort to harmonize the RIA and broker-dealer industries or is it more of a kind of a one-off, for lack of a better term, to rectify the individual issue of investor confusion? And if it is only a first step, do you see other actions or other efforts affecting each industry separately?

Ms. WHITE. The SEC staff did a very comprehensive report, actually, to Congress with staff recommendations on really kind of both sets of issues. And they are big issues and complex issues, all of them. One of them being should there be a uniform fiduciary duty standard, which basically says broker-dealers and investment advisers, at least when they are acting essentially in identical spaces with retail investors, should be subject to a best interests of the client standard. Then also, because you do have separate regulatory regimes, based on the historic development for broker-dealers and investment advisers, should there be harmonization? If so, how much?

In terms of what I am talking about now, I am very sharply focused on the first set of issues. That doesn't suggest that there aren't more sets of issues that need to be addressed. I think there are. But in terms of what I am talking about now, it is really the uniform fiduciary duty standard.

But, again, among the issues, if we are to proceed with imposing a uniform fiduciary duty on broker-dealers and investment advisers is, what is the standard? What does the standard require? What are the existing practices of both investment advisers and broker-dealers which can continue? Which have to be altered?

And, again, we also have the parameters set by 913 of Dodd-Frank that tell us it is not a per se violation of any duty we might impose, that the financial professional charges a commission or engages in principal transactions. So there is an awful lot of issues in that, an awful lot to balance. And as I said, it is complex, getting the right balance is absolutely critical, and it is not going to be quick.

Ms. HERRERA BEUTLER. So it sounds like, yes, in part, that you are going to be spending much more time and attention on it.

Ms. WHITE. Yes.

Ms. HERRERA BEUTLER. Skipping over to a totally different issue, I think you have recently talked—recently, probably in the last year—my recent history is last 5 years anymore—about the lack of liquidity in financial markets. And is this a concern and potentially a major risk? And if so, do you believe we should be examining our regulatory framework to address the risk, like what I believe most of the world is currently doing?

Ms. WHITE. Well, I think all of the regulators, certainly including the SEC, are very focused on that. I mean, clearly with the anticipation of the rising interest rates has obviously focused everyone's attention on that. One of the reports that actually the members of FSOC make to the House Financial Services Committee quarterly is whether the Volcker rule may be adding to or having an impact on liquidity. Thus far the conclusion of those reports is that you can't say that it does, but clearly you have got a whole regime of regulations, capital requirements, et cetera.

What we have done at the SEC, I think it was January 2014 that our Investment Management Division put out guidance to firms to alert them to the possible risks, particularly if interest rates rise. We had the experience of I guess it is called the taper tantrum when it looked as if interest rates were going to be raised and what impacts that seemed to be having—so that they are looking very closely at their own risk management of their portfolios. But it is something that everybody, and rightly so, is very focused on.

Ms. HERRERA BEUTLER. With that, I yield back.

Mr. CRENSHAW. Mr. Graves.

Mr. GRAVES. Thank you, Mr. Chairman.

Good to see you again. And I appreciate your time today, your explanation of some very complex issues. And I would sort of like to follow up a little bit on Ms. Herrera Beutler's comments on liquidity, and I know the chairman addressed that as well. And it does seem since the implementation of the Volcker rule, so it was 2013, the markets have certainly seen the effects of that. And it was once theoretical, and maybe had great intentions, but now it is very practical. And this interaction between all the rules, and I think you suggested that, there is just a complexity of new rules and regulations that are putting a lot of pressure on the markets.

Maybe you could just sort of follow up a little bit more on the liquidity in the bond market. With the implementation of Dodd-Frank and application of capital standards, we are certainly seeing the effects of overregulation in the markets. And as you may recall, last fall the U.S. treasury market experienced what was called a flash crash that alarmed a lot of the major market players and investors.

And last week Larry Summers, former Treasury Secretary under President Clinton, echoed these sentiments, and he made a good point, and that is that regulators seem to be more interested in strictly keeping each individual institution safe rather than taking a holistic approach and making sure that the markets are open and liquid.

So maybe as a member of FSOC, and you referenced that organization as well, can you just comment on some of those concerns that are being widely commented on now?

Ms. WHITE. And, again, there are lots of moving pieces that may have potential impacts, and I think, as I said before, the last report that the regulators did really did not conclude—actually Volcker is not effective yet. Obviously firms have adjusted practices in advance of that, but it actually doesn't take effect until, I think, July of this year, and so there is no cause and effect that can be ascertained from the work that we have done. But the financial regulators are all very focused on this, and particularly as we anticipate the interest rates rising.

From my point of view, I think it is something that we have to continue to comprehensively, continuously look at to see the phenomenon. The last report we did suggested that liquidity in the primary market, bond market, was solid, had tightened some in the secondary market, but that tends to happen at year end, and I think this report was based on year end. But we have to look at everything we do for the impacts that are occurring, positive or negative, and be prepared to make adjustments if need be.

Mr. GRAVES. Okay. Thank you. And I will make a simple point. I know maybe Volcker hasn't gone into effect until July, as you say, but I do think it does have an impact. I mean, you somewhat referenced that with the hint of interest rates rising, and it has an impact on markets because there is an anticipated change that is occurring. So I can imagine that it has rippled through a lot of the markets in some way in anticipation of what may come ahead.

So in your perspective, do you wait until after it is implemented and then analyze what impacts have occurred or haven't occurred? And if so, how do you measure that? Do you measure that prior to Volcker being not adopted, but anticipated to be adopted? And what metric do you measure that against? Because if the markets have already made somewhat of an adjustment, some would argue that it has been negative, do you use that as the metric you measure the future against, or do you go prior to that when the markets were normalized?

Ms. WHITE. At least at the SEC, as we do our economic analysis, you always look for the baseline before you do something or are anticipating doing something, what did it look like and then what might be the impact. And certainly we studied that and analyzed that before the rule was adopted, and certainly we are not not studying it before it becomes effective in July, and I think that is the right way to proceed.

I think among the issues, though, is what is the state now. That may change when interest rates rise, for example. And then the other is what may be causing an effect that at least some may consider to be negative. Obviously, you are balancing cost and benefits as you go. I mean, it is not as if the only thing you look at is higher liquidity or deeper liquidity. You are looking at what are the benefits of whatever may be causing lowered liquidity as well. It is a very comprehensive, but it really needs to be real-time and continuous.

Mr. GRAVES. Right. And I would be interested maybe in the future you could share this with me. You speak of the baseline. I

think it is very important. Choosing that baseline is equally as important. Is it a baseline of today? Is it a baseline pre-2013? Or is it a baseline pre-2007 when the markets really were impacted in a lot of different ways? And so maybe as you formalize that through your own analysis and FSOC you could share that with us.

SEC CHAIR WHITE'S RESPONSES TO QUESTIONS POSED DURING THE HOUSE APPROPRIATIONS SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT HEARING—APRIL 15, 2015

Response to Representative Graves

As a general matter, the SEC's approach to examining the impacts of a new regulation is to look at the current state of the market immediately before a rule is proposed or adopted and compare that to potential or actual effects after the implementation of the rule. Because the Volcker Rule is being phased in over time, generally with an initial conformance date of July 21, 2015, an analysis of the Volcker Rule's impact would involve a comparison to the state of the market prior to the time that banking entities were required to conform to the Volcker Rule. Importantly, however, we understatnd that market behavior had been changing both in anticipation of the implementation of the Volcker Rule and in response to the financial crisis. Specifically, covered banking entities may have altered their business modesl both in response to regulatory changes and as a rational reaciton to changing financial market conditions. For example, covered banking entities with proprietary trading and prviate fund operations began closing their proprietary trading desks and private funds in response to the passage of Section 619 of the Dodd-Frank Act, prior to adoption of the final Volcker Rule. Additionally, covered banking entities with market-making and dealing operationsmay have been reassessing the profitability and riskiness of these operations in response to the financial crisis. Any such analysis that may be undertaken would take all of this into consideration.

Mr. GRAVES. And then, Mr. Chairman, I will just sort of close on this.

It sounds like, and I don't want to put words in your mouth and you can feel free to follow up, that you agree that it needs to be a balanced, holistic approach as you analyze a lot of the various measures that are being taken right now and not be narrowly focused solely on derisking certain institutions or banks, but it needs to be balanced and considered in a broad manner to alleviate some of the liquidity issues. Is that sort of what I took from your comments there?

Ms. WHITE. I mean, I think that anytime you regulate or take any other action you need to be assessing the benefits, the unintended consequences that may be positive or negative. I can't say where that sorts out as we do that review.

Mr. GRAVES. Great. Thank you.

Mr. CRENSHAW. Thank you.

And I think we have time for another round of questions if people have them.

Let me start by asking you about what I mentioned in my opening statement about FSOC and the SIFI designations. As chairman of the SEC, you sit on the Financial Stability Oversight Council. I think there are eight other government regulators on the Council. And your job as the FSOC is to mitigate risks to U.S. financial systems. You are supposed to identify and respond to emerging threats to overall financial stability.

There has been a lot of interest in this designation of SIFIs, and specifically people have talked about how you select someone to be a SIFI, how you inform someone if they are a SIFI, how you designate them as a SIFI. There are some ideas floating around that might be commonsense improvements, like more engagement with

the primary regulator before the designation, the ability of a company to derisk before their designation, and an overall increase in transparency with the whole designation process.

So I want to ask you, what are your thoughts on allowing a company, say, to derisk, offload some of the risky parts of their operations, as identified by FSOC, before the designation?

As I mentioned earlier, in one sense you ought not to be simply in the business of trying to go out and designate folks, which subjects them to an additional set of regulations, but just say, look, it would be better if we help you not become a SIFI because that is part of our responsibility.

What are your thoughts about some of those proposed commonsense improvements?

Ms. WHITE. First, at the outset, I think it is clear that FSOC is a relatively new organization. I think it is enormously important to safeguarding the financial stability of the country. It is a good thing that it brings together all those regulators at the same—I think it is about once a month and more often when there is a need to say what are you seeing in terms of risks that may impact negatively on the wider economy.

So FSOC is assigned to identify those risks and then address them if found with the authorities that FSOC is given. A primary authority is obviously the designation authority.

Certainly a number of parties, and I think you are citing some of the suggestions that a number of parties have made that FSOC should move to increase transparency on a number of scores. FSOC has engaged in that process recently, actually put out some new procedures in that direction. Again, I think the statute does basically assign to FSOC, if there is a finding that a particular entity's material financial distress would have impact on the broader financial system, significant impact on the broader financial system, then it can be designated.

Now, one of the other sets of issues, of course, is once you are designated there is also a process to be dedesignated. And as it has developed so far, although I think that will continue to evolve with more clarity and more transparency, what are the specific things that a firm might do so they are not creating a systemic risk. And clearly not creating a systemic risk is a good thing. But I think what Dodd-Frank and FSOC wanted to be sure of is you are not erring on the side of not catching that risk that may have really very broad and negative consequences.

So I really see it as it is evolving in terms of greater transparency. I think that is a good thing that it is, and I think it will continue to evolve.

Mr. CRENSHAW. Well, on that point, let me ask you, the SEC is the primary regulator of the securities markets. You have the expertise in this area. And so it puzzles me to see now that FSOC is looking into designating registered funds, like mutual funds, that they might be designated as a SIFI. But they are not leveraged, their losses are absorbed by the fund investors, and they already have liquidity requirements. And I don't know that there have been any runs on the funds even in difficult times.

So it seems to me that is an area that you have got to think hard about before you put them under the style of regulation that might not be applicable to them.

So what is your view of registered funds? Are they all that risky? And if so, how? As the SEC is the primary regulator, do you have more say if FSOC is trying to make a decision like that? And you touched on some of the areas that might be places that you could reform and improve, again, understanding the overall importance of making sure you deal with that risk.

Talk about that, just going beyond what you might think ordinarily would be a systemically important financial institution and moving into some other areas.

Ms. WHITE. I think first the way it is structured now, clearly the primary regulator is present. There is an insurance representative, obviously the SEC is there, the CFTC is an FSOC member, and the primary regulator is both consulted and also a very active participant.

One of our jobs, the job of the staff and me, I mean, I am the member, that is another one of the issues when you are on a commission, but I am the member, and our staff brings to bear knowledge in spaces where we are expert. Asset management obviously comes immediately to mind. We provide extensive support to the working groups within FSOC as they are analyzing these issues. And I think that is very, very important to do.

It is important, in my view, and I have said this before, that with respect to all of us on FSOC, we have certain expertises that are deeper than others. Banking regulators have banking regulation expertise. We have capital markets expertise. The insurance member has insurance expertise. That is extremely important, that it be at the table, be listened to, its staff be listened to, and then if there is a need for further expertise to understand a particular set of companies, an industry, that FSOC brings in additional expertise.

So I think it is very important to get it right. I mean, asset managers are basically, structured on an agency basis. It is the client's money. It is not a balance sheet issue typically.

FSOC, as you know, at the end of December put out a request for further information from the public and the industry, as to whether there are activities that are being engaged in by the asset management industry that may create systemic risks of one kind or another, and if so, what should the response to that be.

If it is a regulatory response, and maybe it will be that, maybe the suggestion will be there doesn't need to be a further response, that would fall to the primary regulatory, the SEC. We have regulated asset managers for 80 years. I mean, we are, we think, expert in that.

And we evolve with how the industry changes. There clearly have been changes in the asset manager space. I think I did a speech the end of December talking about kind of our next phase of enhancing regulatory oversight of the assessment management industry, including getting more data in areas where we don't, for example, you don't have today standardized reporting on derivatives. Separately managed accounts, you don't have that informa-

tion in a way that you can analyze it as deeply as you would like to.

So we are proceeding on several regulatory fronts, as we have for decades, where we think it needs to happen. So that is occurring at the same time.

I see what FSOC is doing is, clearly, if you have a systemic risk, there are other market participants we don't regulate that may be part of that risk. So I think what they are doing in terms of getting further information on this complements what we are doing at this point.

Mr. CRENSHAW. Thank you very much.

Mr. Serrano.

Mr. SERRANO. Thank you, Mr. Chairman.

Dodd-Frank implementation created a whole new set of issues for you to deal with. There were 90 new rules, created five new offices, and produced more than 20 studies and reports. Our understanding is that most of it has been either proposed or completed. What still remains to be done and what has hindered progress on these remaining issues?

Ms. WHITE. I will start at the end of your question. I think between the Dodd-Frank and the JOBS Act, the SEC was given almost 100 mandated rulemakings, of great complexity in many cases. When I arrived, there were some, I think, very important ones, frankly, both Dodd-Frank, JOBS Act, and other areas of rulemaking at the agency that had been delayed or for one reason or another needed to be advanced.

One of the things that I tried to do was to do parallel workstreams on these rulemakings so that you didn't have the same people working on four or five different rules. I think we have made very, very good progress on the Dodd-Frank-mandated rulemakings. I look at those in kind of eight separate buckets, including the Volcker rule, the municipal advisors registration regime that has been set up. Clearing agencies. Securitizations. Credit rating agencies.

The two in that group where we have work to complete are really Title VII, as we talked about earlier. I think 17 or 19 of those have been adopted, but we still have to build that out. It is a high priority for 2015. And some of the remaining executive compensation rules under Dodd-Frank, including Section 956 of Dodd-Frank, which is a joint rulemaking with other financial regulators.

So the challenge is really just the volume, the complexity, and not to have the mandated rulemakings crowd out other core things that we need to be doing that are not mandated by either Dodd-Frank or the JOBS Act.

