

FINANCIAL SERVICES AND GENERAL  
GOVERNMENT APPROPRIATIONS FOR 2020

HEARINGS  
BEFORE A  
SUBCOMMITTEE OF THE  
COMMITTEE ON APPROPRIATIONS  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED SIXTEENTH CONGRESS  
FIRST SESSION

SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT

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# **FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS FOR 2020**

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TUESDAY, FEBRUARY 26, 2019.

## **OVERSIGHT HEARING—FINANCIAL SERVICES**

### **WITNESSES**

**ANNIE DONOVAN, SENIOR FELLOW, CENTER FOR COMMUNITY INVESTMENT**

**GRACE FRICKS, PRESIDENT AND CEO, ACCESS TO CAPITAL FOR ENTREPRENEURS, INC.**

**BOB JONES, PRESIDENT AND CEO, UNITED BANK**

**JOE NERI, CEO, IFF**

Mr. QUIGLEY. Good morning. The hearing will come to order. This is the subcommittee's first hearing in the 116th Congress and my first ever as chairman. So what do I do with this? [Laughter.] It has been 8 years.

Before getting started, I would like to acknowledge my friend, Mr. Graves from Georgia, and thank him for his service to this subcommittee and for his leadership as chairman in the previous Congress. And I hope to be as accommodating, as gracious, as he was.

And I also want to acknowledge that we have several more returning FSGG veterans, including the chairman of the Commerce, Justice, and Science Subcommittee and the previous distinguished chairman of the subcommittee, Mr. Serrano. Chairman Serrano will also serve as vice chairman of FSGG in this Congress, and I am grateful for him for assuming that role.

Also returning is Congressman Bishop, the distinguished chairman of the Agriculture Subcommittee; Congressman Cartwright, Congressman Amodei of Nevada, Congressman Stewart of Utah; and finally we have four new members of the subcommittee, Representative Norma Torres, Representative Ann Kirkpatrick, Representative David Joyce, and Representative Charlie Crist. I look forward to working with each of you on the priorities of your constituents and finding bipartisan consensus whenever it is possible.

There is much work to be done on behalf of the American people and I, for one, am looking forward to a productive Congress where we can conduct oversight of the agencies under our jurisdiction and work to find common ground as we set funding priorities for the Federal Government.

As a matter of housekeeping, we will follow the 5-minute rule for opening remarks, questions, and comments. Members will be recognized in order of seniority based on who is seated at the beginning of the hearing, going back and forth between the parties. Late-

comers will be recognized in the order of their arrival, going back and forth between the parties.

And at this time I want to welcome our four witnesses to the subcommittee. With us today we have Ms. Annie Donovan, Senior Fellow at the Center for Community Investment; Mr. Joe Neri, CEO of IFF; Mr. Bob Jones, CEO and president of United Bank; and Ms. Grace Fricks, CEO and president of Access to Capital for Entrepreneurs.

I appreciate you all taking the time to be with us this morning, and I am excited to get this hearing underway to discuss how Community Development Financial Institutions, or CDFIs, benefit the underserved and low-income communities in every State as well as the District of Columbia, Guam, and Puerto Rico. I know my colleague, Mr. Serrano, is always happy when we hear about programs that support the territories.

I will keep my opening statement brief, but want to remind my colleagues that for the past two years, the Trump administration has attempted to eliminate the CDFI Fund by slashing its funding to a mere \$14 million. This is \$236 million reduction, which translates to fewer resources to spur economic growth and revitalization in our most underserved and neglected communities.

If Congress did not step in to restore funding in both 2018 and 2019, CDFI grant programs would cease to exist in the future. There would be no funds to create new CDFIs nor continue CDFI grant awards for financial and technical assistance, Native Initiatives, increased investment in distressed communities, disability, and Healthy Food Financing Initiative programs.

These programs provide access to capital for communities who otherwise might not be able to create small businesses, local jobs, affordable housing, community facilities, and financial education opportunities.

I have a strong suspicion that the current administration will propose yet again to slash the funding for the coming fiscal year, and once again it will be up to Congress to weigh the funding options for this bipartisan program that plays such an important role in generating economic growth and opportunity in some of our Nation's most distressed communities.

My colleagues on the other side of the dais know the importance and value of the CDFI Fund. Indeed, the CDFI Fund has ranked as one of the top four member-requested programs in the bill. In fiscal year 2019, the program received 291 requests for increased CDFI funding or report language, and 19 percent of the requests were from my colleagues across the aisle. I think we all agree on the value of the CDFI Fund.

In fiscal year 2018 alone, the program awardees financed more than 17,900 businesses and microenterprise loans, financed nearly 33,600 affordable housing units, and served more than 343,000 individuals with financial literacy or training. I am hoping that we can all work together this Congress to improve lives and strengthen communities that are not progressing at the same pace with other parts of the country.

I look forward to hearing firsthand about each of your successes and contributions to building stronger communities and growing jobs across the United States and our territories.



That said, thank you all again for taking time to meet with us today, and I look forward to hearing your testimony this morning.

Let me turn now to the ranking member, Mr. Graves, for his comments.

Mr. GRAVES. Thank you, Mr. Chairman, and congratulations on your new role. And I guess might I add, maybe I will be as accommodating a ranking member as you were. I have learned from you. You were great to work with. And I look forward to the many hearings and robust discussions we will have in the days ahead.

And always good to be with my friend, Mr. Bishop from Georgia, as well, and have him on this committee. A great mentor of mine.

Welcome. We are excited to have you. You are before a really fun committee here. This committee has got a really diverse jurisdiction that includes funding sanctions enforcement, tax administration, the White House, Federal courts, and many regulatory agencies. And it is under this committee's jurisdiction and leadership, quite frankly, Mr. Chairman, that we will have the opportunity to help more families and businesses achieve their dreams. And I think that is what this conversation is about here today.

But I look forward to working with each and every person on the committee, and welcome the many new members to the committee on the majority side. I look forward to working with everyone there. And then we also have a new member on our side, Mr. Joyce; he will be a great addition as well.

I want to welcome our witnesses. This is good to have a hearing such as this today to start off this hearing. I appreciate each of you. I know it is a commitment of time to come and be before us. But you are here to educate this committee on your work, and also those that are watching and those that are participating online.

But what you do is very important. It is very important for our economy. It is important for our local communities. And you provide great opportunities for people living in a lot of communities throughout our districts.

I want to recognize Ms. Donovan. I appreciate your good work. As was mentioned, you are a Senior Fellow at the Center for Community Investment, and you have served as director now for 4 years, I believe. It has been good to work with you in the past, and I look forward to working with you and your expertise in the future.

And Ms. Fricks, good to have you as well. Always good to have folks from home join us. You are the founder and the CEO of the Access to Capital for Entrepreneurs; otherwise, as we call you in Georgia, ACE. And you have done a fantastic job there.

Mr. Chairman, they serve 68 different communities and counties in the North Georgia and Atlanta community and areas since 2000, and have made more than \$60 million in loans in that short 18–19 year span, and created and retained nearly 8,000 jobs for folks in our communities; recently named as the Financial Services Champion of the Year by the Small Business Administration's Georgia office. So congratulations on that. Well-deserved. And I look forward to your testimony.

I also want to recognize a good friend and colleague of Ms. Fricks who is with us in the audience today, and that is Ms. Thelma Johnson. Thanks for joining us all the way from Southwest Georgia; I

think you are in Mr. Bishop's district. And good to have you with us as well. She is the president and CEO of the Albany Community Together, Incorporated, which has been since 2002. So really nice to have you. We appreciate your efforts and what you do in that part of our great State, and for joining us here today in this hearing.

But with that, Mr. Chairman, that is all I have. I would be happy to yield back, and look forward to a great hearing today.

Mr. QUIGLEY. Thank you again. I appreciate that. And we love visiting down in Atlanta. It is a city anyone would want to live in if it could support a hockey team. [Laughter.]

But you were so kind in discussing Ms. Donovan. We are going to let her kick things off. And I would remind everyone, please keep your opening statements to five minutes, which will allow time for as many questions as possible.

Ms. DONOVAN. Chairman Quigley, Ranking Member Graves, and members of the subcommittee, thank you for the opportunity to speak with you today about the CDFI Fund. As you mentioned, for the past 4 years I had the honor as serving as the CDFI Fund director.

CDFIs are private organizations that invest in markets that lack access to the kinds of safe and affordable financial services needed to pursue the American dream. CDFIs finance entrepreneurs; first-time homebuyers; affordable housing for rent-burdened families; community families such as schools, day care centers, and health centers; and they offer bank accounts to unbanked and underbanked people.

In our market economy, capital flows to where it can secure the highest rate of return for the lowest risk. Communities that are deemed too risky or not profitable enough are often bypassed by traditional financial institutions.

But CDFIs correct this market imperfection by using the tools offered by the CDFI Fund to leverage private sector investments in low-income communities. For example, for every \$1 of federal investment in the CDFI program, CDFIs leverage \$12 of other investments. In the Capital Magnet Fund, \$20 of investment is leveraged for every \$1 of federal funding, and even higher levels in the Bank Enterprise Award program.

The unique way in which the CDFI Fund supports CDFIs is essential to their success. Most federal programs that target low-income communities either distribute funds to State and local governments according to population-based formulas, like Community Development Block Grants; or they fund on a project-by-project basis, usually with stringent rules that make the funds hard to use at the local level.

By contrast, the CDFI Fund programs are competitive and make funding available to build the capacity of organizations rather than investing in projects. The kinds of financial assistance awards made by the CDFI Fund enhance the financial strength of CDFIs' balance sheets, which in turn allow CDFIs to create innovative and flexible products that make hard-to-finance transactions feasible.

Financial assistance awards act like equity capital but do not demand high rates of return. This equity-like capital is rare. CDFIs blend equity-like capital from the CDFI Fund with conventional fi-

nancing in ways that fill market gaps and restore market functionality in distressed places.

As Chairman Quigley mentioned, the current administration has proposed to eliminate most of the CDFI Fund's programs. Their argument is that community development finance is now a mature industry, with ready access to the capital it needs.

This argument does not hold up well under the facts. Though CDFIs have grown impressively and continue to punch above their weight, their total assets under management round up to a mere 1 percent of total assets in the financial services sector.

But size is not the only nor the most important way to measure the demand for CDFIs. For that, we should look at whether or not access to capital exists at the scale of the need in economically distressed places. The Urban Institute has compared capital flows in high poverty versus low poverty communities.

In a study conducted in Baltimore, Urban found that investments were fragmented by race, income, and geography. Low poverty neighborhoods received one and a half times more investment than high poverty neighborhoods. Census tracts with more than 85 percent of residents are African American sought investments that were five times lower than census tracts where less than 50 percent of the residents are African American.

Nationally, communities with poverty rates of 20 percent or higher received less than half the investment of communities with poverty rates of 20 percent or lower. This translates, according to Urban, into an investment gap of \$156 billion annually. In 2018, total investments made by CDFIs totaled \$11 billion, filling only 7 percent of the gap.

Regardless of where they live, all Americans want the same thing. They want access to good jobs, good schools, healthcare, affordable places to live, and safe places for their children to play. To thrive, all communities need access to capital, the lifeblood of any economy.

As it stands, low-income communities experience wide disparities in access to capital. CDFIs are addressing the gap, though the resources available to them are far fewer than what is needed. If we are to be a Nation where opportunity is truly available to all, we need institutions like CDFIs.

Chairman Quigley, Ranking Member Graves, and members of the subcommittee, that concludes my statement. I look forward to taking your questions.

Mr. QUIGLEY. Thank you, Ms. Donovan.

I would now like to recognize Mr. Neri for his testimony.

Mr. NERI. Chairman Quigley, Ranking Member Graves, IFF is a Midwest-focused nonprofit CDFI loan fund which helps nonprofits serving low-income communities to plan, finance, and build facilities they depend on to provide critical services essential to strong communities.

My message today is simple. The CDFI Fund proves the old adage that Washington does not always know best. That is because the power of the CDFI Fund is that it is not a one-size-fits-all Washington policy prescription.

Instead, its flexible grants put capital into the hands of the local problem-solvers best equipped to find solutions to local challenges,

allows them to use those resources to raise additional capital, and permits them to recycle and redeploy those funds to confront new challenges.

IFF has been fortunate to be one of the first CDFIs to receive a grant in 1996 and since, multiple other program grants in Healthy Foods financing, Capital Magnet and disability funds, as well as New Markets Tax Credits. For every \$1 we receive from the fund, we borrow an additional \$4 from banks to make loans to nonprofit, helping them to finance projects that leverage, on the average, an additional \$3 in overall investment.

The result is that every dollar invested in IFF leverages about \$12 in total public-private investment. Moreover, these dollars remain on our balance sheet permanently. As loans repay, the dollars are recycled and re-lent, generating capital into perpetuity.

These grants have been essential to IFF's ability to grow its balance sheet and expand outside of Illinois—we were the Illinois Facilities Fund—to serve the entire Midwest, where today 60 percent of the \$350 million loan portfolio now resides.

The CDFI Fund is the only consistent source of equity capital available to nonprofit CDFIs to grow. With the fund's support, IFF has grown its impact substantially. Since 1988, we have made over 1,700 loans totaling more than \$900 million, which has developed 26 million square feet of nonprofit facilities, 75,000 jobs, and leveraged \$2.9 billion in total investment.

Now, a fair question might be, given the growth and success of CDFIs, why should we continue to invest in them? But I think that IFF's experience in the Midwest exemplifies that there is still a fundamental need for the financing work that CDFIs do.

Demand for our loans has never been greater. Poverty is rising and concentrating in suburbs that have limited human services infrastructure where investment is greatly needed, and we have so much work to do in our Midwestern rural and urban communities where real estate values remain depressed and population losses have continued.

While the fund has promoted the leveraging of bank capital, the truth is that we have only scratched the surface of deeper public-private partnerships. We need to deploy beyond simple leverage and develop much deeper partnerships between banks and CDFIs and new impact investors and CDFIs.

Finally, there is a huge, lasting public policy benefit to the vibrant network of CDFIs that the fund has seeded and grown. I believe that this is one of the fund's most important accomplishments. Yes, we have invested in CDFIs to make more loans and serve more communities.

But we have also created a cohort of robust, nimble financial institutions with strong balance sheets that they can leverage to raise substantial capital from the private sector, inject that capital into neglected markets, better manage risks, and have greater social impact.

This network of CDFIs remains deeply rooted in communities, and as a result have developed significant on-the-ground expertise in education, health and human services, healthy food financing, affordable housing, small business lending, and other issues.

Local, State, and the Federal Government, along with philanthropy, consistently partner with us to address critical public policy issues, which is why the State of Illinois turned to IFF to create the Illinois Fresh Foods Financing Fund to end food deserts in our State, and the Kresge and Kellogg Foundations asked IFF to design the Hope Starts Here early childhood education program to increase quality of Detroit's early ed sector.

As I continuously remind my staff, we do not just make loans. We align capital with justice through a powerful toolbox of capital, data, policy knowledge, partnerships, and local execution ability.

Thank you for this opportunity, and I look forward to your questions.

Mr. QUIGLEY. I would now like to recognize Mr. Jones for his testimony.

Mr. JONES. Chairman Quigley, Ranking Member Graves, and members of the subcommittee, good morning. Thank you for inviting me to discuss the important work of community development financial institutions. My name is Robert Jones. I'm the CEO and president of United Bank, based in Atmore, Alabama, and chairman of UB Community Development, the bank's CDFI affiliate.

I also serve as chairman of the board of the Community Development Bankers Association. CDBA is a national trade association of the banks that are certified as CDFIs. Today there are 134 certified banks nationwide.

First, I thank the members of this subcommittee for their long-standing support of the CDFI Fund. We thank you for maintained \$250 million for the fund in fiscal year 2019.

Founded in 1904, United Bank is a \$631 million FDIC-insured bank that was certified as a CDFI in 2010. Our 18 brands primarily serve counties in Southwest Alabama and Northwest Florida. Our affiliate, UB Community Development, delivers credit services across Alabama and the Florida Panhandle.

The region we serve looks much like most of the rural South. The key drivers of our local economies are manufacturing, agricultural, and small business. While the cost of living is lower than other areas in the country, poverty rates are higher. Alabama ranks sixth in the Nation in poverty, with a rate of 18.8 percent.

Thanks to the Bank Enterprise Award Fund, United is able to issue responsible credit and financial services to underserved customers. A recent analysis found that 90 percent of all BEA monies go to the lowest income census tracts.

The program helps banks work with financially underserved customers, but the funding does not come easily and institutions have to prove that the money generate positive externalities in the communities we serve. To qualify for our 2018 award, United Bank had to demonstrate that it increased its total lending in distressed census tracts by \$21.1 million between 2016 and 2017.

BEA is critical for offsetting the cost of running a small-dollar loan program. Several years ago we used our BEA award to create our Credit Advantage program, a small-dollar program for customers with credit scores below 650 or no credit. Borrowers receive half of the loan amount, and the other half goes into a savings account that pays a market rate of interest. These loans encourage saving habits, and they come with financial literacy training.

Without Credit Advantage, we would not have been able to help Cassie, a single mother of five who worked two jobs but still struggled to make ends meet. When Cassie came to United, she had four payday loans, one of which had an interest rate of 425 percent. We helped her consolidate her payday loans into one low-interest, small-dollar loan. Today, Cassie is a homeowner who proudly teaches her children about financial literacy.

BEA has also enabled United Bank to support small businesses. In 2018 we provided \$70.2 million in small business lending, and counseled 94 small businesses on planning, budgeting, and cash management. We have also used the BEA award to create the Church Street Incubator, an open-format shared workspace that offers technical assistance to small business startups.

In fiscal year 2018, banks participating in BEA increased their investment into high poverty census tracts by nearly \$578 million. Last year BEA recipients deployed \$3.4 million into persistent poverty counties, exceeding the CDFI Fund's congressional mandate.

CDFI programs like BEA meet critical needs in rural and low-income communities, but demand for these programs far exceeds funding. I ask that the members of the subcommittee provide at least \$300 million to the CDFI Fund in fiscal year 2020, including at least \$35 million for the BEA program.

I thank you for the opportunity to visit with you today, and look forward to your questions.

Mr. QUIGLEY. Thank you, Mr. Jones.

And last but not least, I would now like to recognize Ms. Fricks for her testimony. I believe, Mr. Graves, it was your crack staff that allowed her to get through in a timely basis. Thank you for that.

Ms. FRICKS. Thank you, Chairman Quigley, Ranking Member Graves, and committee members, for the opportunity to testify today about CDFIs. I am the founder of Access to Capital for Entrepreneurs, or ACE. ACE is a CDFI loan fund that specializes in growing small businesses in metropolitan Atlanta and in North Georgia, where the beginning of the Southern Appalachian mountain range begins.

We combine capital with coaching and connections so that underserved business owners can be successful in creating jobs, caring for their families, and contributing to their communities. In 19 years we have loans \$60 million to 900 businesses who created or saved 8,000 jobs.

We started quite small, in the back of my house, with a \$50,000 investment from the Appalachian Regional Commission for a loan pool to help unbanked technical college graduates start businesses like welding, HVAC, automotive repair. We have been humbled and I have been humbled to witness ACE grow from a founder's dream with \$50,000 to a critical local resource with a loan capital pool of \$29.6 million in private capital.

I would like to emphasize that CDFIs are public-private partnerships that, over time, utilize more private capital than public backing. The CDFI Fund is the number one method to build a balance sheet so that an organization like ours can leverage private investment, thus making our organization more self-reliant.

I want to share two examples of our clients and impact. The first is in Dahlonega, which is in Lumpkin County. Lumpkin is a rural mountain county with 33,000 residents. The county seat, Dahlonega, is home to 7,000 residents. Median income in Dahlonega is just \$33,000, and 30 percent of its residents live in poverty.

Tourism provides one of the very few economic opportunities for the area. The reason tourists come there is because of the original gold rush. You see, Dahlonega is actually derived from the Cherokee word “tahlonteca,” which means “yellow stone,” or gold.

In just the last three years, ACE has invested more than \$1.5 million in 11 businesses in Dahlonega. These businesses include boutique restaurants, a day spa, specialty toy store, dry cleaner, a wedding venue. Those businesses could not obtain capital elsewhere and business development services to support them. We have helped these entrepreneurs capitalize on their best option for making a living, building successful businesses, and turning their little town into a destination spot.

The second example is the Marchen Sagen Academy in Atlanta, Decatur, Georgia. Shortly after leaving the Navy, Couleen LaGon found himself homeless and sleeping in a friend's studio. He used his love of music and production skills to work with a developing artist, and found himself in a music deal with CeeLo Green.

A few years later he was inspired to create the academy to teach children music and production skills. We helped Mr. LaGon purchase mixing equipment and provided working capital. That academy has 43 students enrolled and employs 1.5 FTEs plus two interns.

Today, 85 percent of our lending is in metropolitan Atlanta. Forty-eight percent of our loans are to African American business owners, 8 percent to Hispanics, and 48 percent to women.

Nationwide, CDFIs like ACE are investing in some of the poorest communities in America. These communities are comprised of working families with extremely low incomes, high rates of poverty, and unemployment. They lack access to affordable financial services, and CDFIs step into that gap.

I urge the subcommittee to provide \$300 million in funding for the CDFI Fund. This increase of \$50 million would leverage some \$600 million, providing much-needed capital. We are making a tangible difference serving disinvested urban areas, rural areas, and areas of persistent poverty left outside the economic mainstream for decades.

I appreciate the opportunity to share more of our work in Georgia, and I am happy to answer questions. Thank you so much.

Mr. QUIGLEY. Thank you, Ms. Fricks. I appreciate your thoughtful testimony, and all our witnesses. And I appreciate the derivative of the word “yellow stone.” Chicago actually comes from Native Americans who originally lived in the area, “Chicaqua,” which means “striped skunk.” [Laughter.]

So it is quite the same impact as yellow stone. The other definition might be a “smelly onion.” Really. [Laughter.]

And there is an election there today, and the Windy City actually does not come from meteorological conditions. Believe it or not, it is because of our elected officials there. Who knew.

And out of deference for time, I am going to begin the questions by deferring to Mr. Bishop. He has to run across the hall. We all have a lot of hearings scheduled across the Capitol today. Mr. Bishop?

Mr. BISHOP. Thank you very much, Mr. Chairman. I appreciate your deference and that of the committee in allowing me to go first. I do have another hearing. But I certainly wanted to be here to welcome our witnesses, Ms. Donovan, Ms. Fricks, Mr. Jones, Mr. Neri.

I especially want to give a shout-out to Ms. Fricks, who brought along with her my friend of longstanding, a church member and fellow Albanian, Thelma Johnson, who is with Albany Community Together. Let me just welcome all of you, and we really appreciate your discussions on the value of the CDFI program.

According to the Wall Street Journal, between 1995 and 2015 the percent of rural areas and small towns without a local bank increased from about 12 percent to 32 percent. Ms. Donovan, Ms. Fricks, the great need of the financing that is provided by CDFIs for low-income and rural communities continues, as evidenced by the applicant demand in the fiscal year 2018 CDFI program round.

The CDFI fund received 700 total applications requesting about \$505 million for financial assistance and technical assistance awards, healthy food financing initiative awards, persistent poverty county awards, and disability funds financial assistance awards. In addition, 124 CDFIs applied for \$218 million for the BEA program. How does this compare to the amount available in fiscal year 2018 and the demand in previous years?

And I am going to ask my second question quickly because I am going to have to run, so you can take note. Ms. Fricks, can you discuss the impact that Access to Capital for Entrepreneurs has had in helping black-owned businesses in distressed areas of Georgia? And had Congress approved the President's fiscal year 2019 proposal for only \$14 million for the CDFI fund, what impact would that have had in black entrepreneurship in Georgia and nationwide? And how would it have impacted the racial wealth disparity that currently exists in the United States?

And let me just say that my district is 50/50 rural/urban. And as the chair of the agricultural, rural development, FDA subcommittee of the Appropriations Committee, I have a real passion for rural economic development and for improving the quality of life of Americans that live in rural areas.

And so this CDFI Fund and the way that it can be and has in many instances been utilized to improve that quality of life and the opportunities there is very impressive. So can I get you to address those two questions for me, please?

Ms. DONOVAN. Yes. Let me start with the big picture. I am pleased to say that CDFIs who are accessing resources from the CDFI Fund outperform with respect to the allocation of resources that go to rural areas. So about 15 percent or so of our population lives in rural areas, and over 20 percent of the activity with CDFI resources is directed to rural areas.

When you look at persistent poverty, about 6 percent of America lives in persistent poverty communities, and 18 percent of CDFIs



are headquartered in areas of persistent poverty, and one-fifth of CDFI investments are going into areas of persistent poverty.

So I think this is great—this lets us know that the policy of the way that we certify CDFIs and require them to put at least 60 percent of their assets in low- and moderate-income communities and in targeted communities, and the way that we run the competitions at the CDFI fund, is effective at targeting resources to the places that need it the most.

I think our biggest problem is, again, back to the scale of the CDFI sector and the need to grow to a bigger scale.

Mr. BISHOP. Ms. Fricks? What impact would the fiscal year 2019 proposal from the administration have had on what you do and what CDFIs do?

Ms. FRICKS. I think I might still be sitting here because our program, after the recession, also began serving metropolitan Atlanta. I do not think Dr. Adams-Johnson, Thelma's, program would be sitting here. There is just an extreme difference in serving the rural market and serving a metropolitan market.

When I said that right now, 48 percent of the small business owners we serve are African American business owners, that is because of us having offices in Atlanta also. And when I talked about the amount of private capital that we have been able to leverage, that is because of having that Atlanta market as part of ours, where the Albany area in the same amount of time has maybe done 8- or \$9 million worth of loans. And that is because their less capital. There is less resources there.

And I think you know that in the rural areas, there is an out-migration of banks. And then Georgia was the number one state in the country for closing community banks, and that impacted all of us. We have become, in rural areas, the go-to for lending. And what you are seeing is more people being vulnerable to predatory lending when there is no community bank or CDFI in their area.

Mr. QUIGLEY. Thank you, Ms. Fricks.

Mr. BISHOP. Thank you very much. My time is expired.

Mr. QUIGLEY. Thank you all.

Mr. Graves.

Mr. GRAVES. Just sort of a question that can inform all of us. And I will ask Ms. Fricks and Mr. Jones as well. And feel free to respond, too.

But in the Federal Government, oftentimes it is trying to help communities. And there are a lot of different agencies and different programs that get established through multiple administrations or different majorities and such. And I guess for our perspective, and I know that the request would be—you mentioned \$300 million, and the administration is at a different spot there.

Can you share with us the difference it makes through the CDFI program versus the many other programs that are out there that you might interface with or have to work with, that can help us understand there is not a duplicative nature or that this is impactful, that it is needed, and that it is worth that investment?

Because at some point we will have to make decisions, and they are tough decisions. It will be, do we put more in this bucket, this bucket, or this bucket? And so I think that would help this com-

mittee a little bit as we try to make decisions in the future about I guess spreading out the different finances we have.

So we can just start, Ms. Fricks, with you. And just help us understand that a little bit.

Ms. FRICKS. I mean, logically, just like you are thinking, there should be—I think it is what BB&T and SunTrust have called, in their merger or buyout, synergies, which are really efficiencies from combining departments.

I think in the best of all possible worlds, that makes some sense, to do some of that. I can tell you that the CDFI Fund is the only one—its purpose is to help build balance sheets so that we can do more using private capital. And some of the other programs, they have their purpose. USDA is strictly rural. It is difficult. It is difficult for you.

Mr. GRAVES. Well, you have given some great success numbers, statistics here that are fantastic, and I do not know that we hear those from all agencies or other areas that come before us. So that is very helpful.

Mr. Jones. Yes.

Mr. JONES. Thank you, Mr. Graves. I probably would speak specifically to the Bank Enterprise Award, which is unique to insured depositories. And the beauty of that program is it gives institutions like ours the flexibility to create products and deliver unique services into the communities we serve.

The flexibility of the program has not been talked about, the local delivery with people that are committed and invested to the local community, identifying specific needs. There is high accountability to the use of those funds. We have to prove that we are using them appropriately.

It is unique. It is the only Federal program that is for for-profit banks. And as Ms. Fricks mentioned, there is a continuing challenge around the country for a presence of community banks. In 600 counties in this country, if there were not a community bank, there would be no financial services provider there.

And as has been pointed out many times over, to operate efficiently in this economy, you have to be a part of the financial mainstream. And the gateway to that is most times through a community bank by basic financial services, checking and savings accounts, and as I indicated in the story I told, how we assist people with no credit experience at all to build some resiliency. The BEA allows us to do that.

There are unique challenges as an insured depository that oftentimes—the confluence of regulatory pressures with the economic pressures that banks experience. The BEA gives us the latitude to be innovative, to create unique products that otherwise would not exist, that are really tailored to the most distressed members of our communities.

The flexibility is important, and that is why we are advocating for continued support of BEA and increase in its funding.

Mr. GRAVES. Thank you.

Mr. NERI. I would like to add that 1 is 12, so \$1 of CDFI Federal dollars becomes \$12. So when you make an investment, when you make those choices around where dollars should go, remember that if you cut 1, you cut 12. So if you add 1, you are adding 12. I think

the leveraging that CDFIs do in the marketplace is a really powerful tool.

I think the second piece here is that many of the challenges that all of the Federal departments work on are complex. They are interrelated. CDFIs are part of helping implement those public policy decisions and make those other programs more efficient and effective, again because they leverage the private sector to deal with the capital side.

So if you are looking at early education, if you are looking at fresh foods, if you are looking at the social determinants of health, there are many factors that go into working on those challenges and the funding of Federal programs. CDFIs are the capital fuel to working on those public policies.

Mr. QUIGLEY. Ms. Donovan, I will start with you. In your assessment, what is the scale of need that exists for credit and capital in these distressed communities? What amount are we missing, if you can assess it?

Ms. DONOVAN. Yes. Well, the research that is—there is not a whole lot of research out there. But the research that has been done by the Urban Institute, I think for the first time, quantifies the neighborhood of that gap. And their numbers show \$156 billion. And that is the difference between capital that flows to communities that have poverty rates of 20 percent or greater versus ones that have poverty rates of 20 percent or lower.

And the growth in terms of investments that CDFIs are making in low-income communities is impressive. Even over my time, over my 4 years at the CDFI Fund, it went from roughly \$5 billion to \$11 billion. And still, against a gap of \$156 billion, that is not much.

So when I hear my colleagues arguing for \$300 million, I would like us to go much higher than that because, again, you have to look at the scale of the problem. CDFIs are addressing 7 percent of the problem, and doing amazing work, very effective work. But there is so much more to be done.

And I would just also say that it is not just a matter of the money, either. CDFIs offer development services alongside the financing. They partner with local organizations. They partner with national organizations. They are magnets for bringing resources, bringing them together, and structuring them in ways that can be absorbed by the local community that needs them.

Mr. QUIGLEY. Yes. My second question dealt with that. And that is, aside from budgetary resources, what else can CDFIs—what can the fund do to help build the capacity of CDFIs?

Ms. DONOVAN. Yes. This is very much needed. At the Center for Community Investment, where I am serving as a Senior Fellow right now, we refer to this as the capital absorption capacity of places. So some places, even if you have capital swirling around, it has to be able to land.

And to do that, you need people on the ground who are able to do the kinds of work that CDFIs do to organize the demand side of capital, to make sure that communities can responsibly take the capital in and use it well. And to do that requires capacity-building.

And I know during my time as CDFI fund director, we would get the question about, is it the most effective way to invest in capacity-building? Because we want the dollars to go directly into communities. And I think it is important that the predominance of the funding go directly to CDFIs.

But small and medium-sized CDFIs, and CDFIs in hard-to-reach places, will tell you that they need the capacity-building that CDFI Fund offers through the capacity-building initiative. And 1 to 2 percent of the budget I think is sufficient to provide that kind of capacity-building.

Mr. QUIGLEY. Do others want to weigh on that? Mr. Jones.

Mr. JONES. I would just echo what Annie was saying. I think that resources are scarce, obviously, as we have already talked about. I think that the effective deployment of and one of the real strengths that the BEA program has, or some of the other CDFI funds, it puts the money in the hands of local organizations that have the capacity, the resiliency, and the connections to make a meaningful impact in those communities in a way that—just a general allocation of dollars, there is an accountability.

In the BEA, we must have at least 30 percent in areas of poverty and 1.5 times the national unemployment rate. So by definition, those monies are going to the most severely distressed. So when we look at the types of alliances and partnerships that have been talked about—one quick example: In our organization, we have our staff volunteering in the VITA program, which is a volunteer income tax assistance program.

Since we have been a part of that, we have done 585 tax returns totaling \$670,000 in refunds, of which \$218,000 was in earned income tax credits. In the year 2017 alone, we saved individuals over \$20,000 in tax preparation fees. Those are hard dollars that have gone directly in the hands of distressed families in a community that, otherwise, those monies would have been allocated elsewhere.

That alignment and the ability to use those funds to provide those programs make a real difference in communities and families who, frankly, are living paycheck to paycheck. So it is effective.

Mr. QUIGLEY. I want to go ahead to Mr. Amodei.

Mr. AMODEI. Thank you, Mr. Chairman.

I don't think that, just speaking for myself, when I hear things like 12 to 1 leverage and stuff like that, I don't know that in my mind, anyhow, that it is like, well is this a good program or is it a bad program? Obviously, if it had more resources I would assume that you would continue to leverage those and grow those and do good things.

But I am a guy who comes from a State that has had about eight of these programs awarded or whatever, and I am sitting there looking at that, comparing it to other States with similar population or whatever—not that it is apples and apples—that have been much more successful.

So I guess my question to this panel, as people who have a lot of experience in this: Is it financial infrastructure? In other words, do I need to go to the State bankers association and say, hey, how come—God forbid I say the words “credit union” in here, but them, too, or whatever.

But anyhow, is it like, listen, is there no infrastructure in the State promoting this? Or is the quality of applications defective? Or is it just we are not applying? I mean, because I started to get off on the urban/rural thing, and it sounds like you guys know how to say and spell rural pretty good.

And so, I mean, help me a little bit in terms of saying, hey, it is a good program, sounds like it is doing good work. But what are the indices of that in terms of making that a tool? Because I have got communities with populations like you have talked about where the county sheriff is also the dispatcher and the patrol person.

So that tells you about the health of the community. And by the way, I think we have got two community banks left in the whole State, which the bankers tell me they are good things. We want to preserve them.

So anyhow, whoever feels like taking a whack at it, go ahead.

Mr. JONES. Sounds like it is right in my wheelhouse. Let me tell you a quick story; maybe it can speak to exactly what you are talking about.

Our bank has been around since 1904, so we are not new off the street. We were certified in 2010. During my career, I served as the president of the State Bankers Association and served on the board of the American Bankers Association. I have been involved in the industry for basically almost 30 years.

I really didn't know about the CDFI Fund or the initiatives here until we had an opportunity to get certified in 2010. Our journey since that certification has been one of discovery, and we have been an ambassador to other financial institutions because it is a little-understood and not widely-known segment of the industry. There are 134 banks that are CDFIs.

I think disproportionately, the impact that those institutions make are significant in the communities they serve. I can't really speak to why it has not been more widely known. Annie and I have talked about that. In previous times, I think that what we are doing in our State—we were amongst the first to get certified.

We were the first and only to receive New Market tax credits. We were the first to get a Capital Magnet Fund award. We were the first to get a USDA Community Facilities grant. There is more conversation because of the work we are doing, and I think the more mature this industry becomes—and it is very new, and particularly in the rural areas. Very early on, most of these programs were urban-centric. I don't know that, nationally or otherwise, there was a true understanding of the challenges in rural America that only now has become a topic of conversation.

So I would say it is too early to make that determination. I am optimistic that we will see an expansion of that. That is part of the mission we have with the CDBA. I think the performance that we are having and the impact that we are making—as I visit with members of our delegation, they are intimately aware of how we are deploying these dollars. We are accountable to them to report the programs that we are administering.

So it is making a difference. The State is beginning to recognize it. So I would say don't judge it too soon. The work that we do continues to make an impact. And I think the story grows from there.

Mr. AMODEI. Well, and I appreciate it. I am not judging it too soon. I am just waiting for the day when there is somebody on the panel from Nevada, which, by the way, does not stand for some kind of skunk or——

[Laughter.]

Mr. AMODEI [continuing]. Some way to say gold without saying gold. But anyhow, it looks like a tool that is a legitimate tool.

Ms. DONOVAN. Yes.

Mr. AMODEI. And so——

Ms. DONOVAN. And so, really, the reason why the CDFI Fund is as successful as it is in our market economy is because it takes the principles of the market economy. It is market-driven. But it presumes that there is a capacity, there is a baseline level of capacity, at the local level. And so it requires that kind of capacity-building.

So the communities that have strong philanthropy, communities that have a banking sector, that are dedicated to place and have strong partnerships, that is where—and it is probably not due to bad applications. It is probably the capacity at the local level, which is why it is important to take just a little bit of the budget and put it toward a capacity-building initiative.

Mr. AMODEI. Thank you.

Mr. JONES. And if I can include, just one complementary comment on that. I would be glad to come to Nevada and talk to some bankers and help see if we could not get more capacity. I think one of the issues that regulated institutions have, and this is something I would encourage the committee to give some consideration to, regulatorily there are challenges for an insured depository operating in this challenged space.

So at times, the purposes are at odds with each other. An alignment between the regulatory structure and the community development structure can make a meaningful difference in terms of broader application in deployment of these funds.

Mr. AMODEI. Thank you, Mr. Chairman. Thank you. I yield back.

Mr. QUIGLEY. Thank you. Preliminary research says Nevada means “covered in snow.” So I will take the skunk. [Laughter.]

Mr. QUIGLEY. Mr. Crist.

Mr. AMODEI. Thank you for doing that. [Laughter.]

Mr. CRIST. Thank you, Mr. Chairman. I am from Florida. We are known as the Sunshine State, for the record.

I want to thank you, Mr. Chairman, and thank the witnesses for being here today. We appreciate your testimony and educating us further on CDFIs.

I grew up in South St. Petersburg, Florida, a vibrant, economically developing, majority black neighborhood I am now humbled to represent here in the United States Congress. Minority-owned businesses are the bedrock of that community, businesses like Chief's Creole Cafe on 22nd Street, known as the Deuces. Carolyn and Elihu Brayboy run that restaurant. It is all about spicy jambalaya and second chances, second chances for a neighborhood returning to greatness, and second chances for the ex-offenders that they employ.

But this great American story would not be possible without the Community Development Financial Institutions Fund. It was a CDFI lender that finally said yes when every other traditional

lender would say no. So Ms. Donovan, when it comes to issues like sustainable development, eliminating food deserts, and restoring communities, can you quantify what a CDFI would mean for places like South St. Pete?

Ms. DONOVAN. Well, that is a challenging question.

Mr. CRIST. It is not meant to be.

Ms. DONOVAN. So for communities like South St. Pete, absolutely having a CDFI, as you mentioned, there to—like Ms. Fricks mentioned, in terms of what they are able to do in the communities that they serve. They were probably able to make that loan because of the way that their balance sheet is structured, back to having resources from the CDFI Fund that allow them to be flexible and to take the risk, and to take the risk that banks wouldn't take or, I want to add, would not take a loan.

Because a lot of the power of what CDFIs are doing is bringing their own resources to the table in a way that allows the bank to say yes. There very well may have been some bank resources in that loan that was organized and managed by the CDFI in order to make that access to capital available.

Mr. CRIST. Thank you. On the issue of access to capital, I am sure that all the panelists agree that when a black barbershop needs a quick loan to replace a broken chair, the owner should not have to go to a payday lender. No one else will say yes. You all agree that that is wrong, I assume?

[Panelists nod affirmatively.]

Mr. CRIST. I do, too. And that is why I brought together lenders and women and minority business owners for an access to capital fair that we had in my district. We invited lenders of all shapes and sizes to come and meet entrepreneurs at various stages of their business development.

Out of all the lenders who showed up, fully half were CDFIs—Florida Community Loan Fund, Black Business Investment Fund, Suncoast Credit Union, and the Tampa Bay Black Business Investment Corporation, to name a few of them.

Mr. Jones, why are CDFIs so excited to provide access to capital to the women- and minority-owned small businesses that traditional lenders do not?

Mr. JONES. Well, I think we clearly understand the importance of small businesses and the impact they can have in a community. Part of the mission that we have in our CDFI role—because the challenges in communities are so multi-faceted that none of us singularly can solve of them. But we can focus on the parts that we can make the most impact on.

Our experience has been in job creation. As I mentioned in my opening statement, we operate a small business incubator. And perhaps the best way to describe how we have helped that segment that you are most sensitive to is we had a lady that came to us that had an idea to be a home healthcare provider. This is not nursing care, but assisted care so someone can remain in their home.

She had the idea, but did not have a business plan and had not had the experience to do it. We invited her into our business incubator, which immediately gave her credibility with clients that she had an office space and someplace they could come meet with her.

Today she has operated that business and now has nine employees that are working for her as a result of us working with her, helping her with some credit startup, and providing a space, which is critical for credibility for a small business.

Another story: We had a minority young lady who wanted to be in the photography and wedding planning business. She had a great idea and needed the help to get started. We brought her into the incubator, helped her with a business plan. She is now operating out of a standalone space downtown and is adding to her capacity.

So I think there is an opportunity to do that. And the CDFIs operating in these communities are developing a network, and within certain communities it is word of mouth more than anything else that you do. You walk the walk rather than just say you are going to do these things. And they become the ambassadors, and I think that opens doors for future opportunities and changing, in these two cases, the resiliency of two ladies that now have an operating business.

Mr. CRIST. Thank you, sir. Thank you, Mr. Chairman. I yield back.

Mr. QUIGLEY. Thank you.

Mr. Ranking Member, do you have another question?

Mr. GRAVES. Just a follow-up. Yes. It is funny. I was sitting here thinking, Mr. Chairman, that you referenced hockey in Georgia. But I think Mr. Jones and I and maybe Ms. Fricks, we appreciate a different Saturday sport in the fall—

[Laughter.]

Mr. GRAVES [continuing]. That maybe you don't have quite the same understanding of in your State. SEC football is amazing. Yes. It is always good to have somebody from the SEC here as well.

But a quick question. I wanted to drill in just a little bit on something you were saying a minute ago, Mr. Jones. You have a community bank that is a full-service community bank, but also operating a CDFI component as well. And I really don't know the answers to these questions, so help me walk through it.

Is there the possibility that the rules and the regulations are so challenging in the banking industry today—is it possible that there is a customer that could come to you and seek a loan in a traditional format, and maybe not qualify it or not be able to get it or maybe it is too cumbersome or too expensive, that then they can go to a different office in your same facility, your same building or branch, and receive the loan under a CDFI concept?

Mr. JONES. That is an excellent question.

Mr. GRAVES. And if so, why is that, and how do you smooth that out?

Mr. JONES. Well, we could spend the rest of today talking about all the reasons behind it. But let me touch on some very high-level issues.

True story: Years ago we had a finance company that the bank operated, and it operated to provide that option that you just described to people that otherwise could not perhaps meet the regulatory requirements for a bank loan. There was a rule change within the regulations which told us that within the finance company, we had to treat them like bank loans. We had to close the finance



company as a result of that change in guidance from the regulators. As soon as we closed the finance company, the payday lenders moved into the void.

As we have gotten into the CDFI space—this is a conversation that we have openly—we use many other programs to provide enhancements to those opportunities that might need an SBA guarantee or an SSBCI. We have a rule in our bank that no one officer can decline a loan. It takes two. One officer can make a loan, but they cannot decline a loan.

And we do that for the very purpose of taking a second look to see if there is something maybe we did not see in the first application. In the small-dollar program that I mentioned in my opening comments, our rate of loss is 10 percent, compared to consumer loans that run around 2 percent.

The BEA allowed us to present those opportunities and continuation to make those loans to help people build credit because we all understand, and particularly the members of the committee, that until you get a credit score and you get into the mainstream financial system, you are operating off the grid. And that is a place that is not sustainable to take advantage of all the opportunities we offer in this country for homeownership or upward mobility.

So we see that as something critical to what we do. We have a nonprofit side in our company as well that we fund. We are beginning to operate and will set up loan funds to provide that tier of financing to small business or other types of entities through the nonprofit space as well.

Specific to the community development subsidiary you mentioned, we set that up as we were successful in winning awards in the New Markets and other areas to create the ability to deliver those across the State of Alabama. We have received two New Markets awards as a result of those applications, \$120 million; to date, that has created \$165 million worth of capital investment, and it has sustained or created 3,000 jobs. And we continue to expand that.

We operating our Capital Magnets, our online tech program, out of there, which is providing 730 housing units across the State as well in 14 developments. So it has allowed us to move from just a traditional community bank, which we still operate in our traditional counties, to becoming a statewide entity to move into these census tracts that are most in need in a State like ours.