Mr. SERRANO. Next question. You mentioned, both privately when we met and publicly here, the imbalance with some of the banks, for instance, that have so much of a budget for IT compared to what you have. And so has that hindered enforcement for you? And how will the new positions that you are asking for, should we be able to get you some extra dollars, how can you begin to work on balancing that act a little bit more?

Ms. WHITE. First, I am extraordinarily proud of our entire agency, including the enforcement function, including when they go to

trial. I think our success rate is very impressive given the difficulty of our cases, and we often meet an army of lawyers.

IT is very important.

Mr. SERRANO. I understand it is 80 percent.

Ms. WHITE. Yes, that is correct, in most years. Sometimes it is higher, sometimes it is lower. And they are hard cases. They are very, very hard cases. And part of what we are seeking in this current budget request is to be able to bolster enforcement, including at trial, including with IT to assist what they do, hire more experts in order to be able to really match what we are put up against. I think we do very well at it, but we would clearly do better at it with those resources.

Mr. SERRANO. Now, do you foresee this to be an ongoing issue? One of the problems that we have here in Congress is that we are always talking to all the agencies about their IT situation, and then at home we find out that the iPad we bought last year is outdated by next year. And now it is the iWatch and everything else.

And so speaking from your agency alone, are we ever going to catch up, or will Congress always, is the government going to be behind in trying to bring all the agencies up to date?

Ms. WHITE. Very good question. We have already talked about the difference in numbers in the private sector and on the government side, certainly with respect to the SEC, which is why, by the way the reserve fund is so important to us, because we use that for those long-term, mission-critical projects, that you have to be sure you have got that funding. And one of the issues we had last year was $25 million of that was actually rescinded. So that can really set you back.

But our strategy on the IT front is all the enhancements we are doing, all the restructuring and redesign that we are doing is intended to both break down the silos, making sure all our data, big data and other not-so-big data is accessible, more easily useable, but also to build our IT network, if you will, so that we can adapt quickly to new applications that we are going to need in order to be able to assess what the latest practice is.

So, I mean, I think you want to build it as smartly as you can, but I can't sit here and tell you that you are not going to be playing a bit of catch-up as we go forward.

Mr. SERRANO. I suspect.

Thank you, Mr. Chairman.

Mr. CRENSHAW. Thank you.

Mr. Yoder.

Mr. YODER. Thank you, Mr. Chairman.

Mr. CRENSHAW. Continue his conversation.

Mr. YODER. Chair White, I want to briefly return to the topic aforementioned, and then I have a couple other items I wanted to visit about as well.

What I would just maybe say in summary is that I gleaned from your testimony that after Warshak, I think you stated that the SEC is actually not serving Internet service providers directly for emails. Is that a correct statement?

Ms. WHITE. I think what I have said is when I arrived they had not recently served it. I don't think Warshak actually speaks to our

practices, frankly. But while these discussions were going on to enhance the privacy interests we——

Mr. YODER. And that is appreciated.

Ms. WHITE. Yes.

Mr. YODER. So since you have been chair——

Ms. WHITE. Yes. But I am very worried about that, I can tell you that. I am very worried about what we don't know we are not getting.

Mr. YODER. And, Madam Chair, this is what I wanted to get to maybe to conclude our conversation here, is that in no way is the effort to protect the privacy rights of Americans' emails also an effort to try to stifle your effort to do your job. And there has got to be a point there in which you can access the information you need, and I believe that is in a traditional way consistent with paper mail. And it sounds like you believe it as well. We just need some interpretation and understanding of how we make those things similar.

I would think the SEC, under your chairmanship and after Warshak and you giving deference to, okay, this is an issue that Congress is going to address so let's not go forward and serve Internet service providers until maybe we get some clarity, I would think the SEC would actually be banging on our door saying what you just said: We don't know what we don't know, and we need Congress to resolve this issue.

So I guess I would ask that maybe under your leadership, if you could direct your staff or you take this issue on personally to make suggestions and amendments that might achieve my mission, which is what I believe to have the service go directly to the individual, that it be treated just like paper mail, and your mission, which is to make that you don't somehow lose these emails in the process and that you have the ability to use your traditional subpoena powers.

I think there is an answer there. I think it is the bill that we have introduced. But if you have suggestions and ways in which we could resolve this, and amendments, I would be happy to entertain those. I would be happy to come to a resolution with the SEC on this.

Ms. WHITE. I would be very happy to engage in that dialogue. We don't have to take the time of the whole subcommittee now.

Mr. YODER. Sure.

Ms. WHITE. But there are a couple of things in our exchanges where I think we may differ in either how we have done things or what the law allows us to do, et cetera, and, again I am concerned about. But I didn't think it was the right thing to do as we are discussing trying to balance privacy and law enforcement——

Mr. YODER. I appreciate that.

Ms. WHITE [continuing]. To go ahead and serve that subpoena on the ISP.

Mr. YODER. To not do that, right, and I appreciate that.

Ms. WHITE. But I worry about it.

Mr. YODER. Right. And I worry about it. So are you serving the subpoenas directly on the individuals right now or are you just not getting the emails?

Ms. WHITE. No. We always have served subpoenas directly on the individuals.

Mr. YODER. Okay.

Ms. WHITE. And sometimes you get documents and sometimes you don't.

Mr. YODER. Okay.

Ms. WHITE. And sometimes you are told, "We have deleted them all."

Mr. YODER. Right.

Ms. WHITE. Or you have an entire missing month, like the critical month, and if it is still on the ISP, that is critical evidence. While we discuss this, I worry about what we are missing.

Mr. YODER. Right. And certainly we are trying to receive emails, Congress is, on a variety of issues too, and not every American can have their own service provider at home, their own in-home server.

So that being said, let's move on to a couple more issues here. I am interested in the SEC's efforts related to universal proxy ballots. And I noticed the SEC recently held a roundtable to discuss universal proxy ballots. And this is a mechanism favored by some special interest groups to increase their ability to get board seats on public companies. It would fundamentally change the way in which directors are elected, likely lead to endless proxy fights, creating a huge ongoing distraction for companies and their performance and the ability of the, I think, really, the economy to grow and create jobs.

So the SEC has yet to adopt any universal proxy rules, but the fact that you held a roundtable has raised some eyebrows, made folks interested to know which direction the SECis going, does the SEC plan to engage in rulemaking on universal proxy ballots. Is this something that the SECis moving forward on?

Ms. WHITE. There are a number of proxy issues that the SEC has been talking about, been concerned about, and interested in, for really a number of years. A concept released was published a number of years ago. This was among those issues, I think. Our Investor Advisory Committee was very interested in this issue, and made a recommendation. Since the roundtable we have gotten actually a rulemaking petition from, I think, the Council of Institutional Investors.

So it is all under study and review, I mean, that is the status, as are other proxy issues, under study and review with the staff and at the Commission. So there is interest in the issue, therefore we had the roundtable basically. One commissioner requested it, but there was broader interest than that.

And I think what I at least took away from the roundtable is the concern that if you are physically present at the meeting you in effect get a ballot that has everybody on it and you can kind of see who is where. Management slate or the proponent, shareholder proponent slate. When you do that, by virtue of the current rules, by proxy, you are not able to do that. So what the proponents are trying to do is replicate what it would be like and what you could do if you were actually at the meeting.

I think there are number of issues, a number of issues were discussed about the complexities of that. There was a lot of devil is in the details about, at least as I took in the particular roundtable,

a real difference of opinion on the concept, but the devil is in the details. Do you do it alphabetically? Who does the supporting statement for each candidate? So there is a lot in that to study.

And so where that stands right now is it is basically being further studied by the staff and discussed at the Commission, but there is not anything on the slate as we speak now.

Mr. YODER. So there is no intended rulemaking that SEC intends to do at this point?

Ms. WHITE. Well, it is under discussion, but it is not on our Reg flex agenda to go forward.

Mr. YODER. In the discussions, did the SEC identify a market failure that would warrant the SEC consuming additional resources and making this a priority?

Ms. WHITE. Well, I think that the range of proxy issues, and, again, there are different proponents on different sides of the different issues, are really quite important to companies, investors, management. This is one of them. And I certainly thought, or I wouldn't have held it, I thought the roundtable discussed other issues too. How you enhance retail investor participation in the proxy process, which is an issue of concern to a lot of people. I certainly thought that consumption of resources and studying the issue was a wise one. It is not an extensive consumption of resources.

Mr. YODER. Then lastly, just quickly, you made remarks about the priority to initiate crowdfunding rules for the SEC, and I have got a big startup community in Kansas City, in my district, and they are certainly interested in that process and hopeful that it moves forward. And I just thought maybe you could give us a sense of where this ranks on the priorities of the SEC and the timeline regarding crowdfunding rules.

Ms. WHITE. I always get kicked from behind when I do timelines, but this is one that I think is enormously important. I think it is our last major, significant rulemaking under the JOBS Act. It is one that I have actually in the last 6 weeks or so had really extensive meetings with the staff. They are progressing on this.

I mean, essentially the lay of the land on this is we knew it was going to be a complicated rulemaking. We basically need to be true to the statutory requirements, but also make it workable and cost effective. That has proven to be even more complicated, to get that right balance, than we thought. But it is one where I am certainly prioritizing it for this year.

Mr. YODER. Thank you, Chair White.

Thank you, Mr. Chairman.

Mr. CRENSHAW. Ms. Herrera Beutler.

Ms. HERRERA BEUTLER. Thank you. That was one of my questions actually. So I appreciate that.

Your written testimony, Madam Chair, it began with an outline of how much the SEC's workload has increased over the last 15 years. Certainly we have talked about increases for salaries and FTEs—not salaries—but the FTE pay and the ability to take on and do more. Essentially the need for more funding. And our job here is not just to appropriate money, but also to find savings and help agencies operate efficiently.

The SEC is expected to finalize its pay ratio rulemaking sometime this year. This rule requires that public companies publicly disclose the pay ratio between their CEO and their median income employee. And no one is going to argue that CEOs don't get great salaries, they certainly don't need my sympathy. But I had some concern as we are being asked for more funding, and when I think about what could be argued a rule that may or may not directly relate to the role of the SEC, it is my understanding this rule doesn't do anything other than make public certain people's high salaries in private companies or nongovernment companies.

Further, the courts do have a history of throwing out SEC rules that are specifically designed to shame people, as you well know. So there is a good chance that this finalized rule won't last long.

Now, I know in a letter you sent to the chairman of the House Financial Services Committee in December that the SEC has spent over 7,000 man-hours and a million bucks to just draft the pay ratio rule. Do you have an estimate of what the final taxpayer cost is for drafting this rule?

Ms. WHITE. I don't have a final estimate, although I think the costs estimated, and it really is an estimate, reflected in that letter are now certainly most of the costs that is involved.

This is a little bit like the crowdfunding discussion I was just having with Congressman Yoder. I mean, it is a mandated rulemaking by Congress. I do regard congressional mandates as something we are obligated to proceed with. Pay ratio is one of those. Reg A-Plus that we just did, under the JOBS Act, is another one. I think they both didn't have deadlines, actually, as it turns out.

Again, what we are doing there is we have to be faithful to the mandate and faithful to the statutory requirement.

Ms. HERRERA BEUTLER. So in your opinion, I wasn't here when that was passed——

Ms. WHITE. I wasn't either.

Ms. HERRERA BEUTLER [continuing]. So is this something that you would like help with not having to do? You are talking about needing new resources to do real work, important work in protecting investors, in protecting individuals. Do you feel like this really supports that mission?

Ms. WHITE. I think that is for Congress to judge, frankly. There is no question that those 100 mandates I mentioned, in answer to Ranking Member Serrano's question, that the SEC was mandated to carry out under the JOBS Act and the Dodd-Frank Act are challenges for the agency. It is probably the most challenging period of rulemaking and most complex in its history.

And so one of my jobs has been to make certain that we are able to do other things as well that are very important to our core mission. But at the end of the day, I think that is up to Congress. What we do is we try to carry out those mandates, whichever ones we are talking about, in as cost-effective a way, as consistent with our mission as we can, with the mandates we are given.

Ms. HERRERA BEUTLER. Can I ask then, so then all the mandates that you have been given you are putting time and effort into every single one of them, or have you prioritized those mandates?

Ms. WHITE. Well, you do some prioritizing. I mean, when I first arrived, though, again, I mentioned that——

Ms. HERRERA BEUTLER. So none are sitting on the shelf?

Ms. WHITE. We haven't completely finished all of them, but——

Ms. HERRERA BEUTLER. Have you started all of them?

Ms. WHITE. Oh, yes. No question about that. No question about that.

Ms. HERRERA BEUTLER. Okay. Okay. Again, had I been here, I would not have supported requiring you to spend time on what could be superfluous efforts. Like you said, you have got a lot of important work to do. We have already talked about some other rules that are a lot more complex and directly related to consumers. And some of us here would like to relieve some of those mandates to allow you to focus on what you need to do. We welcome your feedback in moving forward on that issue.

So with that, I yield back. Thank you.

Mr. CRENSHAW. Thank you.

I think there might be some additional questions that will be submitted for the record.

Mr. CRENSHAW. But let me first say, speaking of historic days, 150 years ago on this day Abraham Lincoln died. And, interestingly I am told that the day before, before he went to the theater that night, he signed the bill that created the Secret Service. So whether that is true or not, I am told that, but it is kind of interesting. And of course Jackie Robinson played his first baseball game. And of course we have all have to file our taxes today. So it is a significant day. And Mary Jo White.

Ms. WHITE. I think that fell to the bottom, but I appreciate it.

Mr. CRENSHAW. Let me just say thank you. You have an important responsibility and you carry it out well, and we appreciate all that you do. And thank you for being here today.

Ms. WHITE. Thank you very much.

Mr. CRENSHAW. This meeting is adjourned.

Financial Services and General Government Subcommittee Hearing on the Securities and Exchange Commission for Chair Mary Jo White

Questions for the Record Submitted by Chairman Ander Crenshaw

Regulatory Overlap/ Liquidity Impacts

I am concerned about the impact of over-reaching and overlapping financial regulations on the U.S. economy. I have been hearing lately that the combined impact of financial regulations—most notably the Volcker Rule and capital rules—are having a detrimental effect on market liquidity and our job creators. Dealers are decreasing their market making activities to comply with these rules, and as a direct consequence, market liquidity has decreased dramatically and volatility has increased.

As Chair of the SEC and a voting member of FSOC it is your responsibility to coordinate rulemaking and help ensure that financial regulatory rules are not hurting the economy.

Question: Although agencies are doing cost-benefit analyses for their respective rules, does the SEC—or any other financial regulator—take into account the overall effect of rules between agencies and what effect uncoordinated rules have on the U.S. economy?

Response: The Commission and its staff frequently consult and coordinate with other federal agencies on Commission rulemakings, whether required by statute (as with certain rulemakings under the Dodd-Frank Act) or as otherwise necessary to effectively promulgate the rules in question. For the Commission's Dodd-Frank Act rulemaking process, for example, the Commission staff has met regularly, both formally and informally, with other financial regulators. To the extent rulemakings raise issues that are of interest to other federal regulators, the SEC staff has generally brought these issues to the attention of staff at those agencies as they work through the rulemaking process. The staff also from time to time brings relevant issues to the attention of staff from other regulators in connection with their rulemakings.

The Commission considers the effects of multiple regulatory regimes as part of the rulemaking process. For example, in the rules implementing derivatives reform under Title VII of the Dodd-Frank Act, the Commission has considered the effects of CFTC rules, as well as other international regulatory regimes, governing the swaps and security-based swaps market. Commenters provided the Commission with their views regarding the need to coordinate both with the CFTC and foreign regulators and that information was taken into account when developing the SEC's rules.

Question: Is the SEC looking at how rules by different regulators are connected and layered with SEC rulemakings and what the aggregate impacts of these new financial rules are? If not, why not?

Response: As noted above, the Commission takes into account the effect of other relevant rules when developing its regulations. The *Current Guidance on Economic Analysis in SEC Rulemaking* explains that the "baseline" in a rule release should "include both the economic attributes of the relevant market and the existing regulatory structure, including (where relevant) state law." As a result, when analyzing the effects of a new regulation, the Commission will consider related regulatory requirements applicable to those markets or market participants who may be directly affected by the rule.

FSOC / SIFI Designations

There has been much interest in the FSOC's designation of Systemically Important Financial Institutions. Specifically, the process by which FSOC selects, informs, and designates companies as SIFIs.

Question: What are your thoughts on allowing a company to "de-risk" or offload any risky parts of their operations, as identified by FSOC, before a SIFI designation?

Question: Wouldn't this address and mitigate systemic risk concerns?

Response: When considering whether a nonbank financial company could pose a threat to the financial stability of the United States, the Council considers the statutory framework laid out in Section 113 of the Dodd-Frank Act. In addition, the Council has issued a final rule and interpretive guidance describing the manner in which the Council would apply the statutory standards. This description includes three transmission channels through which the company's material financial distress could affect other financial market participants – exposure, asset liquidation, and critical function or service. The rule also sets out the three-stage process by which the Council considers nonbank financial companies for designation. Within the last year, the Council also published supplemental procedures designed in part to facilitate earlier engagement with companies during the determination process. As part of what is known as stage 3 review, staff from the Council's analytical team engages in extensive dialogue with the company under consideration to request information about its operations. By the nature of the inquiry and the dialogue between the company and the Council's analytical team, particular areas of risk may come into focus.

At any point during the process, until the Council's final vote on a designation, a company may "de-risk" or offload any risky parts of its operations as it deems appropriate. The Council's final vote on designation represents the Council's determination of the threat posed to financial stability by the nonbank financial company at that time. However, as is evidenced by the Council's public basis that accompanies each designation, because of a nonbank financial company's size, complexity, and interconnectedness, it can be challenging to single out one activity or business line that, if eliminated, would remove the company's potential threat to the financial stability of the United States. Once designated, the company

is subject to heightened prudential regulation by the Board of Governors of the Federal Reserve System. The Council's rules also require the Council to reevaluate each currently effective determination once a year and rescind the determination if the nonbank financial company no longer meets the statutory criteria. This is an independent responsibility of the Council whether or not requested to do so by the designated entity.

Of the 9 members of the FSOC, the SEC is the regulator with jurisdiction over securities markets. You all are the ones with expertise in this area. So it is puzzling to me why FSOC is looking into possibly designating registered funds—like mutual funds—when they are not leveraged, any losses are absorbed by fund investors, there are already liquidity requirements, and there is no evidence of runs on these funds, even during periods of crisis. I am concerned that banking-style, prudential regulation is being applied to entities and products where that style of regulation is not applicable.

Question: Do you believe the structure of registered funds is at all risky? If so, how?

Response: The oversight of registered funds and investment advisers that manage them is an important function of the Commission. The Investment Company Act of 1940 and the Investment Advisers Act of 1940 establish a comprehensive federal regulatory framework that addresses a wide range of activities and focuses on many complex areas of regulation.

In furtherance of its own mission and responsibilities, the Commission and staff are currently exploring the question of whether and how funds and advisers pose potential risks, including risks to investors and to the U.S. financial system. Staff from the Division of Investment Management has been developing a set of rulemaking recommendations for Commission consideration to strengthen our efforts to address the increasingly complex portfolio composition and operations of today's asset management industry. I outlined these initiatives in a recent speech, available at http://www.sec.gov/News/Speech/Detail/Speech/1370543677722. As one part of this initiative, the Commission unanimously voted on May 20, 2015 to propose rules that modernize and enhance data reporting for registered funds and investment advisers. The new rules would enhance the access to and quality of data the Commission collects regarding registered funds and investment advisers.

SEC staff also is preparing recommendations for Commission consideration that are intended to provide for more robust controls to identify and manage the risks of funds' increasingly diverse portfolios. One initiative seeks to enhance the management and disclosure of liquidity risk for mutual funds and ETFs, and to update liquidity standards for these investment vehicles. Another initiative focuses on specific requirements for the use of derivatives by registered funds, such as measures to limit the leverage these instruments may create and to enhance risk management programs for such activities. In addition, staff is studying new requirements for stress testing by large investment advisers and large funds, as well as provisions for transition plans after a major disruption in an investment adviser's operations.

Collectively, these efforts will further the Commission's long-standing mission and will enable the Commission to monitor and address as appropriate risks that asset managers' activities may pose. In this regard, our actions will complement the ongoing efforts of the Financial Stability Oversight Council to further understand whether systemic risks may be presented by certain activities and products used by the asset management industry and other market participants.

Question: Does FSOC let the primary regulator have much influence in these decisions?

Response: As described in minutes from recent meetings, the Council is in the process of studying the activities and products of the asset management industry. The SEC staff has been active and a key contributor throughout this ongoing process. As the Council's work progresses, I expect that SEC staff will continue to be full participants, bringing their professional expertise and knowledge of the law and the asset management industry to bear. As a voting member of FSOC, I also voice my views on these and other issues and supported re-directing FSOC staff to undertake a more focused analysis of industry-wide products and activities to assess any potential systemic risks they may pose.

Question: Do you believe the FSOC process has more room to improve in the area of transparency—both between FSOC and companies it is looking at, as well was between FSOC and the public? Where is there room for improvement?

Response: Over the last year, the Council has worked on enhancing both its transparency with the public as well as its transparency and engagement with the companies under consideration for designation. On May 7, 2014, the Council issued a transparency policy that outlined its commitment to conducting its business in an open and transparent manner. I supported that policy and believe it struck the appropriate balance between the importance of providing the public with insight into the Council's work and the Council's need to discuss sensitive and confidential information to fulfill its mission.

On February 4, 2015, the Council issued supplemental procedures relating to nonbank financial company designations. I also supported those enhancements, which provided for more engagement with companies earlier in the process. Those procedures also stated that the Council would continue to work to identify and evaluate additional potential changes to promote active engagement with companies under consideration and transparency to the public. I believe the Council is committed to that effort, which I think is important.

Question: Do you believe the current yearly review of designated SIFIs by FSOC is comprehensive enough to determine if a company could be delisted as a SIFI? Does the review take into account changes in markets and laws?

Response: The Council is in only its second iteration of the yearly review process and continues to work to make it as fair and effective as possible. Importantly, the supplemental procedures discussed above contained a section on "Engagement During Annual Reevaluations of Determinations," which states that before an annual reevaluation, the company will be provided with "an opportunity to meet with staff on the Nonbank

Designations Committee to discuss the scope and process for the review and to present information regarding any change that may be relevant to the threat the company could pose to financial stability, including a company restructuring, regulatory developments, market changes, or other factors." The current round of annual reevaluations will be based on this new protocol.

Economic Analysis / Leveraging Technology

This Committee has been supportive of the Division of Economic Risk and Analysis (DERA) and has fully funded this office over the last two years. I am pleased that your fiscal year 2016 budget request seeks to hire an additional 6 positions within this critical office.

Question: I'd like to hear how the increased resources to this division have helped grow the quality of cost-benefit analysis of Commission rulemakings.

Response: DERA has greatly enhanced the Commission's ability to provide data-driven economic analyses to support rulemaking and policy development. Increased staffing levels – particularly increases in the number of Ph.D financial economists and accountants – allow DERA to be involved earlier in a greater number of rules and policy initiatives. Such early involvement is key to ensuring that regulatory options ultimately proposed or adopted by the Commission are based on robust economic analyses of the rules' potential impacts. Importantly, DERA staff not only has access to growing amounts of sophisticated financial market data, but also the infrastructure and resources to process and analyze that data in support of rulemaking. This has strengthened the ability of DERA staff to provide novel data analytics that can assist in the evaluation and development of regulations. These complex data analyses have been incorporated directly into Commission rulemaking releases or otherwise made available to the public on the SEC's website, facilitating public engagement with economic and regulatory issues.

In addition to helping the Commission with critical cost-benefit analysis, it is my understanding that DERA is working to help the Office of Compliance and Examinations and the Enforcement division in developing risk assessment tools to support risk-based examinations and help detect market abuse. To me, this is a practical and sensible way for the SEC to leverage its limited resources in order to allocate them more efficiently and effectively, and I am happy to see our support for this office is producing positive results.

Question: Can you give the Committee some examples of ways DERA's efforts have improved SEC functions?

Response: DERA, working closely with staff across the agency, has developed several important risk assessment tools. For example, the Corporate Issuer Risk Assessment (CIRA) program was developed in close collaboration with the Division of Enforcement and is designed to detect risks indicative of fraud, particularly by providing a set of quantitative analytics that can be used to assess the degree to which registrants' financial statements may appear as outliers when compared to their peers. Similarly, the Broker-Dealer Risk

Assessment model, developed in cooperation with the Office of Compliance Inspections and Examinations, helps prioritize examinations of broker-dealers by comparing each broker-dealer against its peers in multiple risk categories. These and other initiatives enhance the ability of SEC staff to identify areas of potential company or market risk and to better target scarce resources on those areas of greatest need. In addition, DERA has significantly expanded its support of the Division of Enforcement, with increases of over 20% in number of projects every year since 2013, as well as expanding its capability to detect market manipulation schemes in high frequency trading data and identify excessive mark-ups in municipal bond transactions.

Question: Do you believe you are using DERA's expertise and skills to the greatest extent to leverage technology in order to both increase efficiency within SEC divisions and offices, but also save money?

Response: Yes. DERA is focused on leveraging technology and staff expertise to enhance the ability of the SEC to efficiently fulfill its mission in a cost effective manner. Specifically, expert technologists in DERA's Office of Structured Disclosure are working to improve the quality and usefulness of registrant disclosures by supporting the design and implementation of machine-readable forms and filings adopted through Commission rulemaking. By advising the Commission on how data it collects should be structured, DERA staff are helping to ensure that investors and other market participants, as well as Commission staff, can quickly and cost-effectively aggregate, process, and analyze financial information. Additionally, staff in DERA's Office of Risk Assessment continue to develop new analytical tools in support of supervisory, examination, and investigative activities across the agency to help Commission staff conserve limited resources. For example, DERA staff, in conjunction with the Office of Compliance Inspections and Examinations, have developed a Broker Dealer Risk Assessment program that has helped prioritize inspections and focus staff attention on the riskiest areas of the market where staff are more likely to detect inappropriate risk or fraudulent activity. Likewise, the Office of Research and Data Services within DERA has implemented various initiatives intended to expand access within the Commission to centralized data resources. One such example is a central information delivery system which can generate and deliver to Commission staff customized financial market reports. These are but a few examples of the SEC's commitment to leveraging technology in order to streamline the agency's operations and increase the effectiveness of our programs.

JOBS Act

I saw that in March of this year the Commission approved increasing the cap under Regulation A offerings. But, as you know, there is still work to be done on these critical rulemakings to foster more participation in the markets by smaller businesses and startups, as well as smaller investors who want to invest in these emerging companies.

Question: What is the status of the crowdfunding rules for smaller investors?

Response: Completion of this rulemaking remains a priority for 2015. The exemption is complex in part because it involves more than an exemption from Securities Act registration for the offer and sale of securities. It also involves requirements for intermediaries, including the creation of a new regulatory structure for funding portals. To date, the Commission has received more than 480 unique comment letters on its crowdfunding proposal. SEC staff has met with various interested parties to discuss the rule proposals. The staff is carefully considering this public feedback and actively working to develop final rule recommendations for the Commission's consideration that would promote capital formation and provide key protections for investors while complying with the statutory requirements.

Question: What is your response to the concern that the proposed crowdfunding rules are too burdensome for companies, potentially hurting small investors who won't be able to participate in investing in innovative companies?

Response: The JOBS Act contained a number of mandatory requirements for the new crowdfunding exemption, including many aimed at investor protection, and our proposed rules were designed to implement those requirements. SEC staff is reviewing the comments we received on all aspects of the proposed rules, including suggestions for how we might improve them to, among other things, reduce certain burdens to companies. Staff is working to develop final rule recommendations for the Commission's consideration with the goal of facilitating capital formation and increasing investment opportunities for investors, with appropriate protections, while faithfully implementing the statutory requirements.

Question: How is the SEC balancing investor protection and the fact that investments like this are inherently risky?

Response: We recognize it is important to have workable rules that allow for efficient capital-raising by issuers while providing investor protections. Our intent is to provide for both in the crowdfunding rules. Without appropriate investor protections, investors will be less likely to participate in this new market. At the same time, if the rules are too burdensome for issuers, they may be less likely to utilize the new exemption. SEC staff is reviewing the comments received, including suggestions for how to protect investors and provide for workable crowdfunding rules, in recommending final rules.

Question: In any rulemaking, will the SEC trust investors to make competent investment decisions on their own?

Response: The mission of the Commission is to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation. Consistent with this tripartite mission, our rules have long recognized that different investors, by virtue of their sophistication or ability to fend for themselves, may require different levels of protection under the federal securities laws. For example, the proposed rules to implement crowdfunding would permit any investor, regardless of sophistication, to invest in these exempt offerings, subject to certain limits on the amount of capital they can invest. Investors at higher income or net worth levels, who may be better positioned to bear the risk of loss, would be permitted to invest at higher levels. It is important for the Commission to continue to look for ways to provide an effective and workable path to raise capital that also provides appropriate investor protections.

SRO Authority

I am concerned that the SEC has frequently addressed critical market structure issues by delegating its responsibility to Self-Regulatory Organizations. The SEC has delegates its responsibilities to regulate our markets to the exchanges—which, as you know, are for-profit entities that have an obligation to maximize profitability. These entities wear two hats, one as regulator and the other as market participant, and often compete alongside those they regulate. I wonder if there is a lack of transparency and possibly insulated governance within these SROs.

Question: Do you believe the current governance structure of SROs is opaque?

Response: The rules by which a national securities exchange governs itself, and any changes to those rules, are transparent and readily publicly available. As required by the Exchange Act, an exchange's rules set forth its governance structure, including provisions regarding such matters as the composition and duties of the board and board committees. Because these documents are considered "rules of an exchange," they are subject to Section 19(b) of the Exchange Act, which requires that an exchange submit new rules or changes to existing rules to the Commission. Under Section 19(b), depending on the nature of the proposed rule change, the new or amended rule can take effect immediately or must be approved by the Commission. In either case, the Commission must publish the proposed rule change for public comment. In addition, under Exchange Act Rule 19b-4, exchanges are required to post a current and complete version of its rules and its proposed rule changes on their website.

Question: Does it have enough safeguards against conflicts of interest? Should there be more safeguards?

Response: The Exchange Act contains important safeguards that enable the Commission to exercise oversight authority over exchanges. For example, the rule filing process in Section 19(b) of the Exchange Act requires that new rules and proposed changes to existing rules of a

self-regulatory organization be filed with the Commission and published for public comment. This process helps to ensure transparency with respect to an exchange's rules and proposed rule changes and provides interested parties with the opportunity to highlight potential conflicts of interest and other issues for consideration during review of a proposal. In addition, the Commission has examination and enforcement authority over self-regulatory organizations. Section 19(g) requires that exchanges comply with their own rules, and they have been subject to notifications of deficiencies by Commission examiners and enforcement action by the Commission when they have failed to do so.

Additional funds are not the only solution. Reforms as simple as allowing affected market participants in the planning, development, and operations to provide meaningful input could improve governance structure.