So the creation and the opportunity to be a CDFI is changing many of the communities that we participate in. So I think it takes a willingness to do it. As I mentioned in my comments, the regulations often are at odds. And to be able to navigate that—we often have to educate the regulators to what it means to be a CDFI. But that is becoming more accommodating.

Mr. GRAVES. So it is possible that a potential customer could come in and seek a loan in a traditional format and not qualify, and be redirected?

Mr. JONES. Yes. And we provide some other safety nets in terms of unsecured lines to our checking accounts, which provide a \$500 safety net if they need that short-term availability. So absolutely.

Mr. GRAVES. Has there ever been any concerns—this will be my last thought on this, Mr. Chairman—of institutions in essence

cherry-picking customers and saying, okay, we will keep the ones that are more qualified or have a better potential to pay back, and redirect those others to the CDFI-type program? Do you ever sense that throughout the community, or a bad actor, so to speak, taking advantage of that?

Mr. JONES. We often see people seeking the path of least resistance or available credit, which are not on the most favorable terms. But I have to tell you, as a banker, some of the best things you can do for people sometimes is tell them no. And to just grant credit without an reasonable expectation of managing it does more harm than good.

But we also provide financial counseling so that if we can't do it, then we sit down and tell them what they need to do to improve their situation. And many times that experience of being told no, then coming back and say, "Okay, I did this; now what, and how can I improve my situation?" And we will put them into a reloadable prepaid card and help them manage that, or get them into a checking account, or offer them a small secured credit card. Now they are beginning to build a capacity.

Frankly, our country does an abysmal job in training people how to manage their personal finances. And I see that as a foundational failing, that until we help people be better consumers and wiser consumers of credit, this is self-perpetuating. We will always be fighting this problem.

So the root cause is very, very problematic. So we make a difference, one person at a time, and that is all that you can do. And I think that is all every one of us at the table do, is small steps. But that is how we approach it.

Mr. GRAVES. Okay, Mr. Chairman. That is great. Thanks.

Mr. QUIGLEY. Thank you.

Mr. Neri, in 2017 CDFI Fund received specific funds to support programs and projects aimed at assisting individuals with disabilities. It is relatively new, and congratulations to IFF for receiving an award to assist individuals with disabilities.

Can you explain to the subcommittee how IFF is using these funds, has used these funds, and how you are going to measure the impact of the funding? And if more CDFI funding were available, how would you use it?

Mr. NERI. So IFF was actually really incredibly honored to receive that award, partly because lending to nonprofits serving people with disabilities began at our inception in 1988. And since then, we have lent over \$50 million to nonprofits serving those persons with disabilities.

We are also one of the founding members of the CDFI Disabilities Coalition. For us, this work has obviously been very important, and we concentrate the funding that we have received from the fund and in the past in two specific areas—although again, we lend broadly to nonprofits working in that space—but two focus areas, which are employment for persons with disabilities—the unemployment rate amongst people with disabilities is the highest in the Nation—as well as independent living or housing for persons with disabilities.

Unfortunately, Congressman, we live in a State which does a horrendous job of creating housing outside of institutions for people

with disabilities. Some examples of our projects like the loan to Hope Homes Foundation, which is in Representative Joyce's district, where we help stabilize mortgages for that organization to do small, community-integrated group homes for people with developmental disabilities, or our loan to Paraquod, which is a center for independent living in St. Louis, where they used our loan to create the only fully accessible gymnasium and workout center for people with disabilities in St. Louis, in addition to a restaurant called Bloom, which employs persons with disabilities, that has become, actually, a pretty popular spot in St. Louis.

It is also why IFF partnered with Access Living, which is a center for independent living in Chicago, to create a subsidiary called Home First which finances, develops, and owns housing for persons with disabilities coming out of institutions. And to date, we have about 200-some units at scattered sites throughout the city, county, and downstate Illinois that serve persons that were formally in nursing homes or other types of institutions.

So we are obviously very excited that this fund has allowed a focus on what is possible in providing capital specifically in this space, and hope it encourages other nonprofits to begin to think about how that capital can then advance the issues for persons with disabilities.

Mr. QUIGLEY. Ms. Donovan and whomever else, 425 percent interest on a loan—anything else we can do? Can this be used to create alternatives to payday lending? And recognizing that it is not a complete evil for many; without payday lending, they are not going to get their water heater fixed or their car fixed. So what else can we do to help?

Ms. DONOVAN. Well, in I believe it was the 2017 budget, the previous administration put forward a proposal to invest \$10 million in the small-dollar loan program, which is authorized through the Dodd-Frank Act. And I think funding that program would—in the same way that other programs have shined a light on activities like disability or healthy food financing, would allow more resources to be available to fund the work that Mr. Jones talked about he is doing in his community.

There is a much greater need for that. And so I think funding that program and directing resources in that way would increase the amount of activity.

Mr. QUIGLEY. Anyone else?

Mr. JONES. I would like to just expand on it just a minute. I am aware of the proposal that came out of the Obama administration with the \$10 million request. It was part of Section 1206 of the Dodd-Frank. And I certainly agree with the premise that we need to help customers. I mean, it goes without question. That is exactly what we do.

But I think the \$10 million should not be taken out of the existing funding. It should be in addition to anything else that the committee considers so that we are looking at an allocation of those dollars. But I think one of the things that also has to accompany that, other than just dollars, is like I mentioned in my previous comments: I would encourage the CDFI Fund to work in conjunction, particularly for those of us in the insured depository space with our prudential regulators—I think the partnership between

the alignment of giving institutions such as CDFI is the flexibility to create products that can solve this problem, and not run afoul of unintended consequences of some regulations that are not designed to speak to the unique needs of this specific community.

Banks are very sensitive to their reputation risk. And in these types of loans, you can inadvertently do something that could create an adverse outcome. And you do not want to do that because you are trying to do good work. So I think an alignment between the fund and the prudential regulators could create an opportunity for helping to address the problems that you are addressing, Mr. Chairman.

The money is important; I think it would be helpful. But without that collaboration, I am not convinced it would be as efficient or as effective as it possibly could be. We have to align the interests because I think we are all wanting to do the same thing, serve the communities.

And there are unintended consequences. It is like the old expression, no good deed goes unpunished. And you cannot afford to do that. And that is why I think sometimes we see a void created because of that.

Mr. QUIGLEY. Thank you. I want to thank all of you. And before we conclude, I want to ask unanimous consent to add a letter from the Credit Union National Association addressed to myself and the ranking member to the record. No objection. Thank you.

[The information follows:]



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**National Association of Federally-Insured Credit Unions**

February 25, 2019

The Honorable Mike Quigley  
Chairman  
Subcommittee on Financial Services &  
General Government  
Committee on Appropriations  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Tom Graves  
Ranking Member  
Subcommittee on Financial Services &  
General Government  
Committee on Appropriations  
U.S. House of Representatives  
Washington, DC 20515

**RE: The Importance of the Community Development Financial Institutions Program**

Dear Chairman Quigley and Ranking Member Graves:

I write to you today on behalf of the National Association of Federally-Insured Credit Unions (NAFCU) in conjunction with tomorrow's hearing entitled: "Leveraging Private Capital for Underserved Communities and Individuals: A Look Into Community Development Financial Institutions (CDFIs)." NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 115 million consumers with personal and small business financial service products.

As of November 30, 2018, there were 285 credit unions certified as CDFIs. Representing approximately 27 percent of the total number of certified institutions, CDFI-certified credit unions hold more than 50 percent of total CDFI assets. Clearly, CDFI credit unions are critical partners in the CDFI Fund's mission. In recognition of this importance, and in exploring ways to enable even more credit unions to be recognized as CDFIs, the National Credit Union Administration (NCUA), CDFI Fund and Treasury entered into a trilateral Memorandum of Understanding (MOU) in January 2016. A significant component of the MOU included the introduction of a streamlined CDFI application for credit unions, paving the path for more credit unions to seek the designation.

Because they are not-for-profit, cooperative financial institutions, credit unions are focused on providing financial services that are in the best interest of their members. Since CDFI credit unions predominantly serve low-income areas and other target markets, CDFI credit unions are often the only financial services option for consumers that live paycheck to paycheck. The CDFI Fund grant program helps credit unions serve communities and consumers that large banks do not focus on.

Additionally, because many credit unions cannot raise funds from the capital markets, access to the CDFI Fund grant program is an incentive for credit unions to obtain certification. The grants provided by the Fund are an invaluable resource that aids CDFI credit unions in providing financial services to millions of credit union members. Without these grant funds, thousands of consumers

could find themselves without credit union products, such as small dollar loans, credit builder programs, and access to financial education.

Over the past two years, CDFI credit unions received roughly \$70 million in grant funding to aid in their efforts to offer financial services to their low- and moderate-income members. Without the CDFI Fund grant program, many CDFI credit unions would not have been able offer new products and loans that provide financial stability for members and their families. The CDFI program is important for credit unions, and we urge the Subcommittee to continue to support full funding for the program.

We thank you for your important work. Should you have any questions or require any additional information, please do not hesitate to contact me or NAFCU's Associate Director of Legislative Affairs Alex Gleason at (703) 842-2237 or [agleason@nafcuh.org](mailto:agleason@nafcuh.org).

Sincerely,

A handwritten signature in black ink, appearing to read 'Brad Thaler', with a stylized flourish at the end.

Brad Thaler  
Vice President of Legislative Affairs

cc: Members of the Subcommittee on Financial Services and General Government

Mr. QUIGLEY. I want to thank the Members who participated, the staff who helped put this together, and of course our participants. You were extraordinary. This has been very, very helpful. We look forward to working with you again in the future.

Anything else, Mr. Ranking Member?

Mr. GRAVES. No.

Mr. QUIGLEY. Thank you all very much. Have a good day.





WEDNESDAY, FEBRUARY 27, 2019.

**OVERSIGHT—ELECTION SECURITY: ENSURING THE  
INTEGRITY OF U.S. ELECTION SYSTEMS**

**WITNESSES**

**DR. J. ALEX HALDERMAN, PROFESSOR OF COMPUTER SCIENCE AND  
ENGINEERING AND DIRECTOR OF THE CENTER FOR COMPUTER SE-  
CURITY AND SOCIETY, UNIVERSITY OF MICHIGAN**

**HON. ERIC ROSENBACH, CO-DIRECTOR, BELFER CENTER FOR  
SCIENCE AND INTERNATIONAL AFFAIRS, HARVARD KENNEDY  
SCHOOL**

**STEVEN SANDVOSS, EXECUTIVE DIRECTOR, ILLINOIS STATE BOARD  
OF ELECTIONS**

Mr. QUIGLEY. Good morning. Today's hearing is called to order. This morning we are here to discuss an issue I feel very passionate about, and hopefully others here today as well, and that is protecting our election systems.

For the past two years, I have done my best with others to sound the alarm about the vulnerabilities of our election system. We know that in the lead-up to the 2016 elections, the Russians targeted at least 21 State election systems. We also know, through confirmation of all 17 intel agencies, that Russia successfully hacked our democratic process to encourage voters to elect the President.

But it did not stop in 2016. The Director of National Intelligence, Dan Coats, warned us that lights were still blinking red. And sure enough, in 2018 the intel committee saw similar attempts by Russia and other foreign countries, including China and Iran, to influence our election process and promote their strategic interest.

We can be sure that they intend to interfere in the 2020 presidential election. Yet many of the vulnerabilities that existed in 2016 continue to persist across the country. Our election infrastructure remains outdated, low tech, and nowhere near where it needs to be to prevent future intrusions.

In the 2018 elections, 41 States used voting machines that were over a decade old and susceptible to cyber intrusions and system crashes. Thirteen States used voting machines that fail to produce a paper ballot or record, leaving them unable to conduct meaningful post-election audits.

Thirty-four States used electronic poll boxes in at least some polling locations, including six States that used them statewide, which are vulnerable to hackers who can alter or delete voter registration data. Some of these States are taking steps to replace their outdated systems, but they lack the necessary tools and funding. We need to give State and local election officials the tools they need to adequately defend the security of our election system.

After an 8-year gap in Federal funding, the fiscal year 2018 Financial Services and General Government Appropriations Act included \$380 million for grants to help States fortify and protect election systems, and we saw an overwhelming demand for assistance. Every single State and eligible territory requested grant funding. And the Election Assistance Commission, EAC, has disbursed every single dollar of the \$380 million.

The EAC is still analyzing how much money the States spent in the first nine months. But based on initial plans submitted by the States, we know the States plan to spend more than one-third of the grant funding on cybersecurity efforts, and more than one-quarter of the was tagged for new voting equipment.

While a critical first step, it is important to emphasize that this funding was just a down payment. It represents only a fraction of the total need across the country to replace outdated voting equipment and implement cybersecurity and other protections at the State and local level to ensure our election system can withstand future attempts of foreign interference.

The last time our electoral process was put into question post Bush-Gore, this government spent over \$3.5 billion to upgrade our election systems because we treasured the integrity of our democracy. I hope we still do. I look forward to hearing from our panel of expert witnesses this morning who can help us understand the challenges and threats we face and what steps we should be taking to address them.

Before I turn to our witnesses for their statements, I would like to recognize ranking member Mr. Graves for his opening remarks.

Mr. GRAVES. Thank you, Mr. Chairman. Good morning, everyone. Good to be with you today.

When we show up to vote on Election Day, Mr. Chairman, I think we both can agree that we should have the confidence and guarantee that our votes and our voices are going to be heard. That means a fair count by local officials and volunteers and an election that is free from outside influences that aim to harm our systems.

Maintaining the integrity of our country's elections is fundamental to our democracy. We should all be on the side of secure elections. This is not a partisan issue in any way. I appreciate the chairman holding this hearing today. I think this is a really important topic for us to discuss.

Now, there are many aspects to election security such as voter registration systems, voting machines, absentee balloting, and ensuring that our polling places are safe. In fact, earlier this month I was pleased that the Department of Homeland Security, the Office of the Director of National Intelligence, and the Department of Justice shared that there was no material impact from foreign interference in our Nation's elections infrastructure in the recent, 2018 midterm elections. This is a significant accomplishment.

General Nakasone, the Commander of United States Cyber Command and the Director of the National Security Agency, recently testified about efforts to defend the integrity of our midterm elections. Cyber Command created a persistent presence in cyberspace to monitor and to disrupt adversaries. They shared information through DHS with State election officials to help identify weak spots in our system and to improve threat warning. I hope these

partnerships between the Federal Government and State and local elections officials continue to grow.

But it is important that we leave election administering and oversight responsibilities to the States. What I do not want to see from this committee or from Congress is a heavy hand of Federal Government dictating to State and local officials how to administer their own elections or what equipment should be used.

Nor do I want to see the Federal Government be the responsible party for funding States' elections. That is a role and a responsibility of the State governments, to fund the cost of voting machines and their administering of their own elections.

Mr. Chairman, again thank you for holding a hearing on this important topic, and I look forward to a robust discussion today.

Mr. QUIGLEY. Thank you, Mr. Graves.

Let me now introduce our distinguished panel that is here this morning. The Honorable Eric Rosenbach is the co-director of the Harvard Kennedy School Belfer Center for Science and International Affairs. Mr. Rosenbach previously served as the chief of staff for the Pentagon from 2015 to 2017, and Assistant Secretary of Defense for Global Security, where he was responsible for leading all aspects of Department's cyber strategy, policy, and operations.

Dr. J. Alex Halderman is a professor of computer science and engineering at the University of Michigan, and director of Michigan's Center for Computer Security and Society. He conducts research on computer security and privacy, with an emphasis on problems that broadly impact society and public policy, including electronic voting, and has conducted multiple demonstrations on the vulnerability of these systems to hacking.

Mr. Steven Sandvoss is the executive director of the Illinois State Board of Elections, where he has served in that capacity since 2015. He has been with the State Board of Elections for more than 30 years, so he brings a wealth of firsthand experience to his testimony today.

I want to thank you all for being here today, and look forward to your testimony. Without objection, your written statements will be entered into the record.

[The information follows:]

**Securing America's Digital Democracy: Preparing for 2020**

Prepared Statement by Honorable Eric Rosenbach Co-Director of the Belfer Center for Science and International Affairs at Harvard Kennedy School; former Chief of Staff to the Secretary of Defense and Assistant Secretary of Defense for Homeland Defense and Global Security

Before the United States House Committee on Appropriations  
Subcommittee on Financial Services and General Government

Hearing on Election Security and the Integrity of Election Systems

February 27, 2019

**Introduction**

Thank you Chairman Quigley and Ranking Member Graves for the invitation to speak to your committee today. It is an honor to be here today to speak to you about our nation's election security and the integrity of our election systems. The House Committee on Appropriations' Subcommittee on Financial Services and General Government has jurisdiction over many of the independent federal agencies that are critical to election security in the U.S., including the Election Assistance Commission (EAC) and the Federal Election Commission (FEC). Your subcommittee can play a leading role in helping ensure our democracy is secure and resilient in the face of a myriad of threats.

In early February, the U.S. Intelligence Community confirmed that, "there is no evidence to date that any identified activities of a foreign government or foreign agent had a material impact on the integrity or security of election infrastructure or political and campaign infrastructure used in the 2018 midterm elections for the United States Congress."<sup>1</sup> This is certainly a testament to the increased preparedness of state and local election officials; however, we simply should not assume our adversaries have moved away from targeting U.S. elections.

The U.S. Intelligence Community Worldwide Threat Assessment Report, presented to Congress by DNI Dan Coats on January 29th, highlighted the persistent threat of foreign interference in 2020.<sup>2</sup> The Assessment assures us, and I agree, that our adversaries are already planning how they will disrupt the 2020 elections. As we saw in 2016, our adversaries will use cyber and information operations to undermine the core tenets of our democracy and we must do our part to make our elections resilient to these threats. They seek to exploit divisions in our society and

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<sup>1</sup> <https://www.justice.gov/opa/pr/acting-attorney-general-and-secretary-homeland-security-submit-joint-report-impact-foreign>

<sup>2</sup> <https://www.dni.gov/files/ODNI/documents/2019-ATA-SFR---SSCI.pdf>

erode our faith in the most important American values: a vibrant, free-market economy and our democracy, the hallmark of which is free and fair elections.

The Assessment also highlights the growing capabilities of key threat actors to interfere in U.S. elections. China is consistently improving its cyber capabilities and influence operations in the U.S. Iran has demonstrated its ability to manipulate social media and online content, and may do so around the election to impact voters. Russia clearly has the will and the means to disrupt U.S. elections, as it demonstrated in 2016. We should expect to see more hack and leak operations, as well as information operations aimed at poisoning genuine political dialogue and sewing doubt in the validity of the electoral process and results. The Justice Department's indictment in February 2018 of individuals associated with Russia's "troll factory," the Internet Research Agency, shows the sophisticated information operations employed by Russia. The IRA targeted U.S. citizens across the political spectrum, targeting members of both parties. On top of these existing means of election interference, new means of influencing elections are also emerging. Deep fakes -- fake but convincingly realistic videos of public figures created with artificial intelligence -- are already presenting a problem and will likely play a large part in the next election.

Disruptions to American elections are a whole-of-nation threat that requires a whole of government response. In the face of these threats, Congress needs to take the lead on securing our democracy. We will never be able to eliminate the cyber and information risks posed by our adversaries to elections, but we can manage this risk effectively by prioritizing actions to secure our elections now.

I will address the following actions that Congress should prioritize to secure our elections before 2020:

1. Bolster domestic defenses and resilience;
2. Develop precise and legal offensive cyber capabilities;
3. Adopt a clear, public deterrence posture.

### **Bolster domestic defenses and resilience**

To help bolster national defense and resilience against election manipulation, Congress should take a few key steps. First, Congress should authorize and appropriate regular, ongoing federal funding focused on improving the security of our elections. The \$380 million approved by Congress last year was an extremely important step forward; however, the states need a dependable source of funding to support the cybersecurity and upkeep of electronic voting systems. This funding should be flexible, but tied to concrete progress in adopting the NIST Cybersecurity Framework.

Furthermore, Congress should pass a comprehensive national privacy law that protects Americans' personal data and information from abuse by both leading tech firms and nation-state intelligence services in Russia and China. The privacy law passed by California last year provides a good foundation for national legislation, though Congress should work thoughtfully to ensure that new legislation provides the foundation for American firms to lead the world in innovation throughout the Information Age.

Congress should also immediately pass regulation to ensure that online platforms such as Facebook, Twitter, and YouTube are not used as tools of foreign information operations. These firms have taken initial steps towards identifying and removing content pushed by foreign intelligence services to manipulate and divide Americans. That said, Facebook's disregard for American's privacy represents a significant national security vulnerability to our democracy.

Additionally, Congress and the federal government should use the various levers at their disposal to improve cyber risk management. Congress should incentivize private companies to make cyber risk management a priority. For example, DHS and FBI can help the market for cyber risk management solutions by increasing the collection and dissemination of anonymized cyber incident data. The creation of the EI-ISAC (Election Infrastructure ISAC) in February 2018 has already improved election security. The EI-ISAC is hosted by the Center for Internet Security and supported by DHS. It provides free resources for states and counties to share key information about cyber and information threats to elections.<sup>3</sup> The EAC supports the EI-ISAC and Congress should continue to encourage this information sharing among states and localities. Private sector companies can also play an increased role in EI-ISAC by sharing threat intelligence on elections.

Outside organizations and civil society also have an important role to play in bolstering our defenses against cyber and information operations against U.S. elections. I co-lead the Belfer Center and started a project in the wake of the 2016 election to provide resources and training for state and local election officials across the country. The Defending Digital Democracy Project (D3P) is a bipartisan initiative, co-led by myself, Robby Mook, Hillary Clinton's former campaign manager, and Matt Rhoades, Mitt Romney's former campaign manager. Our team has provided concrete support to campaigns and state and local election officials by way of playbooks and intense simulation exercises. We have a team of over 30 students, cyber security experts, political operatives, and election leaders who work to create free resources for campaigns and election officials, including the Cyber Security Campaign Playbook, the State and Local Cybersecurity Playbook, and the Election Cyber Crisis Communication Guide and Template.

As part of our field research, we have worked with election officials from every one of your states. We ran three crisis simulation exercises for over 350 state and local election officials from

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<sup>3</sup> <https://www.cisecurity.org/ei-isac/ei-isac-membership-faq/>

over 40 states. Following our national level simulation in March 2018, 15 states have conducted their own crisis simulations, which is a valuable part of increasing preparedness and resiliency. Ten states specifically used their Help America Vote Act (HAVA) funds, approved by Congress and administered by the EAC, to run simulations based on our project's work. Other NGOs are doing incredibly valuable work in this space and we can all continue to bolster election preparedness and resiliency ahead of 2020.

Finally, the role of the federal government in defending elections is crucial. I applaud Congress and Secretary Nielsen for creating the Cybersecurity and Infrastructure Security Agency (CISA), which elevated the mission of the former National Protection and Programs Directorate (NPPD) within DHS and established CISA.<sup>4</sup> Chris Krebs, Jeanette Manfra, and Senior Advisor Matt Masterson have clearly prioritized securing elections, and I urge Congress to continue to support their efforts. The EAC also continues to be a great resource to the states, and I am pleased to see it at quorum now that Ben Hovland and Donald Palmer were sworn-in earlier this month.<sup>5</sup>

### **Develop precise and legal offensive cyber capabilities**

The second priority in securing elections is to develop precise and legal offensive cyber operations that change the current dynamic of America simply sitting back and absorbing the blows of adversarial actions. Good defenses are important, but defense will not alone mitigate the threat of foreign attacks. To complement defensive measures, the U.S. government, led by the Department of Defense, needs to bolster its capabilities to disrupt and degrade cyber and information operations at their sources.

NSA Director and Commander of USCYBERCOM, General Paul Nakasone, has stated that CYBERCOM is conducting offensive cyber operations against Russia and other adversaries to deter Russian operatives from interfering in U.S. elections.<sup>6</sup> While the actions are not threatening the operatives directly, CYBERCOM's actions will raise the cost of interference for our adversaries. This is a good start and I hope we will continue to see CYBERCOM acting against foreign actors who target our elections as we get closer to 2020.

In addition to CYBERCOM's current efforts, the Intelligence Community should also strengthen its indicators and warnings of cyber and information operations against elections. Most election officials do not have security clearances, but information sharing up and down between election officials and intelligence agencies is an area with room for improvement in 2020.

<sup>4</sup> <https://www.dhs.gov/cisa/about-cisa>

<sup>5</sup> <https://thehill.com/policy/cybersecurity/423672-senate-confirms-commissioners-to-election-agency-giving-it-full-powers>

<sup>6</sup> [https://www.washingtonpost.com/world/national-security/pentagon-launches-first-cyber-operation-to-deter-russian-interference-in-midterm-elections/2018/10/23/12ec6e7e-d6df-11e8-83a2-d1c3da28d6b6\\_story.html?utm\\_term=.563d55d9d25f](https://www.washingtonpost.com/world/national-security/pentagon-launches-first-cyber-operation-to-deter-russian-interference-in-midterm-elections/2018/10/23/12ec6e7e-d6df-11e8-83a2-d1c3da28d6b6_story.html?utm_term=.563d55d9d25f)

DoD should also bolster Cyber Command's capability to address information operations. Looking beyond U.S. elections, CYBERCOM should take a stronger role in stemming attacks from their source, particularly relating to information operations.

### **Adopt a clear, public deterrence posture**

Our response to Russian interference in 2016 was not strong enough; that has resulted in a perception by our adversaries that they can attack American democracy without incurring any pain or costs. We need a strong national response that interfering in our elections in any manner is unacceptable. Imagine if we found out during the Cold War that Soviet operatives gained access to polling places and vote counting machines and attempted to change the outcome of the election? Would President Reagan have stood by and debated the threat, or would he have acted? We have to raise the cost of attacks and decrease the benefits that our adversaries seek.

Public attribution is the most important component of raising those costs. The increased willingness of the Intelligence Community, DHS, and FBI publically to attribute attacks through indictments is a crucial and positive first step. In conjunction with swift and strong sanctions, and targeted offensive cyber operations, this will send a clear message to foreign adversaries that interference in our elections will never be tolerated. Without these types of actions, we can expect these nations' attacks against our democracy to continue.

We need to support our allies and partners too, many of whom face the same threats. Ukraine's presidential elections are at the end of March, and the European Parliament elections are coming up in May 2019. "Las Vegas Rules" don't apply to elections -- we cannot allow Russia to use its neighbors and our partners as a testing ground for cyber and information operations against elections like they have done in the past. If we do not respond, we will see increased attacks against --and decreased public confidence in-- western elections.

### **Conclusion**

Defending our nation and our elections from adversaries is ultimately a government responsibility, so I am glad that you are holding this hearing to encourage further discussion around election security ahead of 2020.

No defense will ever be perfect. We need a robust private sector to maintain our position as the world's technological leader. We need a federal government that is engaged in helping state and local election officials, who are on the frontlines of defending our democracy. Elections are at the core of our democracy, and at the end of the day, require a whole-of-nation effort to be prepared for any adversaries who try to target the 2020 elections.

Thank you for your time, and I look forward to your questions.



U.S. House Appropriations Subcommittee on Financial Service and General Government  
**“Election Security: Ensuring the Integrity of U.S. Election Systems”**  
 February 27, 2019

**Statement of Dr. J. Alex Halderman**

Professor of Computer Science and Engineering, University of Michigan  
 Director, Michigan Center for Computer Security and Society

Chairman Quigley, Ranking Member Graves, and distinguished members, thank you for the opportunity to testify about this urgent matter of national security.

Three years ago, the United States Presidential election was attacked. Hackers penetrated political campaigns and leaked internal communications online, they manipulated social media in an effort order to sow discord, and they targeted our election infrastructure, including voter registration systems in at least 18 states. These attacks were about more than undermining voter confidence. In the assessment of the Director of National Intelligence, they marked a “significant escalation” of foreign “efforts to undermine the U.S.-led liberal democratic order”.<sup>1</sup>

After two years of investigation by Congress and the intelligence community, we know that the attackers had the capability to do even more damage than they did. The Senate Select Committee on Intelligence has concluded that in some states, attackers “were in a position to, at a minimum, alter or delete voter registration data.”<sup>2</sup> Had they done so (and had it gone undetected), there would have been widespread chaos on Election Day, as voters across the vulnerable states showed up to the polls only to be told they weren’t registered. We were spared such a blow to the foundations of American democracy only because Russia chose not to pull the trigger.

Next time, things could be much worse, and it’s not just voter registration systems that are at risk: the nation’s voting machines are stunningly vulnerable to attacks that could sabotage the voting process or even invisibly alter tallies and change election outcomes. I know because I have developed such attacks myself as part of over a decade of research into election security threats and defenses.<sup>3</sup> Last fall, Chairman Quigley and Representative Katko invited me to demonstrate such an attack at a briefing on Capitol Hill. I brought a touch-screen voting machine used in 18 states, and we held a small mock election. I remotely hacked the voting machine to steal both Congressmen’s votes and changed the election winner.<sup>4</sup>

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<sup>1</sup> Office of the Director of National Intelligence, “Assessing Russian Activities and Intentions in Recent US Elections”, January 2017. [https://www.dni.gov/files/documents/ICA\\_2017\\_01.pdf](https://www.dni.gov/files/documents/ICA_2017_01.pdf)

<sup>2</sup> U.S. Senate Select Committee on Intelligence, “Russian Targeting of Election Infrastructure During the 2016 Election: Summary of Initial Findings and Recommendations”, 2018. <https://www.burr.senate.gov/imo/media/doc/RussRptInstlmt1-%20ElecSec%20Findings,Recs2.pdf>

<sup>3</sup> My curriculum vitae and research publications are available online at <https://alexhalderman.com>.

<sup>4</sup> I demonstrated a similar attack for *The New York Times*, as shown in this video: <https://www.nytimes.com/video/opinion/100000005790489/i-hacked-an-election-so-can-the-russians.html>

This level of vulnerability is endemic throughout our election system. Cybersecurity experts have studied a wide range of U.S. voting machines, and in every case, we've found problems that would allow attackers to sabotage machines and alter vote tallies.<sup>5</sup>

Some people think that the decentralized nature of the U.S. voting system and the fact that voting machines aren't directly connected to the Internet make interfering in a state or national election impossible. Unfortunately, that isn't true. Some election functions are actually quite centralized, and our election infrastructure is not as distant from the Internet as it may seem.

Before every election, voting machines and optical scanners need to be programmed with the design of the ballot, the races, and candidates. Election workers create this programming on a central computer called an election management system, then transfer it to voting machines using USB sticks or memory cards. Hackers who compromise an election management system can hijack the ballot programming process to spread a voter-stealing attack to large numbers of machines.

Election management systems are often not adequately protected, and they are not always properly isolated from the Internet. Moreover, a small number of election technology vendors and support contractors program and operate election management systems used by many local governments. The largest of these services over 2000 jurisdictions spread across 34 states. Attackers could target one or a few of these companies and spread an attack to election equipment that serves millions of voters.

Furthermore, in close elections, decentralization can work against us. An attacker can probe the most important swing states or swing districts for vulnerabilities, find the areas that have the weakest protection, and strike there. In a close election, changing a few votes may be enough to tip the result, and attackers can choose where—and on which equipment—to steal those votes.

Fortunately, we know how to better defend election infrastructure and protect it from cyberattacks in 2020 and beyond. There are three essential measures:

1. First, we need to replace obsolete and vulnerable voting equipment, such as paperless systems, with optical scanners and paper ballots—a technology that 30 states already use statewide. Paper ballots provide a resilient physical record of the vote that simply can't be compromised by a cyberattack.
2. Second, we need to consistently check that our election results are accurate, by inspecting enough paper ballots to tell whether the computer results from the optical scanners are right. This can be done with what's known as a risk-limiting audit (RLA). Such audits are a common-sense quality control. By manually checking a random sample of the ballots, officials can quickly and affordably provide high assurance that the election outcome is correct.

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<sup>5</sup> For an accessible introduction to election cybersecurity, see my online course, *Securing Digital Democracy*, which is available for free on Coursera: <https://www.coursera.org/learn/digital-democracy>.

3. Lastly, we need to raise the bar for attacks of all sorts—including both vote tampering and sabotage—by applying cybersecurity best practices to the design of voting equipment and registration systems and to the operation of computer systems at election offices.

These are not simply my recommendations.<sup>6</sup> Paper ballots, manual audits, and security best practices are a prescription endorsed by the overwhelming majority of election security experts, and by the National Academies of Science, Engineering, and Medicine.<sup>7,8</sup> These measures are also widely favored by election officials.

Many states have begun to implement these improvements using the \$380 million in election cybersecurity funding that Congress appropriated last year. According to the Election Assistance Commission, states intend to use 36% of this funding (\$136 million) for cybersecurity improvements, 28% (\$103 million) for purchasing new voting equipment, and 6% (\$21 million) for improving election audits.<sup>9</sup> These are necessary, appropriate, and urgent priorities.

However, much more needs to be done before Americans go to the polls in 2020. Although some states have made significant progress towards securing their election infrastructure, other have barely gotten started, and the nation as whole remains a patchwork of strength and weakness.

In 2018, 41 states used voting machines that were at least a decade old, and some, including parts of Pennsylvania and New Jersey, used machines dating from around 1990. Forty-three states used machines that are no longer manufactured, forcing election officials to cannibalize old machines for spare parts or even turn to eBay. Twelve states<sup>10</sup> still make widespread use of paperless direct-recording electronic (DRE) voting machines, which are impossible to reliably audit to detect potential errors or malfeasance. All of Georgia, for example, voted in November using the same model of vulnerable paperless DRE that I hacked in front of Chairman Quigley last fall. After years of underinvestment, America's election infrastructure is crumbling, and the \$380 million can only serve as a down payment towards fixing it.

Many states would like to replace vulnerable and obsolete voting equipment before 2020, but they are struggling to figure out how to pay for it. Pennsylvania, for instance, plans to switch from insecure paperless machines to paper ballots, but the state's share of last year's HAVA

<sup>6</sup> President Trump himself has consistently endorsed the use of paper ballots, both as a candidate and since taking office. He made the point well in 2016: "There's something really nice about the old paper-ballot system. You don't worry about hacking." <http://www.businessinsider.com/donald-trump-election-day-fox-news-2016-11>

<sup>7</sup> National Academies of Science, Engineering, and Medicine. "Securing the Vote: Protecting American Democracy", 2018. <https://www.nap.edu/catalog/25120/securing-the-vote-protecting-american-democracy>

<sup>8</sup> Additionally, the National Institute of Standards and Technology (NIST) has concluded that it is not possible to effectively audit a voting system to detect and correct potential hacking without a voter-verified paper ballot.

<sup>9</sup> U.S. Election Assistance Commission, "EAC Releases 48 HAVA Grants State Plans, Budgets," August 2018. <https://www.eac.gov/news/2018/08/21/state--territories-plan-to-spend-majority-of-hava-grant-funds-on-election-security-system-upgrades/>

<sup>10</sup> The twelve states with large numbers of paperless DRE voting machines are: Delaware, Georgia, Indiana, Kansas, Kentucky, Louisiana, Mississippi, New Jersey, Pennsylvania, South Carolina, Tennessee, and Texas. Eight additional states use DREs with a voter-verifiable paper audit trail (VVPAT), an obsolete kind of paper backup: Arkansas, California, Illinois, Ohio, North Carolina, Utah, West Virginia, and Wyoming. Verified Voting maintains an online database of the equipment in use in each locality: <https://www.verifiedvoting.org/verifier/>.

funds was \$13.5 million, only about 25% of the cost of implementing hand-marked paper ballots across the state. Georgia's share was \$10.3 million, less than a third of what it needs just to replace its paperless machines. Without further federal assistance, we risk that new equipment and other critical improvements won't be in place for many years. With the 2020 election on the horizon—the next major target for foreign cyberattacks—we need to act before it's too late.

What will it cost to fix the problem? The highest priority should be to replace DRE voting equipment nationwide with robustly auditable paper ballots.<sup>11</sup> This would cost about \$370 million, assuming an average of \$7500 per precinct to acquire one ballot scanner and one accessible voting device.<sup>12</sup> Under HAVA, funds are allocated to states mainly in proportion to voting-age population, rather than by type of existing equipment. If future funding were provided under the existing HAVA formula, I estimate that about \$900 million in further appropriations would be needed to ensure that every state with DREs received at least 50% of the funds needed to replace them with hand-marked paper ballots and accessibility devices.

It's important to understand that states can choose from several kinds of voting equipment, and that these choices greatly affect the overall cost and the security achieved. Fortunately, the most cost effective approach is also the most secure: hand-marked paper ballots counted using optical scanners.<sup>13</sup> Some localities are opting instead to purchase ballot-marking devices (BMDs), touchscreen computers that voters use to mark and print their ballots. Equipping a precinct with BMDs for all voters costs about three times as much as using hand-marked paper ballots and providing a dedicated accessibility device for voters with disabilities, and it's also less robust to cyberattacks that render the equipment inoperable. Moreover, it has yet to be established whether voters can reliably detect errors on BMD-printed ballots—which means that fraud could go undetected if the BMDs are hacked to cause them to sometimes print the wrong selections.

In many states, there are no rules in place to prevent local governments from spending federal funds on insecure and unauditable kinds of voting equipment. Some voting machine vendors continue to market paperless DREs, as well as DREs with so-called "voter-verifiable paper audit trails" (VVPATs)—a roll of paper behind a pane of glass that briefly shows the voter's selections. VVPATs are badly inferior to paper ballots, because the printouts are difficult for voters to read and challenging for election officials to effectively audit. Localities purchasing new DREs, whether or not they are equipped with VVPATs, will make it more difficult for states to implement risk-limiting audits statewide. To ensure that taxpayer money is well spent, Congress should prohibit federal funds from being used to purchase voting equipment that does not provide a robustly auditable paper ballot.

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<sup>11</sup> Once paper ballots are in place, other vital security measures, such as performing risk-limiting audits, are relatively inexpensive to implement. I estimate that performing risk-limiting audits in all federal races nationally would cost less than \$25 million per year on average.

<sup>12</sup> For additional cost estimate data, see: Brennan Center and Verified Voting, "Federal Funds for Election Security: Will They Cover the Cost of Voter Marked Paper Ballots?", March 2018. [https://www.brennancenter.org/sites/default/files/analysis/Federal\\_Funds\\_for\\_Election\\_Security\\_analysis.pdf](https://www.brennancenter.org/sites/default/files/analysis/Federal_Funds_for_Election_Security_analysis.pdf)

<sup>13</sup> Under HAVA, each polling place must also be equipped with an accessible device to assist voters with disabilities in filling out their ballots.

Election cybersecurity is an urgent matter of national security. Under our time-honored system, implementing the necessary defenses falls to states and local governments. We must not leave them to face the threat of powerful foreign adversaries unaided. Congress should provide for the common defense by equipping states with the resources they need to deploy robustly auditable paper ballots, risk-limiting audits, and other cybersecurity improvements. With your leadership, elections in 2020 and beyond can be well secured, and voters will have good reason to have confidence in the results. But if we delay action, I fear it is only a matter of time until a national election result is disrupted or stolen in a cyberattack.

**Testimony before the U.S. House Subcommittee on Election Security and Integrity**

Steven S. Sandvoss

Executive Director

Illinois State Board of Elections

As the Committee is aware, in June of 2016 the Illinois State Board of Elections (SBE) was the victim of a cyber-attack which at the time was of unknown origin. It has since been learned that the attack was perpetrated by Russian operatives who were seeking unauthorized access into the voter registration database maintained by the SBE. In response to this attack, measures were immediately undertaken to close the access point of the intrusion, assess the extent of the penetration, determine whether any data was manipulated or destroyed, and ascertain which voter records were improperly accessed, with the purpose of alerting said voters and giving guidance to assist them in protecting their sensitive information. It should be noted that an analysis of the breach did not reveal any evidence that specific voters were targeted or that the attack focused on any particular region or demographic. The SBE quickly alerted Federal law enforcement, and fully cooperated with their investigation. Following the initial steps described above, the SBE undertook an unprecedented effort to secure its voter registration database as well as other IT related applications.

In March of 2018, the EAC provided \$380 million in grant money to the states to assist in their cyber-security efforts. Illinois' share was \$13.2 million, with a requirement that the State provide a 5% match; which amounted to \$661,615. Shortly after receiving this grant money,

legislation was passed in Illinois that earmarked no less than half of the grant money to a Cyber-Navigator Program (CNP), to be created and administered by the SBE.

In order to receive any of the grant money, Illinois' Election Authorities (EAs) must agree to participate in the CNP. (The EAs consist of 101 county clerks, 1 county board of election commissioners and 6 city boards of election commissioners, who are responsible for maintaining a list of registered voters within their jurisdiction, securing election voting and tabulating equipment and conducting the actual election on election day, as well as early and mail in voting.)

The CNP consists of 3 basic parts; 1) Requiring the EAs to adopt the Illinois Century Network (ICN) as their internet service provider for all traffic between their offices and the SBE. 2) Engaging in a Cyber Security Information Sharing Program with the EAs to share cyber-security related information and 3) Creation of a team of "Cyber Navigators" to provide cyber-assistance to the EAs.

### **Illinois Century Network (ICN)**

The ICN is a state managed network delivering network and internet services to government agencies in Illinois. The goal of the ICN is to provide EAs with a cleaner and safer internet. The SBE Plan would bring all network traffic to and from the EAs to an internal "10 dot IP" network system and "whitelisting" IP addresses for access to the IVRS website. Isolating this network to one under the complete control of the SBE and Department of Innovation and Technology (DoIT) ensures that voter registration data and EA management operations never actually flow

over the internet. Additionally, this provides us the ability to provide additional security measures and monitoring.

#### **Cyber Security Information Sharing Program-**

In partnership with the Illinois State Police's division of Statewide Terrorism and Intelligence Center (STIC), the SBE is overseeing the Cyber Security Information Sharing Program, which involves researching and gathering of information related to pertinent cyber-attacks and cyber resiliency and sharing that information with all federal and state stakeholders. Our goal is to consolidate numerous information sources and, with feedback from local Election Authorities, distill it into the most valuable, actionable information possible.

#### **Cyber Navigators**

The Cyber Navigators are assisting the EAs by performing onsite risk assessments and providing resources to ensure Election Security for 2020 and beyond. Currently 9 Navigators are assigned in 4 regional zones in the state. (2 per zone, and 1 lead navigator). The Navigators will be offering additional services such as phishing assessments, penetration testing and educational trainings. They will also be performing additional risk assessments on physical security and best practices in securing voting equipment.

In addition to the CNP, the SBE worked in partnership with the Illinois National Guard's cyber security team to coordinate a cyber-defense system to provide cyber protection for both the SBE and the EAs prior to and on Election Day. Members of the Guard were stationed in all regions of



the state, at the SBE, at STIC and their own bases to be ready in the event of a statewide cyber event.

Following the creation of the CNP, the SBE released \$2.9 million of the aforementioned grant funds to the participating EAs to make purchases to upgrade election related computer systems and to address cyber vulnerabilities identified through scans, Cyber Navigators or other assessments of existing election systems. Funds could also be used to implement cyber security best practices for election systems and other activities designed to improve the security of the election systems.

In addition to the CNP, the SBE took the following steps to beef up its own cyber security.

**Investments in Personnel**

- Hired two additional highly experienced IT staff, including a Security Analyst with 20 years of Information Security experience

**Investments in Hardware**

- Purchased Web Application Firewalls to protect against attacks on the SBE's public-facing applications
- Purchased new firewalls with Intrusion Prevention Systems

**Investments in Software**

- Implemented "Next-Generation" Endpoint Protection products to protect SBE computers and servers from the latest types of ransomware, Trojans, and other types of malware.

“Next-Generation” implies that the products protect against the *behavior* of malware rather than simply blocking it based on definition

- Implemented endpoint server protection products to detect and prevent attacks against the SBE’s web applications and sites
- Implemented a new Web Security Gateway to provide filtering and protection against malicious links and to monitor traffic for signs of compromise

#### **Security Assessments**

- Completed the Department of Homeland Security’s “Risk & Vulnerability Assessment” in early 2018
- Deployed our own vulnerability scanning solution to allow us to perform regular, internal scans of our environment for vulnerabilities at a deeper level possible than from external scans
- Completed a penetration test in partnership with the Department of Innovation & Technology’s Information Security staff before the 2018 mid-term election

#### **Ongoing Monitoring**

- The SBE’s IT entire environment is monitored by the Department of Innovation & Technology’s Security Operations Center
- All SBE network traffic now flows through an Albert sensor provided by the Department of Innovation and Technology

Looking to the future, the SBE believes it is necessary to maintain the Cyber Navigator Program indefinitely and possibly expand it to address the continuing needs of the EAs. Cyber Security is an ongoing, ever escalating process that doesn’t have an end date, and as such there will be an

ongoing need for funds to maintain the program. At present, the primary mission of the Cyber-Navigators is to perform risk assessments of the IT systems of all the EAs who are participating in the CNP (currently there are 90 EAs participating and 81 risk assessments have been scheduled or performed). Once these assessments are completed, the SBE will be in a position to better understand what types of systems will need to be created and what upgrades will be needed to improve existing systems within each EAs jurisdiction which can be done through the purchases made and reimbursed through the grant requests. Since the risk assessments are ongoing, it is not possible to give a cost estimate to implement said systems and upgrades at this time.