Question: Has the Commission ever considered including the broker-dealer and asset-management industries in the Operating Committees?

Response: The SROs participate in joint SRO plans in connection with the planning, development, operation, and regulation of the national market system. The governance of the plans occurs through their operating committees, which are comprised of representatives of the member SROs.

The Commission in 2005 required the plans to establish non-voting advisory committees in an effort to improve plan transparency and broaden participation in plan governance. Advisory committees have served a useful role in the administration of joint SRO plans. Members of an advisory committee have the right to submit their views to the operating committee on plan matters, including any new or modified product, fee, contract, or pilot program. Members also have the right to attend all operating committee meetings and to receive any information distributed to the operating committee relating to plan matters, except when the operating committee, by majority vote, decides to meet in executive session after determining that an item of plan business requires confidential treatment.

Disclosure

Chair White, you recently spoke of shareholder referendum approaches, and possible future SEC staff oversight of ensuring that investors receive timely, complete and accurate disclosure.

Question: Is the SEC looking into shareholder referendum approaches?

Response: In this context, a shareholder referendum refers to a shareholder vote on a particular matter at a meeting called in a manner not provided for in the company's bylaws. Generally, the results of such a vote would be non-binding and advisory in nature.

Some have expressed concern that allowing a shareholder to file communications relating to a shareholder referendum as soliciting materials under the Commission's proxy rules lends such materials a form of official imprimatur or creates the impression that such a vote is

being conducted in the ordinary course of a shareholder meeting pursuant to the company's bylaws and in accordance with relevant state law.

The federal securities laws do not address whether shareholders can hold shareholder referendums. Rather, it is state law and a company's corporate governance documents that provide the rules for shareholder meetings and specify what are proper matters for shareholder action. Whether a shareholder referendum is a form of proper corporate action under state law is therefore a question best left to state legislatures and the courts.

The SEC's concern in these matters is that shareholders receive the disclosure they need to make informed voting decisions. If a shareholder files a proxy statement in connection with a shareholder referendum, SEC staff will screen and potentially review the filing to ensure that the filing complies with the applicable rules and that shareholders are provided with timely, complete, and accurate material information. The staff has a longstanding practice of accepting and reviewing filings, even if it is unclear whether a filing is technically required under our rules. Whenever a filing is made, we expect it to fully comply with the applicable disclosure requirements, and filers assume potential liability under the federal securities laws. I believe this process generally benefits shareholders and is better than the alternative, where the referendum would take place without public disclosure, SEC staff oversight, and the protection of our rules. SEC staff will continue to monitor any developments relating to the use of shareholder referendums.

Question: What are the SEC's options to investigate conduct related to these types of approaches?

Response: A person or entity filing proxy soliciting materials or information related to a shareholder referendum would assume potential liability under the federal securities laws for the filings. The Division of Corporation Finance may review the filings and request revisions if it believes the disclosure does not comply with applicable rules. If warranted, the Division of Corporation Finance may make a referral to the Division of Enforcement. Where the Division of Enforcement becomes aware of facts that suggest a possible violation of the federal securities laws has occurred – whether from a tip, complaint, referral or other mechanism – it may institute an investigation into the conduct. In a formal investigation, among other steps, the Division of Enforcement can subpoena documents and testimony to gather evidence concerning possible wrongdoing. In appropriate cases, where there is sufficient evidence of a violation of the federal securities laws, the Division will recommend that the Commission bring enforcement actions.

The Securities Exchange Act, and specifically Rule 14(e-3), is clear about a person or firm making a tender offer that is in possession of material, non-public information, but less clear about the conduct of co-bidders.

Question: What is the SEC's definition of who would be considered a co-bidder, or a so-called "co-offering person"?

Response: When an "offering person" has taken a substantial step to commence a tender offer, Exchange Act Rule 14e-3, the tender offer insider trading rule, prohibits any other person who is in possession of material nonpublic information relating to the tender offer and acquired from the offering person to buy or sell securities that are the subject of the tender offer without disclosing the material nonpublic information a reasonable time before the purchase or sale. The prohibition in Rule 14e-3 does not apply to the offering person. The offering person is permitted to trade on its own information about the contemplated tender offer, subject to other applicable disclosure requirements. Therefore, the scope of the term "offering person" for purposes of the prohibition is important in determining whether Rule 14e-3 has been violated in a given instance.

For purposes of Regulation 14D and Schedule TO, the terms "offeror" and "bidder" are defined as any person who makes a tender offer, or on whose behalf a tender offer is made. SEC staff has provided guidance on how to identify who is a bidder in a tender offer, including clarification that there can be multiple "co-bidders."[1] This guidance, however, was provided in the context of the filing requirements of Schedule TO and Regulation 14D and did not specifically address the scope of Rule 14e-3.

Until recently, neither the Commission nor the courts have addressed how the reference to "offering person" in Rule 14e-3 applies to another party or parties who join with the offering person in a tender offer and would be considered co-bidders for purposes of Regulation 14D. In a recent ruling, a federal district court in California held that such an arrangement between a hedge fund and a bidder in an exchange offer raised "serious questions" under Rule 14e-3 based on the specific facts and circumstances of the case, but the court declined to enjoin the hedge fund from voting its shares at a special meeting.[2]

SEC staff is closely following the outcome of the litigation, which is ongoing, and continues to monitor the issue more generally.

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[1] See "Current Issues and Rulemaking Projects Outline, Section II.D.2., Mergers & Acquisitions - Current Issues – Identifying the Bidder in a Tender Offer," (November 14, 2000) *available at* http://www.sec.gov/divisions/corpfin/guidance/ci111400ex_tor.htm.

[2] *Allergan v. Valeant Pharm. Int'l, Inc.*, Case No. SACV-1214 DOC (C.D. Cal. Nov. 4, 2014).

Questions for the Record Submitted by Congressman Yoder

PCAOB Investor Advisory Committee: role of audit committee

Question: Chair White, in October 2014 you mentioned during a speech to the PCAOB Investor Advisory Committee that your staff is working on a concept release on the role of the audit committee in U.S. public companies. What types of issues are you examining and when do you expect to release your report?

Response: Audit committees play a critical role in providing oversight over a company's financial reporting system. Implementation of significant changes in the role and responsibilities of audit committees resulted from the Sarbanes-Oxley Act of 2002. In light of these changes, the Commission's existing audit committee reporting requirements may not reflect aspects of current practices that may be informative to investors.

In this regard, I previously asked the staff to examine the Commission's existing requirements for audit committee reports to see if they can be made more useful to investors, with a focus on understanding which audit committee disclosures investors find useful in informing their investment or voting decisions. The Commission recently published a concept release seeking public comment on audit committee reporting requirements, focusing specifically on the audit committee's reporting of its responsibilities with respect to its oversight of the independent auditor.[3] I look forward to receiving public feedback on this concept release.

JOBS Act Reg S-K

As required by the JOBS Act, the SEC issued a report in 2013 on disclosure rules for public companies. One of the recommendations in the report was a systematic and comprehensive review of disclosure effectiveness, including reforms to information mandated by Reg S-K and how that information is presented to investors. Modernizing and simplifying disclosure requirements would benefit public companies and their investors alike.

Question: What is the status of the disclosure effectiveness project?

Response: Commission staff is currently developing specific recommendations for the Commission's consideration to update the rules in Regulations S-K and S-X. In that effort, which we refer to as the Disclosure Effectiveness initiative, SEC staff is seeking input from a broad range of market participants on how the Commission can improve the disclosure regime for investors and companies. The goal is to comprehensively review the requirements and make recommendations on how to update them to facilitate timely, material disclosure by companies and investors' access to that information. As part of this review, the Division of Corporation Finance is considering ways to enhance the presentation and communication of information to investors, including changes for how companies file their disclosures to

[3] *Possible Revisions to Audit Committee Disclosures*, SEC Release No. 33-9862 (July 1, 2015).

enhance investors' access to information. Staff members also have an ongoing dialogue with the Financial Accounting Standards Board to identify ways to improve the effectiveness of disclosures in financial statements and to minimize duplication with existing disclosure requirements.

Initially, the review is focused on the business and financial disclosures required by periodic and current reports, including Forms 10-K, 10-Q, and 8-K. Staff in the Division of Corporation Finance who regularly review company filings have provided input and suggestions that the Division is currently considering as it formulates recommendations for the Commission. The Commission also has received 50 comment letters as of August 20, 2015 in response to the announcement of this review, and the staff is considering the feedback provided in the letters as it actively works to develop recommendations for the Commission.

Asset Managers

FSB's first consultation on non-bank non-insurer G-SIFIs, identified 14 investment funds for possible G-SIFI designation. These 14 funds were all U.S. mutual funds despite this being a global process. The FSB released its second consultation on March 4, 2015. Despite an extensive comment letter record showing that G-SIFI designation is inappropriate for these funds, the second consultation continues to single out these U.S. funds as candidates for potential designation - and adds new criteria that appear targeted at designating U.S. asset managers.

Question: Do you believe that the SEC does not have the ability to adequately and comprehensively regulate US funds and asset managers?

Response: The oversight of funds and advisers is one of the most important functions of the Commission. The SEC has regulated the asset management industry since the passage of the Investment Company Act and Investment Advisers Act in 1940, and the Commission's efforts in administering these statutes are multi-faceted. These efforts focus on protecting investors from fraud and self-dealing and requiring disclosures that give investors the information they need to make informed investment decisions. Comprehensive regulations for funds include many specific restrictions, governance requirements, and disclosure obligations to protect investors from a range of abuses. And the Commission is very focused on assessing risk, conducting examinations, and enforcing firms' legal obligations. Over the past 75 years, the SEC's regulatory program for asset management has grown and adapted to address the challenges of this important, ever-evolving and growing area of the financial markets, and it will continue to do so.

Question: Can you speak to the SEC's latest efforts to enhance regulations of the asset management industry?

Response: Staff from the Division of Investment Management has been developing a set of rulemaking recommendations for Commission consideration to strengthen our efforts to address the increasingly complex portfolio composition and operations of today's asset

management industry. I outlined these initiatives in a recent speech available at http://www.sec.gov/News/Speech/Detail/Speech/1370543677722.

The Commission, as an initial matter, is focused on modernizing and enhancing the data reporting for registered investment companies and investment advisers. To this end, the Commission, by a unanimous vote, proposed rules on May 20, 2015 to improve the access to and quality of data it collects regarding investment companies and investment advisers. The proposals also would enhance the quality of information available to investors and would enable the Commission to more effectively collect and use data provided by investment companies and investment advisers. The proposals are available at www.sec.gov/rules/proposed/2015/33-9776.pdf and www.sec.gov/rules/proposed/2015/ia-4091.pdf. The comment period for the proposed rules closed on August 11, 2015.

Staff is also developing recommendations to enhance the management and disclosure of liquidity risk by mutual funds and ETFs, and to update the liquidity standards for those investment vehicles. In addition, the staff is reviewing options for specific requirements for the use of derivatives by registered funds, including measures to limit the leverage these instruments may create and to enhance risk management programs for such activities. And the staff is studying new requirements for stress testing by large investment advisers and large funds, as well as provisions for transition plans after a major disruption in an investment adviser's operations.

BDCs

As you may recall, last year the House Appropriations Committee in its fiscal year 2015 committee report directed the SEC to modernize regulations for BDCs. For several years now the BDC industry has been asking the SEC informally and formally to modernize the regulations. However, the SEC has been silent on the issue and has not taken any actions to modernize a long list of outdated rules impacting BDCs.

Question: If the BDC regulations were modernized wouldn't the SEC save hours of staff resources?

Question: Does the SEC intend to modernize these regulations or engage with Congress in other manners to address this issue?

Response: Congress created BDCs as a specialized type of closed-end investment company (*i.e.,* a fund that is not required to repurchase or redeem its shares) operated for the purpose of providing capital for small, middle market and financially troubled domestic operating companies. The regulation of BDCs is the same as the regulation of registered closed-end funds with modifications that generally allow BDCs greater operating flexibility.

Both BDCs and registered closed-end funds register their securities on Form N-2, and their financial statements are subject to the same provisions of Regulation S-X. These requirements differ from requirements applicable to other issuers that file periodic reports under the Securities Exchange Act of 1934. A majority of BDC and registered closed-end

fund securities purchased in primary offerings are purchased by individual investors. BDC disclosure requirements, therefore, provide critical information for retail investors, including prominent disclosure of fees and expenses, a bar graph illustrating the fund's total return for each of the past ten years to illustrate earnings volatility, and a standardized methodology to prepare fee and total return information to facilitate comparisons among funds. As a result of staff reviews of BDC registration statements before shares are offered to the public, staff has identified numerous disclosure and accounting issues, and practices have been modified and disclosure deficiencies corrected before prospectuses were distributed to prospective investors.

The Commission and the staff have undertaken a number of important initiatives in recent years to modernize the regulation of BDCs. In 2008, the Commission adopted rule amendments expanding the definition of "eligible portfolio company" for BDCs under the Investment Company Act. Prior to 2008, eligible portfolio companies did not include any companies whose securities were listed on a national securities exchange. The Commission's 2008 rulemaking expanded the definition to include exchange-listed companies that have less than $250 million in market capitalization, which was a significant step in modernizing the BDC rules.

The Commission also has made use of the Investment Company Act's exemptive authority to accommodate BDC industry developments, consistent with investor protection. Exemptive orders granted to BDCs have enabled them, among other things, to engage in co-investing transactions with affiliates and have greater flexibility in their capital structures, on terms consistent with investor protection. Similarly, Commission staff has facilitated developments in the BDC industry through guidance provided in staff no-action letters and Staff Guidance Updates. For example, staff permitted a BDC to create a master-feeder arrangement to facilitate its business purpose and permitted BDCs to use shelf registrations to offer new shares and other securities to the public more quickly and efficiently without additional staff review.

While certain reforms may save staff time in some ways, it is also important to maintain critical investor protections. For example, amending the rules and forms that regulate the registration of securities offered by BDCs to put them on the same footing as other issuers that also file periodic reports under the Exchange Act could result in fewer staff reviews of BDC registration statements. Any time savings that result, however, could be more than offset by staff time focused on disclosure and accounting issues identified after BDC securities are offered to the public. Identifying issues such as these during staff reviews of registration statements (prior to the offerings being made) is particularly important because, as noted, a majority of BDC securities purchased in primary offerings are purchased by individual retail investors.

The Commission and staff continue to consider further ways to modernize the regulations applicable to BDCs given the Commission's other priorities, and staff will continue to be available to provide technical assistance to Congress on BDC-related issues and their impact on investors.

Questions for the Record Submitted by Congressman Steve Womack

Proxy Rules

In January, Chair Mary Jo White suddenly reversed a previous staff decision that would have allowed Whole Foods Market, Inc. to exclude an activist shareholder proposal from its proxy this year because it "directly conflicted" with a proposal that the management was offering. It was then said that the SEC would take "no position" regarding certain shareholder proposals during the 2015 proxy season. This has caused a great deal of uncertainty for companies that rely on the SEC no-action process when reviewing proposals for their proxy. This unilateral decision seems to be a significant shift in policy rather than a more transparent and deliberative process within the SEC.

Chair White, there have been a number of developments regarding the SEC's proxy rules in the past few months, most recently culminating with the decision by the Third U.S. Circuit Court of Appeals that came in just this week (April 14, 2015). While this particular decision seems to signal a return to past procedure, most notable of these developments surrounding proxy rules could be your sudden reversal in January of a previous staff decision regarding a shareholder proposal at Whole Foods Market, Inc.

Question: Does the SEC have standard procedures for deciding whether or not to grant no-action letters for shareholder proposals and, if so, did your decision in January follow those procedures?

Response: Commission staff has for many years engaged in the practice of expressing its informal views on whether it might recommend an enforcement action if a particular shareholder proposal were excluded from a company's proxy materials. This process is intended to assist both companies and shareholder proponents. In expressing its views, staff is not engaged in any formal proceedings in connection with shareholder proposal matters, nor has it adopted any formal procedures in that regard. *See* Statement of Informal Procedures for the Rendering of Staff Advice with Respect to Shareholder Proposals, Exchange Act Release No. 34-12599 (July 7, 1976). In fact, there is no requirement that the staff respond to a particular request, and any staff opinion is merely an informal view and not a binding determination on the parties, the Commission, or the courts.

As a result of questions that arose this proxy season, I asked the Division of Corporation Finance to review the proper scope and application of Exchange Act Rule 14a-8(i)(9), which allows companies to exclude a shareholder proposal if it "directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting." My request was driven by a concern that the application of Rule 14a-8(i)(9) could result in unintended consequences and potential misuse of the no-action process.

In light of the pending review, the Division of Corporation Finance decided not to express a view on no-action requests relying on that particular provision during the current proxy season and, on reconsideration of the Whole Foods no-action request, took no view as to whether the company could exclude the proposal. While it is rare for the staff to decline to

review no-action requests, or to reverse its prior positions, it is not unprecedented. We recognize that the participants in the process value consistency in the process, and the staff strives to provide it each and every season.

Question: Additionally, with this decision, were the other four presidentially-appointed Commissioners consulted and if not, could you expand, given the magnitude of the policy shift in your announcement?

Response: I informed my fellow Commissioners of my decision to request that the staff review the scope and application of rule 14a-8(i)(9) because of my concern that the application of the rule could result in unintended consequences or potential misuse of the staff no-action process. Once I requested the review, the staff of the Division of Corporation Finance decided not to express a view on that basis of exclusion while the review is pending. While the decision was prompted by my request for a review of the exclusion, the Division of Corporation Finance concluded that it would be prudent not to express a view on the provision until its review had been completed.

Questions for the Record Submitted by Congressman Mark Amodei

Investor Alert

In its October 1, 2013 Investor Alert, the SEC's Office of Investor Education and Advocacy (OIEA) provides specific "hallmarks" of pyramid schemes that potential investors in multi-level marketing companies (MLMs) should beware of. Included among these is a recommendation that potential investors should look to the MLM's financial statements to confirm that the company "generates revenue from selling its products or services to people outside the program" – in other words, that there are actual retail sales of the company's products.

Question: Does the SEC require MLMs to disclose this information in a manner that is accessible by the public?

Response: The Investor Alert warned investors about the dangers of potential investment scams involving pyramid schemes posing as multi-level marketing (MLM) programs. The alert provides guidance to those considering joining an MLM program as a potential business opportunity, including identifying and discussing factors that can indicate whether a particular MLM program is a pyramid scheme. The guidance in the alert applies to all MLM programs, however, and is not limited to companies that are subject to the reporting and disclosure requirements under the federal securities laws.

In addition to financial statement disclosures, reporting companies, including those with an MLM program, are required to provide narrative disclosure about their business and results of operations, including revenues. Regulation S-K prescribes the non-financial statement disclosure requirements for companies that are required to file registration statements and periodic reports under either the Securities Act of 1933 or the Securities Exchange Act of 1934.

Regulation S-K requires companies to disclose information about their material business operations. Companies also are required to provide a discussion of liquidity, capital resources, results of operations, and other information necessary for an understanding of the company's financial condition, changes in financial condition, and results of operations. Companies must describe any significant components of revenues that, in management's judgment, should be described in order to understand the company's results of operations. The rules also require companies to discuss known trends or uncertainties that have had, or might reasonably be expected to have, a favorable or unfavorable material effect on revenue, operating income or net income.

In addition to any information expressly required to be included in filed reports, companies must disclose any other material information that may be necessary to make the required disclosure, in the light of the circumstances under which they are made, not misleading.

A company's compliance with these requirements is designed to allow investors to learn about the structure and operation of its business, which would include an MLM program. To

the extent that sales to different classes of customers (e.g., network members and retail customers) is material to investors' understanding of a company's business, the company should disclose whether and to what extent a company with an MLM program sells product to these customers. A company determines whether information would be material based on the particular facts and circumstances.

Question: Do the SEC's required financial disclosures require this information?

Response: Under U.S. Generally Accepted Accounting Principles ("GAAP") and Regulation S-X, the Commission rule that prescribes the financial statement disclosure requirements, companies are required to disclose in their financial statements (total) sales to their customers. They are not, however, required to break out those product sales by separate classes of customers (e.g., network members and retail customers) in either the financial statements or the notes thereto.

As a general rule, if the reporting company's customers are network members, there is no requirement under GAAP or Regulation S-X for the company to disclose subsequent resales of those products to other parties. A company must, however, meet the criteria in GAAP in order to recognize product sales to network members as revenues in the financial statements.

Although an investor may not be able to determine, based solely on looking at the financial statements, whether the MLM company's customers are network members, retail customers, or a combination of both, information on the existence and extent of the MLM company's network members and retail customers, to the extent material, may be provided in the narrative sections of the company's periodic reports.

Questions for the Record Submitted by Ranking Member Serrano

Information Technology

I understand that you're in the process of modernizing EDGAR, the 20 year-old financial filing system that public companies use to input their data.

Question: Where are you in the process of doing that, how much of your request is for this effort and what are the benefits of it?

Response: Our efforts to modernize the EDGAR system have taken two forms: implementing enhancements to the EDGAR system as it currently operates, and redesigning the system so that it better meets the needs of the SEC, investors, and our regulated entities.

The SEC has made a number of enhancements to the existing EDGAR system over the last several years. For example, the agency has focused significant attention on updating the system to accommodate new Commission rules, including updates that allow the system to accept filings from new categories of registrants added to the agency's jurisdiction in the Dodd-Frank Act. Recent rule-based enhancements to the existing EDGAR system include:

- Implementing Release No. 33-9414: Disqualification of Felons and Other "Bad Actors" from Rule 506 Offerings;
- Implementing Release No. 34-70462: Registration of Municipal Advisors;
- Implementing Release No. 33-9117: Regulation AB; Asset Backed Securities;
- Updating submission form types 13F-HR/A to allow a future date for the "Date denied or on which confidential treatment expired" field;
- Updating EDGAR to support the US GAAP 2014 Taxonomy; and
- Adding validation for filings containing the EX-101 XBRL documents.

The SEC also has reformed the infrastructure supporting EDGAR so that it is more efficient and can provide failover capability in case of emergency.

The EDGAR redesign initiative aims to move the system to a new EDGAR model that captures specific, relevant data points instead of whole forms. This change in approach should make it easier for registrants to make required filings, the public to access key information about their investments, and the SEC to analyze the data and manage the system.

Last year, the SEC began the task of identifying and documenting the requirements for a redesigned system, and for FY 2016 the SEC has requested $3.5 million for the EDGAR redesign project. The development of this new system will be a significant, multi-year undertaking given the huge volume of forms and processes that depend on the current system.

Question: What is the status of the Enterprise Data Warehouse, which enables the agency to combine different sources of data to enhance analysis?

Response: By providing a common platform where disparate streams of data can be brought together for analysis, the Enterprise Data Warehouse (EDW) is a critical tool that permits the SEC to break down silos among systems. The SEC has built the infrastructure for the EDW and has implemented standards for the EDW's development, testing, operations and analytics with necessary access controls. EDW data can now be accessed using a variety of standard end user tools, including Business Objects, SAS, Palantir, and Microstrategy, and the platform is proving very helpful for enterprise-wide reporting, knowledge management, and advanced analytics.

The EDW has permitted the SEC to conduct analytics that were not previously possible, including processing huge volumes of trading data – often in a short period of time – to help identify potential insider trading and market abuses or to support complex economic and risk modeling efforts. SEC staff also has used the EDW to develop predictive models and risk ranking scores that permit our examination program to focus its limited resources on the highest-risk entities.

Currently, staff is focused on integrating SEC internal application systems into a common data model to facilitate analysis and reporting, and also is working to implement an EDW Explorer search tool which will enable staff to search across structured and unstructured data.

Question: Please tell us about the enhancements you're planning to make to the Tips, Complaints and Referral System (TCR).

Response: The Tips, Complaints and Referrals (TCRs) system has enhanced the staff's ability to more effectively identify potential violations of the federal securities laws and to ensure appropriate and timely responses to allegations of wrongdoing. Currently, the staff is conducting a TCR modernization project that will provide system enhancements such as increased flexibility, configurability, and adaptability to better support the TCR work processes.

Specific system enhancements include:

- The implementation of optical character recognition to allow search capability over the archive of older TCRs;
- Updates to the Office of the Whistleblower intake form;
- Advanced search functionality over the complete universe of TCRs; and
- Enhanced security compliance checks over submissions.

Question: Please give us an update on SEC.gov.

Response: The modernization of sec.gov has made the site more informative and easier to navigate for investors, public companies, registrants, and the general public. The site is more flexible to support evolving content and functionality and offers dynamic user capabilities

and multi-channel mobile access for all customers (e.g., SEC staff, the investing community, and the public). These changes provide content that is relevant and easy to find, and has transformed the way the public interacts with the SEC website.

Question: How much traffic does the SEC website have per day in comparison to other popular websites like weather.com?

Response: The demand for the information on SEC.gov continues to increase, with 5.57 billion page views in FY14, a dramatic increase over 3.72 billion page views in FY13. In May 2015 alone, the SEC received 529 million page views. Page views represent users actually viewing webpages or documents on SEC.gov to get to information.

Question: Who are the users of the site and what are they looking for on it?

Response: The users who come to sec.gov are diverse, and include investors, attorneys, registrants, filers, universities, and other public users. Reasons for accessing the website include obtaining corporate filings on the EDGAR system, locating the Commission's rule proposals and final rules, identifying staff guidance, downloading data, seeking investor information, submitting a question, learning about the SEC as an agency, and seeking information on enforcement actions.

Question: How do these technological improvements help your staff spot possible misconduct and trends that might be devastating for the economy?

Response: The SEC's investments in technology have been critical in helping the agency to uncover wrongdoing in securities markets that continue to grow significantly in speed, size, and complexity. The SEC currently receives and processes seven terabytes of digital evidence every month in connection with its enforcement investigations. Through the SEC's investments in data analytics and related tools, the SEC is able to identify outliers compared to a firm's peers, review an investment firm's records over multiple years, visualize heretofore unrecognizable relationships among individuals in insider trading rings, and deepen our understanding of how the markets work by examining trades by the microsecond. Important linkages among individuals, entities, or trades that previously may have been impossible to identify are now feasible, thereby furthering our enforcement efforts.

As a result, the SEC can cover significantly more ground in the markets with its limited resources, detecting trends and potential violations and more easily build cases against defendants. In addition, such investments:

- Reduce errors, decreasing the opportunities for mistakes;
- Facilitate sharing and collaboration among different divisions and offices; and
- Provide better data for the public.

Questions for the Record Submitted by Congressman Mike Quigley

XBRL (Structured Data Formats for Public Company Disclosures)

Chair White, an item I have focused on for some time has been the SEC's efforts to embrace structured data. Structured data, such as XBRL, allow investors to make better decisions, allow markets to more quickly digest information, and let smaller public companies reach a broader range of investors.

The SEC currently requires companies to submit two versions of every financial statement –once as searchable XBRL data and again as an old-fashioned, non-searchable document.

We have been told that there is a proposal to move to the "inline XBRL" format; a format that is both human-readable and machine-readable. This would allow companies to submit just one version of each financial statement. I believe that this change could improve the data quality for investors and also reduce compliance costs for companies.

Question: Do you intend to submit this proposal to the Commission for formal approval?

Response: Staff is developing recommendations for the Commission's consideration for amendments to the XBRL data tagging requirements to provide for use of inline XBRL. Inline XBRL may simplify the process of preparing and filing tagged financial statements by allowing filers to embed tagged data into one document that would be filed with the Commission, which might improve data quality and reduce costs associated with current filing requirements.

Question: If so, can you tell me when the Commissioners will have a chance to consider this proposal?

Response: Although I am not able to provide a specific timeframe, the staff is actively working to develop recommendations for the Commission's consideration. In addition, staff in our Division of Economic and Risk Analysis have been working with a vendor on the development of the underlying technology that will enable the implementation of inline XBRL. This technology will allow for the acceptance and validation of inline files through EDGAR, and also provide the public with an interactive viewer in which to review, search, and navigate the embedded inline tagging from their web browser.

Dodd-Frank

One of my proudest votes in Congress has been for the passage of Dodd-Frank. This law significantly overhauled our financial regulatory structure, while striking the right balance between mitigating systemic risk and ensuring a free-flow of capital.

It cannot be emphasized enough the considerable impact Dodd-Frank is already having on our economy. With an enhanced regulatory regime, liquidation authority, and a new

agency devoted to protecting consumers from risky behavior, we're on our way to significantly lessening systemic risk.

One of the most important aspects of Dodd-Frank is that it now requires swaps derivatives to be traded on transparent, open exchanges where prices are displayed publicly for all market participants to see.

Even though Congress has given the SEC the authority to oversee securities-based swaps, it has not given the SEC the funding it needs to adequately meet this tremendous effort.

Question: Chair White, while I believe providing the SEC with adequate funding is crucial for a fully functional Dodd-Frank, I would like to know what else Congress can do to assist the SEC in fulfilling its newfound responsibilities.

Response: Title VII of the Dodd-Frank Act creates an entirely new regulatory regime for over-the-counter derivatives. To that end, it directs the Commission and the Commodity Futures Trading Commission to write a number of rules necessary to implement the statutory regime. Since the Dodd-Frank Act was enacted in July 2010, we have been focused on completing the rulemaking process in as timely a fashion as possible, and we are now well into finalizing our outstanding rule proposals – most recently with the finalization of our dealer registration rules on August 5.

Our objective is a final rule set that reflects thoughtful consideration of the relevant issues, including those raised in comments by market participants and other interested parties, and provides a workable framework that allows the OTC derivatives market to continue to develop in a more transparent, efficient, accessible, and competitive manner. Congress has given us a number of important tools and mandates to accomplish the goals of Title VII. As we continue implementation, we may identify areas where additional assistance would be helpful in allowing us to meet the important goals of Title VII.

Question: In your opinion, what else should we be doing to mitigate systemic risk within the derivatives market?

Response: One of the most fundamental post-crisis changes for all of the financial regulators, including the Commission, has been an emphasis on addressing risks that could have a systemic impact on the securities markets or the financial system as a whole. This renewed emphasis, in my view, complements our long-standing mission to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.

The Dodd-Frank Act was designed in part to address many of the systemic issues which contributed to the recent economic crisis. The Act gave the SEC significant new responsibilities for, among other things, over-the-counter derivatives, hedge fund and other private fund advisers, municipal advisors, and clearing agencies. Continuing to adopt the rules required by Dodd-Frank remains one of my top priorities, and I will continue to focus on what additional steps beyond implementing these rules we may require to further mitigate systemic risk within the derivatives market or elsewhere within our financial system.

Fiduciary Standard

The Council of Economic Advisers report on *The Effects of Conflicted Investment Advice on Retirement Savings* praises an advice model that is similar to the current Registered Investment Advisor (RIA) model. However, there are more differences between RIAs and other investment counselors than just the fiduciary duty standard.

Question: Do you think that harmonizing the fiduciary duty standard could potentially lead to homogenization of different business models for investment advice?

Question: What impacts do think that could have on the availability of advice from RIAs?