Lastly, the EA community has repeatedly stated to the SBE that their primary need with respect to ensuring the integrity of their elections is the replacement of the voting systems within their jurisdictions, many of which are almost 20 years old. In terms of technology, said systems are ancient and need to be replaced. The SBE anticipates needing approximately \$175 million to replace the systems that are currently in use in Illinois (There are approximately 25,000 voting system components in Illinois consisting of Optical Scan, Direct Recording Electronic machines (DRE or what is commonly referred to as touchscreen voting) and Ballot Marking Devices. This estimate is based on the State of Ohio's recent solicitation of new voting equipment, in which some of the bidding vendors also do business in Illinois and presumably their quotes would be the same. This estimate however does not factor in additional costs that would likely result once the new 2015 Voluntary Voting System Guidelines version 2.0 are approved by the EAC (Illinois is expected to adopt those standards). Said Guidelines will recommend additional security features that would better protect the voting systems from cyber-attack as well as

provide increased accessibility for voters with disabilities. Unfortunately, it is not possible at this point to provide an accurate prediction of what the costs would be of said systems and it is also unknown as to when the vendors will have these systems available for use in Illinois, as they have to go through a rather lengthy testing and certification process.

Thank you for your consideration.

Mr. QUIGLEY. With that in mind, we would like to ask you to please summarize your opening statement in three minutes.

Mr. ROSENBAACH, you are now recognized for three minutes for your opening statement.

Mr. ROSENBAACH. Thank you, Chairman Quigley, Ranking Member Graves, for the invitation to join your subcommittee today. It is an honor to be here to speak to you about our Nation's cybersecurity and the integrity of our election systems.

Also I would like to thank you for your service, and thank you for being with such good witnesses, Mr. Sandvoss in particular. State election officials are on the front lines of defending democracy, and it has been a pleasure to work with them over the past several years.

Imagine, if you can, that we discovered during the Cold War that Soviet intelligence operatives had gained access to polling places and vote counting machines, and attempted to change the outcome of our Nation's election. Imagine if Soviet spies had infiltrated our Nation's newspapers and television stations and tricked them into publishing false content, and divided Americans and inflamed political tensions. Would President Reagan have stood by and debated the threat or would he have acted?

This should not be a partisan issue, as Congressman Graves said. Our democracy has been attacked and continues to be attacked. Now is the time for the country to unify and come together and act, not after we watch the Russians or the Iranians or the North Koreans try to disrupt the 2020 presidential election.

As you mentioned, Mr. Chairman, the worldwide threat assessment highlighted the persistent threat of foreign interference in the elections in 2020. The assessment assures us, and I agree, that our adversaries are already planning how to disrupt the 2020 elections.

With this in mind, I have three areas in which I believe Congress should focus. And of the three, I will focus on the first: bolstering domestic defenses and resilience, developing precise and legal offensive cyber operations, and adopting a clear public deterrence posture.

First, Congress should authorize and appropriate regular ongoing federal funding focused on improving the security of our elections. The \$380 million approved by Congress last year was an extremely important first step. However, the States need a dependable source of funding to support the cybersecurity and upkeep of paper-backed electronic voting systems. It should be very flexible but tied to the NIST framework.

Second, Congress should pass a comprehensive privacy regulation law that protects Americans' personal data and information from abuse both by leading tech firms and nation-state intelligence organizations from Russia and China.

Finally, Congress should also immediately pass regulation to ensure that online platforms such as Facebook, Twitter, and YouTube, are not used as tools of foreign influence. Let's be honest: Facebook's disregard for America's privacy represents a significant national security vulnerability to our democracy. If they will not act, you must.

Finally, the two other areas in which I think you should devote your attention are on developing precise legal options. As Congress-

man Graves mentioned, CYBERCOM in particular, if you read the Washington Post yesterday, has started a more aggressive posture, which I believe is very important. We cannot sit back and just take blows.

Finally, the country needs a clear deterrent posture that shows our adversaries that we will not just be on the receiving end of these attacks, that we will be more assertive, and that we will unify as a country.

Thank you, sir, very much.

Mr. QUIGLEY. Thank you, Mr. Rosenbach. You seem to have a very attentive fan in the audience.

Dr. Halderman.

Mr. HALDERMAN. Chairman Quigley, Ranking Member Graves, and distinguished members, thank you for the opportunity to address this urgent matter of national security.

Three years ago America's election infrastructure was attacked. Hackers targeted voter registration systems, and in some States had the ability to destroy registration data, which would have caused chaos at the polls. We were spared only because attackers chose not to pull the trigger. Next time things could be much worse because America's voting machines remain stunningly vulnerable.

I and other computer scientists have found numerous ways that hackers could sabotage machines and alter election results, and sophisticated hackers can penetrate them even though they are not directly connected to the internet.

Last fall Chairman Quigley and Representative Katko invited me to demonstrate a hack here on Capitol Hill in a mock election with a voting machine used in 18 States. I remotely hacked in, stole both Congressmen's votes, and changed who won. These capabilities are certainly within reach for America's enemies.

Fortunately, we know how to better defend elections. Paper ballots, manual risk-limiting audits, and cybersecurity best practices are a prescription endorsed by the overwhelming majority of cybersecurity experts and by the national academies, and favored by a majority of election officials.

Most States have started implementing these defenses using the \$380 million that Congress appropriated last spring. But many are still struggling to afford replacing their vulnerable machines. For example, Georgia voted in November using the same machine that I hacked in front of Chairman Quigley, but it received only a tiny fraction of the cost to replace them. Forty-three States use machines that are no longer manufactured, and 12 States use paperless machines, which are impossible to secure. This puts the entire Nation at risk.

States and local governments need further Federal assistance before attackers strike again. The highest priority should be to eliminate paperless voting and deploy hand-marked paper ballots, optical scanners, and assistive devices for the disabled. If provided under the Help America Vote Act, about \$900 million is needed to ensure that all States receive at least half the necessary funds.

States need this money now, even before stronger equipment standards are in place. But Congress can at least prohibit purchasing new machines that lack a robustly auditable paper ballot.

With your leadership, elections in 2020 and beyond can be well-secured, and voters will have good reason for confidence. But if we delay, I fear it is only a matter of time until an election is disrupted or stolen in a cyber attack.

Thank you, and I look forward to your questions.

Mr. QUIGLEY. Thank you.

Mr. Sandvoss.

Mr. SANDVOSS. Good morning. My name is Steve Sandvoss and I am the executive director of the Illinois State Board of Elections. I would like to thank Chairman Quigley, Ranking Member Graves, and the distinguished members of the committee for giving me this opportunity to speak to you.

As noted by Chairman Quigley and my colleague Dr. Halderman, in June of 2016 the Illinois State Board of Elections was a victim of a cyber attack, during which hackers gained unauthorized access into the voter registration database maintained by the State Board of Elections. In response to this attack, measures were immediately undertaken to eliminate the vulnerability, assess the damage, alert the victims, and beef up our own cyber defenses.

Following this, the State Board of Elections undertook an unprecedented effort to secure its voter registration database as well as other IT-related applications. These efforts were assisted by the \$380 million grant to the States by the EAC, of which Illinois received \$13.2 million. Legislation was then passed in Illinois requiring the State to create a Cyber Navigator program.

The Cyber Navigator program is a program that is required for the jurisdictions to participate in if they are to receive any Federal money. The first part of the program is the Illinois Sentry network, which is a State-managed network delivering network services to government agencies in Illinois.

The goal of the network is to provide the election authorities with a cleaner and safer internet, and isolating this network to one under the complete control of the SBE and the Department of Innovation and Technology ensures that voter registration data and election authority management operations never actually flow over the internet. Additionally, this gives us the ability to provide additional security measures and monitoring.

The second part is the Cybersecurity Information-Sharing Program, which in the SBE is overseeing partnership with the state-wide Terrorism and Intelligence Center. The program involves the research and gathering of information related to cyber attacks and cyber resiliency, and sharing that information with both Federal and State stakeholders. Our goal is to consolidate numerous information sources and, with feedback from the election authorities, distill it into the most valuable, actionable information possible.

The third element is Cyber Navigators themselves. Nine Cyber Navigators are currently on contract to assist the election authorities by performing onsite risk assessments and providing resources to ensure election security for 2020 and beyond.

The Navigators will be offering additional services such as phishing assessments, penetration testing, and educational trainings. They will also be performing additional risk assessments on physical security and best practices in securing voting equipment.

In addition to the Cyber Navigator program, the State Board of Elections worked in partnership with the Illinois National Guard cybersecurity team to provide cyber protection for both the State Board of Elections and the election authorities during the 2018 general election. Members of the Guard were stationed in all regions of the State, at the SBE office, at the statewide Terrorism Information Center, and at their own bases to be ready in the event of a cyber attack.

Looking to the future, the State Board believes it is necessary to maintain this program indefinitely and to expand it to address the continuing needs of the election authorities. And in addition, as Dr. Halderman noted, the systems, the voting systems in the State, are ancient. They are outdated, need to be replaced. And that would, of course, entail funds to do so. Those are the immediate goals of the State Board of Elections and the election community in Illinois. I thank you for your time in allowing me to speak before you, and I will be happy to answer any questions you may have. Thank you.

Mr. QUIGLEY. Thank you all.

Let me ask you, as succinctly as you can, we have to prioritize. Mr. Graves is fond of—and he is accurate in saying we do not have unlimited resources here. But we want to prioritize the needs that are out there to protect our election security.

So I understand we are talking about training. We are talking about new equipment. We are talking about software. What exactly, if you could divide your time, do the States need? And if you could prioritize that to the extent possible, beginning with you, Mr. Sandvoss.

Mr. SANDVOSS. Certainly. I think if you were to ask the folks in Illinois who actually run the elections, I think they would all say that replacing the voting equipment is probably their number one concern and their most immediate need. Unfortunately, they all recognize that with the current budget situation, that money is probably not going to be forthcoming any time soon.

Mr. QUIGLEY. What is it going to cost? We could extrapolate out for States with equal, different populations. If you are going to replace all the equipment that needs it in Illinois, what would it cost?

Mr. SANDVOSS. I have been told roughly \$175 million.

Mr. QUIGLEY. Okay.

Mr. BISHOP. Million or billion?

Mr. SANDVOSS. Million. [Laughter.]

Mr. QUIGLEY. Yes. Thank you for that.

Mr. SANDVOSS. Machines are expensive. They are not that expensive.

But the other immediate need, and I think this is more from our standpoint, is cybersecurity. And I think with the Cyber Navigator program, we are going in the right direction with it. The tough part right now is getting all the election authorities to understand the threat, and I think most of them do. But again, it is a work in progress.

But once we get them all participating in the program, then the next step is assessing their vulnerabilities, which is again a project of the Cyber Navigators, which they are doing as we speak. But once they come up with their assessments, my suspicion is that most of the jurisdictions in the State are going to need extensive



improvements to their cyber posture, and that is going to cost money.

Mr. QUIGLEY. And the training that goes with it.

Mr. SANDVOSS. That is correct. Yes.

Mr. QUIGLEY. Okay. Let me move on.

Dr. Halderman.

Mr. HALDERMAN. Thank you. I think the most important priority is to make sure we have paper ballots and strong audits in all States. But the biggest impediment to that is States that still have aging equipment, either that does not have paper ballots at all or that is very difficult to audit because of the way it is designed.

Mr. QUIGLEY. And is there a problem with the older equipment not being able to handle anti-hacking software?

Mr. HALDERMAN. Older equipment in general does not benefit from the last decade or two of security improvements. Things have gotten better in security in general. But we still do not know how to make a machine that is absolutely hack-proof. That is why we need this other layer of defense that comes from having a paper trail, paper ballots, and going back and spot-checking them to make sure the result is right.

Mr. QUIGLEY. Now, you talk about hacking an individual voting machine. Now, there is a distinction Mr. Sandvoss and the State has talked to me about, and that is there are States that electronically communicate results. The machines are connected to the internet. And I do not believe that is true in Illinois. Is that correct?

Mr. SANDVOSS. The machines themselves are not connected to the internet, no.

Mr. QUIGLEY. But there are States that have that. Correct?

Mr. HALDERMAN. There are States that transmit results back over wireless links or over cellular modems that can go over the internet. But the bigger vulnerability, as I see it, is what happens before each election, when the machines have to be programmed with the ballot design from a centralized system.

Mr. QUIGLEY. I see. Okay. Let me move on, if I could.

Mr. ROSENBACH. Yes, sir. You said to prioritize. If you are going to prioritize, there is no way all of the technology catches up by 2020, which means, from my perspective, you have to focus on training and exercising to do holistic risk mitigation.

So up at the Kennedy School, we have had State election officials several times come for Army-style training exercises in which we put them through an attack, have them respond, try to figure out how they can mitigate risk, and do all of those things.

Mr. QUIGLEY. How does this work? Putting this into perspective, there are, I have been told, 10,000 entities that are involved in a Federal election.

Mr. ROSENBACH. Yes.

Mr. QUIGLEY. Do we have the capabilities—as you say, the military-type training—to have those folks train all the way down the line?

Mr. ROSENBACH. Sir, it is a big challenge, but not as big a challenge as trying to completely replace technical infrastructure. And so you train the trainer. We have a training manual. We bring in

people from States. They go back to the State. They run the exercise, train people how to do the exercise.

It is not perfect. It is certainly not the silver bullet. But we are just trying to do something that can have the most immediate impact on trying to mitigate the threat which, remember, also is about info ops. There is a lot—

Mr. QUIGLEY. Sure.

Mr. ROSENBACH. Yes, sir.

Mr. QUIGLEY. And I do want to—and we will be equally fair with the ranking member in time. But what concerns me is that we sometimes forget that operating elections smoothly does not just involve the hostile actors. The fact is, we had recounts in States this time out that were not allowed to finish because the election equipment was broken.

Mr. ROSENBACH. Yes sir.

Mr. QUIGLEY. The whole democratic process, even if you do not have the problem of hostile actors, often hinges in trying to find out who really won an election with how old this equipment is.

Mr. ROSENBACH. Sir, totally correct.

Mr. QUIGLEY. Thank you.

Mr. Graves.

Mr. GRAVES. Thank you, Mr. Chairman.

Let's get back to the topic here. I think we all have concerns about election outcomes and results. And even outside of elections, I think we all have concerns about cyber vulnerabilities. There is no question about that, Mr. Chairman.

Mr. Rosenbach, are you aware of any impact or change of an election result from the 2016 or 2018 elections as a result of any kind of cyber attack?

Mr. ROSENBACH. No, sir.

Mr. GRAVES. And so as we have this conversation, let's all know that there has been no altering of an election outcome. There is no evidence of that. Mr. Chairman, I know you are part of another committee that has gone into great detail and depth on this topic.

But I think the broader conversation is: Do we as a committee step in and provide States Federal money and tell States how to spend their money? Or do we provide them guidance and good counsel and training? I think that is where we are.

We are at the end of an authorization period where it was just about \$4 billion was authorized 10 years ago. We just provided the \$380 million in funding to the States. To the question about Illinois and their election systems and the cost, you are spot on, \$175 million, because in fact, yesterday Georgia just passed a budget that included \$150 million of State dollars to change out and upgrade elections equipment. So States can do it, Mr. Chairman, and I am proud that Mr. Bishop and I come from a State that is willing to step up and do that.

But as we look ahead, the question I have for everybody here is: What is the role of the Federal Government in this? Are we to spend another \$4 billion to get 10 years down the road to find out that we modernized things that we want to unmodernize again? That is where we are.

It is funny to hear this conversation. We want to go back to the way things used to be because we spent a lot of money to get

things in a spot to address where we think there might be a problem, but there have been no problems. So I will leave it with each of you on that, and we can just start down the table.

I appreciate your three-prong approach there on addressing some of those problems.

Mr. ROSENBACH. Yes, sir. Thank you. So the first point is—and the role of the government, like I mentioned—is to defend the Nation. That is why it is not fair to State and local election officials that they are there just taking the punches from the Russian Intelligence Service and the GRU. That means CYBERCOM needs to do something more proactive, as I believe they have been. We did not do that during the Obama administration. That was a mistake.

Second of all, I do think it is important for there to be Federal funding for the States because this is a nation-state actor. The States are not designed to have cybersecurity to defend against that threat. It seems fair, with that in mind, that you give them extra support for cybersecurity-type defenses.

Sir, I agree with you that—

Mr. GRAVES. For new equipment or just for assistance in training, protection, defense, those kinds of things?

Mr. ROSENBACH. Honestly, I would leave that to the States. You are right. It should be the States. Let them decide. There can be a general framework, but the States should decide what they need most. But they do need a little help for defending themselves.

Mr. GRAVES. As does the rest of the country. All entities need that same cyber protection.

Mr. ROSENBACH. Yes, sir. Yes. That is right. Exactly. And then just the last point is that—I will leave it there. I do not want to use up too much time.

Mr. HALDERMAN. The role of government in elections, I think, is one of providing for the common defense. The problem we have here is that from an attacker's perspective, they do not necessarily care what State they are going to strike in so long as it is one that is going to be able to cause a difference in a national election outcome, or undermine confidence in a national outcome.

And therefore, until we bring up the most weakly-protected States to an adequate level of security, the whole Nation is going to be at risk.

Mr. GRAVES. What is the weakest State, in your mind? Because right now we have heard there is no evidence of an election result being changed or altered as a result of outside influences of a cyber attack.

Mr. HALDERMAN. We have been very lucky that our adversaries have not pulled the trigger. And I think it is excellent that Georgia is making progress towards replacing its systems. Georgia has in the past been among the most vulnerable States. But there are still about 11 States that do not have an auditable, robust paper trail in place so that if something happens to the machines, we can go back and check. And I think that is the most persistent vulnerability.

Mr. GRAVES. That is preventing them from changing to a new system. So maybe it is that Congress should require some sort of auditing. And I think this goes back to your point—you had three points—that some sort of system that shows that there is an audit

trail or a way to account for election results. Is that what you are suggesting?

Mr. HALDERMAN. Congressman, I think it would be excellent if we had a uniform national policy that elections should be rigorously audited. But I think that having an unfunded mandate that States purchase perhaps hundreds of millions of dollars in new equipment in order to comply with that is going to create problems for many States that are struggling to find the money.

Mr. QUIGLEY. Mr. Cartwright.

Mr. GRAVES. The gentleman from Illinois might want to—

Mr. SANDVOSS. Okay. I will be brief. I just wanted to echo Mr. Rosenbach's thoughts on the role of the Federal Government in defending against these types of attacks. When I was on "60 Minutes," I was asked whether I thought it was a fair fight, Illinois versus the Russians, and especially an agency as small as ours. And I said it was basically bows and arrows against the lightning.

We have a good IT department, and our resources have been well spent. But the fact is, it is just not enough. And I think that with adequate funding, we can secure our elections even more. And I think it is vital that we do so. And letting the States be the primary driver as to where that money goes, I think, is the most prudent approach. Thank you.

Mr. GRAVES. Can I just have one quick follow-up? I know we are talking about elections, and I know you are specifically talking about voter registration files. That is something we should all be concerned about. But is the State of Illinois under cyber threats in any other aspect, any other citizen information that might be at risk? Any tax information? I know we are talking about voter information. But it should be a broader context. Right? And I do not hear that the State is asking for federal assistance to protect all the other files as well.

Mr. SANDVOSS. We are not aware of any specific systems that are currently under attack. I think it is more the unknown is what we are afraid of. We were not expecting a penetration into our voter database, and hopefully it will not happen again. But you are right. There are other systems out there that could very well be vulnerable. And I think it is our job to see that those are secured as well.

Mr. QUIGLEY. The gentleman is not suggesting that if they had hacked into the Medicaid files for the State of Illinois and done it in dozens of States that the States would not be asking for help from the feds.

Mr. GRAVES. You never know.

Mr. QUIGLEY. Well, again, just appreciate the level of sophistication of some at the State and local level in protecting these vital lists. This is not just elections. I do think it is a new world, with nation-state attackers attacking the local levels. But I appreciate that.

Mr. Cartwright.

Mr. CARTWRIGHT. Thank you, Mr. Chairman. And thank you to our witnesses for appearing today.

Dr. Halderman, I come from Pennsylvania, where to this day 83 percent of voters are using the paperless direct recording electronic voting systems, or DREs, direct recording electronic voting systems. These machines have been called a clear and present danger by the

blue ribbon commission on Pennsylvania's election security, as well as other experts in the field.

Now, as you noted in your testimony, this is a matter of the highest priority, these unauditable election machines. You said there is a plan to move to paper ballots, but that the costs have slowed the process. I looked at some of your research, and I found, dating back even to 2011, you found similar types of paperless voting machines used in India as particularly vulnerable to hacking. And as you have said, you have actually come here and demonstrated personally how to hack these machines.

Here is my question. In lay terms, can you walk us through, first, what is it that makes DREs particularly vulnerable? And then secondly, what are the steps somebody or a State actor would follow if they were intent on manipulating election results calculated by DREs, and how easy or difficult this might be to achieve?

Mr. HALDERMAN. I would be happy to, Congressman Cartwright. And I myself grew up in Pennsylvania, so—

Mr. CARTWRIGHT. I knew I liked you despite the Michigan pedigree.

Mr. HALDERMAN [continuing]. All right. So DREs are particularly vulnerable because, well, like other kinds of voting machines, they are computers. And so they are based on software and hardware that could potentially be compromised in many different ways.

They are actually much more complex computers than they look like. You would think they are just a simple touch screen, but it could be a million lines of computer software that is powering those machines in the back office systems.

I have studied DREs, including DREs used in Pennsylvania, since 2006. And for every machine that I have looked at, there have been ways that an attacker could craft malicious software, spread it into the machines, and use that to subvert all of the digital records of the vote the machine stores.

And with a DRE, the entire record, or at least the primary record of the ballot, is simply a file in a computer's memory. So if an attacker can tamper with the software, they can change that file. They can change all the records of the vote and make the machine produce whatever totals the attacker wants.

And it is not just attacking a single machine in isolation. Before every election, the DREs have to be programmed with the ballot design, the rules for counting, et cetera. And that is produced on a back office system somewhere by the election vendor or by the county or the State.

If an attacker can hack into those back office systems, they can spread malicious software to all the DREs programmed from them. And in the most concentrated, centralized case, there is one vendor that programs DREs in 2,000 jurisdictions across 34 States from a central facility.

So that is the risk, that an attacker can get into these systems, compromise voting machines on a massive scale, and just disrupt elections or even change results potentially on a wide enough scale to affect a national result.

Mr. CARTWRIGHT. Staying with the paper trail issue for the moment, do you think that all voting machines having a verifiable

paper trail is enough of a solution to the scenario you just described? Or is there more than Congress, States, or local election officials could or should be doing right now to make sure this never happens?

Mr. HALDERMAN. Well, briefly, it is not enough just to have a paper trail. We also need to make sure that voters are checking that paper trail to make sure that it is right and that election officials are auditing that paper trail to a high enough level of confidence that we know the election outcome produced by the computers is not fraudulent.

Mr. CARTWRIGHT. If you were advising the State of Pennsylvania on what to do today to make our election process more secure, where are the top three things you would recommend be done immediately to ensure the confidence in our elections?

Mr. HALDERMAN. I would recommend that Pennsylvania, as soon as possible, replace its out-of-date and paperless machines with paper ballots and optical scanners, and that Pennsylvania implement what are called risk limiting audits, which are random sample-based tests at the end of the election, where officials look at enough of the ballots to know that the computer results are right.

Then further improvements to cybersecurity best practices in the form of things like training, better testing of equipment, et cetera, would go the rest of the way to ensuring that elections cannot be sabotaged and results cannot be disrupted or changed.

Mr. CARTWRIGHT. Thank you, sir. I yield back.

Mr. QUIGLEY. Thank you.

Mr. Stewart.

Mr. STEWART. Thank you, Chairman, and to the witnesses. It has been very informative so far. And I am going to hit on some things really quickly and kind of go down the line here, if include.

Mr. Sandvoss, I want to start with you. And this is a tiny—well, not a tiny thing, but it is a small thing. But sometimes I think we hear things in here that perhaps witnesses say, “Well, I did not say that exactly the way I meant,” because there is a written record. I want to ask you, and I think you might clarify.

You said you are not aware of other systems under attack. We know that they are and you surely know they are. I just want to give you a chance to say, yes, it is not just the electoral process or systems under attack. Virtually everything is under attack by some type of cyber warfare.

Would you agree with that?

Mr. SANDVOSS. Yes, I would. And I did not mean to suggest that all the systems are secured and impregnable.

Mr. STEWART. And I knew you did not. That is why I wanted to give you a chance to add some clarity to that part of our conversation.

I was in Moscow in 2016 just before the election. I came home and I said, “They are going to mess with our elections.” I did dozens of interviews. No one really cared. They genuinely did not care. But I was often asked, “Well, what are they trying to do? Do they favor one candidate? Do they want?”—and I said, “What they want to do is break down our faith in institutions. They want to break down our faith in democracy.”

And there is no more greater catastrophe that we could endure than if people actually believed, for legitimate reasons, that an election, a national election, had been stolen and that it had been in some way altered by some foreign entity.

And whoever put this together at FSB or what other intelligence organization in Russia to do surely got a promotion out of this because I think it exceeded their wildest expectations. I do not think they thought that we would be talking about this three years later and on.

Mr. Quigley and I both sit on the House Permanent Select Community on Intelligence. We looked at this deeply. We had, about a year ago, a list of recommendations that I have 22 of them here that I am going to refer to in just a moment. The deal with this is something that I think all of us take seriously. So I want to again go very quickly. And for clarity, I want to hit this and allow all of you to have a chance to answer because Mr. Rosenbach, have, but others have not.

I want us to assure the American people of this one thing. This is an enormous problem. We have to be aggressive in dealing with it. But I also want them to understand, because some of them do not, that we do not have evidence of them altering the outcome of any election. And I want you to say yes or no, you agree with that.

Mr. Rosenbach, you already have. You said you agree with that. Mr. Halderman?

Mr. HALDERMAN. Yes. I agree with that.

Mr. STEWART. Okay. And Mr. Sandvoss?

Mr. SANDVOSS. I also agree with that, yes.

Mr. STEWART. Okay. Thank you. It is just for clarity.

One other thing that I think is important for people to recognize, this is not new. This did not just start in 2016 or 2018. We have examples of, for example, Russia interfering with a Ukrainian election where they actually had a news release predicting the outcome because they manipulated the numbers, and then they were able to stop it.

And I think it is again important for us to see this is not something that was just created. In fact, in the fall of the Berlin Wall, Russian people looked at us as, these Americans could be our friends, but I do not think Russian leaders did. I think they always kept the hybrid warfare and all of the options on the table, and they were active in that.

So now coming to the point, if I could, I think, Mr. Halderman, you are the one who has been making it. So I was fascinated with your conversation about your ability to demonstrate hacking of a system, and did so apparently pretty easy. If it is that easy, A, why have they not done it? And the second question is, how can we dissuade them?

Because that is something I have been advocating for for a long time, not just in the electoral process, but just dissuading these cyber attacks with more aggressive repercussions from it. Thoughts on that?

Mr. HALDERMAN. I do not want to give the misimpression that it is something so easy that anyone could do. But I do think that manipulating election results at scale is something that is well within the reach of sophisticated nation-states like Russia.

Why have they not done it yet? I think they have not done it yet because they have not seen it as in their interest yet to cause a disruption that severe to our electoral process. And that is what scares me, that it is not the technology that is preventing them or deterring them from causing wider-scale manipulation. It is that there are limits to their interest.

Mr. STEWART. A political calculation?

Mr. HALDERMAN. I believe so.

Mr. STEWART. So if there are those of us who have been advocating for a long time that we should have greater repercussions for some of their cyber intrusions—again, Mr. Rosenbach, I think you had suggested this in your opening statement—what would you suggest that might be? And do you think it would be effective?

Mr. ROSENBAACH. Yes, sir. I think we are on a path to doing that with taking more assertive actions, as reported in the Washington Post yesterday, that CYBERCOM cut off internet access for the organization that was responsible for this. I think there needs to be clear attribution, and people at the most senior levels of government need to say that this type of activity has happened, that there will be repercussions and sanctions, military action, and other things.

The one thing that I think is different is the manipulation of social media is something on a scale and a depth that would not be able to take place before because of the technology. And the technology changing has made their ability to influence much different than it was in the past.

Mr. STEWART. Well, thank you. And to the chairman, I wish I had another hour, but that would be unkind of me. But it is an important conversation.

Mr. QUIGLEY. Thank you.

Mr. Bishop.

Mr. BISHOP. Thank you very much. And thank you so very much for all of the work that you do.

I have read all of your testimony, and I am very impressed with the work that you have done and the questions that my colleagues have already asked.

I would like to talk about, or ask you to talk about, not just the voting machines, which I think that you have adequately discussed that, but the relationship between the voter registration systems and voting on Election Day so that the vulnerabilities of poll workers and polling places to verify that voters are actually registered or not registered, or registered at a particular precinct or not registered, which, if certain demographic groups are eliminated or are wiped from the record, would be prevented from voting when they appear, and particularly if they are voters who have to rush back to work who do not have time to do the added verification for provisional ballots.

What is the implication in terms of the vulnerabilities of our voter registration systems? I think in Georgia the Secretary of State's office has a database with all of the eligible registered voters and the local counties, county election boards have access to that through—I am not sure if it is internet, but there is an election connection there.



I think in Illinois your department, your Illinois State Board of Elections, has a separate pipeline so that you do not run your data, election data, through the internet. You have developed a separate system, which makes it more secure. But most States do not do that.

So can you talk about how we secure that, and the impact on national elections? The weakest link in that whole thing could very well determine the outcome in a close election. Can you just discuss that, the three of you?

Mr. SANDVOSS. I will try to address the importance of the link between voter registration systems and the actual voting on Election Day. And I think it is a critical link.

Obviously, maintaining an accurate list of the registered voters is paramount to an efficient, well-run election. I think where the problem could occur is if a malicious actor were to mess with the database, whether it is wiping it out or manipulating it. It could cause catastrophic problems on Election Day.

Mr. BISHOP. So, I mean, the research that you have done, does it indicate that there are vulnerabilities for doing just that?

Mr. SANDVOSS. Well, our system is an example of a vulnerability. Now, what the difference is, in Illinois we have a bottom-up system so that the voters are registered through the local election officials and then their information is transmitted up into our database. So theoretically they could wipe out our database, but elections would still go on because it is all done at the local level.

If there was an intrusion into the local database, that is where you would have a problem. And I think this is where the vulnerability is more acute in Illinois because the defenses that the local election officials have—in some cases—very little defense; others, maybe larger counties, have perhaps a stronger defense—but I think there is where the vulnerability is.

Now, in Illinois you have same-day registration and you have provisional voting so that, again hypothetically, if a county's system was compromised, people would still be able to vote because—

Mr. BISHOP. Let me ask Mr. Halderman if he could—you have done some looking at the Georgia system in terms of voter registration, how it relates. What is your observation there?

Mr. HALDERMAN. Yes. Well, Georgia is, I think, a good example. Potential vulnerabilities shortly before the November election. There were a number of problems detected with the Georgia online voter registration system including a simple attack whereby attackers could potentially manipulate voters' data.

I think the key to securing voter registration is monitoring to make sure that attackers are not penetrating the database coupled with resilience, having mechanisms in place, especially at the polls, to make sure that if something goes wrong with the database or the e-poll books, that the election can continue, including having things like early voting take some pressure off of Election Day systems and could add to that resilience.

Mr. BISHOP. Again, thank you. My time is just about expired. I thank you.

Mr. QUIGLEY. Thank you.

Mr. Joyce.

Mr. JOYCE. Thank you, Mr. Chairman.

Out of the \$380 million of the Help America Vote Act grants that were allocated in 2018, about one-third of the funds would be spent on cybersecurity, one-third would be spent on new voting equipment, and about one-third was supposed to be spent on voter registration systems and other State-specifies activities.

Mr. Sandvoss, when it comes to purchasing new voting equipment and improving cybersecurity, how long would you say it takes to fully implement these measures?

Mr. SANDVOSS. Well, in Illinois we have a process where voting system vendors seek approval from the State Board of Elections to allow their machines to be in use in Illinois. And we put them through a rigorous test. They also have to go through Federal testing as well.

Our testing probably takes—depending on the size of the election that is being tested, it could take a couple weeks. It could take over a month. My understanding is some of the problems happened with the vote testing at the Federal level, where there were some delays. It took a long time for voting machines to get the Federal approval necessary to even come to the State.

It is hard to put an actual beginning and end point to implementing these systems, I guess, or these qualifications for the voting systems to actually be in use. Right now we are still waiting for the Voluntary Voting System Guidelines to be promulgated by the EAC; once that is done, then voting machine manufacturers need to test their systems to those standards.

It is going to take a long time, and I cannot guarantee that it would be done by 2020.

Mr. JOYCE. Thank you. It is my understanding that each State has until 2023, and it will take most States at least 2 to 3 years to use the majority of these funds. I also understand the first progress report was due to the Election Assistance Commission only two months ago.

Mr. Chairman, it would seem to me that it would be more effective to see the financial and progress reports to determine the effectiveness of each State's approach before moving forward in allocating additional funds.

Mr. QUIGLEY. I appreciate your thoughts on that. If you want me to interject or ask questions related to that, that is certainly up to you. It is your time.

Mr. JOYCE. Well, I was just making that point of order.

Mr. QUIGLEY. No. I appreciate that. And if I might, and certainly giving you the time that you need. So the EAC is slowing the States down?

Mr. SANDVOSS. Well, it was just recently that the two new appointees were confirmed, and now the EAC has a quorum. So there was some delay, at least in getting the voting system standards out.

Mr. QUIGLEY. But your belief, and operating in these programs on a daily basis, is that training, equipment, software, and so forth is effective, and it protects your system. The fact that it may take longer than it should does not deter your interest?

Mr. SANDVOSS. Oh, not at all.

Mr. JOYCE. I reclaim my time, Mr. Chairman. With all due respect, in 2018 Ohio used Help America Vote Act grant funds to host regional tabletop exercises for election officials.

Mr. Rosenbach, these exercises were modeled after the crisis simulation organized by the Defending Digital Democracy project. Can you provide more information on how these types of events prepare our election officials for our worst case scenarios?

Mr. ROSENBACH. Yes, sir. Thank you for asking about that. And thank you for having the Ohio folks there. They did a great job and are real professionals. That is the project that I lead up at Harvard.

And what we do is we simulate a Russian cyber attack against the State and local election infrastructure and help them rehearse how to prepare for that in terms of risk mitigation steps technically and otherwise; how to respond to information attacks in the media and in the press, and via social media, which is what often would happen with the Russians.

And the reason we do that is along the lines of what Mr. Sandvoss said—it can take time to get new technical things in place, and we may not have that time. So we just want to rehearse, do like you do in the Army where you exercise to failure, learn from that, then teach someone else to do it, and try to have all the election officials in Ohio do something and learn and get better.

Mr. JOYCE. What other proactive steps can local election officials take to ensure personnel are adequately prepared or trained for these type of scenarios?

Mr. ROSENBACH. Yes. These are surprisingly basic things when it comes to cybersecurity. So it is making sure that they use the right type of password, making sure that they use encryption and two-factor authentication, that they have a plan for what to do if a hack occurs in terms of being resilient.

As many of you said, this is all about trust. And even if the bad guys attack us and we do go down, if we are able to demonstrate to the public that we went down and we came back up, the vote is still viable, you can trust in it, then it also diminishes the Russians' or the Iranians' desire to try to attack if they know it is not going to have any impact.

Mr. JOYCE. During my time as a county prosecutor, I used to represent a board of elections. We went to this electronic system, or the "egg," we called it the egg like an old grade school test. And you would put it in. We created a back door in the system so that the coy, in case there was an issue, could come back into it. Correct?

Mr. ROSENBACH. That will happen often. Back doors are not good cybersecurity practice for encryption or anything else.

Mr. JOYCE. Going forward, is there a way to eliminate that and still allow the system to be operable or have somebody be able to repair a malfunction without allowing something in?

Mr. ROSENBACH. In my experience, there is nothing electronic that will not have a vulnerability. And that is 20 years working in the intelligence community as a former NSA person in cyber. But that is why you build in all these other risk mitigation factors into it and why you do try to update technology, update software, address vulnerabilities, so that you make it a lot harder.

Mr. JOYCE. And I do not mean to go too far over my time—I am taking back some of the time that Mr. Chairman had used—but you really cannot have a back door. You cannot allow the manufacturer to be able to work on this equipment remotely without creating an opening for—

Mr. ROSENBACH. No, sir. I think back doors are a big cybersecurity vulnerability. If it were up to me, there would be no closed proprietary software used on election voting systems, and we would have a national project in which we worked on an open source system that would be much cheaper for the States, much more transparent, and have far fewer vulnerabilities.

Mr. JOYCE. Did HAVA address any of those things?

Mr. ROSENBACH. How would it address that?

Mr. JOYCE. No. HAVA, or Help America Vote Act.

Mr. ROSENBACH. HAVA addresses it right now because it is replacing and updating old technology which is full of holes that the bad guys can attack.

Mr. JOYCE. But it is true—

Mr. ROSENBACH. I do think that is important. But I think we could find a more—

Mr. JOYCE. That problem is—that is 50 separate programs, though. Correct?

Mr. ROSENBACH. Yes, sir. We could find a more innovative and more cybersecurity-based way to do that that would not be based on the current vendor-based system right now.

Mr. JOYCE. I get it. Thank you, sir. I yield back my time.

Mr. QUIGLEY. No. I understand. And Mr. Joyce raises interesting points, and important ones. We are just talking about the States and locals. But the attack that we were talking about in Illinois was through a vendor. Correct?

Mr. SANDVOSS. Actually, the attack in Illinois was not through a vendor. It was a direct attack into our system using the online voter registration website portal. It was an SQL injection.

Mr. QUIGLEY. But there was somebody related to the issue as it relates to a vendor who had supplied this or something. Is that—some accurate point? I mean, there has to be—because we are using vendors toward these points, is that not creating the vulnerabilities that we may not necessarily be alerted to?

Mr. SANDVOSS. That must have been one of the jurisdictions in Illinois—

Mr. QUIGLEY. Right.

Mr. SANDVOSS [continuing]. That involved a vendor, maybe storing information on the cloud or something to that effect. I do recall that. But that did not impact our—that was not the case in the attack on Illinois.

Mr. QUIGLEY. And we are going to get Mrs. Kirkpatrick in a second. But I will let the other two gentlemen discuss that issue, if they could.

Mr. SANDVOSS. Well, attacks on vendor systems or on vendors' customers lists, or attacks on vendors' supply chains, could also compromise equipment used by States throughout the election process. So the vendors are part of the problem. They can be part of a solution, too, because somebody does need to manufacture and service voting equipment. But we need better standards.

Mr. ROSENBACH. I would just say very quickly, the Russians or other national intel sources regularly try to get in through vendors to attack the United States Government, Department of Defense, and would do it in the election system.

Cybersecurity is a cost, a cost center in the private sector. That means there are not huge incentives for vendors to devote a lot of investment in the cybersecurity of their machines and technology unless forced to do so by a contract or otherwise.

Mr. QUIGLEY. I see.

Mrs. Kirkpatrick.

Mrs. KIRKPATRICK. Thank you, Mr. Chairman and Ranking Member Graves, for having this hearing. I agree with what Congressman Stewart said, that election security is so important to our democracy. We have all talked with voters who believe their vote does not count, and we have seen voter turnout decrease as a result of that.

In Arizona, we have early voting and we have vote by mail. And so my question to the panel is: Is that a better system? Is that a more secure system, voting by mail and having early voting? And what kind of risks do you see in that system?

Mr. HALDERMAN. Early voting can reduce pressure on Election Day. That is very positive. It does complicate some of the technology, but we have ways administratively of dealing with those complications. One of the most important things is to make sure that early voting as well is based on a paper ballot the voter can verify that gets audited after the election.

Vote by mail has pros and cons. On the pro side, it is on a paper ballot that can, at least in theory, be audited after the election. On the con side, unfortunately, voters are no longer voting within the safety of a polling place. And particularly for the weakest people in society, they could be at risk of being coerced or having their votes bought or stolen through the vote by mail process. So there are important tradeoffs involved.

Mr. ROSENBACH. Yes, ma'am. I would just say very quickly, I am a strong proponent of vote by mail and early voting. What Dr. Halderman said notwithstanding, if you just look at participation rates in States like Oregon and Washington State, they are significantly higher. That is good for democracy. And there are a lot of people who would not otherwise vote that will. From a cybersecurity perspective, also clear advantages.

Mr. SANDVOSS. I would have to agree with both of my colleagues on the points that they raised, especially the pros and cons. I think with mail-in voting, the obvious pro would be convenience for the voter and perhaps make it easier to do a random audit, a risk-limiting audit.

On the flip side, we get complaints quite often of people who get sent applications and then they said they did not request them, although that is perfectly legal in Illinois. But it contributes to that general sense of distrust.

It is also possible that without the security of voting in a polling place, there is no way to ensure that the voter is voting independently, without coercion. Sometimes a vote by mail can—or I should say offsite voting—it is a problem in nursing homes in Illinois,

where you get an overzealous precinct captain who might collect all the ballots and have improper influence on the way they vote.

So there are negatives, too. But I can certainly see the positives from an economic standpoint and a convenience standpoint.

Mrs. KIRKPATRICK. Same-day registration is becoming more and more popular. We do not have it yet in Arizona. But I would like each of your opinions on same-day registration. Is that a more secure way to register and vote?

Mr. SANDVOSS. I would say that, again, with same-day registration, it is more like a fail-safe, that if—as Mr. Bishop had brought up, the point about manipulation of the voter registration rolls, if such a situation were to occur, same-day registration would at least allow the person to vote, which to me is the most important thing, and then you can straighten out what happened afterwards.

As far as security is concerned, I do not see necessarily, from a technical standpoint, that being an issue. There may be an issue, though, related to verifying who the person is. Are they who they say they are? Because once they cast the ballot, then that is it. You cannot take it back.

Mrs. KIRKPATRICK. Other panelists comments?

Mr. HALDERMAN. Same-day registration can take some of the pressure off of the polling place operations and the poll books once again. It can add resilience. It does also require more technical plumbing to make sure that that process can work. And it is important that we apply good cybersecurity thinking there.

But I think the broader point is that election cybersecurity in general is a problem where we can make a lot of progress. And things like same-day registration can feed into improving that.

But I think unlike so many other cyber challenges, Representative Kirkpatrick, this is a problem where we can actually solve the problem. It is going to take a little bit of money, but it is not going to be decades of research. It is not going to be billions of dollars. We have an opportunity for a cybersecurity win in election security.

Mrs. KIRKPATRICK. Anyone disagree with that?

[No response.]

Mrs. KIRKPATRICK. Thank you. I yield back.

Mr. QUIGLEY. Mr. Graves.

Mr. GRAVES. Mr. Chairman, this is really a great discussion. I think it is a good opportunity to compliment the States in navigating a very difficult and challenging process, and keeping the integrity of the process because there are a lot of moving parts. I think every State is very, very different. And there is a lot of—I think we all know from our own elections—there is a lot of energy in the elections process from a constituent base and candidate base.

You could probably take this conversation broader, whether it was the IRS commissioner here or OPM or Treasury, or an SEC chairman sitting before us. We would probably have a very similar concern and conversation about what would we do with the cyber threats out there.

And I think you have brought up something that is fascinating, probably generally from the gentleman from Illinois. And that is, what do you do when you are a State that is being attacked? How do you respond to that? Who do you call? Who is going to be there

to help? And that is the biggest question to answer, really, quite frankly. How do we provide that support?

Something I have been a strong advocate for and have introduced legislation to address, is to allow for active cyber defense. We are a very passive Nation when it comes to cybersecurity, meaning we have to be impacted first and then we can respond.

Mr. Rosenbach, I think you have hinted at that, and the Federal Government is stepping into that role a little bit. I think we should enable States to do more of that, and the private sector as well, whether we are talking the IRS commissioner or States. Our largest business in our district, to the smallest business, to the family, who do they call when they are being impacted or how can they respond? And the answer is, everybody is vulnerable and left vulnerable.

So Mr. Chairman, as we go forward, I hope we can have a conversation, you and I and Mr. Stewart and others about how we can equip Americans and provide tools to be available to not only States or agencies or the private sector but others, to actively defend themselves in the cyber realm because this is a new threat and concern for everybody.

This is a fascinating and great conversation, and I appreciate all three panelists here.

Mr. QUIGLEY. And I want to give anyone a chance to ask a second round of questions. And I appreciate that, and I hope that as a committee we can talk about how HAVA was created. And Mr. Joyce, you were alluding to that, how this funding works right now.

The formula allows for consideration of voting age population. And one of the questions I want to get to is: Is there a better way to do that based on need or some sort of competitive analysis on this? And analyzing how well it works, too, to your point. So I appreciate that, Mr. Ranking Member.

And I guess we go back to the Democrats to a second round and go to Mr. Cartwright.

Mr. CARTWRIGHT. Thank you, Mr. Chairman.

One thing that we have heard multiple times today is this question: Are you aware of any outcome that was changed in any American election because of outside interference or hacking or things like that? And that is a little different from the question I would ask.

The question I would ask would be: Has any American election result been changed, whether we are aware of it or not? And so you think, well, we have been going back and forth about this lack of audit trails. How do we know? I mean, there are a lot of close elections that we do not have audit trails for. Do we know for sure, Mr. Rosenbach?

Mr. ROSENBAACH. We may not know for sure, but this is, my gut tells me, working on this stuff for 20 years, watching the Russians, doing a lot of intel stuff, doing intel oversight, is: What the Russians did is probably a very small part that we know of. What we know of is a very small part of what they actually did.

Any time the Russians have hacked something, including the Department of Defense, we find one small thing and only later unravel the greater part. So while we do not know that definitively,

and that is important to say, I do not think we should solace in that as a fact.

They are very good, they are very aggressive, and they are probably doing something right now, and may even be in the infrastructure we have just like they are in the energy grid and parts of the financial structure as well.

Mr. CARTWRIGHT. Well, along those lines, yes, the Russians are smart and they are aggressive. And they are also really subtle. So they know if they are going to bollix up one of our elections in a big way, it is going to cause a big uproar in this country and really attune everybody that this is an attack on our national sovereignty by a foreign power.

They are not that dumb. They are going to do subtle things. What is your take, Dr. Halderman?

Mr. HALDERMAN. I agree with you that they are going to strike when it is in their interests to strike. And unfortunately, our technology is not yet there to stop them. I think 2020 is going to be the bigger prize. It is not surprising that 2018 was relatively quiet because, as you say, the attackers do not want to induce an immune response, almost, that is going to make it harder for them to strike when they really want to later.

But the unfortunate truth is that although there is no evidence that votes have been changed through a cyber attack in this country, there are many places that just are not being checked because there are not audits in place. There is not a paper trail in place.

And if you go and ask DHS, for instance, how many voting machines they brought into a laboratory and did forensics on to make sure that there was no malicious software inside, I am pretty sure the answer is going to be zero. So there is a lot more that we could be doing to look for evidence of an attack.

Mr. CARTWRIGHT. Mr. Sandvoss?

Mr. SANDVOSS. As far as the question of, has there been an election that the results have changed and we did not know about it, obviously we do not have any evidence that here in Illinois—I am not saying that it is not possible; it certainly is.

We do have procedures in place to try to prevent that. We have a pre-election test, a public test, a post-election test. Our agency selects at random jurisdictions to be tested. The voting equipment is tested. So there is some assurance that we could give that the election results are legitimate.

But there are other factors that are beyond our control, and that is, what at least there is some evidence of is manipulation through platforms such as social media, which one could argue the extent that it affects an election. But when you have fake accounts hitting on hot-button issues that might influence somebody whether to vote or not, that could have a subtle effect on an election. And those are harder to defend against.

And the State Board of Elections cannot order or establish security procedures by the major social media companies. That probably would take some sort of Federal legislation.

Mr. CARTWRIGHT. Well, I thank you for all of your testimony today. I yield back, Mr. Chairman.

Mr. QUIGLEY. Mr. Joyce.



Mr. JOYCE. Thank you, Mr. Chairman. And the point I was trying to make initially was that we are creating 50 separate units and we have yet to hear from the last grants that were issued what the solutions were, or potential solutions. So before we—I am all for us admitting there is a problem.

But before we advocate for more money, we should certainly make sure that we are addressing the programs that exist. And to that extent, in 2016, as I understand, one of the problems we had was the open lines of communication were lacking between the Department of Homeland Security and State election officials.

As a result, they were unprepared to respond to detected suspicious activity in a timely manner. And I open this up to all of you. What efforts were made leading into the 2018 election to improve visibility and open lines of communication to State and local officials?

Mr. ROSENBACH. I will just say very briefly I think in 2016 there clearly was a problem of communication between DHS and the States on this issue. And I have to give credit to the Department of Homeland Security. In the last several years, it really has done a good job to double down on that effort, open lines of communication, pass information, give Secretaries of State security clearances.

I think all those things are very positive. And it is that role that the Department of Homeland Security should have that has gotten much better, too. But I think Mr. Sandvoss can give a better answer on that part, too.

Mr. SANDVOSS. I would say that the Department of Homeland Security, by its own admission, came up a little short prior to the 2016 elections with respect to communication. I think since then—maybe it was a wakeup call; I do not know—but I think their efforts have certainly improved.

I have been a part of two security briefings that I thought were worthwhile. They offer all sorts of assistance, free assistance, to jurisdictions that they need to take advantage of. I guess if there is one area that we would like perhaps to see a little more, it would be on-the-ground recovery assistance in the event of a cyber instance. Have boots on the ground, so to speak, to respond immediately.

I know there are 50 States that are probably going to be wanting that kind of assistance, so I could see that being problematic. But—

Mr. JOYCE. In that light, what should the EAC be doing to prepare for the 2020 election when you are back to a presidential year and you will have a larger volume of voters?

Mr. SANDVOSS. Well, I think one of the things they might consider doing is kind of what we did in Illinois with our Cyber Navigator program, have actual Cyber Navigators ready to go to respond to cyber instances. Have a team assigned to each State. Just a suggestion.

But I know that we have requested help, and they are very good at offering assistance. But a lot of times they will evaluate that, and we are expecting a CERT team to come in, and they will say, “Well, it probably could be better handled by you folks in Illinois,” as opposed to sending in a Federal team of Cyber Navigators to address a problem.

And it could be just lack of resources. It could be other things that I do not know about. I am just—my IT department tells me that that is probably the one area that they could use a little more assistance—not that the DHS is not doing a good job. I think they are, and they have come a long way. But we all can improve.

Mr. JOYCE. I see Dr. Halderman is champing at the bit to address this, so—

Mr. HALDERMAN. Well, let me just briefly say that I think DHS has been a big help in providing advice and guidance to States. They have come a long way since 2016. But I just want to emphasize that in States that do not yet have equipment with a paper trail in place, there is no amount of DHS assistance that is going to bring those States up to a reasonable level of security. You are just putting lipstick on a pig.

Mr. JOYCE. Well, that is a very good point. Then why have them? Unless we have a secondary trail to audit, why have them?

Mr. HALDERMAN. Why have—excuse me?

Mr. JOYCE. Why have a single system? If you do not have a paper trail, you do not have something to have your check and balance on, then why would you have a one-source system like that?

Mr. HALDERMAN. A one-source system? Well, there are States that have not replaced out-of-date systems that do not have a paper trail. And there is no good reason today, in 2019, to have a system that does not use paper ballots.

Mr. JOYCE. Well, the optical scanners we use with the old circle egg thing, at least at the end of the day you have the machine and you have a paper ballot to match again. I mean, I do not know why we would invest any money or allow a State to invest money in a system that just does not work.

You are saying that they have not been upgraded from the beginning?

Mr. HALDERMAN. That is right. There are States that have not upgraded those machines from the beginning. Years ago we did not understand, or at least the broader community around elections did not have the standards or the data or the experience to understand how risky it would be to use paperless voting systems.

But now with nation-state attacks being something you read about in the newspaper every week, well, we know better than that. But States need resources. They need to act to replace that equipment.

Mr. JOYCE. Thank you. Go ahead. You were leaning forward. We will take it. All right.

Thank you, Mr. Chairman. I yield back.

Mr. QUIGLEY. Mr. Bishop.

Mr. BISHOP. Thank you very much. I am still concerned about a national standard. It seems to me that if every—you got 50 States deciding to use whatever system they deem appropriate. And if there are some vulnerabilities, as perhaps in Georgia in 2016 or 2018, where there was some indication from Homeland Security and FBI that our systems were being targeted.

But the elections officials rejected the scrutiny so that we really do not know if it occurred. And the help from a robust backup system from the Federal Government was rebuffed, so we really do not know.

Do you not think that we need to have a national system that is standardized in spite of the fact there might be some concerns about overreach so that, for example, if every State had a system similar to what Illinois has employed—and as I understand it, you are not completely—you have not done that with all of your election authorities.

You really experimented with it. You have done only partial, what, a third, maybe half of them?

Mr. SANDVOSS. Actually, currently we have 94 out of our 108 are participating in the program.

Mr. BISHOP. Which means that would—and let me ask all three of you. If every State had a system similar to the one implemented in Illinois, would that make for a more secure—a better outcome for our Nation as a whole, particularly with our national elections?

Mr. HALDERMAN. If every State had a system that had hand-marked paper ballots, optical scanners, and manual risk-limiting audits, we would be quite well-protected. And I think voters could have confidence that any attack on the voting and tabulation process would be detected and correctable.

I think we do need stronger minimum standards for election technology and election auditing, just to make sure that we can bring up the States that are most weakly protected to a reasonable level. But at the same time we have to acknowledge and bear in mind that there are important differences between States and that being overly prescriptive just is not going to work.

But that core outline of a recipe, having paper ballots and having audits to a high level of confidence, is something that every State can do. And making sure that States have the resources to do it is the new challenge.

Mr. BISHOP. Do you think Congress should mandate those minimum standards?

Mr. HALDERMAN. I do. I think it is important to make sure that the most weakly protected States are not going to cause a risk for the entire Nation.

Mr. BISHOP. Mr. Rosenbach.

Mr. ROSENBAACH. Yes, sir. I, in my experience, have found it very difficult for Congress to mandate certain types of minimum standards. I think in general in cybersecurity, those standards tend to change pretty quickly, and it will be more often effective if you have a risk framework that they should follow that may be tied to funding so that they move forward that way.

Mr. BISHOP. Is a risk framework still the minimum standard?

Mr. ROSENBAACH. I think that is a very basic place—yes, that is a very basic place to start. That, I think, would be appropriate. In terms of the specific system, and maybe I am misunderstanding you, that could be more difficult because, as you know, in the history of the—it is very hard for the government to pick winners.

What I think would be a different approach is that we have a national project to develop an open source software platform that is transparent and results in a paper-based audit that is not based on profit. I am all for people making money, but—

Mr. BISHOP. Could we mandate that?

Mr. ROSENBAACH. I think you could mandate the development of something like that. You probably could mandate, and then it

would be to the States to figure out how to implement and how to use as it should be. It should be State-led.

Mr. BISHOP. Mr. Sandvoss.

Mr. SANDVOSS. Could Congress mandate it? Absolutely. As director of the election board in Illinois, I am always a little leery of Federal mandates, especially when they do not come with Federal funds.

Mr. BISHOP. And they are not funded.

Mr. SANDVOSS. Exactly, yes.

Mr. BISHOP. Because we are in a position to provide the funds.

Mr. SANDVOSS. And believe me, that is one of the reasons I am here, is to—

[Laughter.]

Mr. SANDVOSS [continuing]. To request that. But—

Mr. BISHOP. That is what we are supposed to be doing.

Mr. SANDVOSS. I agree.

Mr. BISHOP. But we want to make sure that the funds that we provide will be effectively used to get the desired results.

Mr. SANDVOSS. Yes. And I think the verdict is still out on that. I strongly believe that our Cyber Navigator program, if funded, is going to be successful. I guess we will know better after the 2020 elections. I am crossing my fingers that we do not suffer any incidents.

Mr. HALDERMAN. If I may just say, in the absence of stronger Federal standards, if there are more funds provided, I think it is really important to make sure that they are not wasted. And I note that many States do not have any rules that say counties and localities cannot turn around and use those Federal dollars to buy more obsolete and vulnerable machines.

That would just be a setback. So absence of greater standards. Just saying, you have got to have a paper ballot.

Mr. BISHOP. So you have got to have standards.

Mr. GRAVES. Mr. Bishop could you yield just for a moment? Just for a follow-up?

Mr. BISHOP. I will yield, yes.

Mr. GRAVES. Thank you. My understanding is the Election Assistance Commission has guidelines. Would you consider those the types of mandates or guidelines that the gentleman is requesting? And if so, I understand they are behind a little bit and the money is available. How do you match up with guidelines that have not been developed yet? And maybe that will address what he is asking.

Mr. BISHOP. Reclaiming my time, also, are those guidelines adequate?

Mr. HALDERMAN. Yes. So the EAC does create, under HAVA, what are known as the Voluntary Voting Systems Guidelines. And those are in the process of being updated and modernized. They have not yet been updated and modernized, unfortunately.

In any case, they are voluntary on the States and relatively weak in their scope. They will not cover processes like post-election audits that are a critical component of running a holistically secured election system.

So we need to do more to develop those standards. But in the meantime, just the high-level bullet in any kind of standard is

going to be: You have got to have a paper ballot that we can go back and audit.

Mr. QUIGLEY. Let's move on. Thank you, sir.

Mr. Crist.

Mr. CRIST. Thank you, Mr. Chairman. And thank you, witnesses, for being here today.

As a Floridian and a former governor, I know a little bit about contested elections. [Laughter.]

In fact, as governor, I made sure that all ballots did in fact have a paper trail so that we had something to verify against what we are being told by the electronic machines. I applaud and support any and all efforts to shore up our election security, especially through Help America Vote grants. And Mr. Sandvoss, I would inquire.

My home State of Florida was awarded \$19 million in election security grants. The State then added an additional mandate that any funds unspent by supervisors of elections at the end of the 2018 cycle were to be returned to the Florida Department of State. Basically use it or lose it, if you will.

Do you know of any other States that made such an addendum? And would you recommend it?

Mr. SANDVOSS. I am not aware of any other States that have made that. And no, I would not recommend that. In Illinois, for instance, the grant is over a five-year period. And to force the State through its local officials to spend it quickly as opposed to wisely, I think, would be the wrong way to go.

We are going to spend probably about \$1.2 million of our grant. But again, we want to keep our Cyber Navigator program running. And we need funds also to be available; depending on what they discover through their audits and their assessments, that takes time. So that would be my opinion on that.

Mr. CRIST. Thank you. Can you think of a reason why a State would add on such a mandate?

Mr. SANDVOSS. Offhand, I cannot.

Mr. CRIST. Neither can I.

To any of you, what do you think is the greatest security threat to the 2020 election cycle?

Mr. ROSENBACH. I will start, sir. I think the cyber aspect is very important. But honestly, I am more concerned about a disinformation campaign via the social media platforms that undermines trust and confidence in the elections when maybe there has not even been a successful cyber attack.

And that is where there still is a huge vulnerability. The social media companies have very grudgingly made very little progress on addressing threats to their platforms. And just the idea that the Russian GRU could spread "disinfo" about a hack in State that had not even occurred, a polling place being closed—those type of things could lead to distrust in our country that could be, I think, very undermining of trust.

Mr. CRIST. So inappropriate propaganda?

Mr. ROSENBACH. Yes, sir. All kinds of propaganda—highly targeted, just like they started to do in the past, continued to do, and certainly will do.

Mr. HALDERMAN. I agree with Mr. Rosenbach that social media and disinformation is a big worry. And it is a worry that is compounded because the social media companies have yet to make much of their data available to researchers on the outside who are trying to study cybersecurity and make things stronger.

But again, what keeps me up at night is not the things that we are going to see, like attacks in social media, but the things that might happen that we probably will not see if they happen, which could include attacks that tamper with election results.

It is one thing for voters to lose confidence because people are telling them lies. But in fact we cannot tell voters that we are confident that no votes will be changed in future elections until we have the election infrastructure secured to a level where it has resilience and auditability.

Mr. CRIST. What is required to do that?

Mr. HALDERMAN. New equipment that is going to be using hand-marked paper ballots and optical scanning, and rigorous post-election audits implemented by the States. We are starting to make some progress there, but there is a long way to do.

Mr. CRIST. Thank you.

Mr. SANDVOSS. And I would just have to say that I agree with both of my colleagues as to the threat that was outlined. Misinformation is out there, and I think it does have a negative effect on voter attitudes. And it does or could have the potential for influencing an election.

And by the same token, I think that the voting equipment vulnerabilities that were mentioned earlier, that is a legitimate concern as well. And it might not necessarily just be a situation of a hacker. It could be the machines themselves are old and they malfunction.

And if it happens on Election Day, a series of machines go down and you do not have anything to replace it, then you got problems.

Mr. CRIST. Thank you, Mr. Chairman. I yield back.

Mr. QUIGLEY. Thank you.

Ms. Torres.

Ms. TORRES. Thank you, Mr. Chairman, and thank you to our panel for being here today.

Lessons learned from the 2016—obviously, you have talked extensively about that. Unfortunately, I was not here for some of that testimony, so I apologize in advance if I ask some of the same questions.

I agree the Federal Government has to have minimum standards. And we have to have a basic recipe that our States should follow. In 2016, I know that several States refused Federal assistance just to simply scan systems for checks, to check if they had been compromised in any way. My State of California did not. They welcomed the Federal Government and allowed them to scrub and do some of that.

How can we work together, understanding that while the State of California is this big, other States may not be that big. So the requirements for them may not be the same. The threshold that they should be meeting may not be the same. But we have to have minimum standards and we have to have funding, I agree, to go with that to avoid potential issues that come across.

I know that in California, the database was looked at. There were questions whether if your voter registration was changed. But I could go online and check if I am still a Democrat. And I am still a Democrat, so I was happy about that. I was still registered in my own home. But that was another concern.

So how do we ensure that not just we are protecting the vote, but we are also protecting the registration?

Mr. SANDVOSS. Well, I can speak for my State. And we invited the DHS to come in and perform a risk and vulnerability assessment. I think it was worthwhile. How do States know if they have vulnerability if it has never been tested? That makes perfect sense to me.

As far as the cooperation that you spoke of, again I think that there has been a great improvement in the communication between the States and the Federal agencies—the EAC, the DHS. And I would like to obviously see that continue.

As far as having mandatory standards, I can see merit in that, especially with regard to basic security and perhaps some sort of auditing requirement as well. I would like to give that a little bit more thought, and I do not want to speak on behalf of my board on something like that because they probably have some ideas as well.

But the standards, I guess the devil is in the details—what exactly those standards would be. What would be the consequences for not following them? Would it be incentive-based or would it be just a flat mandate? Those are questions that probably need to be asked before going forward.

Ms. TORRES. I prefer incentive-based, but I would also like to see what do those minimum standards look like. What should they look like?

Mr. SANDVOSS. Yes. And that is probably beyond my capacity because I am not a tech person. So I could not give you a specific example of what those minimum standards should be. I just know, just in general, the systems need to be as protected against manipulation as possible.

And if it involves the risk-limiting audit that Dr. Halderman here is advocating, maybe that is the way to go. I have heard a lot of merit to that suggestion. I know in Illinois we would have to have legislation to implement it, and we might see that.

Mr. HALDERMAN. So standards can accomplish a lot of things. And one of the things that they might accomplish is greater normalization between States that have some of the better election practices and States that are a little bit farther behind.

I just want to offer one example of that. Representative Torres, in 2007 your State, California, brought in election experts and cybersecurity experts from across the country to do a thorough review of the computer code for all of the voting machines used in the State. And I took part in that.

And we documented about a thousand pages of severe vulnerabilities. And that is all published on the Secretary of State's website. Even today there are many States that use the same voting equipment that have not updated the software since before California's study.

So nation-state attackers do not have to invent new vulnerabilities. They just have to go read about them on the California website in order to figure out where to strike. And that is why there is a role for the Federal Government, to make sure that we bring up the bottom of the playing field here and keep everyone protected.

Ms. TORRES. Thank you. My time is up so I yield back.

Mr. QUIGLEY. And I appreciate that.

Mr. Graves, anything else?

Mr. GRAVES. No, sir.

Mr. QUIGLEY. I want to thank those who have participated. That was excellent. We have a lot of work to do. We appreciate your assistance today and the work that you will do on an ongoing basis, and we look forward to working with you as we move forward.

So thanks to everyone. This meeting is adjourned.



THURSDAY, MARCH 7, 2019.

**SUPREME COURT OF THE UNITED STATES**

**WITNESSES**

**HON. SAMUEL ALITO, ASSOCIATE JUSTICE, SUPREME COURT OF THE UNITED STATES**

**HON. ELENA KAGAN, ASSOCIATE JUSTICE, SUPREME COURT OF THE UNITED STATES**

Mr. QUIGLEY. Good afternoon. This hearing will come to order.

I sincerely want to thank Justice Alito and Justice Kagan for taking time out of their busy schedules to join us. I know it is not every day that I can compare myself to two Supreme Court Justices, but today both Justices and I have something in common: This is my first Supreme Court hearing as chairman of this subcommittee, and I know for both of you, this is the first time you are testifying before this subcommittee. So I want to welcome you both.

Additionally, this is the first Supreme Court public hearing since 2015, and as chairman of this subcommittee, it is my intent to hold a hearing with the Supreme Court more often to discuss the resources needed for the highest court and hear your thoughts regarding America's court system. I think hearings such as this one are a great way for the public to get more exposure to our third branch.

Today's hearing provides us with an opportunity to exchange ideas, discuss pertinent issues, and get a better insight into the judicial branch. The exchanges between our two branches are important as each branch plays a distinct role in our government. While we must collaborate with one another, we must also preserve appropriate autonomy in judiciary governance, management, and decisionmaking. Our two branches walk a delicate line in that we must work together, but remain separate in order for our democracy to uphold the intentions of our Founding Fathers.

I would like to thank the Justices for their recent budget request. I am always impressed with the Court's dedication to cost containment and desire to save taxpayer dollars, which has been demonstrated through the Supreme Court's consolidation of payroll, financial, and HR services, as well as their efforts to use in-house staff to manage IT projects when possible. This does not go unnoticed by the subcommittee and is appreciated.

Your mission is critical to the pillars of our Nation, and we thank you for your judicious and very effective use of the taxpayers' dollars.

The Supreme Court's fiscal year 2020 request includes funding for the Supreme Court Justices, employees, as well as rent, travel, and other expenses. This represents a modest 3.5 percent increase over the fiscal year 2019 budget. I look forward to hearing from you

on what you hope to accomplish in fiscal year 2020 with this funding.

Taking a step back, Congress provided an increase of \$5.6 million for 34 new positions to address security needs. This was a critical request, and I am pleased that Congress was able to fund it. The safety of the Justices, as well as those who work and visit the Supreme Court, should not be at risk. Let's continue to keep this dialogue on the ongoing security upgrades and additional resources needed to maintain a secure and welcoming Supreme Court environment.

I also want to briefly speak about an issue I care strongly about in providing the American people with more access to the Supreme Court. As Justice Brandeis famously wrote, "Sunlight is said to be the best of disinfectants."

That statement, while almost cliché now, still rings true. Whether you are here in Washington or in the comfort of your home, you can watch Congress and the executive branch in action on C-SPAN. That is an important part of making our Nation's legislative and executive branch open and transparent to all people.

But one government institution remains closed to the public eye, and that is the Supreme Court. Decisions on major cases, from *Brown v. Board of Education* to *Bush v. Gore*, have significantly shaped American society and changed history. Unfortunately, due to practices and policies, we have no video record of those historic decisions. In 2019, with so much new and innovative technology at our fingertips, it is time we should use every tool available to preserve America's judicial history.

Beyond cameras in the Court, most Americans have no idea how Supreme Court proceedings even work. I had the opportunity to be one of the few who got to sit in on the Court proceedings when I attended oral arguments in the case concerning Chicago's handgun ban. This is an opportunity that should be available to all Americans.

In the past, arguments on marriage equality have drawn substantive crowds, causing people to line up in advance in order to gain access to the court. It is not unreasonable for the American people to have an opportunity to hear firsthand the arguments and opinions that will shape our society for years to come.

The decision to release same-day audio from certain cases only highlights the fact that the Supreme Court has the technological capability to share audio of its proceedings with the American public.

Lastly, as I said earlier, I think it is important for our two branches to keep an open dialogue and discuss issues when necessary and not only once a year or so at a hearing such as this. So please know we are always happy to meet with you and discuss your concerns.

So, Justices, we look forward to hearing from you about the resources that you need to carry out your constitutional responsibility and we look forward to working with you in Congress.

Before I turn to our witnesses for their statements, I would like to recognize the ranking member, Mr. Graves, for his opening remarks.

Mr. GRAVES. Thank you, Chairman Quigley.

And welcome, Justices Alito and Kagan. It is good to have you with us today.

An independent judiciary entrusted to interpret the laws made by Congress and enforced by the executive branch is fundamental to fulfilling the Founding Fathers' vision for this country. Our system of checks and balances ensures government by and for the people, and we are so thankful for your role in that system.

As a co-equal branch, it is valuable for each of us to hear from you today. Outside of the confirmation process, these hearings are one of the few instances that we get to interact with your branch of government and have the opportunity to directly ask questions.

As we work together today to further examine the Court's needs and operations, I want to thank Chairman Quigley for assembling this hearing today.

Though the Supreme Court's budget request is not large at all in comparison to many of the other Federal programs that this committee will hear about in the weeks ahead, I am pleased that you are both here to testify, and I also appreciate that the Court has limited its request for additional resources.

As the Republican Leader of this subcommittee, I am committed to looking at all our Federal spending through a very fiscally conservative and thoughtful lens. With the Federal debt exceeding \$22 trillion, it is especially important that we all work together to take steps to put our fiscal house back in order, and we are grateful for your effort in that as well.

So keeping that in mind, we will certainly work to make sure that the Court has the necessary resources to fulfill your constitutional responsibilities.

Justices Kennedy and Breyer appeared before this committee several times, and we always appreciated their conversation, their humor, their dialogue, and certainly the guidance that they shared with us. And just the same, we look forward to your testimony today and your insights on the operations of the Court and are grateful for your appearance before us.

Thank you, Mr. Chairman.

Mr. QUIGLEY. Thank you, sir.

I would like to recognize Ms. Granger, the ranking member of the full committee, for her testimony.

Ms. GRANGER. I would like to thank Mr. Quigley and Mr. Graves for holding this hearing for financial services today on oversight of the highest court in the land, the U.S. Supreme Court.

I would like to add my welcome to our witnesses, Justice Alito and Justice Kagan. It is an honor to have both of you appear before us.

The Supreme Court is vital to our system of government and ensuring the survival of our Republic. This has been particularly evident in recent years as the Court has heard cases relating to religious liberty, healthcare, and the use of executive power.

One of the responsibilities the Congress holds is the power of the purse, and that is why we are here today. I hope to learn more about the Supreme Court's operation and funding requirements for the fiscal year 2020. This is a rare and unique opportunity, as Mr. Graves said, and so we take it very seriously.

Thank you again.

Thank you, Mr. Chairman.

Mr. QUIGLEY. I want to thank you, Ms. Granger.

I would now like to recognize Justice Alito for his testimony.

Justice ALITO. Chairman Quigley, Ranking Member Graves, and members of the subcommittee, thank you very much for giving Justice Kagan and me this opportunity to appear before your subcommittee to discuss the budget request for fiscal year 2020.

As was mentioned, Justices Kennedy and Breyer appeared here many times in the past. This is the first appearance for Justice Kagan and me. We are rookies. And I am sure when I get back to the Court, I will hear immediately from either Justice Kennedy or Justice Breyer or perhaps both of them that in all the times when they appeared here, they never broke any glass or spilled water. But as I said, we are rookies, so you have to indulge us a little bit.

In any event, as in past years, our budget request consists of two parts. We will present the first part of the request today. This part addresses salaries and expenses of the Court. The Architect of the Capitol will submit a separate written statement on the second part of the request, which concerns the care of the building and the grounds.

Before presenting our fiscal year 2020 request, we would like to express our appreciation for Congress' approval of our funding request for fiscal year 2019. We recognize that Congress and this subcommittee face a difficult task in allocating a limited amount of available money to fund a wide range of government activities.

The judiciary's entire budget request is small compared to the overall Federal budget, representing less than two-tenths of 1 percent of Federal funding, and the Supreme Court's request, in turn, represents only about 1 percent of the judiciary's budget. But although our request is tiny in relation to the overall budget, we appreciate the value of every dollar of funding we receive.

We are also grateful for the subcommittee's confidence in our ability to manage those funds efficiently. We remain fully committed to prudent fiscal practices.

I should note that our fiscal year 2019 request, following guidance from the Office of Management and Budget, did not include funding for the cost of living adjustment for Federal employees enacted in the most recent appropriations legislation. That adjustment will likely cost the Court an additional \$1 million annually.

To accommodate that increase, the Court has reduced spending by revising existing contracts and cutting back on other discretionary spending. We hope that these cost-cutting measures will allow us to forgo requests for additional funding related to the cost of living adjustment.

We do not have the capacity to reduce our mission or reduce our functions. We have no control, for example, over the number of petitions for review that are filed each year. Nevertheless, we continuously seek out ways to make our operations more efficient.

We would also like to thank the members of the committee for providing the Court with a substantial amount of additional funding last year. That was for additional security purposes, and we are carefully and deliberately putting those funds to work based on a top-to-bottom review of our current practices by highly regarded and experienced security experts.

The money you have provided will be used efficiently to expand and improve our physical security and our cybersecurity. If we find that additional money is necessary to ensure the safety of the Justices, Court staff, and many visitors received in our building every year, we will inform the subcommittee as soon as possible.

I would be happy to refer members of the subcommittee and your staff following the hearing to appropriate Court staff if there is a desire to discuss those security issues in greater detail.

For fiscal year 2020, the Court is requesting funding only to cover the continuation of existing activities. We are not requesting any new programmatic increases. The fiscal year 2020 request is \$90 million, consisting of \$3 million in mandatory expenditures and \$87 million in discretionary expenditures.

The total request is \$3 million higher than the amount provided in the last fiscal year. Half of this increase is due to an expected change in agency employer contributions to the Federal Employees Retirement System pursuant to guidance from the Office of Management and Budget.

Most of the Court's budget is devoted to personnel costs. Approximately 80 percent of the total request is for compensation and benefits of current employees. We have not requested a new nonsecurity-related position over the last 10 years. Instead, we have successfully utilized existing personnel to accommodate an increasing workload.

For example, we recently implemented a new electronic case filing system using our existing budget. The system provides easy access to all of the Court's case documents, including briefs, orders, and opinions, without logging in or downloading additional software, and there is no charge associated with use of this facility. It has been publicly accessible since 2017 through a link on the Court's website.

By building and maintaining this system in-house with existing staff, the Court saved 2 million taxpayer dollars.

In addition to accessing all case-related documents, the public may also use the website to access full transcripts of oral arguments on the same day they occur and audio of the arguments by the end of the week in which they take place.

We have also recently revamped the Court's website to make it more user friendly and to highlight important information, like the current term calendar and upcoming cases.

As a result, virtually every aspect of the Court's work is easily accessible to anyone with internet access. Last year, 19 million people visited the Court's website, a 30 percent increase over the previous year.

The Supreme Court building is also a popular attraction and forum for civics education here in Washington. The website's calendar lists the building's public hours and an online daily schedule of courtroom lectures in which our volunteer docents explain the history and the role of the Court. Last year, 421,000 people visited the building, and nearly one-third of those visitors attended one of the free lectures or tours.

Our 2020 request also includes \$1.5 million of no-year funding for regular upgrades to our IT systems, many of which have multiyear upgrade cycles. The Court reduced the request for this

annual funding in fiscal year 2018 by \$500,000, and the fiscal year 2020 request maintains that reduction.

The annual savings are a direct result of the Court's transition away from desktop computers to virtual work stations, which has reduced upgrade and maintenance costs. We will continue to monitor the no-year fund balance to ensure it is adequate to meet our long-term needs.

When the public interacts with our judicial system they see the substantial resources that Congress provides to the judiciary, whether it is courthouses, libraries, up-to-date information technology, or the thousands of staff who make the courts run smoothly and efficiently. The result is that these observers, along with many others around the world, see a tangible, powerful example of a Nation committed to the rule of law.

On behalf of the Chief Justice and the other Associate Justices of the Court, we would like to extend our sincere thanks to the members of this subcommittee for your continued confidence and support.

This concludes our brief summary of our request, and we would be pleased to respond to any budget-related questions that the members of the committee may have.

[The information follows:]

**Statement of Justice Samuel A. Alito  
Associate Justice of the Supreme Court of the United States  
Before the  
Subcommittee on Financial Services and General Government  
of the  
House Committee on Appropriations  
March 7, 2019  
1:30 p.m.  
Rayburn House Office Building, Room 2359**

Chairman Quigley, Ranking Member Graves, and Members of the Subcommittee.

Thank you for giving Justice Kagan and me this opportunity to appear before your Subcommittee to discuss the Supreme Court's budget requirements for fiscal year 2020.

The Supreme Court's budget request consists of two parts. As in past years, we will present the first part of the request today. This part addresses salaries and expenses of the Court. The Architect of the Capitol will submit a separate written statement on the second part of the request, which addresses the care of the building and grounds.

Before presenting our fiscal year 2020 request, we would like to express our appreciation for Congress's approval of our funding request for fiscal year 2019. We recognize that Congress and this Subcommittee face a difficult task in allocating a limited amount of available money to fund a wide range of government activities. The Judiciary's entire budget request is small compared to the overall federal budget, representing less than two-tenths of one-percent of federal spending. The Supreme Court's request, in turn, represents only 1 percent of the Judiciary's budget. Although our request is tiny in relation to the overall federal budget, we appreciate the value of every dollar of funding we receive. We are also grateful for the Subcommittee's

confidence in our ability to manage those funds efficiently. We remain fully committed to prudent fiscal practices.

I should note that our fiscal year 2019 request, following guidance from the Office of Management and Budget, did not include funding for the cost-of-living adjustment for federal employees enacted in the most recent appropriations legislation. That adjustment will likely cost the Court an additional one million dollars annually. To accommodate that increase, the Court has reduced spending by revising existing contracts and cutting back on other discretionary spending.

We hope these cost-cutting measures will allow us to forgo requests for additional funding related to the cost-of-living adjustment. We do not have the capacity to alter our mission or reduce our functions. We have no control over the number of petitions for review that are filed each year. Nevertheless, we continuously seek out ways to make our operations more efficient.

We would also like to thank the members of this Committee for providing the Court with a substantial amount of additional security funding last year. We are carefully and deliberately putting those new funds to work based on a top-to-bottom review of our current practices by highly regarded and experienced security experts. The money you have provided will be used efficiently to expand and improve our physical and cyber security. If we find that additional money is necessary to ensure the safety of the justices, Court staff, and visitors to our building, we will inform the Subcommittee as soon as possible. I would be happy to refer you to the appropriate Court staff following the hearing if you would like to discuss this matter in more detail.



For fiscal year 2020, the Court is requesting funding only to cover the continuation of existing activities. The Court is not requesting any new programmatic increases. The fiscal year 2020 request is 90 million dollars, consisting of 3 million dollars in mandatory expenditures and 87 million dollars in discretionary expenditures. The total request is three million dollars higher than the amount provided in fiscal year 2019. Half of this increase is due to an expected change in agency employer contributions to the Federal Employees Retirement System pursuant to guidance from the Office of Management and Budget.

Most of the Court's budget is devoted to personnel costs. Approximately 80 percent of the total request is for compensation and benefits of current employees. The Court has not requested a new, non-security-related position over the last ten years. Instead, we have successfully utilized existing personnel to accommodate an increasing workload.

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information, like the current Term calendar and upcoming cases. As a result, virtually every aspect of the Court's work is easily accessible to anyone with internet access, anywhere in the world. Last year, 19 million people visited the Court's website, a 30 percent increase over the previous year.

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Our 2020 request also includes 1.5 million dollars of no-year funding for regular upgrades to our IT systems, many of which have multi-year upgrade cycles. The Court reduced the request for this annual funding in fiscal year 2018 by 500,000 dollars, and the fiscal year 2020 request maintains that reduction. The annual savings are a direct result of the Court's transition away from desktop computers to virtual workstations, which has reduced upgrade and maintenance costs. We will continue to monitor the no-year-fund balance to ensure it is adequate to meet our long-term needs.

When the public interacts with our judicial system, they see the substantial resources that Congress provides to the judiciary, whether it is courthouses, libraries, up-to-date information technology, or the thousands of staff who make the courts run smoothly and efficiently. The result is that these observers—along with many others around the world—see a tangible, powerful example of a Nation committed to the rule of law. On behalf of the Chief Justice and the other Associate Justices of the Court, we

would like to extend our sincere thanks to the members of this Subcommittee for your continued confidence and support.

This concludes a brief summary of our request. Although we cannot comment on Court decisions or pending cases, we would be pleased to respond to any budget-related questions that the Members of the Subcommittee may have.

Mr. QUIGLEY. Thank you, Justice Alito. We appreciate it.

You heard me mention in the opening the desire of many to have Supreme Court video. In the past we have had this debate, and I have come to the conclusion, clearly, it is your decision, and I believe in the independence and the autonomy of a separate branch.

I just want you to know there are a lot of folks who, as you know, can't get into the Supreme Court to watch these arguments. In the case I mentioned and a few others, *Brown v. Board of Education*, there were historic, brilliant arguments made that only perhaps a few hundred people could watch in person.

I know that there are valid reasons to not video Supreme Court cases, such as behavior change, editing, and so forth. We flub up a lot here, but we are on C-SPAN, and so our mistakes are live. And while in a democracy, the trains don't always run on time, we don't always look our best, and maybe it has a negative impact.

The last time we had the discussion, it was the anniversary of the release of "Mr. Smith Goes to Washington." The reason I bring that up is when that movie was released, it was screened before an audience which was largely the U.S. Senate, and they didn't like it. It didn't make us look good. The irony was it was also screened in Moscow and Berlin, and they made the decision not to show it in their countries because they thought it made us look too good. Beauty is in the eyes of the beholder.

I would just like your thoughts on if there is an evolving sense within the Court of whether or not to expand to at least some limited video feeds of the arguments.

Justice ALITO. The first thing I think I should say is that all of my colleagues and I share your interest in making our proceedings and everything that the Court does as accessible to the public as we possibly can consistent with the performance of our paramount function, which is to decide cases in the best possible way.

I was thinking about this issue of access before coming over here, and what I am going to say will date me, but what occurred to me was how much more accessible the Supreme Court is now than it was when I started out as a lawyer, and even before that, when I was interested in the work of the Supreme Court when I was in college and even in high school.

If someone back in those pre-internet days wanted to read an opinion that was issued by the Court a few years ago, it wouldn't be that easy to find a library with reports of the Supreme Court. Certainly the little municipal library where I grew up didn't have that.

So you would have to find a law library or a big library that had the U.S. reports or one of the commercial services. And then if you wanted to take a copy home and read it and study it, you would have to—you might be able to make what we called in those days a Xerox copy, by feeding money into a machine. Now every opinion that we issue is instantly available on our website.

If you read an article in the paper about a decision that had just been handed down and you wanted to see exactly what the Court said, that would be even more difficult. You would have to find a law library with a subscription service called U.S. Law Week, and that was an expensive subscription service. And then you might get

a little account of the argument if it was an important case, and you would be able within about a week to read the Court's opinion.

Now, if you wanted a transcript, that would be extraordinarily difficult. You would have to find a very good law library, and you wouldn't be able to get that for years. If you wanted to read the parties' briefs, that would also be extremely difficult.

Now all of that is available free of charge to anybody who has access to the internet. We issue a transcript of all of our oral arguments on the day when the argument takes place. It used to be a few years ago that the person, the Justice asking a question wasn't identified in the transcript. Now all the Justices are identified. So you can see exactly what was said, every single word. And we release the audio of all of our arguments by the end of the week.

But then we get to the issue on which there is a lot of interest, and that is televising our arguments. And I recognize that most people think that our arguments should be televised. Most of the members of my family think that arguments should be televised. I used to think they should be televised.

When I was on the Third Circuit, we had the opportunity to vote on whether we wanted to allow our arguments to be televised, and I voted in favor of it. But when I got to the Supreme Court, I saw things differently, and it wasn't because I was indoctrinated or pressured by my colleagues.

But I came to see and I do believe that allowing the arguments to be televised would undermine their value to us as a step in the decisionmaking process. I think that lawyers would find it irresistible to try to put in a little sound bite in the hope of being that evening on CNN or FOX or MSNBC or one of the broadcast networks, and that would detract from the value of the arguments in the decisionmaking process.

Mr. QUIGLEY. That sort of thing never happens here.

Justice ALITO. I recognize times change, and I don't know what our successors years from now will think, or maybe even next year. It has been a while since the members of the Court collectively have discussed this issue, but it has been our consensus for a while that this would not be—although we want as much access as possible, we don't want access at the expense of damaging the decisionmaking process.

Mr. QUIGLEY. Justice Kagan, your thoughts?

Justice KAGAN. Thank you very much, Mr. Chairman. And if I could just thank all of you for the invitation to be here. We very much appreciate it, Justice Alito and I and the entire Court.

As to this question, I find it a very difficult question, and like Justice Alito, my views on this question have somewhat evolved over time.

And if you will agree to let me get to the place where I tell you about the cons of cameras, I will start by telling you about the pros and very much sympathizing with some of the things that you said, Chairman Quigley. Because I think more than just transparency for transparency's sake, the good of having cameras would be that people would see an institution at work, which I think does its work pretty well.

When I was Solicitor General, one of the jobs of Solicitor General, in addition to arguing every month, is that you are always there

when members of your office argue. And so the time I was Solicitor General, I probably sat as a spectator for about 75 percent of the Supreme Court's arguments, and I was constantly impressed by how the Court went about its business, that it was thoughtful and it was probing. And it was obvious that the Justices really wanted to get things right.

And it is no small benefit if the American public were able to see that, because faith in institutions of governance is an incredibly important thing. And for me the greatest positive of having cameras would be that it would allow the public to see an institution working thoughtfully and deliberately and very much trying to get the right answers, all of us together.

But having said that, I will wholeheartedly agree with Justice Alito that the most important thing is that the institution continue to function in that way, not that people see it. If seeing it came at the expense of the way the institution functioned, that would be a very bad bargain, and I do worry that cameras might come at that expense.

You know, I think it is a principle of physics, I think, which is about how when you put the observer, when the observer comes in, the observed thing changes. And you commented on Congress, and if you all were given truth serum, I think some of you might agree that hearings change when cameras are there.

Now, I have to say I think that they might change in the Court in subtle ways. I don't think all that many people would grandstand. I hope that my colleagues and I would not do that. But I think we would filter ourselves in ways that would be unfortunate.

In other words, the first time you see something on the evening news which taken out of context suggests something that you never meant to suggest, suggests that you have an opinion on some issue that you, in fact, don't have, but that—you know, when I come into the courtroom, I play devil's advocate. I probe both sides hard, and I challenge people in ways that might sound as though I have views on things that I, in fact, do not, just because that is the best way of really understanding the pros and cons of a case. And I worry that that kind of questioning, which I think we all find very conducive to good decisionmaking, would be damaged if there were cameras.

So I think, as Justice Alito expressed, I think this is a hard issue. I think that there are things to be said on both sides of it. And I do want to emphasize, as he emphasized, that we haven't spoken about this together as a conference since I have been at the Court. But I think that there is real value to being deliberate and to being careful and to not doing things that we would later regret in terms of how the institution operates.

And I will say just one last point in addition to all the things that Justice Alito said about the ways in which we are transparent. I think that the most crucial way that we are transparent is that all of our decisions get made with reasons. In other words, you always know—or almost always—when we make decisions why we are making them and the views of the various Justices of the Court. That is the most important thing, far more important than the arguments, which, in fact, play a very limited role in our decisionmaking process.

Mr. QUIGLEY. Thank you so much.

Mr. GRAVES. Mr. Joyce needs to go first.

Mr. QUIGLEY. All right.

Mr. Joyce.

Mr. GRAVES. He is the Republican leader on the Interior Committee and will need to leave here momentarily.

Mr. QUIGLEY. Thank you, sir.

Mr. JOYCE. Thank you very much for recognizing me out of turn. And when I am through asking my question and I get up and leave, it is no disrespect to you. Mr. Amodei is sitting down there holding court for me so I can get back to mine.

As a former prosecutor and aging trial lawyer, this appearing before two lions of the Court is probably as good as it is ever going to get for me.

But I certainly appreciate, Justice Alito, what you were talking about, the transparency issue, and I appreciate what you have been doing as far as making the workings of the Court available to them. But for those of us, the vast majority of us who will never appear before the Supreme Court, who are down in the inferior courts, the appellate courts, the bankruptcy courts, the trial courts, as you know, we are on the PACER system, and we have to pay money to get those things.

What impact do you think the Supreme Court's making this available for free has had on the transparency of the Court, if you will, in allowing people to have some input or be able to see, without the use of cameras, be able to see into what you do?

Justice ALITO. Well, I hope that the electronic filing and the other measures that have been taken in recent years will increase understanding of the work of the Court. Other than hearing our voices immediately or seeing our faces with our lips moving, the public can see everything that goes on in the Court, from the filing of a petition for certiorari until we issue an opinion deciding a case.

That is a tremendous development, and I think it is good that all of that is available to the public free of charge, because we do want the public to understand what we do to the greatest extent possible.