Response: Whenever substantially similar services are regulated differently, I believe you should carefully consider whether the distinctions make sense from both the perspective of investors and industry, and if not, what to do about it. I believe that broker-dealers and investment advisers should be subject to a uniform fiduciary standard of conduct when providing personalized investment advice to retail investors. In advancing such a proposal, there are many questions that would need to be addressed, including how to define the standard with clear guidance on what it would require and how it would impact current business practices.

I recognize that implementation of a uniform fiduciary standard must consider the potential economic and market impacts, including consequences that may result for investors and market participants. Any action we take in this area would take into account related concerns, such as a potential reduction in availability of advice or services. It is important that the Commission strikes the right balance in addressing these issues, while making sure investors, particularly retail investors, are appropriately protected and have access to the type of investment advice they need and can afford. I am committed to working with the Commission's economists in evaluating the costs and benefits of any approach to help ensure that any potential rulemaking benefits investors without imposing unnecessary or unduly burdensome costs on them or the industry.

Insider Trading

I'd like to address insider trading and who exactly is covered. The SEC Act, and specifically Rule 149(e-3), is clear about a person or firm making a tender offer that is in possession of material, non-public information, but less clear about the conduct of co-bidders.

Question: What is the SEC's definition of who would be considered a co-bidder, or a so-called "co-offering person?"

Response: When an "offering person" has taken a substantial step to commence a tender offer, Exchange Act Rule 14e-3, the tender offer insider trading rule, prohibits any other person who is in possession of material nonpublic information relating to the tender offer and acquired from the offering person to buy or sell securities that are the subject of the tender offer without disclosing the material nonpublic information a reasonable time before the

purchase or sale. The prohibition in Rule 14e-3 does not apply to the offering person. The offering person is permitted to trade on its own information about the contemplated tender offer, subject to other applicable disclosure requirements. Therefore, the scope of the term "offering person" for purposes of the prohibition is important in determining whether Rule 14e-3 has been violated in a given instance.

For purposes of Regulation 14D and Schedule TO, the terms "offeror" and "bidder" are defined as any person who makes a tender offer, or on whose behalf a tender offer is made. The SEC staff has provided guidance on how to identify who is a bidder in a tender offer, including clarification that there can be multiple "co-bidders."[4] This guidance, however, was provided in the context of the filing requirements of Schedule TO and Regulation 14D and did not specifically address the scope of Rule 14e-3.

Until recently, neither the Commission nor the courts have addressed how the reference to "offering person" in Rule 14e-3 applies to another party or parties who join with the offering person in a tender offer and would be considered co-bidders for purposes of Regulation 14D. In a recent ruling, a federal district court in California held that such an arrangement between a hedge fund and a bidder in an exchange offer raised "serious questions" under Rule 14e-3 based on the specific facts and circumstances of the case, but the court declined to enjoin the hedge fund from voting its shares at a special meeting.[5]

SEC staff is closely following the outcome of the litigation, which is ongoing, and continues to monitor the issue more generally.

Say, for instance, Company A is making an offer to buy Company B, and Company A enters into a contractual agreement with a financier to purchase shares of Company B before the announcement of the intent to acquire it.

Question: How would insider trading laws apply to this situation?

Response: Once Company A has taken a substantial step to commence a tender offer for the shares of Company B, Rule 14e-3 prohibits any other person who is in possession of material nonpublic information relating to the tender offer, which is acquired from Company A, to buy or sell securities that are the subject of the tender offer without disclosing the material nonpublic information a reasonable time before the purchase or sale. If the financier joins Company A as a "co-bidder" in the tender offer, then the financier may trade on information about the tender offer without violating this rule only if it is also considered to be an "offering person" for purposes of Rule 14e-3. If the financier is not an "offering person," then it will be subject to the prohibition in Rule 14e-3.

It is important to note that whether an insider trading violation has occurred in any particular case depends on the specific facts and circumstances of that case.

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[4] See "Current Issues and Rulemaking Projects Outline, Section II.D.2., Mergers & Acquisitions - Current Issues – Identifying the Bidder in a Tender Offer," (November 14, 2000) available at http://www.sec.gov/divisions/corpfin/guidance/ci111400ex_tor.htm.

[5] *Allergan v. Valeant Pharm. Int'l, Inc.*, Case No. SACV-1214 DOC (C.D. Cal. Nov. 4, 2014).

Question: Does the SEC intend to provide guidance on this issue?

Response: SEC staff is closely following the outcome of the pending litigation in federal district court on this matter, which is ongoing, and continues to monitor the issue more generally.

I have asked the staff to keep me informed of developments.

Question: What is the SEC's process for examining a novel or creative deal structure, and what are the SEC's options to investigate conduct related to these types of transactions?

Response: The Division of Corporation Finance selectively reviews transactional filings, such as business combination transactions. A novel or complex deal structure would certainly be considered in determining whether to review a filing.

In its filing reviews, the Division concentrates its resources on critical disclosures that appear to conflict with SEC rules or the applicable accounting standards and on disclosure that appears to be materially deficient in explanation or clarity. When, as part of the review process, the staff identifies disclosure concerns raised by a deal structure, the staff will generally seek to address those concerns through the written comment process with the parties, with a view towards resolving those concerns before the parties proceed with the transaction.

In cases where the staff has disclosure concerns about a transaction that is underway or has already occurred or the parties to the transaction are unable or unwilling to address the staff's concerns, the Division may refer the matter to the Division of Enforcement. In addition, the Division of Enforcement has its own dedicated unit, the Complex Financial Instruments unit, which, among other things, concentrates on proactively understanding and, where appropriate, investigating potential misconduct related to novel or complex financial instruments.

The federal securities laws, including the general anti-fraud provisions found in Section 10(b) of the Securities Exchange Act of 1934 and Section 17(a) of the Securities Act of 1933, apply to all securities transactions, i.e., disclosures about transactions structured in novel or creative ways as well as transactions structured in more traditional ways. Where the Division of Enforcement becomes aware of facts that suggest a possible violation of the federal securities laws has occurred – whether from a tip, complaint, referral or other mechanism – it may institute an investigation into the conduct. In appropriate cases where there is sufficient evidence of a violation of the federal securities laws, the Division of Enforcement will recommend that the Commission bring enforcement actions against the wrongdoers.

Questions for the Record Submitted by Congressman Sanford Bishop

Rulemakings Required by Dodd-Frank

Your budget request states that the SEC has "proposed or adopted nearly all of the mandatory rulemakings required by the Dodd-Frank Wall Street Reform and Consumer Protection Act and the Jumpstart Our Business Startups Act."

Question: Which rules mandated by either of these acts has the SEC yet to address and when will the Commission to take action on these mandated rules?

Response: The Commission has made tremendous progress in implementing the nearly 100 rulemaking mandates assigned to it in the Dodd-Frank Act and the JOBS Act. With respect to the Dodd-Frank Act, the Commission has proposed or adopted all but a handful of the rulemaking mandates. The remaining mandatory rules on which no action has been taken are listed below, all but one of which were not assigned a timetable by Congress. I expect the Commission to move forward with these rules as soon as practicable in light of our work to finalize our outstanding proposals for Dodd-Frank Act rules and advance the Commission's other important programs, including enhancements to equity market structure, disclosure effectiveness, and risk monitoring and regulatory safeguards for the asset management industry. With respect to the JOBS Act, there are no remaining rules where the Commission has yet to take action, and the staff is working to finalize rule recommendations to implement the crowdfunding provisions of the JOBS Act.

Remaining Mandatory Rules under the Dodd-Frank Act

- Sec. 165—Stress tests
- Sec. 205(h)—Orderly liquidation of covered brokers and dealers (joint rulemaking with the FDIC)
- Sec. 915—Regulations for Office of Investor Advocate
- Sec. 929X(a)—Short sale reforms
- Sec. 984(b)—Increased transparency of information available to brokers, dealers, investors, with respect to loan or borrowing of securities

National Examinations Program

In your budget request, you state that the SEC was able to examine only 10% of registered investment advisers in FY 2014, a rate which you stated "presents a high risk to the investing public." As a result, you stated that a top priority for FY 2016 will be to hire additional examiners and you expect to increase the examination coverage of advisers to approximately 14% per year.

Question: Realistically, how does an examination rate of 14% annually compare to 10% and do you think that the higher level no longer poses a "high risk" to the investing public?

Question: What is your target examination rate for investment advisors?

Response: If the SEC were appropriated funds sufficient to hire the additional examiners proposed in our FY2016 budget request, the additional staff would be integrated into our existing risk-based examination program, which focuses on targeting firms and activities identified as high risk. This would result in *hundreds* of additional examinations of high risk firms and activities.

Hundreds of additional examinations would make a real difference. OCIE conducts examinations of registered entities to promote compliance, prevent fraud, identify risk, and inform policy. More examinations means an enhanced ability to identify entities engaged in illegal activities such as excessive trading and pump-and-dump market manipulation schemes. It means a greater likelihood of ensuring that the services provided to retail investors – whether saving for retirement, college, or otherwise – are consistent with applicable laws, rules, and regulations. And it means increasing the staff's ability to assess market-wide risks and assist in improving industry practices.

Beyond this, more frequent examinations would in my view provide a greater level of deterrence, which is partially a function of each investment adviser's perception of the probability of being examined.

While there is no magic number, our goal would be to have at least 50% examined each year as occurs for registered broker-dealers, which are subject to examination by both the SEC and FINRA. By improving significantly OCIE's examination coverage of registered investment advisers, OCIE will be better able to accomplish its mission of protecting investors, ensuring market integrity, and supporting responsible capital formation through risk focused strategies.

Virtual Currencies

With the expanding prevalence of virtual currencies, including the popular BitCoin, the SEC has encountered an increasing number of securities violations from companies that either facilitate the sale or trade of these currencies or from companies that use these currencies to purchase securities.

Question: What is the Commission's position on virtual currencies and what major issues, if any, do you think stem from the use of these currencies?

Response: Bitcoin and other virtual currencies are an emerging issue for the Commission and other financial regulators. The Commission has taken a number of actions in this space. Where virtual currencies have been used in conjunction with securities violations – *e.g.*, a Bitcoin-based Ponzi scheme, Bitcoin-denominated investments, or a Bitcoin-denominated stock exchange – the Commission has brought several enforcement actions. The Commission's Office of Investor Education and Advocacy has also issued two investor alerts warning investors about fraudulent schemes that could involve virtual currencies. Under the facts as we currently understand them, Commission staff has not concluded that bitcoins themselves meet the legal definition of "security" under the federal

securities laws. But as this is a fast-changing landscape, we are continuing to examine Bitcoin and the various relationships that arise out of Bitcoin. Even if bitcoins or other interests relating to Bitcoin are not securities, the Commission can and will continue to address issues related to Bitcoin and other virtual currencies in a variety of areas that fall within the Commission's jurisdiction and mission.

Fiduciary Duty

Chair White, you have recently come out in favor of developing a new fiduciary duty for brokers in an effort to implement a uniform rule covering brokers and investment advisors. This comes after years of investigating the matter, which was authorized by the 2010 Dodd–Frank Wall Street Reform and Consumer Protection Act. Your agency has been criticized for trailing the Department of Labor's progress in instituting a similar rule covering brokers giving advice regarding retirement accounts.

Question: Considering the amount of time it takes to implement a rule and our proximity to an upcoming presidential election, what are you doing to ensure that a new rule does not get side-tracked, while taking care to adequately address criticisms of a proposed rule?

Response: I believe that broker-dealers and investment advisers should be subject to a uniform fiduciary standard of conduct when providing personalized investment advice to retail investors. This is a complex issue and in proposing a uniform fiduciary standard, there are many challenges that would need to be addressed. I am discussing these issues with my fellow Commissioners, and I have asked the staff to prepare for the Commission the staff's recommendation for both imposing a uniform fiduciary standard and a program of third-party exams for investment advisers.

Question: How does the Commission plan on working with the Department of Labor to ensure there is no unnecessary overlap in responsibility and a coordination of efforts for a coherent regulatory regime?

Response: As separate and distinct agencies, I believe that the Commission and the Department of Labor (DOL) can each proceed independently to propose changes to the standards that apply to advice given by each of our regulated entities. I also understand, however, the importance of consistency and considering the impact that potential fiduciary rulemaking by the Commission and DOL may have on those entities, investors and the markets. Consultation among the two agencies has been, and will continue to be, important.

SEC staff has provided staff from DOL with technical assistance and expertise on the Commission's regulatory regime as DOL prepared its re-proposal. SEC staff also shared experiences with how services are provided in this area of the market. I expect SEC staff to continue to be available to provide technical assistance to DOL staff as they pursue their fiduciary rulemaking. And consulting with DOL staff will continue to be important as the Commission evaluates advancing its own proposal.

Concerns regarding the indemnification requirement have been expressed in a number of reports on progress of implementation of OTC derivatives market reforms published by the Financial Stability Board. In addition, other regulators may be legally prohibited or otherwise restricted from agreeing to indemnify third parties.

In 2013, the SEC proposed Rule 13n-4(d) under the Exchange Act that would provide exemptive relief from this indemnification requirement if certain conditions are met: (i) the requesting authority seeks information from the SBSDR to fulfill its regulatory mandate or legal responsibility; (ii) the authority's request pertains to a person or financial product subject to its jurisdiction, supervision, or oversight; and (iii) the requesting authority has entered into a supervisory and enforcement memorandum of understanding or other arrangement with the SEC. In making this proposal, the SEC noted that it preliminarily believes that the indemnification requirement does not apply when an SBSDR is registered with the SEC and is also registered or licensed with a foreign authority and that foreign authority is obtaining information directly from the SBSDR pursuant to that foreign authority's regulatory regime.

In February 2015, the SEC adopted final rules for SBSDRs but did not adopt Rule 13n-4(d) at that time. The SEC noted that the final resolution of this issue would benefit from further consideration and public comment and that the SEC anticipates soliciting additional public comment in the near future regarding the indemnification requirement and a proposed exemption.

Equivalence under EMIR

Under EMIR, the European Commission may adopt one or more implementing acts determining, in part, that the legal and supervisory arrangements of a third country ensure that central counterparties (CCPs) and/or trade repositories (TRs) authorized in that third country comply with legally binding requirements which are equivalent to the requirements laid down in EMIR. If granted, this form of equivalence would satisfy one of the prerequisites for a CCP or TR established outside the European Union to apply for permission to operate within the European Union. Separately, the European Commission may also adopt implementing acts declaring, in part, that the legal, supervisory and enforcement arrangements of a third country are equivalent to the central clearing, trade reporting and risk mitigation obligations laid down in EMIR. If granted, this form of equivalence would allow counterparties to a cross-border transaction to fulfill EMIR's central clearing, trade reporting and risk mitigation requirements.

In September 2013, the European Securities and Markets Authority (ESMA) published a final report on its technical advice to the European Commission on the regulatory equivalence of certain aspects of the U.S. regulatory regime to the applicable European Union regime under EMIR. The report reviewed the regimes of the CFTC and SEC applicable to (i) CCPs, (ii) TRs, and (iii) areas of potentially duplicative or conflicting requirements regarding EMIR's clearing and reporting obligations, non-financial counterparties as defined under EMIR and risk mitigation techniques for non-centrally cleared OTC derivatives contracts. The report sets out ESMA's detailed analysis of the

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CFTC and SEC regimes. In certain areas, ESMA advised that the U.S. regime is not equivalent to EMIR.

Following ESMA's publication of its technical advice, the European Commission is conducting an independent analysis of equivalence under EMIR. SEC staff has engaged in discussions with the European Commission staff on this issue in bilateral and multilateral fora. We remain committed to working with the European authorities as well as other foreign regulators on such matters as equivalence and substituted compliance in order to help ensure a level playing field for market participants consistent with the requirements of the Dodd Frank Act.