We also receive a great many visits during the course of the year from students, ranging from sometimes even elementary school students to groups of law students, and I think my colleagues and I like the opportunity to speak to them and to explain to them what we do, because it is important in a democracy for the public to understand what all of the institutions do.

Mr. JOYCE. Justice Kagan.

Justice KAGAN. I agree with everything Justice Alito said on that. I mean, the electronic filing system that the Court has put into place in the last year or two has made, I think, an enormous difference for people who practice before the Court, but also people who are just interested in the Court. And we were able to do it with the appropriations that you gave us and a tremendous staff that put untold hours into that project. And so the Justices are very appreciative of that.

Mr. JOYCE. Well, I, for one, would disagree with the chairman in that I don't believe that more visibility and cameras in the courtroom would be any good. I agree with your assessment. Just in my

limited time here in the House, people are changed beings when they get in front of the camera and not all for the good.

But I am certainly interested in the transparency and the education of the public as to the collegiality of which the nine of you enjoy, and I think it gets ripped apart at times when people see 5-4 decisions. It is not an us-against-them game. It is the work and the hard work that you all put into it, asking those hard questions. And any way we can get the public to be able to visualize that without necessarily seeing it on camera I am all for, and I think the rest of this committee would be for, is helping you get that accomplished not only in the Supreme Court, but in the lower courts as well.

Justice KAGAN. You know, you put your finger on something, I think, that we find a little bit frustrating, because we are a very collegial institution. We like each other quite a lot. I think people think of the 5-4 decisions as sort of the only thing we do.

In fact, Justice Alito and I agree with each other far more often than we disagree with each other. And one of the things I think as we talk to groups, whether in law schools or elsewhere, I think all of us try to emphasize this, the extent to which the Court really functions as a unit.

Of course there are going to be cases in which our different views about how to do law, how to interpret the Constitution, put us in opposition to each other. But 40, 50 percent of the time we are unanimous, which is sort of an amazing thing given that we only take the hardest cases, cases on which there are splits in the courts below. Another 30 or 35 percent of the time we are split in all kinds of random and different ways.

So I think it is one of the things that we would like to make clear to people is how much of what we do does not follow this stereotype of the perpetually divided Court.

Mr. JOYCE. Would you care to respond?

Justice ALITO. Well, I agree with what Justice Kagan said, and it is an aspect of our work that is overlooked, understandably, because the most controversial cases tend to be the ones where we are the most closely divided.

We have developed a very open style of debating issues back and forth among the Justices when there is a majority opinion and a dissent. We argue the issues robustly, let me put it that way, and increasingly we don't pull any punches.

And we don't take it personally. When one of my colleagues attacks my reasoning and says it doesn't make any sense, I don't take it personally, and I hope that the same is true when I reciprocate.

But I think sometimes people who read what we write may get the wrong impression that we are at each other's throats in a personal sense, and that is certainly not true. And this is not just something that we say for public consumption. This is the complete truth.

Mr. JOYCE. I yield back my time, but I am all out, Mr. Chairman. Thank you very much, and thank you for the opportunity to be here today.

Mr. QUIGLEY. Thank you, sir.

Mr. Cartwright.



Mr. CARTWRIGHT. Thank you, Mr. Chairman.

And thank you to our witnesses for appearing today, Justice Alito, Justice Kagan.

Justice Alito, as the lone Pennsylvanian here on this panel, it is a pleasure to have a representative of the Third Circuit here.

It is hard for us to understand those Second Circuit accents, but it is nice to have you here too, Justice Kagan.

I know I speak for all of us here on the Appropriations Committee and all of us in Congress when I say that we honor and fight for the independence of the judiciary. And as part and parcel of that, we fight for the security of the judiciary, and I want to talk about that a little bit.

Between fiscal years 2018 and 2019, the Congress approved \$5.6 million for security upgrades and modernization, along with an additional 34 positions for the Supreme Court. I am pleased Congress was able to accommodate the request, and rest assured that we will continue to review and regard security requests coming from the Supreme Court as a top priority.

The first question is, does the fiscal 2020 Supreme Court budget properly cover your security needs? Are you getting what you want?

Justice ALITO. We believe that it does. And we cannot express strongly enough our appreciation for the support that the committee has given us in the past.

If it turns out that we have additional security needs, we will take the opportunity to let you know. But my understanding is that our security people and the outside experts they have consulted believe that we have the resources now that we need.

Mr. CARTWRIGHT. And if you have a dissenting or concurring opinion, Justice Kagan, you let us know.

Justice KAGAN. I will let you know.

Mr. CARTWRIGHT. Secondly, regarding the 34 new positions involving the increase in security funds, are you able to provide us a status update on those 34 new hires?

Justice ALITO. I think most of the positions have been filled.

Am I correct?

I am sorry. Eight have been hired as of last year. I stand corrected.

Justice KAGAN. We have been taking this quite deliberately. The Chief Justice hired some security consultants, and those consultants have been talking to everybody in the building with a view on these questions, to the police officers themselves, to the Justices, about how exactly it is we should change some of the security practices that we follow given that we will have greater resources. And so we wanted to let that review process go forward before hiring everybody.

Mr. CARTWRIGHT. How long does it take to onboard one of these new hires, if you know?

Justice ALITO. I don't know personally.

Mr. CARTWRIGHT. And this is not a pop quiz. You can get back to us.

Justice KAGAN. Many months, I am hearing from behind.

Justice ALITO. I should have introduced some of the members of our staff who came here with us. But this is our marshal, Pam Talkin, who is in charge of the police force.

So she tells us that it takes many months, and that is certainly true. They go through standard Federal law enforcement training before they begin.

Mr. CARTWRIGHT. Well, of course, one of the things driving my questions is this concern about the current political climate where we have seen a rise in public criticism of not only courts, but also specific judges. And it is deeply disturbing to me and I think to all of us to see specific judges questioned not on intellectual grounds, but on personal grounds.

Most recently in the news, there was a photo posted online of District Judge Amy Berman Jackson with a target placed on her likeness. These are deeply disturbing things to us. And, of course, she is not a Supreme Court Justice.

But here is the question. Do you believe Congress ought to consider increasing appropriations for the security needs of district and circuit court judges in the 2020 budget?

Justice ALITO. We are not, I think, fully cognizant of the security needs at this time of the lower courts. I believe when you receive testimony regarding the overall Federal judiciary budget that would be an opportunity for someone who is more knowledgeable to speak to that.

But certainly, having been a lower court judge, a court of appeals judge for 15 years, I am very cognizant of the security needs of judges at those levels.

In some respects there the security threats to them are more serious than they are to us because district judges, trial judges at all levels, have much greater contact with members of the public and are often involved in cases where emotions run very high. And so many of the instances of unfortunate attacks on judges have been on trial-level judges.

Mr. CARTWRIGHT. I thank you. I yield back.

Mr. QUIGLEY. Thank you.

Ms. Granger.

Ms. GRANGER. Thank you.

Each year between 6,000 and 8,000 cases are filed with the Supreme Court. The Court usually hears arguments for 70 to 90 cases.

So Justice Alito, I would ask you, can you tell us how the Court decides which cases to hear?

Justice ALITO. Yes. We have two main criteria, and we select our cases based on the application of those criteria.

The first and the most important is, is there a disagreement about a significant legal issue among the lower courts? This can be a conflict in the decisions of the Federal courts of appeals or conflicts involving State supreme courts.

What the Constitution means and what the statutes enacted by Congress mean should be the same everywhere in the country. The law should not mean one thing in one State or one judicial circuit and something else in another circuit. So that is the main thing that we look for.

But we will also take cases that involve what we regard as an important issue of law that should be decided without any further delay, without waiting to see whether there will be a disagreement among the lower courts.

And the best example of that is a situation in which a statute enacted by Congress is held to be unconstitutional. We will almost always review that, even if there is no conflict in the decisions of the lower courts.

Now, there are some other cases that are also very important and we will take without a conflict. But those are the two main things that we look for.

Ms. GRANGER. Thank you.

Justice Kagan, would you say that there are additional worthy cases that you think should be reviewed?

Justice KAGAN. You know, I think all or most of us think that we probably could handle a few more cases than we currently do. And in the abstract, I think, we would say: Well, instead of that 70 cases, why not handle 90?

But then it turns out that even though we all think that, we don't find 90 cases to take using the criteria that Justice Alito laid out. But using those criteria, that is about what we have been coming up with year by year.

It used to be that it was much more. You know, I clerked on the Court about 30 years ago, and at that time the Court was handling 140 cases per year, which was too many. I don't think anybody would want to go back to that.

But there has been a lot of ink spilled about why it is that the Court's docket has declined. I don't think it is because the Court has wanted to be at 70. I think, as I said, in the abstract, I think we all would like to have some more.

But when we apply those criteria, which are the criteria—I think there is very wide acceptance on the Court that those are the criteria that we should be using, and when we apply those criteria, we have ended up, certainly since I have gotten to the Court, which is almost 10 years ago now, with about that many cases.

Ms. GRANGER. Thank you. That is the only question.

I just have one statement, going back to the discussion about your security. You are very important to us, to the Nation, the Supreme Court, and so if there is a need for additional security dollars, I am sure the subcommittee would be very much in favor of it.

Thank you both for being here.

Justice KAGAN. Thank you.

Justice ALITO. Thank you.

Mr. QUIGLEY. Thank you.

Mr. Bishop.

Mr. BISHOP. Thank you very much.

And let me welcome our distinguished Justices.

Let me ask two questions. I will ask them both, and perhaps I can expedite time.

The first has to do with law clerk diversity. A fairly recent National Law Journal study examining Supreme Court clerks from 2005 to 2017 found that the composition of the Supreme Court clerks does not even remotely reflect the makeup of our country.

Eighty-five percent of clerks during this period were White, 9 percent were Asian, 4.1 percent were Black, and 1.8 percent were Latino.

Clerking on the Supreme Court allows these attorneys to participate in deliberations that directly influence the interpretation of our Nation's laws. These decisions impact hundreds of millions of people in the country and sometimes across the world. These clerks are often on a fast track to judgeships, positions in academia, high profile attorney positions, in and outside of government.

Are you concerned about the potential impacts that can result from a Court that does not reflect the populace that it serves? And what, if anything, is the Court doing to address that issue?

My second question has to do with attacks on the Court. Last November, Chief Justice Roberts stated that after a number of attacks on the judiciary by President Trump, quote: "We do not have Obama judges or Trump judges, Bush judges or Clinton judges. We have what is an extraordinary group of dedicated judges doing their level best to do equal right to those appearing before them. That independent judiciary is something we should all be thankful for."

Do you believe that recent verbal attacks on the judiciary undermine the ability to interpret the Constitution and laws of the United States? Do you believe that the recent attacks undermine the stature, the reputation, and the respect for the Court, and the strength and the foundations, therefore, of our democratic system?

Justice KAGAN. Congressman Bishop, I will take your first question.

This is an issue that I believe we take very seriously. Each of us hires individually, so there is an extent to which we can't talk for any of our colleagues. But I think that the Court as a whole certainly pays attention to this issue and cares about it.

There are many different kinds of diversity. And before I get to the one that I think you are most concerned about, as I am, I will just say that we should keep all of them in mind, not just sort of racial, ethnic, and gender diversity, but there are criticisms of the Court with respect to its geographic diversity, with respect to its school diversity.

When I wander around and go to law schools I hear more questions about the number of clerks that come from just a few schools than I do almost anything else. All of these are very important.

With respect to race and gender, I think we are doing better. I know this. I referred before to the fact that I was a clerk on the Court a few decades ago, and if you want pathetic numbers, those were some pathetic numbers.

The numbers are much higher now. I think for women now, this is our first year where a majority of clerks are women. And we are doing better on the front of racial diversity as well. But that is not to say that there isn't a great deal more to do.

As with most of these issues, sort of the higher you go, these are real pipeline issues, and the higher you go, the stronger and firmer and more inclusive the pipeline has to be. And this is something that I know I thought about a lot when I was a law school dean. And, in part, to make the Court and its clerks more diverse, you need very diverse law schools.

You need judges and law firms, because we take our clerks—certainly they have to come from other appellate judges, sometimes district judges. More and more they come from law firms, so that the more inclusive and diverse those institutions are, the better that pipeline will serve us.

Over time, I am confident that that pipeline will become more inclusive, more diverse, but that means that we all have to be working at it, every single one of us, the law firms, other judges, the law schools, and us.

And maybe the most important thing is for us to use whatever bully pulpit we have to make clear that this is an important issue, that diversity in the legal profession is a matter of real significance, that the legal profession is made stronger by how diverse and inclusive it is, no profession fares well if you don't take advantage of the talents and the perspectives and the experiences of all kinds of different people, and for us to use this kind of setting and other sorts of settings to say exactly that and to say that this is an issue of deep concern.

Mr. BISHOP. Mr. Chairman, I think my time has expired unless the chair would give—

Mr. QUIGLEY. You are correct.

Justice KAGAN. Is that because I filibustered?

Mr. QUIGLEY. Well done. You have learned how these cameras work here.

Mr. Justice, if you could answer Mr. Bishop's question in a succinct manner, I would appreciate that.

Justice KAGAN. As opposed to—

Mr. QUIGLEY. I apologize. I don't mean it that way. I know everybody wants to get a series of questions in, and I should have mentioned that at the beginning.

Justice ALITO. Yeah, certainly.

Well, I won't add much to what Justice Kagan said about the first question, about law school, law clerk diversity. There is the funnel issue.

All of our law clerks, because they serve with us for only a year and they have to hit the ground running—I will get to the second question in 1 second—come from a court of appeals clerkship at one point. They need that for the training.

On the second issue, it is very important, and I do not want to talk about any particular incident, but in general terms, I will say this. I think it is extremely important for all of the members of all three branches of our government to be accurate and respectful when we are talking about members of the other branches.

We all have important work to do. We all do our best. We all make mistakes. There are constitutional procedures for correcting the mistakes that are made by lower court judges. I think we all have to be careful, consistent with sort of the American way of robust public debate to be respectful and accurate in what we say.

Mr. BISHOP. Thank you very much.

Mr. QUIGLEY. Thank you, Mr. Bishop.

Mr. BISHOP. Thank you, Mr. Chairman.

Mr. QUIGLEY. Mr. Graves.

Mr. GRAVES. Thank you, Mr. Chairman.

I know you all are keenly aware of all the things that we are working on every day. I am sure you watch and monitor. And I say that jokingly.

But there is one thing today that maybe you could comment on. We have been debating yesterday and today a bill that rewrites the election laws here in our country, and many would suggest is unconstitutional. And in some ways the bill itself admits that in its own criticism of Supreme Court decisions in the past justifying law changes today.

I am not asking you to comment on the bill itself, but there is one provision that has a direct impact on the courts, and I wanted to get your opinion on it. It was added at the last minute in the Rules Committee without any committee hearing, but it requires that the Judicial Conference's Code of Conduct apply to the Supreme Court Justices. I am not sure why that was added, but is there something we should be concerned about in the Supreme Court? Is there a code of conduct issue?

Justice ALITO. Well, I will try to be succinct.

I know I speak for all of my colleagues in saying that we take our ethical responsibilities very seriously. We are committed to behaving in an ethical manner and in a way that it appears to the public is fully ethical.

We follow the code of conduct that applies to the lower courts, but we don't regard ourselves as being legally bound by it. And the reason for that can be found in the structure of Article III of the Constitution, which says that the judicial power shall be vested in one Supreme Court and in such inferior courts as Congress may create.

Now, I was a judge on one of those inferior courts, using the 18th century terminology, for 15 years. They are not inferior in the sense of being less talented or less deserving of respect, but they are subordinate. And I think that it is inconsistent with the constitutional structure for lower court judges to be reviewing things done by Supreme Court Justices for compliance with ethical rules.

So that is the concern about being formally bound by those ethics rules. And our situation is not exactly the same as that of the lower court judges, our working life is a little different.

Mr. GRAVES. No known misconduct issues. There are only nine of you. And it is explicit. It is not about clerks or staff or anything else. It is only Justices. I am curious why somebody would add this at the last minute.

Justice KAGAN. Well, I will just emphasize again what Justice Alito said in his first remarks, which is we take our ethical obligations extremely seriously. And we do follow the code.

The code does not itself answer all questions. Where we have questions about the code and how it applies, typically we have a very strong legal office that is well equipped to deal with issues like this. We consult with them. Maybe we will consult with our colleagues, or some of them, the Chief Justice in particular. But all of us take our responsibilities in this area extremely seriously.

And I agree with Justice Alito about the sort of constitutional difference between the Supreme Court and the circuit and district courts. But one thing we are definitely not different, which is that we follow those guidelines to the very, very, very best of our ability.

Mr. GRAVES. Thank you. I never questioned that at all. Apparently, though, somebody in the majority party does, and I don't know why. But thank you for answering that.

A quick question on cybersecurity, a big, big concern this committee has addressed a lot with a lot of the other agencies. Clearly the Supreme Court has a lot of very important information that it must protect from cyber attacks.

Is there anything you can speak to on that, just to give us a little bit of reassurance on the plan or proposal that you have in place?

Justice ALITO. I am very far from being a cyber expert. Maybe my colleague is. She is younger, and maybe she is more knowledgeable than I am.

We have a very good IT staff, and they assure us that we are well protected, and I trust that that is true. But it is certainly a problem. We don't want individuals to hack into our system.

Mr. GRAVES. You most likely have cybersecurity experts on staff, I would suppose, right?

Justice ALITO. We do have people on staff who work on this, and when they tell us the number of attempts that are made on a regular basis, it is kind of startling.

Mr. GRAVES. Alarming? Yes, it is. Thank you.

Thank you, Mr. Chairman.

Mr. QUIGLEY. Thank you.

Mrs. Torres.

Mrs. TORRES. Thank you very much, Mr. Chairman, for holding this hearing.

And thank you so much to our Justices for being here.

Indeed, I agree with my colleagues that today is a special day when two branches of government can come together to talk about the issues that are pending and important to both of us. We want to make sure that you have the resources that you need to carry out your constitutional duties and apply the law fairly—justice, right, liberty and justice for all—as we discuss salaries and expenses for the Supreme Court.

We have entered a new era where women are taking their place in the House of Congress, in the Senate, as clerks, and as you, yourself, have stated, that you have a large number of women now that you have hired on. It is important to me as a female Member of Congress to be able to answer that question that was asked earlier. How do we know, without an inspector general, how do we know how many cases of misconduct actually exist?

And I am not probing as to relating to Justices. But as a whole, we all have peers, right, how do we know?

Justice ALITO. The Chief Justice and the Judicial Conference have taken this issue very seriously in the last couple of years, and a working group was formed to examine the practices of the entire Federal judiciary. And the working group delivered its report with some very substantive recommendations, and it is my understanding that those are being implemented.

I am not aware of particular—of problems on the Supreme Court itself. But I certainly can assure you that all of the Justices are aware of this potential problem, and if it were to come to our attention that there were any problems along these lines regarding or

involving anybody who works in the Supreme Court building, we would not sit back. We would take action that is appropriate.

Mrs. TORRES. Congress has taken this issue very serious as of lately because we have had some issues, and Congress has an Ethics Committee that is made up of Members of Congress. So while I understand that Chief Justice Roberts and Justice Breyer have argued in the past that there are two reasons why there is no process, public process that exists, they argue that essentially a code of conduct is impossible to enforce on Justices as there aren't judges that we could bring to the Supreme Court to replace Justices.

That is what I am bringing out the issue of as with Congress where we have our own ethics group that is a check and balance on Members.

Secondly, it was argued that the Code of Conduct created by the Judicial Conference with Chief Justice Roberts presides over is only an instrument of the lower courts, and I find these arguments unconvincing. I think there are messages that we send to our employees when we don't put forward transparent policies on how we are going to protect victims and how we are going to deal with whistleblowers and protect whistleblowers.

I hope that at some point, without disclosing specific information, that we could have a conversation around this issue, because it is an important issue not only to our Nation, but to the world. Women all over the world are finding their voice, and it cannot stop at the Supreme Court.

Justice KAGAN. Well, I do believe that with respect to a code of judicial conduct, Justice Alito has suggested some of the reasons why we have reservations about following the same code that applies to lower court judges.

But for that reason, the Chief Justice is studying the question of whether to have a code of judicial conduct that is applicable only to the United States Supreme Court. So that is something that we have not discussed as a conference yet, and that has pros and cons, I am sure, but it is something that is being thought very seriously about.

And then with respect to the sexual assault issue in particular as it relates to the entire judicial branch, this is something which I think that the Chief Justice has been really proactive in getting a wonderful committee together of judges and circuit executives, court executives.

And the final recommendations, I believe, are going to be voted on this spring, that the circuit conference is going to vote on a set of recommendations which do many of the things that you said, not just make clear what conduct is forbidden, but also protect against retaliation and make the processes for reporting very streamlined or much more streamlined than they have been.

And of particular concern in the judicial branch, I think that people take seriously the sort of confidentiality of chambers, but making it quite clear that that confidentiality gives way when people are reporting sexual misconduct, and so taking that off the table with respect to these kinds of allegations.



Mrs. TORRES. Thank you very much. I am very interested in this subject, so if there is anything that I can do to help move forward, please let our office know.

And I yield back.

Mr. QUIGLEY. Thank you.

Mr. Stewart.

Mr. STEWART. Thank you, Chairman.

Justices, what an honor it is to have you here. I think it has been a helpful conversation. It is far less contentious than many of them. And we are grateful for the calm demeanor that you bring to us.

Justice KAGAN. We can start fighting if you want.

Mr. STEWART. It will come.

If you will allow me two very quick observations and a question. I am not an attorney. I actually was going to go to law school and very late decided to go in the military. But I come from a family of attorneys. One of my brothers is a district court judge and three of my sons are attorneys. One of them actually, Justice Kagan, is at Harvard and going to law school there. I am very proud of him. I wondered sometimes why they chose that career path, but I am, I say, proud of where they are.

And the second thing is, I want to go back to our conversation regarding televised remarks. And I want you to know that I agree with your reservations about that. And I am someone who understands that the cameras and the openness is a very important part of Congress, this work that we do.

Mr. Quigley and I both sit on the House Intelligence Committee. Most of our work is done in a basement without cameras and without people there that are observing. And I think we would both tell you that you do have a different experience when cameras are there, especially if it is an emotional topic—which, by the way, you all deal with all the time. Some of them are a little less so, but many of them are the most contentious issues facing our society right now, and I can imagine that that would maybe change your process.

Now, if you could, I am going to ask you a question, and I don't know if you are going to bear with me and feel comfortable answering it, but I am going to try. And it kind of builds on what Chairwoman Granger said when she was indicating 6,000 to 8,000 cases before you, of which you select a very small number, 70 or 80 or 90. And it seems like my concern would compel that to change and maybe force you to do more.

But my concern is far broader than that, and it is this thing that we have seen in the recent past, the last half a generation maybe, of nationwide injunctions that are imposed by a single district court judge at various locations around our Nation. They bar the Federal Government from enforcing law or policy far more reaching than even their own district, and as I said, by definition it extends to everywhere in the United States.

And as I was thinking about this and doing a little reading on it, I mean, you all know this, I didn't, but the first time it happened was in 1963, 200 years to get to where we had this kind of precedent, but in the last year alone we have had 22 of these. And it seems to be an explosive trajectory for our Federal courts to im-

pose these nationwide injunctions. And I suppose that compels you to look at many more cases because those have to be examined.

Could you share your thoughts on that? It concerns me. Does it concern you? Does it concern the Court? Is this a good thing for our country? And is there a way to correct it?

Justice ALITO. Well, I appreciate your remarks, and this is an important issue. Some of my colleagues, I believe, have written on it a little bit in recent years. It is an issue that is being discussed increasingly in scholarship, and it is an issue that may come before the Court in the near future.

So I don't think I can say more about that, and certainly can't suggest how I think we should decide the issue, and wouldn't be in a position to be able to say that until the issue came before us and the issue was briefed.

We have had an increase during the last year or so in cases in which we have been asked to stay injunctions that have been issued by the district courts. And we have received applications from the Solicitor General in a number of cases to grant certiorari before judgment, which would allow us to take a case directly from a district court, bypassing the court of appeals. That is a procedure that has always been available, but it has always been recognized as one to be used quite sparingly.

I think—I don't think I can go further on that issue.

Mr. STEWART. Justice Kagan, do you want to share any thoughts?

Justice KAGAN. Not really.

Mr. STEWART. I understand. And, of course, not being completely oblivious, I anticipated that you would be very cautious in how you responded.

Can I ask for one clarification, and just for my own knowledge? When we do have these nationwide injunctions, does that compel you to examine all of those cases or not in every case?

Justice ALITO. They are typically made in connection with a petition for a writ of certiorari, which is a matter of court discretion. So we don't have to grant certiorari in any case, and therefore the application is also discretionary.

Mr. STEWART. Okay. Thank you both.

Mr. QUIGLEY. Thank you.

Mrs. Kirkpatrick.

Mrs. KIRKPATRICK. Thank you so much for being here.

Both my husband and I are attorneys, and so is our oldest son, so we not only read your opinions, we debate them at the dinner table. And so I appreciate your thoughtful deliberation, you do take the hardest cases, and your excellence in legal writing. We, as a family, very much appreciate that.

And, of course, being from Arizona, we are very fond of former Supreme Court Justice Sandra Day O'Connor. And Justice Alito, it is a pleasure to hear from you today as her successor, not replacement, you can't replace Sandra Day O'Connor.

But thank you again both for being here.

My question involves financial disclosure. Supreme Court Justices, like all Federal judges, file an annual financial disclosure report each May. But unlike Members of Congress, these reports are

not posted online. Would you support a change in policy to online disclosures?

Justice ALITO. As a practical matter they are available online almost as soon as they are released to the public. There are private groups that request all of the financial disclosure forms of the Justices as soon as that is possible, and as soon as they obtain them they put them online. So as a practical matter, they are already available online and anybody can see any of our financial disclosure forms.

We follow the procedure that is set out in the Ethics in Government Act and in the implementing regulations of the Judicial Conference on this matter, and we have not gone further, but that is certainly something that we could consider if there is a real issue. Because they are documents that are available to the—supposed to be available to the public.

Mrs. KIRKPATRICK. And you were talking about the transparency of your website and the things that you post there, and that was what sort of prompted my question there.

Justice ALITO. Yes.

Mrs. KIRKPATRICK. Justice Kagan, anything different?

Justice KAGAN. No, I think that is my view, too.

Mrs. KIRKPATRICK. Okay.

Again, along the lines of financial disclosure, currently the Supreme Court Justices are not bound by the STOCK Act, which requires Members of Congress to post securities transactions within 45 days. Do you see any reason that Federal judges, including the Justices, should not be included in such a measure?

Justice KAGAN. You know, I have not looked into that piece of legislation, so I don't know what is in it. But it would certainly be something that maybe we would take a look at as to whether there were some kinds of transactions that some of us might be participating in that in other branches of government are being reported and then ours not. I just don't know that to be the case. But certainly we will take it back with us.

Mrs. KIRKPATRICK. Thank you. Thank you. All in the interest of more transparency.

Justice ALITO. We are prohibited by statute from participating in any case in which we have a financial interest. So if we own stock in a company that is a party or related to a party, a subsidiary or a parent, then we are prohibited from participating in that case. And all of that is disclosed in our financial disclosure form.

Mrs. KIRKPATRICK. Thank you, again. I yield back.

Mr. QUIGLEY. Thank you.

Mr. Crist.

Mr. CRIST. Thank you, Mr. Chairman.

And it is wonderful to have both of you here today. Thank you for your presence.

I was curious, it has been 4 years, I believe, since a Justice of the Supreme Court has been before this committee. Do you think it would be advantageous to have this opportunity on a more regular basis or do you think this is sufficient?

Justice KAGAN. Well, we were talking before the hearing began with the chairman, and he was suggesting that he would not think

that this is an every year kind of thing, but an every few years kind of thing.

I hope I am not misrepresenting you, Mr. Chairman.

But we are at your disposal. I agree with the chairman, it might not be different enough year by year by year, it might be sort of repetitive. But if you want us to come back in a few years' time, we would be glad to do so.

Mr. CRIST. Thank you.

And then my only other question. I was just kind of curious, I notice that there is discussion of the 2020 Supreme Court salaries and expenses budget totals \$90.4 million and that 87.7 is for discretionary expenses. Can you elaborate on what those might be? I am just not aware, that is all.

Justice ALITO. Yeah. Mandatory expenses are the salaries of the Justices that cannot be decreased pursuant to the Constitution. That is why they are called mandatory. It is somewhat misleading terminology. But discretionary expenditures are everything else. And the vast bulk of that consists of the salaries and benefits for our staff. So the amounts that they are entitled to in accordance with their pay grade.

Mr. CRIST. Is there any per diem or travel expense allocation?

Justice ALITO. There is. Not for us. Most of the members of our staff don't do a lot of traveling. Our police officers do, and I assume that there is a per diem for that.

Mr. CRIST. Probably when you would travel they would be need to be with you, I assume.

Justice ALITO. That is correct, yes.

Mr. CRIST. Thank you very much.

Thank you, Chairman.

Mr. QUIGLEY. Thank you.

I would just ask the ranking member if there is any member on his side who has a second round of questioning.

Mr. GRAVES. No, sir.

Mr. QUIGLEY. And I would ask my members as well if someone has a second round of questions. All right.

There is one thought. There was some curiosity on how the shut-down impacted the Court. You seem to be up and running with some ability to move forward. Did that impact you in any way?

Justice ALITO. Fortunately, it did not. My understanding is that we operated during the shutdown using the same pool of funds as the rest of the judiciary, and those are funds that are derived from the filing fees that parties are required to pay in civil cases. So we are permitted to use those for operating expenses in an emergency such as that. And, fortunately, there was enough money for us to keep operating during the shutdown.

Mr. QUIGLEY. Very good.

Justices, do either of you have anything else you would like to add.

Justice KAGAN. Thank you very much for having us.

Mr. QUIGLEY. The ranking member and myself and all members here, thank you very much for your service and your time today. Thank you so much.

Justice ALITO. Thank you.

Justice KAGAN. Thank you.

TUESDAY, MARCH 12, 2019.

## **TREASURY'S ROLE IN COMBATting FINANCIAL CRIMES**

### **WITNESS**

**SIGAL MANDELKER, UNDER SECRETARY U.S. DEPARTMENT OF TREASURY**

Mr. QUIGLEY. Today's hearing is called to order.

This morning we welcome Sigal Mandelker, the Under Secretary of Terrorism and Financial Intelligence of the Department of Treasury.

As a member of the House Select Committee on Intelligence, I have traveled to countries around the world and had the benefit of receiving briefings from multiple agencies to understand the meanings and tactics used by terrorists, drug traffickers, human smugglers, and other bad actors who threaten our national security.

One thing I have learned from these briefings is that all of these criminal organizations have one thing in common. Their unlawful operations are supported and financed through money laundering.

Treasury plays a vital, but often overlooked role, in combatting terrorist financing and money laundering. In particular, the Office of Terrorism and Financial Intelligence works to protect the integrity of our financial system using a variety of tools and authorities.

TFI's activities range from economic and trade sanctions administered and enforced by the Office of Foreign Assets Control against targeted foreign countries, terrorists, and others who seek to do us harm, to the collection and analysis of intelligence and financial information that can be used by law enforcement to investigate financial crimes and money laundering.

The fiscal year 2019 omnibus appropriations included an increase of \$17.2 million above the fiscal year 2018 levels for TFI. This additional funding supported the newly established Terrorist Financing Targeting Center, a multilateral effort between the U.S. and Gulf Cooperation Council countries to counter terrorist financing and provide a substantial enhancement to Treasury's programs targeting North Korea.

From the limited information we have so far on the Department's fiscal year 2020 budget request, I am pleased to see continued recognition of the important work you do with a proposal for a modest increase above fiscal year 2019 for TFI and FinCEN.

Lastly, I would be remiss if I did not take this opportunity to comment on the recent announcement of Treasury's intent to divert \$601 million from the Treasury Forfeiture Fund to pay for the construction of physical barriers along the southern border. These funds are typically used to augment funding for critical Treasury and Homeland Security operations, such as IRS criminal investigations, Title III wiretaps, and electronic crimes task forces.

In fiscal year 2019, Treasury's budget request stated its intent was to use available funds to support investigations and other activities to combat money laundering and terrorist financing. The recent decision to redirect these funds toward border fencing recklessly undermines the ability of Treasury and Homeland Security to address known threats against our financial system and the Nation.

Before I turn to our witness for their statement, I would like to recognize Mr. Amodei.

Mr. Amodei, do you have a statement on behalf of Mr. Graves?

Mr. AMODEI. Mr. Chairman, thank you.

I want to apologize for my tardiness, and you have covered it pretty well. So I have no statement on behalf of Mr. Graves.

And I yield back. Thank you.

Mr. QUIGLEY. Thank you so much.

Under Secretary Mandelker, thank you for being here today. Without objection, your full written testimony will be entered into the record.

With that in mind, we would ask you to please summarize your opening statement in 5 minutes.

Ms. MANDELKER. Thank you very much, Chairman Quigley and distinguished members of the subcommittee.

I want to begin by expressing my gratitude for the committee's strong and continued support for Treasury's Office of Terrorism and Financial Intelligence. We are very proud to work closely with the Congress across U.S. national security and law enforcement agencies and also with our foreign counterparts to disrupt malign activity and to safeguard and strengthen the integrity of the U.S. and international financial system.

It is an honor for me to be the Under Secretary of TFI during our 15th year. Although TFI itself is a relatively recent creation, it actually has its roots in the 1940s out of an effort to prevent Hitler and the Nazis from seizing U.S.-held assets of countries as the Nazis invaded them.

In a novel use of our tools then, the Treasury Department officials used the emergency powers of the United States to freeze those assets. In fact, they were able to freeze billions of dollars to keep them out of the hands of the Nazis.

Treasury moved swiftly then, and we move swiftly now as we are constantly working to keep funds out of the hands of dangerous actors around the world and to change their behavior.

I am humbled to supervise TFI's career officials within OFAC, FinCEN, the Office of Intelligence and Analysis, and the Office of Terrorist Financing and Financial Crime, including the Treasury Executive Office of Asset Forfeiture, or TEOAF.

These dedicated public servants work day in and day out, often behind the scenes, to keep America safe. They work at an increasing pace to implement our complex authorities and our successes are a testament to their skill and dedication.

TFI's economic authorities play an increasingly central role in countering some of the Nation's most critical national security and illicit finance threats. This last year has undoubtedly been one of our most active.

We have reimposed nuclear related sanctions against Iran; brought maximum pressure against North Korea; targeted major Russian companies, oligarchs, malicious cyber actors, and many more; ramped up our efforts worldwide to combat terrorist financiers and narco traffickers, as well as their networks; taken unprecedented action to hold human rights abusers and corrupt actors to account; reinvigorated our work with partners to strengthen domestic and international anti-money laundering, countering the financing of terrorism safeguards; among many other things.

We are also increasing our efforts to share information with the private sector. We have issued multiple advisories on issues ranging from corruption in Nicaragua, Venezuela, and South Sudan to illicit maritime networks, to deceptive practices that Iran uses, among many more.

With each of these actions, we are strategically calibrating our economic tools and authorities across our components, and all of our efforts are underpinned by bilateral and multilateral engagement with partners, also with civil society organizations, including efforts that we undertake to share information with other governments to work together to disrupt specific threats.

We, again, greatly appreciate the confidence and support of this committee. As the chair already mentioned, in the last two budget cycles, our appropriations have continued to increase, and we are using these funds to ensure that we remain agile and responsive to a wide range of national security and law enforcement objectives and that we are innovating and adapting at a faster pace than our adversaries.

These budget increases are critical to supporting our workforce and our mission.

Thank you, again, for your support, and I look forward to answering your questions.

[The information follows:]

**Testimony of Sigal Mandelker**  
**Under Secretary for Terrorism and Financial Intelligence**  
**U.S. Department of the Treasury**  
**Before**  
**The House Committee on Appropriations**  
**Subcommittee on Financial Services and General Government**  
**March 12, 2019**

Chairman Quigley, Ranking Member Graves, and distinguished members of the Subcommittee, I want to begin by expressing my gratitude for the Committee's strong and continued support for Treasury's Office of Terrorism and Financial Intelligence (TFI). We are proud to work closely with Congress, across U.S. national security and law enforcement agencies, and with foreign counterparts to disrupt malign activity and to safeguard and strengthen the integrity of the U.S. and international financial systems.

TFI's economic authorities play an increasingly central role in countering some of the nation's most critical national security and illicit finance threats. We strategically deploy some of the most effective tools in use today to counter terrorist financing, money laundering, weapons proliferation, rogue regimes, human rights abusers, narcotics traffickers, and other threats to the United States.

I am humbled to supervise TFI's career professionals who work day-in and day-out, often behind-the-scenes, to keep America safe. They work at an increasing pace to implement our complex authorities, and our successes are a testament to their skill and dedication.

We greatly appreciate the confidence and support of this Committee. In the last two budget cycles, Congress increased TFI's appropriations by \$18.8 million in FY18 and \$20 million in FY19, including a \$2.8 million increase for FinCEN. We are using these funds to ensure that TFI remains agile and responsive to a wide range of national security objectives and that we are innovating and adapting at a faster pace than our adversaries. These budget increases are critical to supporting our workforce and our mission.

It is an honor to be the Under Secretary of TFI during our 15<sup>th</sup> anniversary year. Although TFI itself is a relatively recent creation, it was born in the 1940s out of an effort to prevent Hitler and the Nazis from seizing U.S.-held assets from the countries that they invaded. In a novel use of its tools, Treasury Department officials used the emergency powers of the United States to freeze those assets—billions of dollars—to keep them out of the hands of the Nazis. Treasury moved swiftly then, it moves just as swiftly now, and we are constantly innovating to keep funds out of the hands of dangerous actors around the world.

In the aftermath of 9/11, Congress and the Executive branch had the tremendous vision to put the Office of Foreign Assets Control (OFAC) and the Financial Crimes Enforcement Network (FinCEN), alongside the Office of Intelligence and Analysis (OIA), and the Office of Terrorist Financing and Financial Crimes (TFFC), to include the Treasury Executive Office of Asset Forfeiture (TEOAF), under one roof. This revolutionized Treasury's ability to illuminate and



target terrorists and other bad actors and restrict their access to funding. TFI combines within a single government office oversight of the tools and authorities required to cut illicit actors off from the U.S. financial system. These four components collaborate daily to implement our mission:

- The Office of Foreign Assets Control, or **OFAC**, is the beating heart of U.S. sanctions authorities, leveraging the strength of the U.S. financial system to change behavior, disrupt illicit finance, and advance foreign policy priorities across the globe. OFAC has broad authorities provided by statutes and Executive Orders to target individuals, entities, and governments that threaten our national security, foreign policy, and economy.
- The Financial Crimes Enforcement Network, or **FinCEN**, is responsible for administering the Bank Secrecy Act, combating money laundering, and promoting national security through the use of financial intelligence and powerful economic authorities.
- The Office of Intelligence and Analysis, or **OIA**, is one of the seventeen U.S. Intelligence Community elements and it provides expert analysis of financial networks and illicit actors, identifying key nodes that enable us to take disruptive action and build impactful strategies.
- The Office of Terrorist Financing and Financial Crimes, or **TFFC**, is our policy coordination office, leading our international engagement efforts. It works with partner countries on anti-money laundering and countering the financing of terrorism (AML/CFT) efforts, including through the Financial Action Task Force (FATF), the international standard-setting body for AML/CFT.

No other government in the world has an organization like TFI, integrating an intelligence component with the offices charged with sanctions and AML/CFT. This strong and integrated organizational structure provides TFI with unparalleled insight into the emerging threats in the world and the authorities to counter them.

While we don't measure our worth strictly by numbers, it is important to note that since the start of the Administration, we have:

- Issued over 150 tranches of sanctions, targeting over 2,000 individuals, entities, vessels and aircraft;
- Issued 17 advisories for banks, the real estate sector, the maritime industry, and others;
- Received over 4.5 million suspicious activity reports;
- Participated in hundreds of bilateral and multilateral diplomatic engagements that are integral to our success;
- Responded to over 18,000 licensing requests and 100,000 phone calls from the private sector; and
- Conducted mission-critical all-source intelligence analysis in support of numerous Treasury actions, and developed intelligence products to inform policymakers at Treasury and elsewhere.

And this is just a sample of what we do.

I have spent considerable time ensuring that we are utilizing the full range of our economic authorities to achieve maximum strategic impact by becoming a more integrated, collaborative, and strategic organization. This includes establishing new institutional mechanisms, such as:

- **Strategic Impact Units (SIUs):** To enhance collaboration among TFI components, I have stood up six initial SIUs across some of our highest priorities—North Korea, Russia, ISIS, Iran, virtual currency, and human rights and corruption. These units bring together experts from across TFI to ensure that we are appropriately collaborating our tools and authorities to achieve strategic and tactical objectives. In addition to these initial SIUs, our components work strategically together on a broad range of efforts.
- **TFI Councils:** I have also established TFI-wide councils to identify and address common challenges across the TFI components, such as access to targeted training and enhancing the effectiveness of our IT enterprise. The TFI Councils report directly to me, and they are charged with improving the human capital, culture, and IT infrastructure of TFI. For example, I have asked the Councils to ensure that managers across TFI have access to the materials, resources, and training necessary to lead and further develop our workforce. By working together, leadership from across the components can share best practices, identify any capability or resource gaps, and better manage our organization.
- **Integrated Initiatives:** We have also stood up a fusion cell to improve TFI and interagency coordination against Iran. The Iran Finance Fusion Cell is an intra-TFI and interagency group that is building out our knowledge of Iran's malign activities and considering new ways to take action against Iran and Iranian-backed illicit actors. We have also made great progress in advancing our counterterrorism efforts through the Terrorist Financing Targeting Center (TFTC), a multinational effort with the entire Gulf Cooperation Council (GCC). In addition, the United States co-chairs the Counter ISIS Finance Group (CIFG), a working group of the Defeat-ISIS Coalition, which convenes 52 members and observers to share information and coordinate multilateral actions that target ISIS's global financial networks.

### Strategic Priorities Around the World

I will briefly touch on some very high-level accomplishments in our different programs:

**Iran:** Iran is the world's leading state sponsor of terrorism, and we are continuing to maximize economic pressure on the regime to combat its weapons proliferation, terrorism, and regionally destabilizing activities. Last November, we re-imposed all of the U.S. sanctions authorities previously lifted under the Iran nuclear agreement, and added over 700 individuals, entities, aircraft, and vessels onto our sanctions list on a single day. As part of that, we designated 70 Iran-linked financial institutions and subsidiaries. This brings the total number of Iran-related sanctions targets under this Administration to 927 entities, individuals, vessels, and aircraft.

Among the many actions taken, we have sanctioned militias recruiting and deploying child soldiers to fight and die in battlefields in Syria. We have exposed the Central Bank of Iran (CBI) as a key figure in the regime's ongoing deception and funding of malign activities and designated CBI officials who have enabled funding to terrorist groups. For example, in November, we designated a network operating out of Russia, Syria, and Iran that was responsible

for providing oil to the Assad regime and funneling cash to Iran's Islamic Revolutionary Guard Corps-Qods Force (IRGC-QF), Hizballah, and Hamas. The Central Bank of Iran, including CBI officials, played a key role in this scheme by facilitating the transfer of millions of dollars to Russia for its role in transporting oil to Syria. On the same day, in a coordinated action, we issued a maritime shipping advisory alerting foreign governments, port authorities, and insurance providers to the risk of facilitating deliveries of oil to Syria.

We are also targeting Iran's use of its commercial aviation sector for illicit purposes and those who provide support to designated Iranian airlines. Mahan Air, a designated Iranian airline, plays a key role in supporting the IRGC-QF and transporting weapons and fighters on its behalf, and we are urging countries to deny landing rights to the airline. As a direct result of these efforts, countries have taken steps to deny Mahan Air access to their airports. In addition, we are continuing to warn countries and the private sector of the grave dangers of much of Iran's commercial sector, including through an expansive FinCEN advisory issued in October 2018 where we documented scheme after scheme that the regime uses to abuse the international financial system. We also provided red flags to financial institutions to help them harden their systems and operations from abuse. And we have engaged extensively with European countries on the significant risks of launching a special purpose vehicle for a country that has repeatedly failed to adopt international AML/CFT safeguards. We have made clear that those who engage in activities that run afoul of U.S. sanctions risk severe consequences, including losing access to the U.S. financial system and the ability to do business with the United States.

**Russia:** We have conducted a robust and prolonged campaign to counter the full range of Russian malign activity, such as Russia's attempts to subvert Western democracies—including our own—through election interference, its illegal occupation of Crimea, its cyber attacks against the United States and our allies, its support to the murderous Assad regime, and its ties to transnational organized criminal groups, among other areas. This Administration has sanctioned more than 270 Russia-related individuals and entities, including one of our most complex and impactful actions on April 6, 2018 that targeted seven Russian oligarchs and 12 of their companies. We have also targeted Russian companies involved in sanctions evasion, including in our North Korea program where we sanctioned a Russian bank and Russian shipping companies, and in the Syria and Iran programs, where we recently sanctioned a subsidiary of the Russian Ministry of Energy.

Many of the targets of our sanctions have become pariahs in the international community and have lost their ability to portray themselves as legitimate businessmen. In one instance, we were able to sever the control of Oleg Deripaska, an oligarch closely linked to the Kremlin, over important companies instrumental to global aluminum markets. EN+, Rusal, and Eurosisbenergo agreed to unprecedented transparency for Treasury into their operations by undertaking extensive, ongoing auditing, certification, and reporting requirements, and there is now a Western foothold into the companies' corporate governance and leadership structure moving forward. Kremlin-linked oligarchs such as Deripaska leverage these deep business ties to portray a false sense of international legitimacy used to spread Russia's malign influence throughout the world. Treasury will be vigilant in ensuring that all of these commitments are met, and failure to comply will bring swift consequences.

We also continue to track and target illicit financial hubs where Russian, North Korean, and other actors seek to obscure the origins and sources of funds. In February 2018, we used Section

311 of the USA PATRIOT Act and issued a Notice of Proposed Rulemaking (NPRM) to find Latvian-based ABLV Bank to be a foreign financial institution of primary money laundering concern, citing multiple instances of institutionalized money laundering. This NPRM highlighted systemic AML/CFT deficiencies in the Latvian banking system and helped prompt reforms not only in Latvia, but also at the European Union. The bank's failure to implement effective AML/CFT policies and procedures made the bank attractive to a range of illicit actors, including parties connected to Russian organized crime. This action put global financial institutions on notice that we will not hesitate to act against banks that institutionalize money laundering as a pillar of their business practice.

**Counter Terrorism:** Treasury is a leading actor in the U.S. Government's counterterrorism effort, focusing on bolstering the counterterrorism finance laws of our partners and international regimes, while working closely with those same partners to disrupt global terrorist finance and facilitation networks. At Treasury, we have been deploying our economic authorities at a rapid pace to cut off and disrupt funding for terrorist groups including al-Qa'ida, the Islamic State of Iraq and Syria (ISIS), and Iranian-sponsored terrorist groups like Hizballah and Hamas. Treasury also works to disrupt the terror financing networks of the Taliban and Lashkar-e-Tayyiba in South Asia and the Middle East.

In 2018, OFAC designated more terrorists than in any one of the last 15 years, causing significant financial impact to terrorist networks worldwide by targeting leadership, operatives, facilitators, financiers, investors, and key global procurement networks. OFAC has designated Hizballah supporters in more than 20 countries, including in the Western Hemisphere, West Africa, and across the Middle East. In FY 2018 alone, Treasury designated over 40 Hizballah-affiliated individuals and entities, more than any previous year. Also in 2018, the President signed the Hizballah International Financing Prevention Amendments Act, which reinforces Congress's and the Administration's efforts to protect the international financial system from being exploited by Hizballah. Counterterrorism sanctions are often most effective when they are implemented multilaterally, and Treasury has encouraged the increased use of multilateral sanctions efforts through the United Nations (UN).

**Terrorist Financing Targeting Center (TFTC):** We are grateful to Congress for funding the TFTC, a multilateral partnership between the United States and the six GCC countries to better share information, build partner capacity, and coordinate joint disruptive actions, including sanctions, against terrorist financing and Iranian threat networks. Since the TFTC was announced in May 2017, this new partnership has led to three coordinated designations of 36 individuals and entities, which included key members of the IRGC-QF, Hizballah, Iranian supporters of the Taliban, Yemen-based supporters of ISIS, and Al-Qaeda in the Arabian Peninsula (AQAP). In addition to sanctions actions, Treasury offers expert capacity-building support to TFTC members. In the summer of 2018, we held a successful workshop in the region to establish best practices in line with the FATF standards, and we will hold another workshop this month.

**North Korea:** The pressure we have imposed on North Korea through our authorities is unprecedented. In this Administration, Treasury has issued 246 designations and identifications, with a focus on those who are evading UN and U.S. sanctions. This Administration has issued key advisories for industry and the international community on North Korea's deceptive shipping

practices, its abuse of the international financial system, and its risks to the integrity of global supply chains.

We also recognize the importance of an international coalition in supporting sanctions against North Korea. The UN sanctions program against North Korea—created at the urging of the United States—is the strongest multilateral sanctions regime in decades and prohibits virtually all trade with North Korea. TFI staff have engaged with dozens of countries to urge them to implement restrictions even beyond the UN regime, and alongside our international and interagency partners, we have significantly diminished North Korea’s ability to fund its illicit weapons of mass destruction (WMD) and ballistic missile programs. While the United States remains ready to engage in a constructive negotiation, Treasury will maintain pressure on North Korea’s finances and economy until we realize the final, fully verified denuclearization of North Korea.

**Venezuela:** Treasury’s Venezuela sanctions program is a critical part of the Administration’s effort to hold the illegitimate Maduro regime accountable for the collapse of democracy in Venezuela, as well as the economic and humanitarian crises the illegitimate Maduro regime created through its rampant corruption and looting. Treasury has used its authorities to support Interim President Juan Guaidó and a peaceful transition to democracy in Venezuela. The President has issued five Executive Orders since the beginning of the Administration, which have allowed Treasury to systematically shut down avenues that former President Nicolás Maduro and his illegitimate regime use to loot public resources and repress the people of Venezuela. This includes targeting his former Executive Vice President, Tareck El Aissami, for playing a significant role in international narcotics trafficking, targeting members of Maduro’s inner circle and security forces for their association with corruption and repression, designating security forces who have committed violence against protesters and blocked the delivery of humanitarian aid to the Venezuelan people, and cutting corrupt revenue streams that the regime used to hold onto its power.

On January 28, 2019, OFAC designated Petróleos de Venezuela, S.A. (PdVSA), Venezuela’s state-owned oil company, which has long been a vehicle for corruption. And on March 1, 2019, Treasury sanctioned six Venezuelan government officials who are aligned with Maduro and associated with the obstruction of humanitarian aid deliveries into Venezuela that Interim President Guaidó requested on behalf of the starving Venezuelan people. In total, since the beginning of the Administration, Treasury has sanctioned over 140 individuals and entities under this program.

Additionally, in September 2017, FinCEN issued an advisory to warn financial institutions to guard against corrupt Venezuelan money flowing to the United States. It alerted financial institutions of the widespread public corruption in Venezuela and the methods senior political figures and their associates may use to move and hide their ill-gotten gains. It also included a number of financial red flags to assist in identifying and reporting suspicious activity.

**Human Rights and Corruption:** Combating human rights abuses and corruption is one of my top priorities. Financial tools are a central element of the U.S. government’s broader efforts to pressure authoritarian regimes and impose costs on regime insiders who exploit their official positions to commit human rights abuses and engage in illicit activities. One of the most significant additions to our toolkit is the Global Magnitsky sanctions program, which the President issued through an Executive Order that builds on the Global Magnitsky Human Rights

Accountability Act. This new authority has allowed us to further target human rights and corruption and to send a strong message that the United States will disrupt the activity of kleptocrats and human rights abusers.

Since January 2017, we have sanctioned over 500 individuals and entities with a human rights- or corruption-related nexus under the Global Magnitsky and other sanctions programs. In conjunction with many of these designations, we have also issued key human rights- and corruption-related advisories to U.S. financial institutions exposing human rights abuses enabled by corrupt senior foreign political figures and their financial facilitators, and other malign activities. We have complemented these actions with direct engagement and pressure in key countries. Last summer, I traveled to Uganda and Kenya to call on their leaders to work with us to ensure that human rights abusers and corrupt actors do not find financial refuge in those countries and to put an end to the atrocities occurring in South Sudan. We also sent a very direct message to kleptocrats that we will use our tools to keep them from plundering the wealth of their nations and committing human rights abuses.

**Counter Narcotics Trafficking:** Our counter narcotics program is one of our oldest and most robust. Cumulatively, OFAC has designated over 3,800 narcotics traffickers and their criminal support and financial networks since 1995. Narcotics traffickers and their associates account for almost 50 percent of the Specially Designated Nationals and Blocked Persons (SDN) List. We have made it a priority to map out the financial networks of major narcotics traffickers so that financial institutions can identify their key financial associates and disrupt their money movements.

In the past year alone, OFAC has targeted nine narcotics trafficking and money laundering networks located around the globe and published on its website detailed charts of how these networks operate to move narcotics and money. These actions have included the identification of the first Chinese fentanyl kingpin in April 2018 and designations that have targeted narcotics traffickers in Mexico, India, and the United Arab Emirates who are involved in moving synthetic opioids to the United States. We have also targeted transnational criminal organizations involved in human trafficking, such as the Laos-based Zhao Wei and Kings Roman Casino criminal network and a related action against Japan's Yakuza leadership and key front companies. To combat the U.S. opioid epidemic, FinCEN has disseminated at least 39 targeting packages to United States Attorney's offices; Federal, state, and local law enforcement; U.S. interagency partners; and foreign Financial Intelligence Units (FIU).

### **International Engagement**

All of our efforts are underpinned by bilateral and multilateral engagement with partners, international organizations, and civil society organizations. In this position, I have traveled to Asia, Africa, Europe, and the Middle East to advance TFI's mission, and my staff has collectively traveled to more than 80 countries. TFI's international engagement with other jurisdictions includes information sharing on specific threats and partnering with other governments to disrupt those threats. We also work with and encourage other countries to establish and improve their AML/CFT regimes to be in line with international standards.

Treasury also advances this strategic objective through the FATF, the multilateral body that sets international standards for AML/CFT and proliferation financing safeguards, and the various FATF-style regional bodies around the world, and works for the adoption and implementation of

those standards by jurisdictions around the world. With Assistant Secretary Marshall Billingslea serving as President of the FATF and FinCEN Director Kenneth Blanco as the head of the FATF FIU forum through June 2019, we are pushing forward on key illicit finance priorities. This includes (i) addressing the money laundering and illicit financing risks associated with digital asset financial activities and related providers, (ii) taking further action to strengthen international CFT efforts, and (iii) enhancing the FATF's work on countering WMD proliferation financing. In addition, we are helping lead efforts in the FATF to provide guidance on the application of the global standards to the use of digital identity solutions for customer onboarding, monitoring and authorizing customer account access.

### **Strengthening AML/CFT**

As Treasury's economic authorities become increasingly central to key national security and law enforcement priorities, it is imperative that the AML/CFT safeguards that financial institutions have in place are as effective as possible. A strong, current, and efficient AML/CFT framework keeps illicit actors out of the financial system and allows us to track and target those who nonetheless slip through. We must, therefore, continuously upgrade and modernize our system—a statutory and regulatory construct originally adopted in the 1970s.

As criminals become increasingly sophisticated, we want to ensure that financial institutions are devoting their resources towards activities that relate to priority illicit finance risks. But Treasury cannot do this alone. It must be a partnership with the private sector, law enforcement, and of course, our regulatory colleagues.

To that end, I initiated a working group with the heads of the federal banking agencies (FBAs) to identify ways to improve the effectiveness and efficiency of the Bank Secrecy Act/Anti-Money Laundering (BSA/AML) regime.

We are making progress. In October 2018, Treasury and the FBAs issued a joint statement allowing community-focused banks and credit unions to share certain AML resources to better protect against illicit actors seeking to abuse those types of institutions. In December 2018, Treasury and the FBAs issued another joint statement that encourages the private sector to take innovative approaches in combatting money laundering, terrorist financing, and other illicit financial threats—including the use of innovative “RegTech” technologies.

The group is also actively working on other important efforts to improve the BSA/AML regime, including:

1. Reviewing other ways in which financial institutions can take innovative and proactive approaches to identify, detect, and report financial crime and meet BSA/AML regulatory obligations;
2. Reviewing the risk-based approach to the examination process; and
3. Reviewing the agencies' approach to BSA/AML supervision and enforcement.

### **Public-Private Partnerships**

Another area of particular focus is public-private partnerships. We are engaged in ongoing and productive conversations with the private sector because we know that in order to effectively deploy our tools, we must not only maintain a proactive dialogue but also share information with financial institutions. The safeguards that our financial institutions put in place, and the

information that they provide to us about terrorist financiers, proliferators, human rights abusers, and cyber and other criminals, are what helps prevent malign actors from abusing our financial system.

Treasury recognizes that in order to make these public-partnerships work it is important to provide financial institutions with specific information that enhances their ability to identify and report suspicious activity. That is why, among other things, Treasury has been issuing more advisories to help the private sector identify priority threats and key AML and sanctions evasion typologies. Treasury has also initiated public-private banking dialogues with key partners around the world to better understand shared illicit finance threats. When I travel overseas, I meet with foreign banks to share typologies and stress the importance of proactive diligence so that those banks are not used by nefarious actors to evade sanctions or engage in other illicit activity.

Treasury, through FinCEN, launched FinCEN Exchange last year, a public-private information sharing program that brings domestic financial institutions, FinCEN, and law enforcement together to facilitate greater information sharing between the public and private sectors. As part of FinCEN Exchange, we are convening regular briefings with law enforcement, FinCEN, and financial institutions to exchange targeted information on priority illicit finance threats. In close coordination with law enforcement, our goal is to provide information to support specific matters through Section 314(a) of the USA PATRIOT Act and other authorities and also to provide financial institutions with broader typologies to help them identify illicit activity. These types of exchanges enable the private sector to better identify risks and provide FinCEN and law enforcement with critical information to disrupt money laundering and other financial crimes.

#### **Risks Related to Virtual Currency and Emerging Technologies**

Treasury continues to be a leader in AML/CFT regulation and supervision in the area of virtual currency. In particular, FinCEN regulates individuals or entities that engage in the business of accepting or transmitting digital assets such as convertible virtual currency (whether virtual-to-virtual, virtual-to-fiat, or any other digital asset that substitutes for value) from one person to another person or location as money transmitters, including virtual currency exchangers, administrators, and wallet providers, among others. Under the BSA, virtual currency money transmitters are required to register with FinCEN as a money services business and implement AML program, recordkeeping, and reporting measures, including filing suspicious activity reports. These requirements apply equally to domestic and foreign-located virtual currency money transmitters, even if the foreign-located entity does not have a physical presence in the United States, as long as it does business in whole or substantial part in the United States.

Examination and supervision are critical components of Treasury's efforts to ensure compliance with these regulatory obligations and to proactively mitigate illicit finance risks associated with virtual currency. Working closely with our delegated BSA examiners at the Internal Revenue Service (IRS), FinCEN and the IRS have together examined many virtual currency exchangers and administrators to ensure that they understand and comply with their regulatory obligations. These examinations have notably included a wide array of virtual currency businesses: virtual currency trading platforms, administrators, virtual currency kiosks, virtual currency-precious metals dealers, and peer-to-peer exchangers. And this variety is critical because, whether a business is operating as a peer-to-peer exchanger or a large, multi-national trading platform



offering numerous virtual currencies (including virtual-to-virtual and virtual-to-fiat transactions), we expect them to comply with their AML/CFT regulatory obligations.

Our efforts have had a tangible, positive impact on compliance programs, and we have seen SAR filings from virtual currency entities rise tremendously over the past few years. Today, FinCEN receives thousands of SARs describing suspicious activity involving virtual currency.

On the sanctions front, we have continued to make clear that OFAC compliance obligations for U.S. persons are the same regardless of whether a transaction is denominated in non-national virtual currency, national digital currency, or traditional fiat currency, and we have stated that the industry must implement strong and robust protective measures to ensure it is not inadvertently facilitating or enabling illicit activity. OFAC has issued key guidance on its website describing compliance obligations related to digital currency, as well as the mechanics of *how* digital currencies can be blocked.

And, of course, where we have identified problems and illicit activity, we have used our supervisory and enforcement authorities to appropriately take action. For example, just recently, in December 2018, we took action against two Iranian individuals who helped exchange digital currency ransom payments into Iranian rial on behalf of malicious Iranian cyber actors. This action involved a ransomware called “SamSam,” which the Department of Justice alleges impacted over 200 victims, including hospitals, municipalities, and public institutions. The scale and scope of this ransomware scheme was immense, with high-profile victims like the City of Atlanta, the City of Newark, the Port of San Diego, the Colorado Department of Transportation, the University of Calgary, LabCorp of America, MedStar Health, and Nebraska Orthopedic Hospital. In response to this scheme, and *for the first time ever*, OFAC publicly attributed digital currency addresses associated with the designated individuals. This means that exchangers, administrators, and other similar entities subject to U.S. jurisdiction that provide digital currency financial services are prohibited from dealing with these two designated actors, including allowing transactions using the identified digital currency addresses.

While the United States regulates, supervises, and takes strong enforcement actions relating to digital currency and other types of digital assets more broadly, the lack of consistent global AML/CFT regulation of digital asset activities exacerbates the associated money laundering and illicit finance risks. Many countries, for example, do not impose measures to prevent the use of digital assets for money laundering or terrorist financing purposes, nor do they regulate entities that provide digital asset-related services as they would traditional financial institutions.

For this reason, during the U.S. Presidency of the FATF, we have pressed to make the regulation and supervision of digital asset financial activities a top priority issue and our efforts have had a positive impact. In October 2018, the FATF clarified that its international AML/CFT standards apply to financial activities involving virtual currencies and related assets and to the businesses that provide such services. More recently, in February 2019, the FATF provided further clarification on how countries should implement the standards in this space, including with respect to licensing or registration; supervision or monitoring; targeted financial sanctions; preventive measures such as customer due diligence, record keeping and suspicious transaction monitoring; and international cooperation.

## Closing

In addition to the efforts I have already described, TFI expends significant resources taking enforcement actions, producing reports in response to statutory requirements, processing licenses and requests for guidance, responding to thousands of calls and emails from the public, issuing regulations, and pursuing other critical regulatory activities. And the demands of these activities continues to grow. I want to thank this Committee for your support, and I look forward to the opportunity to work with you to further TFI's important mission.

Mr. QUIGLEY. Thank you so much.

We have some members who need to move on to other hearings as well. So I am going to move forward with others first, and I would ask, given that consideration, that we observe the 5-minute rule, and so we ask members and the witness to try to keep their questions, especially on the first round, to that 5 minutes.

Mr. Cartwright.

Mr. CARTWRIGHT. Thank you, Mr. Chairman.

And thank you for being here, Ms. Mandelker.

I want to start with the Financial Crimes Enforcement Network. It recently made a statement jointly with regulators of federal depository institutions, encouraging banks to implement what they call, quote, "innovative approaches," unquote, to meet Bank Secrecy Act and anti-money laundering compliance requirement, with the goal of better identifying and reporting money laundering, terrorist financing, and other illicit financial activity.

Can you provide us examples of some of the innovative approaches that you are seeing?

Ms. MANDELKER. Thank you for that question.

This actually we thought was a very important effort. It is the first time that you have had all of the Federal banking agencies along with FinCEN, which is part, of course, of TFI, coming out with a statement like that, where we are encouraging innovation.

We have had a number of financial institutions come to us with innovative ideas. I do not think at this point I am at liberty to tell you what those are, given what those discussions are like. But we are happy to come in and talk to you about it more.

You know, I believe that we are going to be that much better at the end of the day detecting money laundering, illicit activity if we give financial institutions the incentive and the space to engage in all that more sophisticated activity to detect those crimes.

And we have seen a lot of great innovation coming out of the financial institutions, and I look forward to seeing more, in part, as a result of that statement.

Mr. CARTWRIGHT. Yes, and I welcome working directly with you off script.

And you mentioned the participation of depository institutions, and I want to ask you. What level of participation are you seeing from banks in conducting pilots and other innovative approaches?

Ms. MANDELKER. So that was, in part, the purpose of the statement. We want to make sure that financial institutions have the space to pilot these kinds of innovative approaches without feeling like they are going to be dinged, so to speak, in an examination because they have undertaken these kinds of pilots.

We have actually received great feedback from financial institutions. This has gotten a lot of attention at senior levels of the banks because we do have a lot of people in financial institutions who have a sophisticated background in how to use financial crime units within their organization to ferret out that kind of illicit activity.

So, again, we are happy to have a discussion with you, about what kind of pilots we are seeing because those are, you know, conversations that we have in confidence with those financial institutions, and we are in the process of evaluating those.

I would rather not speak about it here, but happy to have further conversations, and what I can tell you is there is a lot of really good work that is happening in the compliance community to incentivize even more sophisticated work in this space.

Mr. CARTWRIGHT. Good. Yes, let's talk offline on that as well.

And I want to move to this question of AI. I notice in the joint statement it is mentioned that some banks are experimenting with artificial intelligence to strengthen and enhance compliance measures.

Can you explain as best you can publicly a bit more about how these types of systems are being used?

Ms. MANDELKER. I bring it to the comments I made before, and again, I am happy to have other conversations with you.

But the bottom line here is that as actors, illicit actors, are becoming all the more sophisticated in trying to get around our rules, our laws, we have to be many steps ahead of them.

And so when it comes to whether it is the use of artificial intelligence or other technology to detect that kind of activity, we think it is important.

The other effort that a lot of the banks are now undertaking is they are forming, under an authority that was pursuant to the Patriot Act, they are forming consortia where they are actually able in certain circumstances to share information with one another.

Mr. CARTWRIGHT. With each other.

Ms. MANDELKER. Yes, exactly. And when you do that, of course, you can detect a broader pattern of activity, which we think is a really important development.

And when they do that, not only does it enable them to harden their networks, but they also provide information back to us through suspicious activity reports and other reports that have been crucial in our ability to take down, with law enforcement, broader networks.

Mr. CARTWRIGHT. Well, I am glad to hear that. So one bank can say, "Well, we are seeing that, too," and that gives added credence to a particular threat.

Well, I thank you for being here, Secretary.

And I yield back.

Mr. QUIGLEY. Thank you.

Mr. Amodei.

Mr. AMODEI. Thanks, Mr. Chairman.

Madam Under Secretary, I want to kind of go to the FinCEN area as well for a minute, and I want to talk about banking and marijuana.

Not my cup of tea, no pun intended. I understand Schedule 1 is floating around out there, and the Congress has or has not done or is going to do some things. But I am talking now as somebody who has reached out and had FinCEN come in for briefings about, "Hey. How are you doing this? And what is going on?" because we get that federally regulated banks are sensitive to what FinCEN has to say about things and stuff like that.

But I am looking, at least in the neighborhood that I travel in, at a situation where, for instance, let's take a large national bank that has not had a great couple of years. So they are really, really

conservative on that Schedule 1 stuff, and “we cannot.” Okay. I get that.

But then you get another bank who says to the plumber, who may have done work on rental property for the landlord, which is leased to somebody who grows or distributes King’s X. Okay, I think. Maybe not okay.

But I want to get right to the point here, which is when those folks who are operating in States under a privileged business license, are paying local governments, State governments, and the Federal Government their taxes in cash, which are then put in depository institutions, there is no scrutiny whatsoever.

It is okay to take cash from a licensed marijuana grower if you are the State of Nevada and you deposit it in pick the name of the institution, and there are not examination issues. There are no FinCEN issues. Clearly Schedule 1 prohibited substance tax revenues, while there is for all of these other things.

So I am not trying to put that all on you because Congress has to fill a void. I get that, but right now status quo is if you are a government entity, putting your cash from marijuana businesses in a Federal depository institution, as near as I can figure, it is just fine.

Help me. Why are all of the private sector people being told, “Figure out a way to launder your money,” but yet the government’s political subdivisions are saying, “Pay the IRS in cash”?

As a matter of fact, some of them are overpaying them and getting Treasury checks back. So we have essentially laundered the money for them.

Ms. MANDELKER. So I want to make clear what our role is in this area and what it is not. So, of course, it continues to be a crime, as you know, under Federal law to engage in certain activities related to distribution, et cetera, of marijuana.

Nothing that FinCEN does or can do in this area changes that. That continues to be the state of Federal law.

Mr. AMODEL. Understood.

Ms. MANDELKER. And in that context, of course, banks have to make their own decisions about risk-based decisions as we ask them to do in a variety of circumstances about what they are and are not willing to bank.

We do not tell them what to bank. They make those decisions based on a variety of circumstances, including their concerns about whether or not engaging in certain types of banking is going to bring regulatory scrutiny on them or, alternatively, concerns that it may be involved in money laundering or other illicit activity.

What FinCEN did in 2014 was issue guidance to financial institutions about the kinds of SARS that they should file related to guidance. That was in connection with guidance the Justice Department had put out at that time related to what they were and were not going to prosecute.

That guidance remains in place. We have not changed it. We continue to review it, but as you mentioned, this is really something, I think, that Congress needs to look at because nothing that we do can or does change what is prohibited under Federal law.

Mr. AMODEL. Okay.

Ms. MANDELKER. And of course, it is really——

Mr. AMODEI. And I do not mean to cut you off, but my time is a little limited.

Ms. MANDELKER. Sure.

Mr. AMODEI. I would like to request a copy of the guidance, if that is appropriate, from your office to the guidance you put out in 2014.

And then I would also like to do one follow-up, which is: has FinCEN done anything in a disciplinary sense against any banks that are taking deposits for the U.S. Treasury or for any State treasury or for any local government treasuries in States that have legalized marijuana?

Ms. MANDELKER. So we are happy to provide that guidance. It is also available on our Website. We can give a copy to you and to your staff.

What we do with the suspicious activity reporting that comes in in connection with that activity is we analyze it, of course, and you know, law enforcement, I think, believes that that analysis is valuable to them.

We also have to understand that any activity related to narcotics can also show other illicit activity that we all have to take—

Mr. AMODEI. I appreciate it, Madam Under Secretary.

I will just do one more request before I yield back, which is: could you please let us know if there have been any SARS filed by any financial institutions with respect to deposits made by the Federal Government, any State government, or any local government?

Do you have in your system any SARS filed for deposits made by political subdivisions that are affiliated with the marijuana industry?

Ms. MANDELKER. So what I can tell you is, of course, we have a number of SARS related to the marijuana industry, as we do in a wide range of activity.

With respect to your specific question, we are happy to get back to you.

Mr. AMODEI. Thank you very much.

I yield back Mr. Chairman.

Mr. QUIGLEY. Thank you.

Mr. Bishop.

Mr. BISHOP. Thank you very much, Mr. Chairman.

Welcome, Ms. Mandelker.

Ms. Mandelker, on February 28th, 2019, there was an article in the New York Times that described how Internet companies like Facebook are planning to roll out new cryptocurrencies over the next year that are meant to allow users to send money to contacts on their messaging systems, like Venmo or Paypal that can move across international borders.

Facebook, for example, is working on a coin that the users of WhatsApp, which Facebook owns, can send to friends and family instantly.

Given the reach of Facebook, as well as the current lack of central authority like a government or a bank regulating them, what are the potential vulnerabilities of a Facebook coin to money laundering?

How would it be regulated?

What can be done to make cryptocurrencies less vulnerable to criminality and scammers?

Does FinCEN or other investigative organizations monitor public Blockchain that works for potentially illicit transactions?

And I am going to ask my second question.

One of the preferred methods of money laundering is through real estate, which can offer stable values or appreciated values and also anonymity if they are purchased through shell companies.

Real estate is also functional in that a money launderer could use the property as a second home or rent it out, earning income from the investment. Those transactions are also less subject to scrutiny when they are compared with transactions related to banks, which have a legal requirement to report suspicious activities.

What tools do you need to bring these transactions to the light of day?

Ms. MANDELKER. Thank you very much for both questions.

So just starting with the virtual currency aspect, I do not want to comment on any particular organization's efforts in—

Mr. BISHOP. I understand.

Ms. MANDELKER [continuing]. The virtual currency space, but what I can tell you—

Mr. BISHOP. My bad.

Ms. MANDELKER. No. What I can tell you is that this is a very heavy effort, a focus of ours.

So among other things, for example, I have a group of people that stretches across all of my components that is looking every day at illicit activity related to virtual currency.

FinCEN actually was one of the first regulators in the world to look at this issue and take it very seriously, and in about 2014, FinCEN issued guidance that said that virtual currency administrators and exchangers are the same as money transmitters, which effectively meant that they had to have compliance, AML/CFT compliance programs just like other money transmitters. They have to have internal controls. They have to have compliance officers. They have to file suspicious activity reports.

In fact, we have gotten thousands and thousands of suspicious activity reports as a result of our efforts.

In addition, what we have been doing systematically with IRS criminal investigators is examining virtual currency administrators and exchangers, and we say that any virtual currency administrator or exchanger, if it transmits currency through the United States, has to have those kinds of controls, regardless of whether or not they are headquartered—

Mr. BISHOP. Are you enforcing it?

Ms. MANDELKER [continuing]. Here in the United States?

So we are. We are examining them in our supervisory role. We also have brought examination enforcement cases against certain virtual currency administrators and exchangers.

We also have a very big effort globally to get other countries to do the same because bad actors are always going to go to the lowest common denominator.

So this year we hold the presidency of the Financial Action Task Force, which is the international standard-setting body for AML/CFT, and one of our three top priorities is to——

Mr. BISHOP. I have got 1 minute left.

Ms. MANDELKER [continuing]. Encourage other countries to do the same.

We could talk about this for a long time, but I can tell you we are tracking it. We are working very closely with law enforcement to do the same, and it is a very heavy focus for us.

In terms of your question on real estate, that is also another area of focus. So you may be aware that we have issued a number of what we call geographic targeting orders, which is an authority that we have gotten from Congress that requires in certain jurisdictions title insurance companies to provide information to us very specifically to address the problem that you have identified, which is the use of shell companies to buy property, real estate, using cash.

Those title insurance companies have to provide reports to us about who the beneficial owners are, among other areas.

We have also issued an advisory to the real estate sector to help them identify red flags that they need to be alert to, to make sure that they are not being used to funnel money. It is a big effort of ours, and it is going to continue to be.

Mr. BISHOP. Thank you very much.

Mr. QUIGLEY. Thank you.

Mr. Joyce.

Mr. JOYCE. Thank you, Mr. Chairman.

Ms. Mandelker, thank you for being here today.

As you are well aware, opioids are having a epidemic effect on our States, and I was wondering if you could explain to us what role the Treasury might have in helping Federal, State and local prosecutors in trying to figure out the organizations, one; two, how they are trafficking or laundering their money through communities and the things that they are doing similar to what you might have seen in, obviously, the TV shows that have shown different ways that they are doing it.

But most importantly to me is: what are we doing to counter the effects of the Chinese importation of fentanyl and carfentanil, which is the deadliest thing out there today?

Ms. MANDELKER. Thank you for your question.

So opioids and illicit narcotics as a general matter is a very big effort for us. So among other things, we have an authority under the Kingpin Act, which has been historically our most active OFAC program, where we have systematically targeted narcotics traffickers, international narcotics traffickers and their networks in a variety of different ways.

So we have sanctioned a number of trafficking rings and the financial infrastructure that supports those trafficking rings all over the world, including in the last year we sanctioned a big fentanyl ring out of China.

So we are very focused on the Chinese fentanyl issue and problem, and we are going to continue to be.

In addition, what we have been able to do when it comes to understanding those networks and those rings is taking the informa-



tion that we have through the BSA and suspicious activity reporting and otherwise, analyzing the information, and as appropriate, we share that with our State, local, Federal partners because we think we bring a particular type of expertise into how they work and they operate, and sharing that knowledge base is, we think, of high value.

So we are going to continue to be focused on the opioid crisis. I think the other piece of it that we have been able to bring to the table is the work that we do with our foreign counterparts. So it is often the case that we will take action, and that action will spur the action of other counterparts in countries.

We also work very closely with law enforcement in those countries to take parallel action, to share information with them as appropriate so that they can use their effective tools to do the same.

Mr. JOYCE. Certainly the seizures that have taken place of the drug itself is one thing, but as you are well aware, to really try to stop the program, you have got to seize their assets and the finances that are moving around.

You know, for one who has been a local prosecutor for 25 years, I was really interested in the sharing aspect because obviously you are in a position to make that available. When the Feds. came to me, the first question I would have is, "What is wrong with this case?" because if it was good, they would have taken it in the first place.

But you know, I would like to see more of that sharing because I think the most important thing we can do is continue to work as a team on all of those things and try to seize as many of their assets and break them up accordingly. Because in seizing those assets and getting them back in the communities that are being hit by this epidemic, I mean, we are losing people at too high a rate today.

You know, one thing that is needed is treatment, and that requires dollars, and so it would be nice if we could continue to seize those assets.

Any thoughts on how we could get that accomplished?

Ms. MANDELKER. I agree with you 100 percent. I am also a former prosecutor, and I have seen how much more impactful we can be when we are able to take those kinds of actions because they hurt people's pocketbook, and that is another disincentive, so to speak, to engage in that kind of activity.

Again, I think what we bring to the table is, on the FinCEN side, the information that we are able to share through our analysis, and then on the OFAC side, it is going after being able to designate and sanction the financial infrastructure that supported those networks.

So just in the last year, for example, we had a big case in Mexico where we did not just go after the known sort of narcotics traffickers. We went after the companies, the shell companies that were behind those traffickers. We went after some very significant, with attention internationally on some very significant individuals who were helping to be used as a cover for narcotics rings, and that similarly is going to continue to be a big effort of ours.

Mr. JOYCE. Thank you. Keep up the great work.

And I yield back what no time I have left back, Mr. Chairman.

Mr. QUIGLEY. Thank you.

Mr. Crist.

Mr. CRIST. Thank you, Mr. Chairman.

And, Deputy Secretary, thank you so much for being with us today.

My home State of Florida recently legalized medical marijuana overwhelmingly at the ballot box. Currently our State is home to 14 lawfully licensed and regulated cannabis companies.

By 2020, data suggests that the regulated cannabis market in the State of Florida will be about \$880 million. So between the economic impact and the benefit to seniors, veterans, persons with certain disabilities, and other conditions, I think it is safe to say that medical marijuana is extremely important in my State.

And yet we are currently having no banks, none, to publicly extend financial services to any of these lawfully licensed and regulated businesses in Florida, essentially treating them like criminal enterprises that your office may have to approach.

I guess imagine for a moment that every lawfully licensed and regulated marijuana business in the State of Florida has open access to banking, and every dollar of every transaction was banked, traced, and taxed within our banking system.

Would this give your department more control and oversight over illicit activities that contribute to the problem of financial crimes and money laundering?

Ms. MANDELKER. Thank you for that question.

What I can tell, what I mentioned before earlier in the hearing is I think it is important to understand what our role is in this area and what it is not.

So of course, it is still a Federal crime to engage in certain activities related to marijuana. Nothing that we do in this area changes that, and of course, what financial institutions have to do as a result is make their own risk-based decisions as to what they do want to bank and what they do not want to bank.

There are a number of financial institutions actually who are doing banking in certain respects. I cannot speak to what is happening specifically in Florida.

In 2013, I said 2014 before, but it was actually in 2014. Sorry. FinCEN did issue guidance, and that guidance very specifically identified for financial institutions what their BSA obligations are relative to the marijuana guidance, and they did that at the time because the Justice Department had come out with parallel guidance about what they do, what they are and what they are not going to prosecute.

That guidance effectively just told financial institutions or gave them guidance on what kinds of suspicious activity reports they should file in connection with certain types of marijuana related activities.

It did not change Federal law. It just provided that kind of guidance, and that is really the role that we play here. We do get suspicious activity reporting related to marijuana business among a wide variety, of course, of other kinds of activity.

Law enforcement has access to that suspicious activity reporting as they do across many, many different other areas, and we will

continue to play that role, which is to be a recipient and analyzer of that kind of data.

But at the beginning and the end of the day I think this is really a question of what is and what is not permitted under Federal law.

Mr. CRIST. Can you discuss more broadly how the current lack of banking access may be contributing to the problem of financial crimes and money laundering and how giving access to businesses operating legally under State law would help your office better carry out that work?

Ms. MANDELKER. So, Congressman, I am happy to come back and have a discussion with you about that. We are happy to take that question and do additional analysis. Some of that may be law enforcement sensitive, of course, and it is not something I could share with you today, but we are happy to have further discussions with you about it.

Mr. CRIST. When you do get those reports of suspicious activity, what do you do with it?

Ms. MANDELKER. So our BSA database is actually available to a wide range of Federal, State, and local law enforcement officials. So it is not just a matter of what we do with it. It is also a matter of how Federal, State, and local law enforcement officials look at and analyze that data.

Mr. CRIST. I appreciate that, but you are here today. So what, if anything, do you do with it when you get it?

Ms. MANDELKER. We track the data. In a lot of different areas we do analysis of the data because we think it is helpful both to Federal, State, and local law enforcement as they are investigating money laundering.

Similarly, within TFI generally speaking, we use the BSA database to support many of our activities. You know, one thing, of course, in the narcotics area that we are always looking to see is whether or not the activity is contributing to other criminal activity, organized crime, and what have you.

So it depends on the data, but we do spend time and effort analyzing it and using it and providing it to other law enforcement partners.

Mr. CRIST. Thank you.

Thank you, Mr. Chairman.

Mr. QUIGLEY. Thank you.

I will take a turn.

Let's step back more broadly. Looking at the issue of money laundering, large foreign banks, if they were to launder money for a U.S. person or a U.S. entity, what tools do you have in place and systems that will detect this activity?

How do we even know they are doing this?

Ms. MANDELKER. So we have access to a great deal of information related to banking, banking activity and other sanctions evasion activity, whether it is information that we have through the BSA database or information that we have from law enforcement partners or information that we have vis-a-vis the intelligence community.

As you know, I have an intelligence agency that sits under my supervision, and that has been extremely valuable in our efforts to counter illicit finance all over the world. So we bring all of that in-

formation together. We analyze it, and we make decisions about what to do with it.

So just as an example, yesterday we sanctioned a Russia-Venezuela bank in connection with our Venezuela program.

Similarly, we have sanctioned other banks in Russia and elsewhere, where we have found or detected that they have been engaged in illicit money laundering and in different programs.

Mr. QUIGLEY. Again, what type of activity would trigger your awareness of this?

Ms. MANDELKER. So it really would be across a wide spectrum of our programs. So whether it is in connection with North Korea, whether it is connection with what is happening in Venezuela, whether it is in connection with illicit activity that we see in our Iran program in counterterrorism, for example, among other areas, narco trafficking or what have you.

And I have teams of people in TFI who are focused on very specific areas, national security areas, law enforcement, narco trafficking, human rights and corruption.

The other thing that we have been able to do with great impact is use a tool that FinCEN has under the Patriot Act called Section 311, and that authority allows us to call out financial institutions or jurisdictions who are engaged in money laundering. We say they are primary money laundering concerns.

And when we do that, there are a variety of different measures that we can take under that tool that relate to the ability of those institutions to continue to do business with the United States, and we have used it to great effect.

So last year, we used the 311 authority to do a rulemaking in connection with a bank in Latvia where we had seen that particular bank engage in a wide swath of illicit activity related to North Korea, related to Russia, related to elsewhere.

Similarly, actually my first week on the job, we did a 311 action against a Chinese bank that we had found had ferreted a lot of money illicitly to North Korea.

And those kinds of actions have had wide ranging impact not only in the particular institution, but they also send a message, I think, worldwide that the United States is not going to tolerate that kind of illicit activity, and we are going to take action where we think is necessary.

Mr. QUIGLEY. Just for the 100 level, how did you detect that they were doing that?

Ms. MANDELKER. It is a combination. It would be a combination of information that we have through the Bank Secrecy Act. We also have information that we are able to use through the intelligence community, among law enforcement, among other sources.

Mr. QUIGLEY. It is something that typically transferring money, you are able to detect that?

Ms. MANDELKER. We have a lot of tools to detect how financial institutions are operating.

Mr. QUIGLEY. And it is a new world with all sorts of new currencies, and how are you able to keep up with encryption and so forth?

What tools do you have to match what the bad guys are using?

Ms. MANDELKER. So in a very similar way. So as I mentioned before, we get a lot of reporting from various entities. So, for example, the virtual currency space, we get reporting, BSA reporting, from exchangers and administrators. We get information. We are able to share information.

We also get information from foreign counterparts and information that we have in partnership with law enforcement and other national security agencies.

Mr. QUIGLEY. Thank you.

Mrs. Torres.

Mrs. TORRES. Thank you for being here with us.

I represent California's 35th Congressional District. Within it, we have seven freight corridors, massive logistics industry. So it is a fairly targeted area for the Mexican cartels to move around narcotics.

I am very concerned with the asset forfeiture account. I know that in previous years the Treasury has sought to maintain a minimum of 100 to \$150 million in the TFF for operating expenses. This year is at 71. So I am concerned about that remaining balance and how much would really be available.

My local agencies use asset forfeiture funding to, you know, work on these major crimes.

I am also concerned with the President's decision to spend up to \$601 million on a border wall, taking that money out of TFF.

Can you tell me what other law enforcement activities will not be supported in fiscal year 2019 as a result?

Ms. MANDELKER. So in any given year, we have been able to fund, depending on what is remaining in the Treasury asset forfeiture fund, we have been able to fund a range of different kinds of activities. Including actually in a number of areas, we have actually taken similar steps, which is we have been able to support other border security related programs.

So as you know, DHS is a very active participant in the Treasury Forfeiture Fund, and we get requests from CBP, from HSI to fund certain kinds of programs, and that is what happened in this instance. We got a request from the Department of Homeland Security to use a big chunk of the Treasury Forfeiture Fund in relation to border security.

In many years in the past actually, we have not had those kinds of funds available either because we did not have as many inputs into the Treasury asset forfeiture fund—

Mrs. TORRES. Was that surplus?

Ms. MANDELKER. And also because there have been a number of rescissions that Congress has taken to the Treasury asset forfeiture funds. In certain years, we have actually had nothing available because of those rescissions or we have had a minimal amount that we have been able to use in this context.

This year we are actually fortunate that we have a larger amount of money that we can use for those kinds of projects.

Mrs. TORRES. I am going to be keeping a close eye, and I will probably follow up with you on that because it is a critical piece of infrastructure that my local jurisdictions use to deal with human trafficking and drug trafficking within my district.

The Magnitsky Act in Central America, I am very focused on the Northern Triangle issues, very corrupt governments in that area.

I am concerned that out of this, is it 101 people that are on the list right now under the Magnitsky act? There is only one person from the Northern Triangle and a total of two from Central America; is that correct?

Ms. MANDELKER. I would have to go back and look at the actual numbers that we have had. However, we have had a number of actions against individuals engaged in human rights or corruption from the general region.

So we take certain actions under the Global Magnitsky Act. We also have other authorities that we can use to similar effect. So we have actually designated well over 500 individuals and entities in connection with human rights and corruption. Many of those have not been under the Global Magnitsky Act. They have been under other executive orders and statutes.

Mrs. TORRES. In fiscal year 2019, NDA included an amendment which I authored requiring the State Department to provide Congress with a list of corrupt elected officials within the Northern Triangle. That list is almost a month overdue.

I guess the shutdown really had an impact on them. Will you commit to working with us to ensure that we move forward and impose the Magnitsky Act on some of these very corrupt officials that are causing a crisis for us at the southern border?

Ms. MANDELKER. Absolutely. We are happy to do so. What I can tell you is that we have seen when we use those authorities in that region and others, it can create real change.

Mrs. TORRES. Yes.

Ms. MANDELKER. And I am very committed to using these authorities in that way.

So we are happy to do that and happy to have other discussions with you about it.

Mrs. TORRES. Dealing with the root causes of migration has been a priority for me, and I hope to work with your office to continue that work.

Thank you and I yield back.

Ms. MANDELKER. Absolutely.

Mr. QUIGLEY. Thank you.

Our members have one more round. Mr. Amodei.

Mr. AMODEI. Thanks, Mr. Chairman.

Madam Under Secretary, to make sure that I understand, FinCEN does not have prosecutors. You guys are kind of an administrator. If you get a SAR that you think is a smoking gun, my words, not yours, you forward that on to the appropriate people, for instance, at Department of Justice; is that correct?

Ms. MANDELKER. So we do not have prosecutors. We do have enforcement authorities that we use in connection with financial institutions that are—

Mr. AMODEI. There is that authority, but what can you do to somebody if you think they are breaking the rules?

Ms. MANDELKER. Well, we have authority to take enforcement action against financial institutions that do not have AML/CFT internal controls that meet up to our regulatory standards.

Mr. AMODEI. So that is an administrative sanction, not in the nature of petty offense, misdemeanor, felony——

Ms. MANDELKER. No, that is exactly right.

Mr. AMODEI [continuing]. In Federal court.

Ms. MANDELKER. That is right, and the Justice Department and many other law enforcement agencies have access to the BSA database. So we maintain the database. It is our responsibility to make sure it is secure.

We do a lot of analysis of the information that is in the BSA database, and we work with our law enforcement partners to analyze that data. We often analyze it and provide that to a wide range of law enforcement partners.

But it is the Justice Department that would be prosecuting those cases criminally.