Increased Staffing for Economic and Risk Analysis Program

From FY 2014 to FY 2015, you increased the number of Full Time Equivalents (FTEs) for the Division of Economic and Risk Analysis by 150%, from 56 to 140. For FY 2016, you are requesting an additional 17% FTEs over the current fiscal year.

Question: Can you please explain what results you have seen from this year's increase in staffing and the expected results of an additional increase for FY 2016?

Response: Staffing has grown from 89 employees in FY2013 to more than 130 currently, with a ceiling in FY2016 of 170. This additional staff has enabled DERA to greatly increase its analytical capacity. The division is able to provide advice on a broader range of economic issues, such as supporting additional rule-writing and reviews of self-regulatory organization rules, engaging on an increased number of enforcement matters at earlier stages of investigation, and developing sophisticated risk models to assist the Office of Compliance, Inspections, and Examinations and the Division of Enforcement. DERA is also increasing its support for newly established offices within the agency, such as the Office of Credit Ratings, and the Office of Municipal Securities, providing expertise relevant to rulemakings, rule filings, and market monitoring.

Advisers Who Have Never Been Examined

According to your budget request, the SEC has never examined approximately 40% of all registered investment advisers.

Question: With a growing number of registered advisers, which you claim has been an increase of nearly 35% over the last decade, how do you plan to address this shortfall without impacting the investigation of at-risk advisers?

Response: Last year we made a conscious effort to increase our examinations of never before examined ("NBE") investment advisers. Specifically, in February 2014, OCIE launched an initiative directed at investment advisers (not including advisers to private funds, which were subject to a separate initiative) that had been registered for at least three years and had never been examined.

The NBE Initiative has concentrated on the advisers' compliance programs, filings and disclosure, marketing, portfolio management, and safekeeping of client assets. The initiative includes two distinct approaches: risk-assessment and focused reviews. The risk assessment approach includes a high-level review of the firm's overall business activities and compliance program designed to obtain a better understanding of the investment adviser. The focused review approach includes a comprehensive, risk-based examination of one or more higher-risk areas. Since the beginning of fiscal year 2014, OCIE has completed more than 575 examinations of NBE investment advisers. Over 100 additional exams are in various stages of completion.

Due to the continuous influx of new SEC-registered investment advisers, the actual percentage of NBE advisers (nearly 40%) has remained relatively stable. However, through our continued focus on this population of investment advisers, we hope to reduce the overall percentage of investment advisers who register with the SEC but are not examined for a period of years. Additionally, OCIE piloted and has now more fully integrated a program to contact new registrants within the first 90 days of registration. This communication with new registrants allows the registrant to learn more about the examination program and provides OCIE staff with insight into the activities of the investment adviser. OCIE staff has contacted nearly 250 newly registered advisers since this program began.

In addition to (1) increasing the overall examination coverage of the NBE investment adviser population and (2) providing the exam program with additional information for assessing the risk level of such advisers, the goal of this initiative includes promoting compliance through outreach efforts and transparency. At the beginning of the initiative, OCIE sent letters to all NBE investment advisers outlining the risk areas of focus for the initiative and providing guidance and resources to the firms. Additionally, SEC regional offices conducted outreach seminars in approximately 20 different cities focused on topics of particular interest to advisers who had not yet been examined.

The NBE initiative has not shifted OCIE's focus away from examining the riskiest investment advisers. As discussed above, NBE examinations are designed to assess a firm's risk. If OCIE determines that the firm is of high risk, staff will expand the scope of the exam. Similarly, if OCIE determines that a NBE firm is of low risk, staff will conduct a "lighter touch" examination that requires fewer resources.

Separate from the program's risk-based focus on NBE firms, OCIE is continuing its primary focus of examining firms and activities with the highest risk profile.

Colleen M. Kelley

National President

National Treasury Employees Union

Statement for the Record

For

House Appropriations Subcommittee on Financial Services and General Government

"Internal Revenue Service Budget Request for FY 2016"

March 18, 2015

1750 H Street, N.W. • Washington, D.C. 20006 • (202) 572-5500

Chairman Crenshaw, Ranking Member Serrano and distinguished members of the Subcommittee, I would like to thank you for allowing me to provide comments on the IRS budget request for FY 2016. As President of the National Treasury Employees Union (NTEU), I have the honor of representing over 150,000 federal workers in 31 agencies, including the men and women at the IRS.

Mr. Chairman, despite the critical role that the IRS plays in helping taxpayers meet their tax obligations and generating revenue to fund the federal government, the IRS' ability to continue doing so has been severely challenged due to funding reductions in recent years.

Since FY 2010, IRS funding has been cut by almost $1.2 billion, or 17 percent after adjusting for inflation. The funding reductions have forced the IRS to operate under an exception-only hiring freeze since December 2010, and will have forced the Service to reduce the total number of full-time, permanent employees by more than 16,000 by the end of the fiscal year. In particular, the number of employees assigned to answer telephone calls from taxpayers fell from 9,400 in 2010 to 6,900 in 2014, a 26% drop. And despite the critical role they play in maximizing taxpayer compliance and generating revenue, the total number of Revenue Officers and Revenue Agents was down more than 3,600 at the end of FY 2013, and without additional resources, the IRS has warned it will lose another 1,800 enforcement personnel through attrition by the end of FY 2015. The lack of sufficient staffing has strained IRS' capacity to carry out its important taxpayer service and enforcement missions.

The drastic cuts to IRS' budget come at a time when the IRS workforce is already facing a dramatically increasing workload with staffing levels down by more than 13,000 since 2010, and more than 26 percent below what they were just 18 years ago. In 1995, the IRS had a staff of 114,064 to administer tax laws and process 205 million tax returns. By the close of 2013, staffing had fallen to 83,613 to administer a more complicated tax code and process 242 million much more complex tax returns and other forms. The IRS predicts it will lose an additional 3,000 full-time employees by the end of FY 2015.

IRS FY 2016 BUDGET REQUEST

NTEU was pleased to see that the Administration's budget request for the IRS would provide the agency with a total of $12.9 billion in funding for FY 2016, including $12.3 billion in base funding and $667 million via a program integrity cap adjustment. The $12.9 billion in funding would represent an increase of more than $1.9 billion over the current FY 2015 level, which would help restore funding for important taxpayer service and enforcement activities that have been slashed in recent years. These funding reductions have adversely impacted IRS' ability to meet its mission, and without action by Congress, IRS' ability to serve taxpayers and enforce our nation's tax laws will continue to erode.

I would also note that in previous years, NTEU has supported the budget recommendations proposed by the IRS Oversight Board which have generally called for additional resources above that requested by the Administration. For FY 2016, the Oversight Board has recommended $13.5 billion in funding for the IRS. While we have not seen the specific details of the Board's proposal, we would be inclined to support providing additional funding for the IRS above the Administration's request and look forward to reviewing the Board's recommendation.

TAXPAYER SERVICES

Providing quality taxpayer service is a critical component of the IRS' efforts to help the taxpaying public understand their tax obligations while making it easier to participate in the tax system. Unfortunately, the IRS' ability to provide excellent taxpayer service has been severely challenged due to reduced funding in recent years and the cuts mandated by sequestration. Without additional resources, further degradation in taxpayer services will occur, jeopardizing our voluntary compliance system.

Impact of Inadequate Funding on Taxpayer Services

In the past few years, many experts in the tax community, including the National Taxpayer Advocate, IRS Oversight Board and the IRS Advisory Council have all warned of the dangers of underfunding the IRS and the adverse impact it has had on taxpayer service.

In January, the National Taxpayer Advocate, Nina Olson, released her 2014 Annual Report to Congress which identifies the decline in IRS taxpayer services due to reduced funding as the #1 most serious problem facing taxpayers. The report describes in detail the severe reduction to taxpayer services caused by repeated cuts to the IRS budget. Among the report findings are:

- In FY 2015, the IRS predicts that the percentage of callers seeking live assistance who receive it (telephone level of service) will fall to 38 percent,—down from 74 percent in FY 2010.

- Taxpayers who do manage to get through are expected to wait on hold for 57 minutes on average, up from 10 minutes in FY 2010.

- During the upcoming filing season, the IRS will not answer any tax-law questions except "basic" ones. After the filing season, the IRS will not answer any tax-law questions at all, leaving the roughly 15 million taxpayers who file later in the year unable to get answers to their questions by calling or visiting IRS offices.

- The IRS historically has prepared tax returns for taxpayers seeking its help, particularly for low income, elderly, and disabled taxpayers. Eleven years ago, it

prepared some 476,000 returns. That number declined significantly over the past decade, and last year the IRS announced it will no longer prepare returns at all.

• The IRS has also said the funding reductions could result in delays in refunds for some taxpayers. Those taxpayers who file paper returns could wait an extra week or longer to see their refund. Taxpayers with errors or questions on their returns that require additional manual review will also face delays.

Mr. Chairman, it is evident that funding reductions in recent years have seriously eroded the IRS' ability to provide taxpayers with the services they need. Without the additional funding proposed in the Administration's budget request, taxpayers will continue experiencing a degradation of services, including longer wait times to receive assistance over the telephone, increasing correspondence inventories, including letters from taxpayers seeking to resolve issues with taxes due or looking to set up payment plans.

That is why we strongly support the President's request of $2.4 billion in funding for taxpayer services in FY 2016, a $252 million increase over the current level. This increase will allow IRS to fund an additional 3,000 FTEs to raise the Customer Service Representative telephone level of service (LOS) to 80 percent, meet rising taxpayer demand and help taxpayers understand their obligations.

Enforcement

Mr. Chairman, the funding reductions to the IRS budget in recent years have also negatively impacted its ability to maximize taxpayer compliance, prevent tax evasion and reduce the deficit.

Impact on Voluntary Compliance & Tax Gap

NTEU strongly believes our system of voluntary tax compliance is most effective when the IRS is able to assist those trying to meet their obligations under the law. In particular, by assisting taxpayers with their tax questions before they file their returns, the IRS can help prevent inadvertent noncompliance and reduce burdensome post-filing actions, such as audits and penalties.

Unfortunately, as noted previously, funding reductions have resulted in the inability of millions of taxpayers to get answers from IRS call centers and at taxpayer assistance centers (TACs), which lessens their ability to meet their tax obligations.

The National Taxpayer Advocate has previously warned that limited resources were impeding IRS' ability to conduct education and outreach to taxpayers, including small businesses, which is critical to ensuring they are able to understand and comply with their tax obligations. For example, she has repeatedly warned staffing levels at TACs across the country

are woefully inadequate, with taxpayers lining up to enter IRS offices well before those offices were even open and with some people being turned away.

Inadequate staffing and the lack of availability of services at TACs has long been a problem at the IRS and disproportionately impacts the most vulnerable in our population who use TACs most often, including non-English speaking taxpayers, the elderly and low income individuals and families, who often need additional assistance in understanding and meeting their tax responsibilities. If these taxpayers are not provided the assistance they need to understand their tax obligations, they may inadvertently file an incorrect return which could necessitate the need for IRS to undertake post-filing actions that are costly and burdensome to both the taxpayer and the IRS.

Incorrect filings could also result in taxpayers paying less than they owe, further hampering efforts to close the tax gap, which is the amount of tax owed by taxpayers that is not paid on time.

The adverse impact on IRS' capacity to collect revenue critical to reducing the federal deficit is clear. In FY 2014, on a budget of $11.2 billion, the IRS collected $3.1 trillion, roughly 93 percent of federal government receipts. According to the IRS, every dollar invested in IRS enforcement programs generates roughly $7 in return, but reduced funding for enforcement programs in recent years has led to a steady decline in enforcement revenue since FY 2007. In FY 2014, IRS enforcement activities brought in $57.1 billion, down more than $2 billion from the $59.2 billion in FY 2007.

The $345 million reduction to IRS' budget for FY 2015 will further reduce IRS' ability to collect revenue and would result in the loss of billions in revenue in FY 2015 alone. That lost revenue could otherwise be invested in critical government programs or be used to reduce the federal deficit.

The IRS has warned that enforcement staffing will continue to be a significant concern under the FY 2015 funding level and has cautioned that under this insufficient level of funding, the IRS will lose another 1,800 enforcement personnel in FY 2015. The impact of the reduced staffing in enforcement will result in in at least 46,000 fewer individual and business audit closures and more than 280,000 fewer Automated Collection System and Field Collection case closures.

That is why NTEU was happy to see the Administration's budget request would provide a $539 million increase in funding for IRS tax enforcement above the current level. This increase includes a program integrity cap adjustment which provides critical funding designed to protect revenue by identifying fraud and preventing issuance of questionable refunds, including tax-related identity theft, addressing offshore noncompliance, and improving collection coverage rates. According to the Administration, the additional funding provided via the cap adjustment is expected to generate $2.8 billion in additional annual enforcement revenue, resulting in a return on investment (ROI) of more than 6 to 1, once new hires reach full potential in FY 2018. This estimate does not account for the deterrent effect of IRS enforcement programs, estimated to be at least three times larger than the direct revenue impact.

CONCLUSION

Chairman Crenshaw, Ranking Member Serrano and members of the subcommittee, thank you for the opportunity to provide NTEU's views on the Administration's FY 2016 budget request for the IRS. NTEU believes that only by restoring critical funding for effective enforcement and taxpayer service programs can the IRS provide America's taxpayers with quality service while maximizing revenue collection that is critical to reducing the federal deficit.

National Rural Assembly
BROADBAND

March 23, 2015

The Honorable Harold Rogers
Chairman
House Appropriations Committee
2406 Rayburn House Office Building
Washington, DC 20515

The Honorable Nita M. Lowey
Ranking Member
House Appropriations Committee
2365 Rayburn House Office Building
Washington, DC 20515

The Honorable Ander Crenshaw
Chairman
Subcommittee on Financial Services and General Government
2161 Rayburn House Office Building
Washington, DC 20515

The Honorable José Serrano
Ranking Member
Subcommittee on Financial Services and General Government
2227 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Rogers, Ranking Member Lowey, Subcommittee Chairman Crenshaw, and Subcommittee Ranking Member Serrano:

We are writing to ask you to support the fair treatment of rural and Native communities online. We are entrepreneurs, artists, educators, advocates, and devoted community members, and we strongly believe network neutrality rules provide us with a level playing field online. The open Internet has given us the opportunity to revitalize rural America's local economies, share our culture with global audiences, and amplify rural voices in debates shaping our society.

The Federal Communications Commission (FCC) recently voted in favor of strong net neutrality rules, a decision that ensures Broadband Internet Access Services (BIAS) treat all information equally – no one receives preferential treatment, no one is slowed down, and no one is blocked, regardless of where they live. The rules prevent service providers from choosing digital winners and losers, a practice that could disproportionally hurt rural Americans. In brief, net neutrality rules keep Broadband Internet Access Services honest. Indeed, the FCC decision is a great victory for rural America.

We need your help as a Rural Champion: Support the Net Neutrality rules and maintain a level playing field for rural Americans.

Your support for the FCC's net neutrality rules ensures that rural Americans don't get stuck in the slow lane and are able to access the power of the open Internet to transform our communities.

Today, residents of rural and Native communities constitute the majority of Americans who are unable to access telecommunications services. According to the FCC, 53% of rural Americans (22 million) and 63% of Americans living in Tribal lands do not have access to broadband speeds that enable full participation in our society.[1] This persistent digital divide keeps rural communities from better education, health care, economic development, and from full civic participation.