Mr. AMODEI. Okay. And so I would like to finish with, and FinCEN has stopped by my office before to help me understand some stuff, which as you can tell from my questioning, I am not doing well with, but not FinCEN's fault, but anyhow, we would like to follow on.

If I could get after the hearing the contact or the person to set that up——

Ms. MANDELKER. Absolutely.

Mr. AMODEI [continuing]. To do that discussion offline, I would appreciate it.

Thank you very much.

Ms. MANDELKER. We are happy to do that.

Mr. AMODEI. I yield back, Mr. Chairman.

Mr. QUIGLEY. Thank you.

So our sanctions are important. They are our policy. They are the effort short of war to get other countries to do what you want them to do and to punish those who have misbehaved.

But obviously, the countries and individuals we have sanctioned principally use money laundering as a means to avoid this. I would like you to talk about how you address this. In particular, use Russian sanctions as an example of your efforts.

Ms. MANDELKER. So every day we work to make sure that we are using our sanctions authorities consistent with our national security and illicit financial priorities, consistent with what Congress wants to do.

What we always strive to do is to make sure that we are using the authority to actually carry out a particular strategic or tactical objective.

So, for example, I will just take the Russian bank that we designated over the summer in connection with the North Korea program. So there we saw illicit activity happening through that particular financial institution. We designated it, and actually a couple of months later, the Russian government pulled its license so that it would no longer be operative.

We have also been able to use our authorities in a variety of different sophisticated ways. So there are many or most of our sanctions are effectively blocking actions. We designate an institution or a person. They are no longer able to access the U.S. financial system.

In areas where we have secondary sanctions authorities, that has an even greater effect because it puts those banks or companies to the choice of either doing business with the United States or not, and it has a spiraling impact and effect.

In the Russia context, we also have a different kind of tool, which is what we call sectoral sanctions, where in connection with certain types of industries, in energy, defense, in finance, we have been able to launch these sectoral sanctions where we limit their ability to engage in certain types of debt, among other things.

So we use different tools depending on the program.

Mr. QUIGLEY. I want to talk about the tactics used to evade sanctions, shell companies, going through other countries. You sanction XYZ corporation. They transfer all their assets to ABC, which is then sitting in Cyprus with a corporation with absolutely no history.

How do you detect that kind of effort and what tactics do you see the Russians using to avoid these sanctions?

Ms. MANDELKER. So really as I mentioned before, we have an approach of using all source information, whether it is information that we get through the BSA database. It is information that we have because we do have an intelligence agency in TFI, which is unlike any finance ministry in the world. No one else, as far as I am aware, has the ability to access that.

Whether it is because we work with foreign partners who also share information with us, we have become increasingly, I would say, sophisticated in our abilities to detect the kind of shell company activity. So when we go after a particular target, it is often the case that we do not just sanction the individual. We sanction the financial infrastructure, whether it is the shell companies, front companies that are being used to ferret money all over the world.

And by doing so, by OFAC putting those entities on the list, we make them radioactive all over the world.

The other thing that happens when we designate particular entities is there is a whole compliance community out there that takes the names that we put on our list, and they do their own analysis as they are advising the compliance sector, whether it is financial institutions or other companies, about how to keep themselves out of being caught up in the web of those kinds of shell companies and front companies.

And as an example, you mentioned Cyprus. We have been working with Cyprus to really push them to keep bad money out of the country because that has been an historic problem.

Similarly, as I mentioned, the 311 action that we took where we called out a bank for being a money laundering concern was in Latvia. So in that instance we were able to identify this bank in Latvia that had been used to engage in money laundering in the Russia program, in the North Korea program.

And because we took that action, it actually had a big impact on the Latvian banking sector and ultimately in Europe, and what we have seen as a result of not only that action, but as a result, of course, of some other scandals that have come out, real reform efforts underway in Europe, which is part of what we want to do.

You know, we want to work with other counterparts to make sure that they are not vulnerable to the movement of money,



whether it is illicit movement of money, whether it is coming from Russia or elsewhere.

Mr. QUIGLEY. Thank you.

Mr. Stewart.

Mr. STEWART. Thank you, Mr. Chairman.

I am sorry I came a little late to the party. Like many others, we are kind of juggling schedules a little. Thank you.

I am going to start with a proposition and then give you an opportunity to respond, and I am going to make this simple. This is just, you know, for people like me, just normal, everyday, average Americans to try and wrap their head around something.

Because I think sometimes the narrative is produced which is not accurate, and let me start with this. I would argue that this President has been tougher on one of our global adversaries, Russia, than many Presidents have been now and I would say in a generation or more, and I will give as evidence of that.

First, the kinetic weapons to the Ukraine, whereas the previous administration refused to do that, sent MREs, and really nothing else.

The reinforcing of NATO, going to NATO and challenging them to pay their dues, the 2 percent, which is, of course, the whole purpose of that is to counter Russia's influence in Eastern Europe and Western Europe.

The missile defense shields throughout Europe; the European-Russian initiative, again, to build and counter the Russian influence.

I think even energy policy. I think the most important sanction we could put on Vladimir Putin is to keep the price of energy, the price of oil at \$50 a barrel, their incredible reliance on that for foreign currency, including discouraging Germany and other European nations from being so reliant on Russian sources of energy.

So on one hand, you have these policies that are enacted that are meant to counter the influence of Russia. Now, break, break. The narrative is that this President sometimes is weak on Russia, and that is created sometimes because of the lifting of sanctions.

And, you know, a recent example in January with Rusal, the metal producer.

Help us understand the thinking behind that, that on one hand, you want to counter them, but you justified lifting these sanctions so the American people can understand that.

Ms. MANDELKER. Sir, I am happy to do so.

So what we had with Rusal, En+, another company called ESE, these companies were designated purely because this guy, Oleg Deripaska, who is an oligarch, who we believe is responsible for a wide range of activity, was designated back in April.

So the way our rules work is if you are an entity that is 50 percent or more owned or, alternatively, controlled by a designated person or entity, they automatically get on our list. So that is why those three companies were designated.

Following that set of designations, we engaged in months and months of negotiations. The companies came in to us with a delisting petition.

Mr. STEWART. When you say "the companies," who do you mean? The two entities you—

Ms. MANDELKER. Right, exactly, and as well as an individual who was leading that effort, who is chairman of the holding company, En+.

So we engaged in months of negotiations, and what we did in the course of those negotiations is push them into an agreement whereby the designated person, his ownership fell under 50 percent, and we took a number of very significant and really unprecedented steps to sever his control of the companies.

Effectively what we were able to negotiate was, among other things, a Western foothold into those companies. So whereas before he controlled the boards, among other things. Today half of the board of the holding company is U.S. or U.K., which is quite significant when you think about the fact those are major Russian—

Mr. STEWART. How were those board members selected, those Western board members, the U.S. or U.K.?

Ms. MANDELKER. So those board members were selected by the company. What we did was we vetted those. So we told the companies, you know, whether or not a particular board member would pass our vetting, and the independent board members are required to sign affidavits effectively that say that they are not controlled or will not be influenced by this individual.

Mr. STEWART. Are you satisfied that they are independent?

Ms. MANDELKER. We are going to continue. What I am satisfied is that we have very significant and substantial measures to continue to monitor compliance.

So we inserted into the agreement things we have never done before in any program, the ability for a great amount of auditing, a great amount of transparency, and we have signaled very clearly, much more than a signal, to the companies that if they do not comply with the terms of what was a very significant restructuring and very significant corporate governance changes, then we will take swift action, up to and including putting them back on our list.

So now you have these boards, again, with the infuse of Western influence that are on the hook to us, to OFAC, to abide by the terms of the agreement.

The other thing that we were able effectively to negotiate was to have a very significant chunk of the shares of the holding company are now voted by independent U.S. parties.

So I am not aware of any enforcement action, whether by us or the Justice Department, where we have been able to effectively negotiate terms, such that a huge chunk is voted by independent U.S. parties.

Mr. STEWART. Thank you.

Mr. QUIGLEY. Mrs. Torres.

Mrs. TORRES. On money laundering and real estate, so we have the GTO that revealed about the role of money laundering in real estate. So Los Angeles Metropolitan Area was just added to that.

Can you talk to me a little bit about that?

Ms. MANDELKER. Sure. I am happy to do so.

So we have this tool, again, the geographic targeting orders which allow us to require, in particular, types of companies to provide information to us here about the beneficial owners of shell companies that are used when they purchase real estate by cash.

And we take that information, and we do a lot of analysis. We have expanded the GTOs, as you have mentioned, to identify information from other jurisdictions. We have also lowered the thresholds of what title insurance companies that are required to give us this information.

We have lowered the threshold in terms of the dollar value of the cash transfers, and what we do is we use that information. We share it with law enforcement. We analyze the information, and ultimately it informs our thinking on whether or not we should make regulatory changes.

The other thing that we have done, which I mentioned before, is that we issued guidance to the real estate sector to help them identify money laundering in connection with real estate transactions, and I think that that advisory, likewise, has been quite helpful.

Mrs. TORRES. Is that the principal source?

And how does it impact our current state of the housing market and rents?

Ms. MANDELKER. So I cannot tell you how it impacts the housing market and rent. We are happy to see if we have information about that. That is not really what we do.

What it does impact is our ability to understand how real estate transactions are used in order to identify money laundering, so illicit activity.

Mrs. TORRES. The bigger picture for us in California is we are continuing working on addressing the issues of homelessness. We want to make sure that, you know, we are checking every box, and how are these purchases making a negative impact into the housing market, and how is it affecting our constituents?

Ms. MANDELKER. So, again, that is not my area of expertise, but I am happy to go back and see if we have anything about that.

Mrs. TORRES. Thank you.

I yield back.

Mr. QUIGLEY. Mr. Joyce.

Mr. JOYCE. Thank you, Mr. Chairman.

Madam Under Secretary, terrorists and international crime organizations have used different methods in which to avoid detection by the Treasury. Can you explain the threat posed by these alternative remittance channels that they have been using?

Ms. MANDELKER. Sure. So we have actually had a number of actions in which we have gone after money service businesses and the other money transmitters that have been involved in helping to funnel money for groups like ISIS, Hezbollah, Al Qaeda. You name it. We are tracking that kind of activity.

Of course, you know, terrorists are always going to try and find new and different means and methods to evade detection, and what I can tell you is that we have a great ability to see and understand what they are doing, and we work consistently to try to disrupt that kind of activity, whether it is action that we take through a sanction, for example, or whether it is information that we will be able to share with our foreign counterparts to encourage them to take action.

So one thing, just in the example of ISIS, one thing that we have been able to do in strong partnership with a number of other countries is to set up a multilateral body called the CIFTG where we

work very closely with a number of other countries to share information on how ISIS moves its money, to work collectively to take action with other countries, to help inform their prosecutors about actions that they should be taking to keep ISIS and others from being able to transmit that kind of money, whether it is through money transmitters or in other means.

Mr. JOYCE. And realizing that you cannot really elaborate on some of this, but to the best that you can answer it, the Terrorist Financing Targeting Center that your activities, that you have done on that, and the other question is what methods are these groups using to obtain these funds they need to push on to their groups throughout the world.

Ms. MANDELKER. So the Terrorist Financing Targeting Center is a new initiative that we have been very grateful to this subcommittee to help us fund. It is a partnership with all of the GCC countries, where we come together both in a center, but also in other multilateral or bilateral engagement to take action to disrupt terrorist financing through that region.

So as a result of this, and it is really unprecedented. We have never had that kind of partnership. We have never been able, I think, in the past to get all of those countries in one room to focus on this effort.

So among other things, we have had three rounds of sanctions that we have taken multilaterally with all of those countries related to ISIS, related to AQAP, related to Hezbollah.

The entire GCC with us, for example, designated Hezbollah's Shura Council, which we thought was a very important effort.

The other thing that we have been able to do, and that was really one of the objectives of the TFTC, was to do a lot of capacity building. So we want, you know, many other countries to have the same kind of tools and methods to detect and disrupt terrorist financing.

For example, we had a week-long training here in Washington over the summer with all of those countries. We are doing another workshop, a 2-day workshop, with those countries.

Later this month, we will be presenting information about what we are seeing, and other countries will be doing the same. What we really want that center to do and what we are striving towards is to use it to root out terrorist financing in the region, and I think we are making great strides.

We have a long way to go, but this effort has really been instrumental to our ability to do so.

Mr. JOYCE. In raising those funds, is that through drug sales?

What are the ways that these organizations are raising their money, if you can explain?

Ms. MANDELKER. It is through a wide variety of means. So without a doubt, there has been criminal activity that has enabled terrorist financiers to get access to money.

Of course, traditionally we have been able to stop this, but ISIS, because it had territorial control over certain regions, had access to oil revenues, right? That is no longer going to be the case, but they have used extortion. They use kidnapping. They move money through charitable organizations that are really fronts for terrorist financing.

They get money from governments. So, you know, the Iranian regime, of course, has spent hundreds and hundreds of millions of dollars supporting terrorist activities, terrorist organizations like Hezbollah, Hamas, and others. So some of it is state financed, which is more than an outrage.

So we are taking a number of actions with partners in that region, but also elsewhere to really put pressure to disrupt that kind of movement of money.

I will give you one example of action that we took.

Mr. JOYCE. Please.

Ms. MANDELKER. I believe it is in October. So we identified and disrupted this international network. Part of it you had Syria, Iran, and Russian companies working in concert to help move oil, Iranian oil, through Russia to the Assad regime.

You had actors in the Central Bank of Iran that were helping to facilitate the movement of that money. There was a company in Iran that had the name "medical" and "pharmaceutical" in it, as if that is what it was doing. That was helping to funnel money to a company, bank accounts in Russia, that then moved money to a subsidiary of the Russian Ministry of Energy. We designated that subsidiary.

That resulted in enabling oil going to Syria. At the same time, that same international network, which was led by a Syrian businessman who is now designated, was able to work to move hundreds of millions of dollars through certain means through Syria onwards to Hezbollah and Hamas.

So they operate in a variety of different means. In that case we call that an oil for terror network, and that is what we are working every day to try to shut down, not only through Treasury tools, but in concert with a number of other interagency and international partners.

Mr. JOYCE. Please keep it up. Thank you for your testimony here today.

Ms. MANDELKER. Thank you.

Mr. JOYCE. I yield back.

Mr. QUIGLEY. Thank you.

Thank you to the members for participating and the staff for putting this together.

Madam Under Secretary, thank you so much for participating and for your service and for all who work with you.

Ms. MANDELKER. Thank you. Thank you very much.

Mr. QUIGLEY. The meeting is adjourned.

[Questions and answers submitted for the record follow:]

March 12, 2019

**House Appropriations Subcommittee on Financial Services and General Government:**

***Treasury's Role in Combatting Financial Crimes***

**Questions for the Record: Congressman Tom Graves (R-GA)**

***Wire Fraud in Real Estate***

Criminals send emails that appear as legitimate communication from real estate professionals to defraud homebuyers and divert funds in real estate transactions. This cybercrime is commonly called "Business Email Compromise" and caused \$12 billion in losses from October 2013 to May 2018.

What has been done at the Department of Treasury to combat wire transfer fraud and how are the results measured?

Is there a coordinated effort between Federal agencies to work together to combat this type of fraud? Why or why not?

**Answer:**

FinCEN analysis notes that financial data referencing Business Email Compromise (BEC), a cyber-enabled financial crime targeting U.S. financial institutions and their customers – in particular, the real estate sector – has seen a sharp increase since 2016. In 2017, real estate-related BEC data comprised nearly 10% of all reported BEC information, which is up from approximately 4% in 2016.

In 2014, FinCEN created the Rapid Response Program (RRP) to combat financial losses associated with BEC. The Rapid Response Program is a partnership between the Federal Bureau of Investigation, the United States Secret Service, Homeland Security Investigations, and the United States Postal Inspection Service. The RRP allows for urgent dissemination of information regarding suspected financial fraud tied to BEC.

The goals of RRP are to safeguard the U.S. and international financial systems from illicit use and assist in the recovery of funds on behalf of victims. The RRP consists of transmitting formal notifications on behalf of U.S. law enforcement to foreign Financial Intelligence Units and foreign financial institutions of suspected BEC fraud, facilitating actions to disrupt the crime, and assisting in the return of the stolen funds to victims. The RRP provides information on trends and patterns that assist FinCEN in the proactive identification of future threats and illicit actors involved in this constantly evolving criminal scheme in addition to aiding in the recovery of stolen funds on behalf of victims. The RRP has been used to confront increasingly significant cyber threats, and it has ultimately facilitated the recovery of more than \$499.5 million for U.S. victims since its inception in 2014.

The program was established pursuant to 31 U.S.C. § 310, which broadly authorizes FinCEN to analyze and disseminate available information to support ongoing criminal financial investigations. The statute also authorizes FinCEN to furnish research, analytical, and information services to financial institutions and law enforcement, in the interest of detection, prevention, and prosecution of money laundering, terrorism, organized crime, and other financial crimes.





WEDNESDAY, MARCH 13, 2019.

## **GSA OVERSIGHT HEARING**

### **WITNESSES**

**EMILY W. MURPHY, ADMINISTRATOR, GSA**

Mr. QUIGLEY. Good morning. Thank you all for joining us. We are pleased and we would like to welcome the GSA Administrator, Emily Murphy, back before the committee this morning.

Today we plan to engage with Administrator Murphy on a variety of matters, including her past testimony before this subcommittee, as well as her management of major projects under GSA purview.

First and foremost is whether the interest of the American taxpayer are being put first, where they belong, or whether the personal financial interests of the President are taking precedence when GSA is making real estate and procurement decisions. To get to the bottom of this, we will need the administrator to answer our questions truthfully and forthrightly about the construction and consolidation of the new FBI headquarters.

The plan to acquire the new headquarters for the FBI has a long history. In the 2009 omnibus appropriation bill Congress directed the GAO to review the security concerns of the J. Edgar Hoover building and other FBI locations in the National Capital Region.

In a report issued in November 2011, GAO found that actions were needed to address concerns with the condition of the FBI headquarters because the building had become delapidated and the FBI staff had outgrown the building.

In addressing the concerns raised about the Hoover Building, GSA and the FBI jointly recognized that consolidating all the FBI personnel in the Hoover Building and other locations throughout the region into one modern facility was the best answer.

GSA expected the new headquarters facility would eliminate close to 1 million square feet in rentable space, significantly reduce the need for FBI leased space in the National Capital Region, and address the serious security concerns raised by the FBI headquarters being located in downtown D.C.

In 2014, GSA issued a solicitation to interested developers asking for bids to develop a new FBI campus headquarters, one of three suburban locations in either Maryland or Virginia, that would house 10,000 FBI employees. In 2015, GSA identified a short list of offers and asked for bids for a new FBI campus. In exchange, the winning bidder would receive the current Hoover Building site.

On July 11, 2017, GSA canceled a procurement to replace the FBI headquarters. And in February of 2018, GSA and FBI presented Congress with a new, revised raze and rebuild plan for a new FBI building at the existing Hoover location. This raze and re-

build plan represented abandoning nearly 10 years of work of moving the FBI to a suburban Washington, D.C. campus.

In addition, the long-term plan to relocate the FBI headquarters to a suburban location would cost an estimated \$3.57 billion according to the inspector general and would be offset by \$334 million of proceeds from selling the existing Pennsylvania Avenue site.

In contrast, the plan to keep the Pennsylvania Avenue property, demolish the existing facility, and construct a new building would cost an estimated \$3.84 billion or \$279 million more than the relocation plan, and it would accommodate 2,300 fewer employees.

Further, the new revised raze and rebuild plan would make the FBI the only member of the intelligence community to have a new headquarters in an urban site.

In testimony to Congress back in 2013, the then-Associate Deputy Director of the FBI stated that although the FBI had implemented some countermeasures at the Hoover Building to improve security, these efforts are not a substitute for relocating FBI headquarters to a location that affords the ability to provide true security in accordance with interagency security committee standards.

So what changed? Why would a nearly 10-year project agreed upon by both GSA and FBI be abandoned for a significantly more expensive proposal that compromises the safety and security of FBI personnel?

Interestingly enough, many years before becoming President, Donald Trump expressed interest in the FBI headquarters moving out of Washington, D.C. so that he could acquire the land on Pennsylvania Avenue and redevelop the property which is directly across from Trump International Hotel.

However, after he was sworn in as President and became ineligible as a Federal employee to obtain the property, he reportedly became dead opposed to the government selling the property. This reversal caused many to question—and rightfully so—whether the President wanted to protect his financial interests in Trump Hotel, particularly if another private developer could obtain the property and compete directly with the Trump Hotel.

With this in mind, I asked Administrator Murphy last year at a hearing on April 17, 2018, directly and repeatedly if President Trump or other White House officials had any communications with GSA or the FBI about this abrupt and expensive new decision to keep the FBI at the Hoover location.

Unfortunately, in Ms. Murphy's response, she withheld the fact that she met twice with White House officials about the FBI project, both on December 20, 2017, with General Kelly and OMB Director Mick Mulvaney and on January 24 with the President himself.

The GSA inspector general later described these omissions as having left a misleading impression with our subcommittee that those meetings didn't occur. Ms. Murphy misled us in spite of the fact that according to the GSA inspector general she had practiced answering these questions several times while preparing for the hearing. When the inspector general asked why Administrator Murphy had misled the committee, she replied that she did not want to derail the hearing.

Well, let's be clear. We are off the tracks. This committee demands truthful and forthright answers going forward. Today, I take it at face value view that Administrator Murphy sure wants to answer our questions and put last year's hearing behind us, and we would like to do that.

We want to know why the relocation plan for the FBI changed dramatically and how it impacts the security of FBI headquarters and what level of White House involvement there was in this decision. We want to know why the new plan is more costly than the previous plan that had been vetted and approved by Congress.

We also want the questions answered in the followup letter from October 18, 2018, where I and other Members of Congress requested a complete timeline of the FBI project and all documents and communications associated with the FBI relocation.

So with that said, I look forward to what will hopefully be an open and truthful discussion today.

Thank you. And I defer to the ranking member, Mr. Graves.

Mr. GRAVES. Thank you, Mr. Chairman.

Ms. Murphy, good to see you again. Thank you for joining us today.

When it comes to our Federal Government operations, you have a tremendous role. In essence, you operate the agency that is the landlord for all the Federal Government. I know it is a tremendous task, and you are prepared for this hearing today.

But you also act as an acquisition agent in many respects, including purchasing the services, supplies, and equipment for all the agencies. Each year you manage tens of billions of dollars of hard-earned taxpayer money. This is a great responsibility, and obviously you are a part of a lot of conversations, a lot of tremendous decisions.

I did want to from the outset compliment you and what your agency has done. In your testimony you have identified about \$6 billion of savings that you are presenting to this committee, and that is not something we see often from agencies.

So thank you for doing that, because our Nation faces a crisis. \$22 trillion in debt has amassed, and the deficit continues to grow. A lot of folks can point a lot of fingers, but I appreciate the fact that you are willing to come before us with cost savings measures.

I look forward to your testimony today. I am not one that believes that you have joined in colluding with the President or anyone else in any kind of manner to intentionally or knowingly mislead this committee or any other committee. I don't see that in your character, in your person. I wouldn't be one to sit here as well and say my words always come out the way I intended.

So today is your great opportunity to clarify anything you may have said in the past, and I look forward to your testimony this morning.

Thank you, Mr. Chairman.

Mr. QUIGLEY. Thank you, Mr. Graves.

And let the record reflect that it is 10:08 and the word "collude" has entered our lexicon this morning. I had it in a later—

Mr. GRAVES. It might have been implied before 10:08.

Mr. QUIGLEY. Well, the word itself. And I had it in a later pool. I thought it would be more like 10:15.

But I can't express enough, I care a lot less about the testimony last time. We will touch on it. I care a lot more about how this decision was made. And I know it is a sensitive topic for you, and I want to give you every opportunity to help us understand.

But you have to appreciate the fact that 10 years of planning and work—and a line that you said that—and I would like you to address this in your opening, you reportedly stated that the Pennsylvania Avenue location—this is January of 2018—was not GSA's preferred site and a lot of work had gone into the campus concept. So I just want to know why the abrupt change and how the apparent cost differentials and safety issues were addressed and who was involved in those decisions.

So I want you to take your time. We usually tell folks in the opening, please don't filibuster. Your written statement is there for the record. But if it is something new and we can learn from it, take your time and help us understand how we came to that abrupt change. Please go ahead.

Ms. MURPHY. Good morning, Chairman Quigley, Ranking Member Graves, and members of the subcommittee. Thank you for the invitation to join you today. I look forward to discussing a wide range of priorities and programs within GSA, an agency that supports Federal agencies with their real estate procurement, IT, and shared services needs.

I am pleased to say, GSA saved the American taxpayer nearly \$7 billion in fiscal year 2018 alone. We look forward to building on our service and cost-savings success this year and in the future.

As the Federal Government's primary landlord, GSA manages more than 368 million square feet of owned and leased space, housing more than 1 million Federal employees. As part of our ongoing efforts to be better stewards of taxpayer dollars, last year GSA's public building service generated more than \$1 billion in savings, including over \$900 million in cost avoidance from these transactions through consolidations, footprint reductions, and longer-term leases.

From office equipment to satellites, GSA's contracting vehicles help agencies procure \$56.7 billion in goods and services annually. By simplifying and streamlining access to the Federal marketplace and modernizing procurement systems and processes, GSA helped agencies save nearly \$6 billion in 2018.

The modernization of Federal IT infrastructure and applications is an important priority for GSA, and our agency has become a trusted leader and a valued partner in improving IT across the Federal government.

By expanding shared services across the Federal government, GSA is improving performance and saving taxpayer money. This allows agencies to direct more resources towards their core missions. One example of shared service savings, GSA fleet provides more than 217,000 vehicles to more than 75 agencies, delivering a savings of \$0.28 per mile when compared to independent fleet programs.

Before I close, I do want to address the one issue that was discussed last year in the subcommittee and that you addressed in your opening remarks, Sir, the FBI headquarters project. Given the

intense interest in this project, I want to be clear: The FBI made the decision to propose remaining at its current location.

I wish the FBI were here with me today to explain their reasoning for doing so, but there was a new FBI director who joined the agency in August of 2017. And I don't find it at all surprising that a new leader coming in to run the agency would want to take a step back, given the fact that the procurement had just been canceled, and look at the best way to address the needs that he assessed for his agency moving forward.

Last year I did not mention meeting with the President with regard to the location decision because to my knowledge then—and now—the President had no involvement in the FBI's location decision. The FBI's decision to remain at the current location was communicated to GSA at a meeting on January 4 of 2018.

Three weeks later, FBI Director Wray, Deputy Attorney General Rosenstein, Director Mulvaney, General Kelly, and I met in General Kelly's office and decided to use a demolish-rebuild approach to construction at the current site. The location decision had already been made prior to that meeting.

Following that meeting, Wray, Rosenstein, Mulvaney, Kelly, and I met with the President to discuss the only outstanding question, how should the project be funded. The FBI has also testified that it made the decision to remain at the current location; and I included in my written testimony a recent statement from the FBI reiterating that it made this decision.

Also after an exhaustive investigation, the GSA IG determined that my testimony that the FBI made the determination decision to remain at its current location was true. I look forward to answering all of your questions on this matter this morning.

And I also look forward to being able to discuss with you all of the good things that GSA is trying to do to better serve American taxpayers and the Federal agencies that it is our core mission to support.

So thank you very much for the opportunity to be here this morning.

[The information follows:]

**Statement of Emily W. Murphy  
Administrator of the U.S. General Services Administration**

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

**March 13, 2019**

**Introduction**

Good morning Chairman Quigley, Ranking Member Graves, and Members of the Subcommittee. Thank you for the invitation to join you today. I look forward to discussing how the U.S. General Services Administration (GSA) is working with Federal agencies on multiple fronts to save taxpayer dollars and improve the efficiency and effectiveness of the Federal Government. GSA is pursuing a wide range of programs that support partner Federal agencies with their real property, procurement, information technology (IT), and shared service needs.

In fiscal year (FY) 2018 alone, I'm pleased to say, GSA helped Federal agencies save more than \$6 billion. We look forward to building on the service and cost-savings success this year and going forward.

GSA's mission is delivering value and savings in real estate, acquisition, technology, and other mission-support services across Government. Our unique mission-support role ties back to our founding by President Harry S. Truman in 1949. In establishing GSA, President Truman sought to create one agency to help the Government avoid "senseless duplication, excess cost, and confusion in handling supplies, and providing space."

In today's testimony, I will discuss key areas of focus for GSA and the opportunity that each brings to our agency and the Federal Government.

**Real Property**

As the Federal Government's primary landlord, GSA manages approximately 371 million square feet of owned and leased space for Federal agency tenants, serving more than 1 million Federal employees.

At GSA, we are working to "right size" and reduce the Federal Government's real property footprint. Our goal over the next four years is to reduce billions of dollars in costs by shrinking the Federal real estate footprint, negotiating lower price leases, and investing capital in those facilities with the greatest need and financial return. This plan will allow agencies to invest more

in their missions and less on paying rent to GSA. We appreciate the funding this committee has provided in FY 2019 for GSA's real property program which will further advance this goal. This committee's support of our purchase of the Department of Transportation Headquarters, the modernization of the Customs and Border Protection Calexico Land Port of Entry, and the further consolidation of Department of Homeland Security components at the St. Elizabeths campus are critical to ensuring our Federal agencies have the infrastructure needed to execute their missions. I look forward to working in partnership with this committee on the FY 2020 request to build on our long-standing partnership to better manage Federal real property.

I am pleased with the progress we've made in our courthouse construction and modernization program. The funding provided in the FY 2016 appropriations resulted in 11 courthouse projects throughout the country. GSA has procured design services for 10 of the courthouse projects. Three are already in the midst of construction, and another three will go into construction this year. Of the remaining projects, we have acquired the sites for two, and the rest are in the design phase. GSA is working closely with the Administrative Office of the U.S. Courts, the district judges, and the local communities to ensure that these courthouses are in keeping with their surroundings and reflect the Federal Government appropriately. These new facilities will address the mission and security needs of the courts. Overall, we've made tremendous progress working in partnership with the judiciary and stakeholder communities in implementing this program.

As GAO reports have shown, for agencies with long-term space requirements, it is more cost-effective for these agencies to occupy owned space rather than rent from the commercial market, especially in high cost locations. GSA's consolidation program takes advantage of opportunities to move agencies from multiple leased locations into a single federally owned space. With this committee's support, GSA has authorized 75 consolidation projects. When all 75 projects are completed, it will reduce our footprint by more than 1.59 million usable square feet (USF), reduce agency rental payments by \$65 million annually, and generate \$130 million in annual lease cost avoidance.

For agencies housed in leased commercial space, GSA is working to produce savings by 1) improving utilization rates by reducing the footprints, 2) negotiating better pricing through longer term leases, and 3) identifying existing leases where short-term extensions would be costly relative to the market and replacing them with more cost-effective long-term leases.

GSA is also working to dispose of unneeded Federal real property. In FY 2018, GSA partnered with agencies to dispose of 140 assets governmentwide and generated over \$123 million in sales proceeds from these transactions. These disposals resulted in a reduction of almost 5 million square feet and 2,735 acres from the Federal footprint.

### **Acquisition**

GSA's second strategic goal is to serve as the premier provider of efficient and effective acquisition solutions across the Federal Government.

From office equipment to satellites, GSA contracting vehicles help agencies procure over \$50 billion in goods and services annually. By simplifying and streamlining access to the Federal marketplace, and modernizing procurement systems and processes, GSA helped agencies save \$5.8 billion in FY 2018.

One example is GSA's City Pair Program for air passenger transportation services, which is the largest negotiated contract and managed airline program in the world.

Whether you are traveling to respond to a natural disaster, attend a training conference, or get back to your district, the City Pair Program allows eligible Government travelers maximum flexibility to book, change, or cancel their airline tickets without costly penalties. The contracts deliver savings to all Federal agencies through contract prices that in the aggregate offer a 49 percent average discount off comparable commercial fares, saving approximately \$2 billion annually.

Another example is the GSA SmartPay® Program. With more than 3.5 million charge card account holders, it is the world's largest commercial payment solution program, providing services to more than 560 Federal agencies, organizations, and Native American Tribal Governments. In FY 2018, the program provided agencies with net refunds of \$310.2 million out of \$30.6 billion in purchase volume.

### **Information Technology**

The modernization of the Federal Government's IT infrastructure and applications is an important priority for GSA, and our agency has increasingly become a trusted leader and valued partner in helping improve agencies' use of information technology. GSA offers a full suite of services and programs to help agencies adopt agile IT procurement, migrate critical systems to the cloud, make thousands of data sets available to the public, and modernize antiquated legacy systems.

For instance, GSA's Federal Acquisition Service (FAS) maintains an Office of Information Technology Category, or ITC, which provides access to best-value IT and telecommunications products, services, and solutions to Federal, State, local, and Tribal government agencies. ITC facilitates \$24 billion in annual government spend, and 98 percent of Federal agencies utilized its contract vehicles last year.

GSA is also involved in several large-scale efforts to fundamentally transform the Federal IT landscape. One such project is the Department of Defense's Defense Enterprise Office Solutions (DEOS), to replace disparate legacy IT services for office productivity, messaging, content management, and collaboration. By leveraging GSA's IT Schedule 70 contract vehicle



to purchase services, DEOS will enable the Department to improve interoperability and information sharing across operational boundaries, enhance cybersecurity through rapid updates and leveraging current commercial capabilities, provide unprecedented insight into Department-wide IT spending and shift commodity IT support functions to critical cybersecurity missions.

Perhaps GSA's most visible IT modernization effort is implementation of the Technology Modernization Fund (TMF), which became law as part of the Modernizing Government Technology (MGT) Act in late 2017 in an effort to accelerate the modernization of legacy IT systems in Government. The TMF, administered at GSA on behalf of an independent TMF Board, provides broad support for the Board's activities, including technical support and project monitoring for agencies that receive funds from the TMF. In 2018, the Board awarded \$90 million for seven projects at various agencies, after receiving over 40 project proposals totaling over \$500 million in requested funding. GSA is helping the Board ensure that projects are on track and delivering on planned milestones. I appreciate your subcommittee's efforts to provide additional funding for the TMF in FY 2019.

### **Shared Services**

The expansion of shared services across the Federal Government to improve performance, reduce duplication, and save Federal agencies money is a key goal for GSA, allowing agencies to direct more resources toward their core missions.

GSA's Fleet program is one example of a shared service resulting in significant efficiencies and savings. GSA Fleet provides more than 217,000 quality motor vehicles to over 75 participating Federal agencies—delivering an average savings of 40 percent when compared to independent fleet programs.

Additionally, in 2018, GSA awarded the NewPay blanket purchase agreements to two firms for modern commercial payroll solutions, and this year GSA is prepared to lead agencies in the implementation of these solutions in an effort to modernize legacy systems and improve service delivery to agency customers.

### **FBI Headquarters Project**

Before I close, I would like to take the opportunity to address one issue discussed at my hearing before this Subcommittee in April of last year: the FBI headquarters project. Given the intense interest in the proposed location, I want to be clear, I stand by my testimony that the senior leadership of the FBI made the decision to remain at the current Pennsylvania Avenue location.

The location for the proposed headquarters was discussed at length by the GSA and FBI project teams before my confirmation as Administrator. Ultimately this question culminated in a meeting on January 4, 2018, with FBI Director Wray, myself, and senior staff with both agencies. The FBI leadership explained its operational requirement to be in proximity to the

Department of Justice leadership, other key decision makers, and partner agencies. Consequently, the FBI decided to remain at the current Pennsylvania Avenue location. GSA had no significant discussion of alternative locations after that meeting. After the January 4 meeting, work focused on the two remaining questions needed to complete the revised plan for submission to Congress: whether to renovate the existing building or demolish and rebuild at the current site and how to finance the project.

GSA strongly advocated for new construction and against a renovation given the physical limitations of the existing structure. While there was general consensus in favor of a demolish rebuild strategy prior to the January meetings at the White House, White House Chief of Staff Kelly, FBI Director Wray, OMB Director Mulvaney, Deputy Attorney General Rosenstein, and I discussed these two alternatives and decided to proceed with new construction (demolish and rebuild) at the current site during our pre-meeting with the White House Chief of Staff on January 24, 2018.

The remaining question considered at the following meeting with the President was how to finance the project. The outcome of that meeting was a decision to finance the project through a ground-lease leaseback transaction. In the weeks after the meeting, OMB personnel advised that, consistent with longstanding guidance on budgetary treatment, the proposed ground-lease leaseback transaction would require full up-front funding. Further, Congress announced an agreement significantly increasing the available funding for non-defense appropriations, creating a potential opportunity for a full appropriation for the project. The increased likelihood of securing an up-front appropriation for Federal construction of the FBI headquarters and the fact that Federal construction would be more cost-effective than a ground-lease leaseback transactions caused a reconsideration of the initial funding decision and a decision to seek full up-front funding for the headquarters project.

Importantly, as a stark reminder of the urgency behind the need for a new FBI Headquarters, just a few weeks ago, an eight-pound piece of concrete fell through the ceiling at the J. Edgar Hoover building, knocking out overhead lighting and causing damage to an office desk. Thankfully no one was hurt, but incidents like these will only become more frequent if the status quo remains intact. I understand the challenges associated with this project, and it is my goal to do everything I can to help find a headquarters solution for the FBI that meets its national security and law-enforcement mission requirements.

Lastly, as a former congressional staffer and firm believer in the vital role of congressional oversight, I have asked my staff to cooperate as fully as possible with all ongoing and future oversight requests on this topic. This matter is too important to get wrong, and I believe we can and must find a successful path forward.

### **Closing**

Thank you for the opportunity to appear before you today. I look forward to your questions.

Mr. QUIGLEY. Thank you.

Let me begin on the cost issue then.

Ms. MURPHY. Please.

Mr. QUIGLEY. Because as I read the inspector general report, Director Wray reportedly said, quote, if the cost savings between a suburban campus site and the existing site were similar, his preference was to remain at the Hoover Building. But, quote, if the campus scenario offered significant savings, which we now know it does, he was not opposed to a suburban campus site. Is that your understanding of Director Wray's understanding and belief at the time?

Ms. MURPHY. That was—that is the—yes, that is my understanding. I am sorry. Do I—yes. That is my understanding of Director Wray's statement that he was a strong supporter of remaining at the current location but that if the cost difference were—if it was a wild cost difference that he would reconsider.

Mr. QUIGLEY. What is your definition of wild, and is there a cost difference?

Ms. MURPHY. So I think the way the IG did her cost analysis is one that I would like to, if I may, I would like to explain why GSA disagrees with it. There are a lot of elements that go into any, you know, cost buildup, and I would be happy to provide you with a really detailed briefing. I won't waste your time going through all of it now.

But I think the key issue where we disagreed is how we treat the cost—the value of the current location. When the IG did her analysis, they subtracted from the cost of the campus the money that would be put toward—that we would receive from selling the FBI building.

Mr. QUIGLEY. Right.

Ms. MURPHY. They did not give a similar credit though to the—remaining in the current location. And if you think about it, if you owned a home that was \$200,000 and you owned it free and clear, and you decide that you want to buy a \$300,000 home, just because you can get \$200,000 from the sale of your current home doesn't mean that the new home costs \$100,000. The new home still costs \$300,000, it is how you are going to pay for it.

Mr. QUIGLEY. But it is the net effect on taxpayers. We are going to get money back one way or another if we sell the Hoover Building, correct?

Ms. MURPHY. Well, again, if you think about the analogy from the home—

Mr. QUIGLEY. Just let me just—let me just—but answer that. And I want to give you a chance to respond. We would get money back. Approximately, what is your ballpark guess of what we would get back selling the Hoover Building?

Ms. MURPHY. The GSA has not released that amount because we have wanted to protect that as procurement sensitive information. The IG has stated that they believe that, I think you quoted in your remarks—

Mr. QUIGLEY. Right.

Ms. MURPHY [continuing]. that it was \$334 million. GSA's concern has all along been that we—

Mr. QUIGLEY. It is a pretty good location.

Ms. MURPHY. Well, we believe the site is worth far more than that and that because of the cost—but we are not getting the full value, that the—because of the way that the prior lease exchange was structured where we didn't have the full appropriations, we were going to be taking—your \$200,000 home was going to become a \$50,000 home, and so you weren't going to be recognizing the full value of that first investment you had.

So when we look at how much we are actually going to—it is going to cost taxpayers, it was still going to cost taxpayers the same amount to build the campus or to remain—roughly the same amount to build a campus or to remain in the same place. There are other factors—

Mr. QUIGLEY. You still haven't explained why the money we get for selling it doesn't count.

Ms. MURPHY. The money we get for selling it isn't money we can then go and just apply to the new building. And even if it were, it is an asset the Federal Government has then lost. It is a valuable piece of land, as you have acknowledged. And at the end of the day, if we are talking about, you know, a campus that the FBI doesn't believe meets its requirements and a headquarters facility that the FBI says does meet its requirements—

Mr. QUIGLEY. Let me try to get through the cost issues with you. Were you aware that several officials within GSA thought that they were understating the cost associating with the newly revised plan? And this was stated in the inspector general's report.

Ms. MURPHY. I read that in the inspector general's report. The information that was provided to me with the funding gap analysis would be continuing to dive into the funding issue and look at, among other things, what are the relocation costs of moving employee—the 23 employees—2,300, I am sorry, employees the FBI has identified it is moving out of the area.

Mr. QUIGLEY. Is that a yes? Were you aware that there were those in GSA that thought that we were understating the cost of the raze and rebuild project?

Ms. MURPHY. Not at the time I appeared here last year.

Mr. QUIGLEY. Okay. Are you aware of those now?

Ms. MURPHY. I am aware of them due to the IG's report, yes.

Mr. QUIGLEY. And did any of these—those who dissented discuss this with the GSA leadership team now at this point, to your knowledge?

Ms. MURPHY. No one—no. They had not discussed it with me. The project team that has been working on it has been working to refine what the cost associated with the project would be. And they continue to do so.

Mr. QUIGLEY. To your understanding, did this take into consideration the hardening of the building and all the other issues that come with being downtown and the only building in the intelligence community that would be in an urban setting?

Ms. MURPHY. So, yes. The security measures were taken into account. In fact, the numbers that GSA presented in the February 2018 report included the fit-out cost, which is what the—usually what GSA comes to appropriations with—in the past has come with is the cost of building the building, not of all the things you have to add on it to make it a functional building.

And in an attempt to be much more transparent as to what the real costs of the building were, we included in the 2018 report what we thought the additional cost would be. And that—and the issue with the hardening of the building is indeed the reason that GSA strongly argued that a remodel of the building would not be a successful project, that we believe that the demolish and rebuild, if the FBI wanted to stay on that site the demolish and rebuild was the approach that we should use.

Mr. QUIGLEY. Is the quote correct that you stood by the original plan in January—on January 4 of 2018 was not the preferred site and that a lot of work had gone into the campus concept, you said this?

Ms. MURPHY. So when I met with Director Wray on January 4 of 2018, I presented him with each of the options, including what we understood at the time was his new preference. And I spoke—I had a telephone conversation with Director Wray on the 22nd of December of 2017, at which time he told me that he wanted to remain at the current location. And I asked for the ability to come over and brief him on what that would mean and the alternatives.

My concern for—was that by switching from a campus to an urban—to remaining at the current location, we would have a lot of trouble getting funding, that we would have trouble having support from our appropriators, and—

Mr. QUIGLEY. Well, what did you view then—what was your argument on what the other downsides were besides this, the fact that there were the capacity for 2,300 fewer employees that were going to have to be housed someplace else, additional security requirements downtown?

All the arguments you made in this 10-year plan that Congress approved to move forward, you must have made some of those arguments with the director.

Ms. MURPHY. So when I met with the director, the decision had already been made by the FBI independently of GSA that it was going to reorganize its headquarter structure and move 2,300 employees outside of the National Capital Region, so that those employees were already off the table as far as the director was concerned.

Mr. QUIGLEY. And did the director tell you who he had talked to about this with the White House?

Ms. MURPHY. No.

Mr. QUIGLEY. Did you ask him?

Ms. MURPHY. No.

Mr. QUIGLEY. Did anyone ever tell you whether the White House communicated with the director about their preferences as to this site?

Ms. MURPHY. I want to be careful in answering this question, sir, because I know that there have been questions about this in the past. I mean, it is longstanding executive branch practice and privilege not to discuss conversations between the President, his advisers, between senior advisers—heads of agencies and senior White House advisers. So I am going to respectfully decline to answer that question.

Mr. QUIGLEY. Well, are you exerting a privilege?

Ms. MURPHY. I am not exerting a privilege because the privilege belongs to the White House. I am saying that longstanding—that all my predecessors of either party would have declined to have a conversation about conversations that I wasn't even a party to that may or may not have occurred.

Mr. QUIGLEY. Well, I am going to—we will talk a little bit about that and then I will pass it onto Mr. Graves. The fact of the matter is the President has not asserted this privilege, correct?

Ms. MURPHY. To the best of my knowledge, no.

Mr. QUIGLEY. Well, he would have had to have told you?