The open Internet helps bridge the isolation and neglect our communities experience. But getting online is not sufficient. In order for rural people to obtain the full benefits of the open Internet, our voices, stories, and ideas cannot be downgraded to the slow lane. Net neutrality helps rural communities get the same exposure as those with power and wealth. It creates a level playing field unlike we have ever seen.

As our economy, culture, and civic engagement become increasingly tied to our presence online, rural communities depend on network neutrality to get a fair shake. Here are some examples:

Rural Entrepreneurs

Broadband provides rural businesses and innovators access to global customers. Net neutrality allows rural entrepreneurs and large corporations to compete for these customers on a level playing field. Allowing Broadband Internet Access Services to sell fast lanes to those who can afford them leaves rural businesses stuck in the digital dirt road. Net neutrality maintains the digital road to economic progress open for rural entrepreneurs.

Rural Artists

The Internet exposes global audiences to rural art, music, stories, and culture. And rural musicians, filmmakers, journalists, and artists use the Internet to be our cultural ambassadors. While rural artists face many obstacles to reach mainstream stages, the Internet is their most accessible venue. Net neutrality rules help rural talent reach the global stage.

Rural Ideas

The Internet is a platform where rural people can speak for themselves and on the behalf of their communities to wider audiences. Net neutrality grants every idea equal opportunity to reach a global audience, thus ensuring that rural communities are not excluded and do not experience the same lack of representation they face on other communications platforms. Net neutrality rules ensure rural voices get the same megaphone as everyone else.

The FCC listened to our requests to establish Net neutrality rules that help rural Americans obtain the full benefits of the open Internet, and now you can help us by protecting those rules.

The stakeholders endorsing this letter respectfully request your help establishing fairness for rural communities, entrepreneurs, and artists online by supporting the FCC's network neutrality rules.

---

[1] *Tenth Broadband Progress Report*, Federal Communications Commission. January 29, 2015

Sincerely,

Sean Mclaughlin
Executive Director
Access Humboldt
Eureka, California

Michael Nicholls
Co-Chair
Access Sonoma Broadband
Cazadero, California

Jay April
President & CEO
Akaku Maui Community Media
Kahului, Hawai'i

Amelia Kirby
Development Director
Appalachian Citizens Law Center
Whitesburg, Kentucky

Mimi Pickering
Community Media Initiative Director
Appalshop
Whitesburg, Kentucky

Matt L. Barron
Bluegrass Rural
Melber, Kentucky

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Becky McCray
Founder & Publisher
Small Biz Survival
Hopeton, Oklahoma

Julia Oxarango-Ingram
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Southern Idaho Rural Development
Shoshone, Idaho

Jenny Lancaster
Partner/Client Director
Terzetto Creative, LLC
Huntington, West Virginia

Matthew Rantanen
Director of Technology
Tribal Digital Village Network
Pala, California

Ana Montes
Organizing Director
The Utility Reform Network
San Francisco, California

Beth O'Connor
Executive Director
Virginia Rural Health Association
Blacksburg, Virginia

Lynn Jungwirth
Senior Fellow for Policy and Development
The Watershed Center
Hayfork, California

CC: Members of the House Appropriations Committee

March 23, 2015

Rep. Ander Crenshaw
Chair
Financial Services Subcommittee
B-300 Rayburn HOB
Washington, DC 20515

Rep. Jose Serrano
Ranking Member
Financial Services Subcommittee
B-300 Rayburn HOB
Washington, DC 20515

Dear Chairman Crenshaw and Ranking Member Serrano:

As racial justice and civil rights organizations, we write to express our support of the recent Federal Communications Commission decision to enact strong and enforceable Net Neutrality rules.

Our organizations are among the more than 100 racial justice and civil rights groups that have called on the FCC to pass strong Net Neutrality rules using its Title II authority. It is critical that the FCC have the legal authority to protect the online digital rights of communities that historically have been marginalized in our society. With such protections, our communities have been able to better participate in our democracy, tell our own stories, strive towards educational excellence and pursue economic success.

We are deeply troubled by Congressional efforts to overturn the Net Neutrality order and to strip the Commission of its legal authority to enforce its Net Neutrality protections under Title II of the Communications Act. This includes efforts to prevent the Commission from enforcing Net Neutrality by defunding the agency.

The Net Neutrality debate has centered on whether the Commission has the authority to enforce Net Neutrality rules that prevent Internet service providers (ISPs) from blocking or discriminating against online content. A federal court ruled last year that the Commission could not ban such online discrimination without reclassifying ISPs as common carriers under Title II. Therefore, the FCC cannot protect Internet users from ISP practices such as blocking, throttling and other types of discriminatory conduct that could arise as the marketplace and technology evolves, without asserting its authority under Title II.

This is why more than four million people have called on the FCC to use its Title II authority to adopt strong and enforceable Net Neutrality rules over the past year.

Accordingly, we respectfully request that you join the millions of digital equality champions and support the FCC's historic decision, and reject any efforts to overturn or weaken the decision. You will be in good company, on the right side of public opinion and history.

Sincerely,

Alliance for a Just Society
Black Alliance for Just Immigration
Black Lives Matter
Center for Community Change
Center for Media Justice

Center for Popular Democracy
Center for Rural Strategies
Center for Social Inclusion
ColorOfChange.org
Community Justice Network for Youth
Demos
Dream Defenders
18 Million Rising
Ella Baker Center
Forward Together
Free Press
Hispanic Association of Colleges and Universities
Latino Rebels
Media Action Grassroots Network
Mexican American Opportunity Foundation
Million Hoodies Movement for Justice
Movement Strategy Center
National Domestic Workers Alliance (NDWA)
National Association of Hispanic Journalists
National Association of Latino Independent Producers
National Economic & Social Rights Initiative
National Guestworker Alliance
National Hispanic Media Coalition
National Institute for Latino Policy
National Latina Institute for Reproductive Health
National LGBTQ Task Force Action Fund
National People's Action
News Taco
Nuestra Palabra: Latino Writers Having Their Say
Our Walmart
Philanthropic Initiative for Racial Equity
Presente.org
Radio Bilingüe
Race Forward
Right to the City Alliance
Roosevelt Institute Campus Network
The Librotraficante Movement
The Praxis Project
United Church of Christ, OC Inc.
United We Dream
Voices for Internet Freedom

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STATEMENT OF PAUL SCHOTT STEVENS
PRESIDENT AND CEO
INVESTMENT COMPANY INSTITUTE
ON THE U.S. SECURITIES AND EXCHANGE COMMISSION'S
APPROPRIATIONS FOR FISCAL YEAR 2016

Subcommittee on Financial Services and General Government
Committee on Appropriations
U.S. House of Representatives

April 15, 2015

The Investment Company Institute[1] appreciates this opportunity to submit testimony to the Subcommittee relating to the Administration's FY 2016 Appropriations request for the Securities and Exchange Commission (SEC). In the past, the Subcommittee has consistently sought to provide adequate resources for the SEC. For the reasons expressed below, we urge it to do so again this year.

Importance of a Well-Funded and Effective Securities Regulator for Funds and Their Investors

Registered investment companies (RICs, or "funds")[2] and their shareholders have an important stake in an effective SEC. RICs are one of America's primary savings and investment vehicles for middle-income Americans. All told, an estimated 92.7 million shareholders in 54.5 million U.S.

[1] The Investment Company Institute (ICI) is a leading, global association of regulated funds, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI's U.S. fund members manage total assets of $18.1 trillion and serve more than 90 million U.S. shareholders.

[2] Fund sponsors offer four types of registered investment companies in the U.S.—open-end investment companies (commonly called "mutual funds"), closed-end investment companies, ETFs, and UITs.

households owned some type of registered fund in 2014.[3] At year-end 2014, total RIC assets were $18.06 trillion. These funds, and their millions of investors, benefit from an effective SEC.

RICs are an integral part of our economy in other ways, as well. In addition to their role as the investment vehicle of choice for millions of Americans, RICs have been important investors in the capital markets. As participants in the stock, bond, and money markets, RICs and their shareholders benefit from the SEC's ability to provide strong regulatory oversight of these markets in order to protect investors, promote confidence in our markets, and ensure their resiliency and vibrancy.

Increasing Importance of the SEC's Domestic and International Engagement and Perspective in Financial Regulatory Policy Discussions

The SEC has engaged in joint rulemaking with other domestic regulatory agencies (including banking regulators) and is an active participant in international bodies such as the International Organization of Securities Commissions (IOSCO) and the Financial Stability Board (FSB). Because the fund industry is increasingly affected, directly or indirectly, by other domestic regulators and international regulatory activities, SEC engagement with these bodies is more important than ever. The SEC's collaboration with its counterparts can help minimize costly and inappropriate regulations, enhance regulatory consistency, and promote better market oversight and investor protection. Moreover, as the world's financial regulators, finance ministries, and central banks debate and seek

[3] *See* Kimberly Burham, Michael Bogdan, and Daniel Schrass, "Ownership of Mutual Funds, Shareholder Sentiment, and Use of the Internet, 2014," *ICI Research Perspective* 20, no. 8 (November 2014); available at www.ici.org/pdf/per20-08.pdf.

consensus on the standards and principles that will govern the international financial system, the SEC as the world's leading capital markets regulator must have a strong and effective voice.

Policy discussions about how to bolster the stability of the financial system and increase its resilience to future shocks provide a compelling example. Since the global financial crisis, U.S. and global regulators and international bodies such as IOSCO and the FSB increasingly have focused on identifying and mitigating risks to the financial system at large. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) created the Financial Stability Oversight Council (FSOC)—on which the SEC Chair serves as a voting member—for this purpose. Notwithstanding the SEC's involvement, the membership of both the FSB and FSOC is heavily tilted toward banking regulators. As a result, there is an unfortunate tendency for those members to view the entire financial system through the lens of their "safety and soundness" concerns and their experience with banks and bank-type regulation. This, in turn, makes it altogether likely that these bodies may advance policy initiatives without sufficient understanding of or due regard for the way in which the capital markets operate and are regulated, or of how financial institutions other than banks are structured, operated, and currently regulated. The resources of an expert capital markets and securities regulator such as the SEC need to be bolstered so it is well-positioned to provide relevant information, perspective, and balance to these policy discussions.

To the extent that bodies like FSOC or FSB, after careful review and analysis, identify demonstrable risks related to the activities of funds, then the SEC is the regulator best equipped to address them. SEC Chair Mary Jo White has recently outlined several recommendations under development by the SEC staff to enhance risk monitoring and regulatory safeguards for the asset management industry, including: (i) modernizing and enhancing data reporting for both funds and

investment advisers; (ii) requiring mutual funds and ETFs to have enhanced risk programs in place to address risks related to their liquidity and use of derivatives; and (iii) requiring annual stress testing by large funds and advisers, and requiring advisers to create transition plans to prepare for the winding down of their business or similar business disruptions.[4] This is an ambitious regulatory agenda that features complex subject matter. Careful execution will require the SEC staff to undertake in-depth analysis needed to assure itself that it can meet its regulatory objectives (including improving the SEC's ability to monitor risk) without imposing undue burdens on funds and exposing their investors to unintended harm. Moreover, in connection with any enhanced data reporting proposal (or the reporting to the SEC of any other non-public information), it will be critical for the SEC to have proper information security controls in place, to protect and maintain the confidentiality of this highly sensitive and valuable information. The SEC's resources need to be adequate to meet these important objectives.

Fulfilling New Regulatory Mandates Should Not Take Priority Over Core Functions

Congress must remain highly attentive to addressing annual budget deficits and levels of federal indebtedness. Nonetheless, it also must take care to provide the SEC the resources the agency needs to successfully conduct its investor protection and market oversight functions and to promote financial stability. As the Subcommittee is aware, the Dodd-Frank Act gave the SEC significant new or expanded regulatory authority over securities-based derivatives, private fund advisers, credit rating

[4] *See, e.g.*, Testimony of Mary Jo White, Chair of the U.S. Securities and Exchange Commission, on "Examining the SEC's Agenda, Operations and FY 2016 Budget Request," before the United States House of Representatives Committee on Financial Services (March 24, 2015), available at www.sec.gov/news/testimony/2015-ts032415mjw.html#.VRW1BPnF884.

agencies, municipal advisors, and clearing agencies. The Jumpstart Our Business Startups Act (JOBS Act), enacted in 2012, further increased demands on the SEC's limited resources. In recent testimony, SEC Chair White noted that while improvements in technology and operations and the recent growth in the SEC's budget had "permitted the agency to begin to address gaps, more is needed to match our resources to our growing mandates and the increasing complexity of the markets."[5]

Although ICI is not in a position to comment on specific funding levels, we appreciate and share this important concern. Fulfilling new regulatory mandates should not come at the risk of impairing the SEC's pre-existing responsibilities with respect to the fund industry, nor compromising the interests of their millions of mainstream investors. Aside from its mandatory rulemaking, the SEC staff's ongoing responsibilities to investors and the fund industry include, among others: discretionary rulemaking; reviewing funds' registration statements and material amendments thereto, certain preliminary proxy statements, and accounting statements; providing legal guidance through interpretive and no-action letters, interpretive releases, memoranda, and other letters and materials; and reviewing applications from entities that request exemptions from certain statutory provisions and granting those that are consistent with investor protection. These functions should not be compromised due to competing priorities or funding constraints.

The Need for an Efficient and Expert Regulator

No matter what level of funding ultimately is authorized, the SEC must utilize the resources it receives to their maximum effect. In this regard, the SEC deserves credit for its efforts to develop,

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[5] *Id.*

improve, and increase the use of the agency's economic research and analytical capabilities, in particular through the enhancement of the Division of Economic and Risk Analysis (DERA). DERA's contributions and involvement should help bring additional focus, rigor, and consistency to the SEC's consideration of the economic consequences of its rulemaking activity. For instance, DERA's 2014 analyses were of great benefit to the SEC's consideration of money market fund reform.[6] This type of analysis and technical advice provides useful information to build the public record on important issues before the SEC and helps guide sound policy decisions.

DERA and other SEC divisions, notably the Division of Investment Management, also have made progress in hiring staff with specialized expertise and experience. These staff members should help the SEC better inform itself about the industry and markets that it regulates, as well as the economic consequences of its regulations. Funding levels should support the continuation of these types of activities and improvements.[7]

Conclusion

Congress must assure that the SEC has resources sufficient to fulfill its mission of protecting the nation's investors, including the nearly 93 million investors who own shares of mutual funds and

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[6] *See, e.g.*, DERA's March 2014 analyses of data and academic literature related to money market fund reform, covered in four separate memoranda, which examine (i) the spread between same-day buy and sell transaction prices for certain corporate bonds from Jan. 2, 2008 to Jan. 31, 2009, (ii) the extent of government money market fund exposure to non-government securities, (iii) academic literature reviewing recent evidence on the availability of "safe assets" in the U.S. and global economies, and (iv) the extent various types of money market funds are holding in their portfolios guarantees and demand features from a single institution, available at www.sec.gov/News/PressRelease/Detail/PressRelease/1370541253716#.U0alaZ3D8dX.

[7] The SEC's FY 2016 budget request identifies "expanding staff expertise" through both hiring and training as a key performance goal.

other RICs. These investors deserve the benefits of an SEC that can soundly and effectively regulate securities offerings, market participants, and the markers themselves and promote financial stability.

Accordingly, we urge Congress to provide the appropriations necessary to allow the SEC to appropriately fulfill its vitally important missions.

We appreciate your consideration of our views.

WITNESSES

	Page
Buerkle, Hon. Ann Marie	1
Kaye, Hon. Elliot F	1
Pai, Hon. Ajit	81
Wheeler, Hon. Tom	81
White, Hon. Mary Jo	183