Ms. MURPHY. Yes.

Mr. QUIGLEY. It is his privilege.

Ms. MURPHY. It is his privilege, no.

Mr. QUIGLEY. So you are asserting a privilege that has—the President hasn't?

Ms. MURPHY. I am not asserting a privilege. I am declining to answer based on the fact that—first of all, you are asking me to speculate about conversations I wasn't party to.

Mr. QUIGLEY. I am asking you if you are aware of any.

Ms. MURPHY. And going either way, either answering yes or no to that question would reveal what conversations took place between agency heads and the President, and it is my understanding that longstanding executive branch policy and practices we just don't discuss conversations between the heads of the agency, the President, and senior White House advisers.

Mr. QUIGLEY. And respectfully, I am asking you to answer because there has been no assertion of privilege.

Ms. MURPHY. And respectfully, I am going to decline, sir.

Mr. QUIGLEY. We will get onto that, but I will let Mr. Graves continue.

Mr. GRAVES. Thank you, Mr. Chairman.

I can sense the difficulty in her with this question because you are asking her to answer a question based on a conversation that could be hearsay that maybe she heard about or didn't hear about or others talked about.

In this place, in this city, Mr. Chairman, you know there are a lot of conversations that people think they heard or didn't hear or others presume might have been said. In fact, you are implying that yourself.

Ms. Murphy, it sounds to me like with the chairman's questioning he accepts your initial opening statement about the previous hearing we had and how you clarified that, unless he says something different here a little bit later. So thank you for doing that.

Tell me about how decisions are made. Is it common practice that you as the head of GSA tell directors, or Presidents, or agency heads where they will have a building built or not built? Is that your job?

Ms. MURPHY. Thank you, Congressman.

Usually what GSA does is an agency comes to us and they say, we have a requirement, and they give us that requirement. And then GSA works with them to find a suitable approach, and then we present what we think the answer to that is to our oversight

committees, and they then have the ability to pass resolutions either agreeing with us or disagreeing with us.

Mr. GRAVES. So it is common that you receive a preference from——

Ms. MURPHY. We receive requirement——

Mr. GRAVES [continuing]. Those that are doing their own research and have their own request?

Ms. MURPHY. Yes. And I will be candid, I don't believe that the GSA administrator gets to dictate to the FBI director what national security requirements are.

Mr. GRAVES. Do you know of any time in which a GSA director, whether yourself or in the past, has ever told another director no and just said, you are wrong, we are not going to do that?

Ms. MURPHY. I have argued with other directors about whether I agree with their delineated area, whether I agree with their requirements, whether I think we can sharpen our pencils. But I have never told them, no, absolutely no, you may not.

Mr. GRAVES. Are you aware of anyone in the past that has has done that? I can't think of one where there has been that conflict where FBI or anyone comes forward, or DOT recently within the last decade, and said we need a new facility and this is where we need—and this is how much we need and how we need it and where we need it and a director said no, we are not going to do that for you, can you?

Ms. MURPHY. I can't think of anytime that I have done that, but I don't want to speculate as to what my predecessors have done. I am not aware of any such—I can't recall any. But I don't want to go—I have learned not to speculate at all.

Mr. GRAVES. That is fine. So let's go back in time to when all this started. The chairman referenced this is about a 10-year process we have all been in.

Ms. MURPHY. More than, yes.

Mr. GRAVES. More than ten. You have been with GSA for a while too in some capacity, so maybe you have heard conversations in the past about where all this began and where it came from. So it began maybe in 2004, 2005, 2006, 2007. Where did it all start? Let's go back to the beginning for a second.

Ms. MURPHY. It was back, you know, beginning of the prior decade where the FBI was coming and saying that they are—that the building is falling down and——

Mr. GRAVES. Right.

Ms. MURPHY. If I can give you an example.

Mr. GRAVES. But then investment and site research began when, you think, maybe 2007, 2008, 2009?

Ms. MURPHY. I think it was 2007, 2008 that they began doing the work on that. 2009 there was a GAO study. There was another study in 2011. There has been a lot of work that has gone on into this.

Mr. GRAVES. When were the sites identified, the suburban sites?

Ms. MURPHY. The suburban sites were identified in—I believe it was about 2014 that they had—the final three were identified. There were more before—prior to that. If I am not exactly correct of the date, I would love to correct it afterwards.

Mr. GRAVES. No, that is fine. I am just asking in general. I am trying to help the committee with the timeline.

Ms. MURPHY. Yes. Yeah.

Mr. GRAVES. This is not something that happened last year—

Ms. MURPHY. No.

Mr. GRAVES [continuing]. That all of a sudden you stepped in and told the President or anyone else or the President told you or someone where all this is going.

So the sites were narrowed down to three, that is my understanding?

Ms. MURPHY. That is correct, yes.

Mr. GRAVES. Is it still three suburban sites, or has it been narrowed down any further aside from the recommendation from the FBI director?

Ms. MURPHY. So when the procurement was canceled in July of 2017, which was before I became the administrator—

Mr. GRAVES. Right.

Ms. MURPHY [continuing]. At that point in time GSA did not pursue keeping its options on those sites. So we—at this point in time—

Mr. GRAVES. Okay. Let's go back to those three sites.

Ms. MURPHY. Yes. Okay.

Mr. GRAVES. Where were those sites?

Ms. MURPHY. There were two in Maryland and one in Virginia.

Mr. GRAVES. And was any one preferred over another from the previous administration?

Ms. MURPHY. I don't know if the previous administration had a preferred site. I believe it would be inappropriate for me to have a preference as to if there is going to be a competition, the competition runs itself.

Mr. GRAVES. The two Maryland sites.

Ms. MURPHY. The GSA administrator should be ambivalent as to what the outcome is.

Mr. GRAVES. Are you aware of any conversations prior to you being in this position where political influence was asserted and preferences were indicated from Congress?

Ms. MURPHY. Yes. The—I am aware that both the Maryland and Virginia delegations have a strong vested interest in having the project in their States, yes.

Mr. GRAVES. And the two Maryland sites, if we were to look at a congressional map, where would those two Maryland sites be? Whose congressional district would those be in?

Ms. MURPHY. I—

Mr. GRAVES. Maybe Steny Hoyer's?

Ms. MURPHY. Yes, that would be one of them. And the Virginia site would be in Mr. Connolly's—

Mr. GRAVES. So both Maryland sites would be Steny Hoyer's?

Ms. MURPHY. Yes, they would be.

Mr. GRAVES. So if I remember right, Steny Hoyer was majority leader back in 2009 and 2010. Barack Obama was President. They had the Department of Justice. They are back at it again now, and Steny Hoyer is the majority leader again. Is it possible there is some political influence on the other side?



Ms. MURPHY. I would never want to impugn the motives. I am sure that every Member of Congress is doing what he or she believes is best for its constituents and the American people, just as I am trying to do what I believe is best for my customer agencies and the American people.

Mr. GRAVES. And you are right to do that. You are being fair here. Maybe I am not. Maybe the chairman is not with implications as well. But we could all probably go back and ask for some research to be done to see if there were any emails or any phone calls or any pressure by leadership offices of this body on GSA in the past, and that might make an interesting investigative report as well.

So, Mr. Chairman, it can cut both ways, I think. But it would be nice to move forward and allow this committee to accept the fact that on February 8 a letter was directed to Ms. Murphy that says after careful consideration the FBI decided that demolishing and rebuilding the Pennsylvania Avenue facility best balanced the equities at stake for the organization.

So it was their request. It was not Ms. Murphy's conversation with anyone aside from being given this recommendation by the FBI themselves.

So with that, Mr. Chairman, I will yield back.

Mr. QUIGLEY. I won't ask you if Steny Hoyer owns any property across from the FBI building or in Maryland a more direct influence.

And I will reference that when the IG report was released August 27, 2018, the FBI had not completed the security program of requirements for raze and rebuild. And we will talk about privilege again in a second, but for now, Mr. Bishop.

Mr. BISHOP. Thank you very much.

I am troubled by what appears to be a lack of regard of the findings and the determination of the inspector general of your department as administrator. A neighbor to the FBI building is the Trump International Hotel Washington on Pennsylvania Avenue, which is housed in the Old Post Office Building on a 60-year lease from GSA. Of course, the lease contains the provision that says no U.S. officials should be admitted to any share or part of this lease or to any benefit that may arise there from.

In March of 2017, GSA made a determination that the President—that Trump's presidency does not present a conflict of interest to the lease. But then on January 16 of 2019, the GSA Office of Inspector General released a report finding that the President's business interests in the Old Post Office raised issues under the Constitution's Emoluments Clauses that might cause a breach of the lease. But you decided at that time not to address those issues in connection with management of the lease, which is your responsibility.

Then the GSA inspector general advised you and GSA to reconsider the constitutional issues presented by the OPO lease agreement, and if a violation was found to reconsider your earlier finding that the President—that President Trump had not violated the lease agreement. The Emoluments Clause issues, of course, that is under litigation in Federal court.

But it appears to me that the recommendations of the inspector general don't carry very much weight with you as administrator and the folks at GSA. Can you tell me why that is the case? Most agencies have a great deal of deference to the recommendations of their inspector general.

But in this instance, it appears that you don't have very much regard for that. And I might note that this is a neighbor piece of property to the FBI building that has been the subject of discussion for most of this hearing.

Ms. MURPHY. Thank you, Mr. Bishop. I appreciate the question because I think there has been a great deal of confusion as to the January 2019 IG report and what the actual recommendation is.

If I may, I would like to read the recommendation to you. It says that we recommend that before continuing to use the language—meaning the language that the clause is in the lease—GSA determined the purpose of the interested parties provision conduct a formal legal review by the Office of General Counsel that includes consideration of foreign presidential Emoluments Clauses and revise that language to avoid ambiguity.

The—GSA accepted that recommendation. I would say that the entire report, the only recommendation that the Inspector General's Office gave to GSA was about the prospective use of a clause in out leases that did not recommend that GSA make any changes to its current administration of the lease before the Old Post Office building.

Mr. BISHOP. Did you or did GSA consult with the attorney general with regard to legal advice on that—

Ms. MURPHY. So the—

Mr. BISHOP [continuing]. Or did you have—the inspector general obviously had a strong suggestion for you, but did you seek other legal counsel to get a contrary opinion?

Ms. MURPHY. So the decision to not consult with the Department of Justice before issuing the contracting officer's letter in March of 2017 was actually made by the prior administration in December of 2016. That was 2 years before I was—I am sorry, it was a year before I was confirmed.

GSA has been—and as you know, the topic of the Emoluments Clause is the subject of litigation. The Department of Justice has in public pleadings at this time said that there is not an Emoluments.

Mr. BISHOP. Let me just interrupt you. My time is about to expire, but didn't the IG report criticize your leadership at GSA for improperly ignoring the constitutional issues there?

Ms. MURPHY. They were criticizing the decision to not consult with the Department of Justice. That decision was made by the prior administration.

Mr. BISHOP. So the answer to my question is yes?

Ms. MURPHY. They criticized the Agency's decision but it was the decision made by the prior administration.

Mr. BISHOP. Thank you. My time has expired.

Mr. QUIGLEY. My friend, Mr. Joyce.

Mr. JOYCE. Thank you, Chairman Quigley.

Good morning Administrator Murphy.

Ms. MURPHY. Good morning, sir.

Mr. JOYCE. Let's get down to brass tacks. Was the President involved in the selection and location for the new FBI headquarters?

Ms. MURPHY. To the best of my knowledge, he was not involved in the decision for the location.

Mr. JOYCE. Did the Trump Hotel influence the decision not to move the FBI headquarters from its current location?

Ms. MURPHY. No. To the best of my knowledge, there was no discussion at the Trump Hotel involved in the decision on the location.

Mr. JOYCE. Did the IG report on the FBI headquarter location dispute your testimony last year that the FBI made the decision to remain on Pennsylvania Avenue?

Ms. MURPHY. No. No, sir, it didn't.

Mr. JOYCE. What was the January 24 meeting in the Oval Office about?

Ms. MURPHY. It was about how we were going to fund the FBI—the demolish-rebuild of the FBI location, and it was an important meeting for GSA because we were proposing a ground-lease lease-back. The ground-lease leaseback has been a matter of controversy—I shouldn't say controversy—of debate between the Office of Management and Budget and GSA for many administrations now. And the idea that we were going to be able to use a ground-lease leaseback to expedite construction was one that was actually very exciting for GSA.

Mr. JOYCE. The current status of the FBI headquarters, good condition? Poor condition? Fair condition?

Ms. MURPHY. Sir, to answer your question, last month an 8-pound block of concrete fell through the ceiling onto an employee's desk. If it had been—it took out the overhead lamp, his phone, part of his monitor. If he had been sitting there, he would have been seriously injured if not killed. We now have to wall off parts of the building.

I would invite any member of the committee to join me. I am sure the FBI would be happy to have everyone come over there and see not just the state of the current building but also talk about what our plans are for the future.

Mr. JOYCE. Is it normal for you to tell the political appointee, such as Director Wray, where they should go and what they should do? Or do you act with them in concert? Or how does that procedure work where you—and you are dealing with administrators as far as where they want to maintain their headquarters?

Ms. MURPHY. So GSA works with agencies. Agencies give us the program requirements, and the agencies own that program requirements. GSA then works with them on a solution that will meet that requirement. GSA has opinions and we try to influence the decision, but ultimately we are going to—you know, especially when it is a matter of national security, we are going to defer to the FBI director.

Mr. JOYCE. This wouldn't be your normal office building maintaining government employees. There is a certain level of security necessary that is already in place for the FBI headquarters where it is?

Ms. MURPHY. There is security that is already in place, and the ability to do a demolish-rebuild lets us put a lot of very new cutting-edge security features in as well.

Mr. JOYCE. How old is the building?

Ms. MURPHY. The building was built—I think it is 51 years old now, sir.

Mr. JOYCE. What is the normal lifespan for a building, governmental building? Now, granted the Capitol is a different structure, but, you know, something that would take it back to what, in early 1980s it was built?

Ms. MURPHY. No, sir. It was built in the late 1960s.

Mr. JOYCE. Oh.

Ms. MURPHY. So it is a brutalist structure. The average age of the GSA own portfolio is 50 years, so about half of our buildings are older than 50 years, and half are newer than 50 years.

Mr. JOYCE. Do you do a benefit-cost analysis on the moving of an agency versus rebuilding at the—on site?

Ms. MURPHY. Yes, sir, we do. And the idea of renovating on site, really just we were concerned that that was going to—that the operational risks to the FBI were going to be so high, as well as the risk to the construction project by moving them out and then demolishing, rebuilding, and we could get them the headquarters they need for the 8,300 employees who were going to remain in the area.

Mr. JOYCE. Now, we have gone through a similar cost analysis with the Smithsonian Institute and Air and Space Museum, correct?

Ms. MURPHY. Well, the Smithsonian is independent of GSA. I would assume that the individuals who were working on the Smithsonian project have done that work.

Mr. JOYCE. Well, I apologize for that. I thought you were a party to the discussion, because my understanding a teardown, rebuild there is \$1 billion?

Ms. MURPHY. That is my understanding, but the Smithsonian has some independence from GSA. So they are—

Mr. JOYCE. Still \$1 billion of taxpayer money.

Ms. MURPHY. Still \$1 billion, but—yes.

Mr. JOYCE. And that was a fairly new building. It is similar to—again, we talk about the Capitol or the other buildings that we are in here are older, but they have stronger bones for lack of a better term.

Ms. MURPHY. I would say the GSA headquarters building, for example, is 101 years old now. And it needs some work, but it has got really good bones. And so we—we are actually able to—we are adding another 1,000 employees to the building this year, so we will be able to really maximize the utilization of it because it is a very solid building.

It is one of the reasons that last year's budget request I asked for a lot of money—you know, funds for repair and alteration work because I think that if we invest in these buildings and keep them in good shape we don't end up having to have conversations about do we demolish the building or do we sell it and need to build a new building.

Mr. JOYCE. I am out of time. Thank you, Mr. Chairman.

Mr. QUIGLEY. Certainly.

And before I recognize Mr. Crist, just as you go forward with your testimony, Madam, you openly discussed and characterized

the January 2018 White House meeting, including the one with the President. And in your other answers with my Republican colleagues you seem to be selectively asserting a privilege that you aren't asserting. So let's hope we can be a little more consistent.

Mr. CRIST.

Mr. CRIST. Thank you, Mr. Chairman.

Good morning, Administrator. It is nice to have you with us.

Ms. MURPHY. Thank you, sir.

Mr. CRIST. In 2014 the Government Services Administration began procurement proceedings for a new FBI campus outside of Washington, citing the clear financial benefits of a suburban location. Is that accurate?

Ms. MURPHY. That is sir, yes.

Mr. CRIST. At some point between now and then the GSA scrapped the relocate plan in favor of a more expensive plan to raise J. Edgar Hoover Building and build a new headquarters on the existing site. You have said that the wishes of the FBI director were part of that decisionmaking process. Did he share with you why he wanted to do something that was more expensive?

Ms. MURPHY. Sir, and I really wish the FBI director were here with me to answer these questions because I think he could do the best job of answering, you know, what his requirements are. But, yes, we talked about his need to have proximity to his parent organizations. The FBI is part of the Department of Justice.

The fact that there are infrastructure concerns that will make it easier for their employees will also make it easier for them to secure, to have some—whether it be plumbing, electricity, that there is a lot of the—the work is already in place. They talked about the number of meetings that they have in the area and the transportation costs and the increased cost to the FBI of being there.

But additionally—

Mr. CRIST. Isn't there less traffic outside the District than coming into it?

Ms. MURPHY. Well, I think that their issue would be that they would still have a large number of meetings in the District, and so their employees would be constantly commuting between a campus and their—whoever it is they were meeting with.

The overall concern though, sir, was, again, it was a brand new director in August of 2017. So the prior procurement was—without full appropriations was not financially viable by the end. It was clear by the end of July of 2017 that it just was not a viable procurement anymore.

Mr. CRIST. But under a previous director—

Ms. MURPHY. Under—yes.

Mr. CRIST [continuing]. This mission was put into motion to have this relocation to go outside the District.

Ms. MURPHY. Uh-huh.

Mr. CRIST. Do you know who that director was?

Ms. MURPHY. I would believe it would have been—I believe it would have been Director Comey, but I am—

Mr. CRIST. I think it was Mueller.

Ms. MURPHY. Mueller. Sorry.

Mr. CRIST. I believe so.

Ms. MURPHY. Yes.

Mr. CRIST. In weighing the pros and the cons of the two options, relocate or raze and rebuild, I would like to know what changed in the almost 10-year run-up to the plan of relocation, either by you or by the new director in addition to what you may have already just stated that made it more attractive to stay on Pennsylvania Avenue?

Ms. MURPHY. So the first thing that made it more attractive was that the FBI's requirement itself changed. They no longer needed a campus for 10,600 employees. They needed a building for 8,300 employees. The FBI's decision, which was independent of GSA and I believe was—already obtained independent funding, to relocate 2,300 of their own employees changed the calculus. It put the site on Pennsylvania Avenue back in play. So when GSA was informed of that that brought the—an owned site back into contention.

Mr. CRIST. So smaller but more expensive was deemed better?

Ms. MURPHY. Well, they are just—they are different mission needs. So the—when the FBI though is saying that the—you know, having a building there that they could accommodate their employees in, it wouldn't have—you know, you wouldn't need the space for a parking garage. You wouldn't need a separate physical plant. So it is smaller but it is because you don't need those other things you would need with a campus.

Mr. CRIST. All right. Did you have at any time any knowledge of the President's preference of which of the two plans he preferred?

Ms. MURPHY. So I want to be clear that you are asking me if I had knowledge of whether the President—

Mr. CRIST. Had a preference.

Ms. MURPHY. A preference to relocate. Sir, again, I am not going to—I don't want to speculate, and I don't want to—

Mr. CRIST. I am not asking you for speculation.

Ms. MURPHY. Please don't read—don't read a yes or no into this, but I am going to decline to discuss conversations that I may or may not have had with the President or his advisers.

Mr. CRIST. Why?

Ms. MURPHY. It is longstanding executive branch practice and privilege for heads of agencies not to discuss those, whether they existed or didn't exist.

Mr. CRIST. But as pointed out by the chairman, nobody has asserted a privilege.

Ms. MURPHY. No one has asserted a privilege, sir, but that is—in the same way with attorney-client privilege it is the client who asserts the privilege, not the attorney.

Mr. CRIST. And—

Ms. MURPHY. And it wouldn't be me who asserts the privilege. It would be the White House, and I don't get to make the decision for the White House.

Mr. CRIST. So you were in two meetings with the chief of staff of the President and the President and the FBI director on this issue?

Ms. MURPHY. So prior to the hearing last year I had been in one meeting with the President on this issue.

Mr. CRIST. And you said that was on cost?

Ms. MURPHY. And that was on cost.

Mr. CRIST. No discussion of the location of the facility?

Ms. MURPHY. I am authorized to discuss what we decided in that meeting and so—and—

Mr. CRIST. Did you decide in that meeting the location?

Ms. MURPHY. No. The location had already been decided weeks before I met with the President, and that was the first time I ever met the President.

Mr. CRIST. By whom?

Ms. MURPHY. By the FBI.

Mr. CRIST. I think my time is expired. Thank you.

Mr. QUIGLEY. I just want to ask, you were authorized—you just answered a question you were authorized to—by whom?

Ms. MURPHY. Normally that I wouldn't—it would be—

Mr. QUIGLEY. But who authorized you?

Ms. MURPHY. White House Counsel's Office said that I could discuss the fact the meetings existed and what the conclusions were. The—

Mr. QUIGLEY. All right. I am sorry, we will get into that. I don't want to delay Mr. Stewart.

Mr. GRAVES. Mr. Chairman, if I could just—

Mr. QUIGLEY. Certainly, sir.

Mr. GRAVES [continuing]. Clarify—I believe her answer was correct on the FBI director at the time, Mr. Crist. Comey took over in 2013, and Mueller was prior to 2013, 2013 and prior. So just for clarification of the record.

Mr. CRIST. Thank you.

Mr. QUIGLEY. We will put into the record eventually who was the FBI director at each point in this long process, but I don't want to delay Mr. Stewart.

Mr. GRAVES. And maybe who was President at the time in conversations that took place between then GSA director and—

Mr. QUIGLEY. Those would all be interesting too if somebody could answer.

Mr. GRAVES [continuing]. And the majority leaders.

Mr. QUIGLEY. I appreciate that.

Mr. Stewart.

Mr. STEWART. Thank you, Mr. Chairman.

Administrator Murphy, thank you. We have had a chance to get to know you in your tenure, and I want you to know that many of us think you are doing a terrific job. It is a difficult position. And you have had some stuff thrown on your lap that I don't think was—you didn't expect. But—and I think we—to use a phrase—beat this dead horse in this hearing today, and I haven't been here for all of it, but I have been here for enough to get a sense of where it has gone.

So I want to ask a few clarifying questions and then move onto something that is important to me and my district, which matters as well, and allow you to respond, if you could.

And just for clarity, for my own benefit, I understand that career—and I will emphasize career contracting officials determine that the tenant of the Old Post Office Building lease is in compliance with the terms of that lease. Is that true?

Ms. MURPHY. That is correct, sir.

Mr. STEWART. And do you believe that these decisions should be made by career, nonpartisan, nonpolitical, hopefully unbiased professionals, which is what we are counting on them to be, and which I think they take pride in being, that they would be the ones who would determine that versus elected officials or political appointees?

Ms. MURPHY. Yes, sir, I do.

Mr. STEWART. And to a sensitive subject, but someone questioned your intentions or perhaps accuracy of your words or testimony before this committee or Congress, I will give you a chance to answer very simply: Have you been truthful in your testimony?

Ms. MURPHY. Yes, sir, I have. And—

Mr. STEWART. Have you tried to mislead in any way?

Ms. MURPHY. No, it was never my intention, and I don't believe I—

Mr. STEWART. And I believe that.

Ms. MURPHY. And I don't believe I did, but—

Mr. STEWART. I don't believe you did either.

And if I could make an extended argument here, and that is, it is important to keep in mind that when we make accusations or perhaps insinuate, as we have seen—and not in your case. I am not talking about you or this committee at all now. I am talking about more generally.

But we have seen innocent people accused of essentially treason over the last few years. We are not accusing them of jaywalking. Innocent people have been accused of treason and other high crimes with no evidence. And it has had an enormous impact on their lives. It has broken them financially. It has ruined their reputations. It has broken in many cases their professional careers and their families.

And I think it is important that when we make accusations like that or when we imply things such as that, to remember we are talking about real people who many of them are serving honorably and trying to do a good job and that it has impacts on them personally. And it would perhaps make us careful in how we respond to them or how we treat the information that may be before us.

Now, if I could talk to you a little bit about some things back home. We have some real needs in Salt Lake City, as you know. I know you are coming out in a few weeks. We hope to visit with you while you are there.

Ms. MURPHY. Look forward to it, sir.

Mr. STEWART. In our courthouses and others, we have had several earthquakes in my district over the last few weeks. The renovation of this beautiful courthouse, a historic courthouse, which is a beautiful building, but it is going to be incredibly expensive to bring up to code for earthquake standards. Can you give us your feeling on that and what is the best way forward?

Ms. MURPHY. So you are referring to the Moss courthouse, sir?

Mr. STEWART. Yes, ma'am.

Ms. MURPHY. Yes. So my understanding is it currently houses the tax and the bankruptcy courts, and that it is the top—it is the, you know, what we consider to be the highest seismic risk. GSA is going to treat it accordingly. We would need to—in order to renovate that building we would need to move during the renovations



the judges and the courts out into the Federal building and into the new courthouse temporarily until we can complete remediation.

I don't have an exact date of when we would be able to begin our remediation, but I would like to work with you on that so we can try and find a way to fund and get that to happen.

Mr. STEWART. And we look forward to that, and thank you. It is a boatload of money, to use a technical term.

Ms. MURPHY. It is. It is, indeed.

Mr. STEWART. It is almost as much as building the new courthouse was out there, which we just completed. And we appreciate your help on that.

And then one thing I will mention quickly, and then we are going to have to work with you, Ms. Murphy, on this, and that is our judicial—our courts have already outgrown the courthouse. There is a floor there that has been set aside—the sixth floor has been set aside for non-Federal offices.

And we need to work with you to try to clear up some space for our judges out there right now that some of them—well, all of them are doubling up on their courtrooms, and it has been a real issue. And we will reach out to you and try to work with you on that conflict as well.

Ms. MURPHY. I look forward to working with you on it, sir.

Mr. STEWART. Thank you, ma'am.

Ms. MURPHY. Thank you.

Mr. QUIGLEY. Thank you.

Mr. Cartwright.

Mr. CARTWRIGHT. Thank you, Mr. Chairman.

And thanks for being with us, Administrator Murphy.

I want to clarify some of your testimony. I believe you have testified that you have spoken to the Office of White House Counsel about today's testimony. Is that correct?

Ms. MURPHY. I received clarification going into—when I met with the IG last year that I could speak to meetings I had and the conclusions of those meetings.

Mr. CARTWRIGHT. No. No. I am asking you a simple question. Have you spoken to the Office of White House Counsel prior to today's testimony about today's testimony? If the answer is no, that is fine.

Ms. MURPHY. I want to be careful, again, sir, because it is my understanding that it is longstanding executive branch policy and practice to not discuss what we do deliberatively to prepare for a hearing.

Mr. CARTWRIGHT. Certainly. But we are talking about a privilege not to disclose the contents of conversations or communications. I am simply asking you, yes or no, have there been communications between you and Office of White House Counsel to prepare for today's testimony?

Ms. MURPHY. Again, I am going to respectfully decline to answer that question because of the deliberative nature.

Mr. CARTWRIGHT. Okay. Well, let's delve into that a little bit. When you say you are declining, I think you said before that you are declining on the basis of potential executive privilege being invoked. Am I correct in that?

Ms. MURPHY. And, sir, I am a government contracts lawyer not a constitutional scholar, but, yes, it is my understanding that no matter the party, no matter the administration that witnesses don't discuss what they did to prepare, and that heads of agencies don't discuss what they—conversations they had or the details of conversations they had with the President or his senior advisers.

Mr. CARTWRIGHT. I am asking you a simple question. Has anybody at the White House, including White House counsel, instructed you that they are invoking executive privilege in any part of your testimony today?

Ms. MURPHY. No.

Mr. CARTWRIGHT. Okay. So we are talking about a theoretical invocation of executive privilege here, and I suppose this is your idea that that may happen. There may be an invocation of executive privilege from the White House. Is that what it is about?

Ms. MURPHY. I am not speculating as to whether there could be or couldn't be, or would be or wouldn't be. I am saying that just historically no administrator, no secretary, no head of an agency discusses the contents of conversations with—that they had or didn't have with the President or his senior advisers.

Mr. CARTWRIGHT. You are not only declining to discuss the content of conversations with the White House, you are declining to tell us whether you even had any conversations with the White House prior to today's testimony to get you ready for today's testimony. Am I correct in that?

Ms. MURPHY. Yes, sir.

Mr. CARTWRIGHT. Okay. But you have said that you have not been instructed that there is an invocation of executive privilege. You did tell us that, correct? Correct?

Ms. MURPHY. Yes.

Mr. CARTWRIGHT. Okay. What about the April 17, 2018, testimony that you gave us. Same set of questions, Administrator Murphy, did you have meetings with the White House to get you ready for the April 17, 2018, testimony?

Ms. MURPHY. Sir, again, I want to decline to answer that question for the same reasons, that—

Mr. CARTWRIGHT. All right. And same followup question. Are you declining on the basis of an executive privilege that someone actually invoked?

Ms. MURPHY. I am declining because it is both deliberative and that, you know, historically I think that the Department of Justice has stated that we just don't discuss how we prepare for hearings.

Mr. CARTWRIGHT. And to be precise, again, the same question, prior to the April 17, 2018, testimony that you gave us, did anybody at the White House instruct you that they were invoking executive privilege with respect to any of that testimony, April 17, 2018?

Ms. MURPHY. No. And I hope that when I am declining to answer these questions, please don't read a yes or no into that answer. It really is that it is just not mine to discuss.

Mr. CARTWRIGHT. But it is a no for that question.

And so the April 17, 2018 testimony, if there were any refusals to answer based on executive privilege, again, this was a theo-

retical executive privilege invocation as opposed to a real one. Am I correct in that?

Ms. MURPHY. I am trying to make the distinction between a theoretical and real because, again, it is not my privilege. It is the—

Mr. CARTWRIGHT. I don't remember. Did you decline to answer any of our questions April 17, 2018?

Ms. MURPHY. No, sir. I didn't believe that there were any questions that I needed to decline to answer.

Mr. CARTWRIGHT. Okay. But—

Ms. MURPHY. I didn't understand the question to be—I understood the questions that I was being asked to be about the location decision.

Mr. CARTWRIGHT. All right. But you are standing on your refusal to answer our question about whether you met with anybody from White House counsel or anybody from the White House to prepare you for today's testimony. Are you?

Ms. MURPHY. I am.

Mr. CARTWRIGHT. I yield back, Mr. Chairman.

Mr. QUIGLEY. Mrs. Torres.

Mrs. TORRES. Thank you, Mr. Chairman and Ranking Member, for holding this hearing.

And thank you for coming to my office, I don't know, last month or so.

Ms. MURPHY. Yes.

Mrs. TORRES. As a new member of this committee, I really appreciate having that time with you. And as I stated to you during that meeting, I am never going to do a surprise question to you. I was very clear as to the issues that are important to me and what I was going to address at today's hearing.

So having said that, I want to ask you if it is common practice for GSA to not sign agreements?

Ms. MURPHY. No.

Mrs. TORRES. Okay. So you are—

Ms. MURPHY. At least, I hope it is not. I am not aware that it is. I would be very upset to learn that it was.

Mrs. TORRES. Okay. Great. I am happy to hear that.

This GSA agreement with the Park Service about the Post Office, when was that signed?

Ms. MURPHY. So can I—may I give some background on this?

Mrs. TORRES. Uh-huh.

Ms. MURPHY. I think you are asking me—and I want to be clear because I learned last time that I need to be really clear that I understand what the question is. You are asking me about the clock tower at the Old Post Office—

Mrs. TORRES. Yes.

Ms. MURPHY [continuing]. And GSA's agreement with the National Park Service to maintain that. So there was a public law, it is I believe 98–1, that was enacted in 1983 that requires GSA to work with the National Park Service to make sure that the clock tower remains available. GSA pays for that as a service contract to the National Park Service.

Mrs. TORRES. My question was only about the date. When did GSA sign this contract?

Ms. MURPHY. I believe their latest—it is an MOU. I believe it was signed in late December of 2018.

Mrs. TORRES. During the shutdown?

Ms. MURPHY. Yes.

Mrs. TORRES. During the same shutdown where many national parks across the U.S. were completely destroyed. When I met with you, I expressed my frustration over Joshua Tree in California. That park is a national treasure. It will never recover, never, never, never recover. It was an incredibly irresponsible decision to keep that open. I understand that is not your decision.

But you—I am sure you can imagine how I feel and how my constituents feel that when they realize that while there was no staff there to guard those 300-year-old Joshua trees, there were staff at the clock tower, at the Trump Hotel to ensure that the visitors of that hotel had a nice place to visit.

Ms. MURPHY. So, Congressman, and I understand your concern with this. GSA during—throughout the entire month of December did not furlough any of its public building service employees. We never furloughed any of our general counsel staff. The—so the decision to continue to—and we funded all of our service contracts throughout the entire shutdown. There were none that we did not pay, so we continued to execute and pay those contracts.

GSA noticed that the clock tower had been shut down. It is my understanding that my regional office had reached out to the National Park Service and said GSA was still paying its service contracts and so still could pay its service contracts.

And there was no interference either from political appointees, there was no interference from the White House, there was no interference from the—to the best of my knowledge, no one from the Trump Hotel even reached out.

Mrs. TORRES. So why was there a failure from Lisa Mendleson to date this contract? Why did she fail to date this contract?

Ms. MURPHY. I couldn't tell you, ma'am. I am happy to go back and find out, you know, and ask why it wasn't dated. I wasn't aware it wasn't dated until you just mentioned that to me.

Mrs. TORRES. I would like for you to follow up with me—

Ms. MURPHY. I would be happy to.

Mrs. TORRES [continuing]. On that. As well, if it is common practice and if it is not common practice, how do you resolve this issue moving forward to ensure that all employees that are allowed to sign agreements or contracts follow the direction and the policy in place.

Ms. MURPHY. Ma'am, that is something I take really seriously. When I was at GSA the first time, I instituted a set of procurement management reviews where we have individuals go out and review contract files throughout the course of the year to make sure that everyone is following the appropriate rules. And I am going to continue—I am happy to look into this because I take very seriously that we need to keep our records in proper order.

Mrs. TORRES. Thank you. I yield back. And I am going to leave this with the clerk so you can have it.

Ms. MURPHY. Thank you very much.

Mr. QUIGLEY. Thank you.

Let's do a round two, if we can. It has been discussed in this hearing that you had discussions with Director Wray about this, and it is normal that when you are dealing with an agency that you talk with the agency head about their needs and what they need out of a facility like this, correct?

Ms. MURPHY. Yes, sir.

Mr. QUIGLEY. Okay. Because I—and I read in this, November 2011 GAO and the FBI worked together on this report, and they talked about moving to a suburban campus because they raised concerns about the Hoover Building and they jointly recognized that consolidating all of the FBI and the Hoover Building and other locations into one facility was the best answer.

The GSA expected the new headquarters facility would eliminate close to 1 million square feet in rental space, significantly reduce the need for FBI for leased space, and address the security—serious security concerns raised by FBI headquarters being located in downtown D.C.

And they would have—they wouldn't have to find a home for 2,300 other employees someplace else. And it has been our analysis and in talking with the FBI and being a member of the Intelligence Committee that the number of FBI personnel hasn't gone down. It is gone up. So this building has only lasted 51 years, and we get it. It is falling apart.

But what we are talking about is hopefully building something that will last longer than 50 years, and we would imagine that the FBI's concerns about our national security would not dictate having fewer employees.

So at what point did anyone suggest to you what was wrong and what has changed since 2011 that makes downtown location safer, a need to galvanize that building, secure it, find home for more and more employees? Did anyone express to you as you defended this in early January 2018 why this was incorrect?

Ms. MURPHY. So my first conversation with the director was the 22nd of December of 2017. We did a quick conversation. We agreed that we would have that meeting. That was—my understanding though is that in October, November of 2018—of, I am sorry, of 2017, before I was confirmed, and I wasn't party to these conversations, that there was some career level conversation about maybe they wanted to put the J. Edgar Hoover site back into play.

GSA, when I met with the director, he had already made the decision that the 2,300 employees were not going to be part—at least my understanding was the decision was made that the 2,300 employees were no longer part of the requirement. After that meeting GSA's efforts pivoted into how do we address their—you know, if their new requirement is to stay at this location, how do we address that requirement.

So they had come back and believed that—and that I think contracted with an outside company to look at how could we address security measures, how could we address the very issues that you are mentioning, and they have done that independently of GSA.

Mr. QUIGLEY. And I just want to ask, these 2,300 are going someplace, and included in the cost has to be wherever the heck they are going, the fact that there has to be a chair for them and a desk

for them someplace else. Was that included in this when you are calculating which one of these things was more efficient?

Ms. MURPHY. It was not included in the numbers that we submitted in January of 2018—I am sorry, in February of 2018.

Mr. QUIGLEY. Or the fact that they will have more employees as time goes on?

Ms. MURPHY. The FBI came to us with what their requirement was, and, again, as I have stated, it is the FBI that tells us what the requirement is going to be. So, you know, the FBI's plan to—they believe they could achieve the consolidation, they could achieve the safety concerns, and that they no longer had the need for 10,600 headquarters employees in the D.C. area. My understanding is they have actually obtained most of the funding independently of GSA to move those employees already.

Mr. QUIGLEY. But, as you said, with the money we would get from a sale the dollars count in someplace. They are not getting it from some other government. In the end, the money we get from the sale is U.S. taxpayer dollars, and the money that they get from someplace else is still U.S. taxpayer dollars. So if we are comparing the cost of which is more efficient, in the end it doesn't matter at all where the spigot is. What matters is the total net differential.

Ms. MURPHY. Although at that time we were—when the FBI came back to us and said the requirement was 8,300, GSA was not going to build a campus for 10,600 employees if the FBI was already moving to 2,300 of those employees. So at that point in time that it was—that money was going to be spent whether we did a suburban campus or we remained on Pennsylvania Avenue.

Mr. QUIGLEY. Bottom line, why did you defend this in January, early January of 2018? Why did you defend the suburban campus?

Ms. MURPHY. Honestly, Congressman, I believe that the best way to get funding for this project was a suburban campus, that it was going to be the one that it would be easiest to get support from the Maryland and Virginia delegations to go forward and get funding for.

Mr. QUIGLEY. But you got this job for a reason. You are a numbers person. You calculate all this. That had to be calculated in some of your reasoning. It couldn't have been just this is the easiest way for us to get the money.

Ms. MURPHY. No. It was—

Mr. QUIGLEY. There had to be some other factors that you, a smart person, would have weighed and said this makes more sense. And it can't—please don't tell me all your decisions are politically expedient.

Ms. MURPHY. It is not a political expediency question.

Mr. QUIGLEY. So beyond that, why a suburban location in January?

Ms. MURPHY. So when I went and toured the FBI building, I was incredibly upset to see the conditions under which those employees were working. There are nets outside the building to make sure that pieces of facade don't fall and injure or kill the employees coming to work, pedestrians walking by.

Inside the building they brought out a media cart filled with pipes that had rusted through. There are parts of the basement that had collapsed, the parking garage that had collapsed. My pri-

mary concern is getting the FBI headquarters that meets its requirements. If I—if the way to get that done and what I believe the fastest path to getting them a headquarters in January—on January 4 I believe was going to a campus.

The FBI told me that that no longer met their needs. At that point then that takes that off the table. So their mission comes first. My job is to now get—find some way to hopefully work with you to get them a headquarters that will meet their requirements. And I would love to have them be part of this conversation as well.

Mr. QUIGLEY. Mr. Graves.

Mr. GRAVES. Thank you, Mr. Chairman.

Thank you for your responses today.

Mr. Chairman, I wish all the committee members were here and could understand that a lot of this really predates Ms. Murphy. I remember prior to her being nominated and sworn in, we had these same conversations with the previous acting director at the time, Mr. Horn, and even before that about this same building and same concept. This is nothing new. It may be new to the newer members on the committee, but it is certainly not new to this discussion, debate, and unfortunately, we are still spending more time on it.

Mr. Chairman, I think we should all respect the idea that when a new administration comes in, there is new leadership. Sometimes there is new direction, there are new ideas, there is new vision, there is a new concept.

And so it is unfair to accuse Ms. Murphy of changing course and direction when she is just trying to carry out the direction of the request of a director, a new director who came in just after she did, who has a different vision for the Bureau. This may be a fairer conversation for another hearing with the director of the FBI.

Now, I have visited the facility.

Mr. QUIGLEY. I couldn't agree more.

Mr. GRAVES. And it is dilapidated. It is falling apart. I was there just 4 months ago. It is in dire need of demolishing, and then certainly they need a new facility.

But what I hear is that Director Wray has said, look, we want to operate differently. We want to deploy more people out into the field offices and have less people in a centralized location, but in that centralized location we still need access to our resources and our intelligence community assets and friends that we work with, just because there is something about that synergy that is helpful for national security purposes.

Maybe we could just totally dismiss this notion that we have a President's office that is oftentimes criticized by the other side for poor ideas or lack of direction or incapability of carrying out a mission when, in fact, what I hear today is that in some way maybe this President is so conspiring that in 2012 or so he and his family organization put a bid in on a project that they won in 2013.

They invested millions of dollars to build a facility, predicting that he would run for office, that he would beat 15 other Republicans and then Hillary Clinton just so he could be across the street from a building that he didn't want demolished and sold to a private party. I mean, that is a pretty far stretch.

Mr. QUIGLEY. I think it is the other way around. Once he owned it, was he concerned about what was across the street.

Mr. GRAVES. But so then he must have appointed——

Mr. QUIGLEY. Just the timing is pretty dramatic to shift 10 years of bipartisan support for a project and then all of a sudden overnight, yeah, maybe not so much.

Mr. GRAVES. I guess my point is that this predates Ms. Murphy and this debate predates the President being sworn in. And you and I have been on this committee for a while. We know that.

Mr. QUIGLEY. Look, I think a lot of what you are saying is true. I said at the beginning to Ms. Murphy, I care far less about the fact that I believe that she misled us by not stating the obvious about the meetings at the White House and far more about how this decision was made and whether she thought it was a good idea, and how her notion of how she thought it was a good idea in January changed, because just a few weeks later there was a meal—a meeting at the White House with these folks and then an email chain shortly thereafter that said, we are changing direction right after this meeting. So there are coincidences and then there are coincidences and then there is commonsense, sir.

Mr. GRAVES. Reclaiming my time, my point being in some cases that picture—I don't know who all is in that picture. It hasn't been shared with the committee——

Mr. QUIGLEY. Well, we will ask.

Mr. GRAVES. But Director Wray, I imagine, is in that picture. Is he? Is the director in that picture?

Mr. QUIGLEY. Well, why don't you ask Ms. Murphy.

Ms. MURPHY. May I? So in that picture you will see Deputy Attorney General Rod Rosenstein, sitting next to him is FBI Director Wray, then there is me, and then I believe Mick Mulvaney, and General Kelly, and the President. So the FBI and the Department of Justice were in that meeting. And that meeting——

Mr. QUIGLEY. Who was there from the FBI and the Department of Justice? And I will wait until after, but I just want——

Ms. MURPHY. No. That is—Director Wray is the director of the FBI was there, and Deputy Attorney General Rod Rosenstein was there from the Department of Justice.

Mr. QUIGLEY. I am sorry, sir.

Mr. GRAVES. No. That is fair.

And so what I am hearing through all this, there has been a lot of debate and discussion about where the facility should go, shouldn't go, but there is a part of me that might think that it is less about the President trying to block a private entity from building on Pennsylvania Avenue and maybe it is a little bit more about an FBI director who has a different vision for the Department and wants to do something different and he has reasons for that.

And I share that because I have been there. I have met with some of the career staff at the FBI, and I have asked the questions because this has been an ongoing topic. And there is a common thread there. And the people I talked to were not in that picture. I don't think they have been to the White House. They are just normal folks. And so maybe we should not pin as much of this on Ms. Murphy because I think she is trying to do her job, and it is a big, complex agency she runs.

Mr. Chairman, I will just close with this, because Mr. Crist brought up a point and was asking questions and Mr. Cartwright



as well. In this letter from the Department of Justice and the FBI to Ms. Murphy, it says clearly the FBI decided that demolishing and rebuilding the Pennsylvania Avenue facility best balanced the equities at stake for the organization.

It addresses the suburban campus. But it says that maintaining the current location addresses several equally significant concerns, including the proximity to FBI partners, transportation concerns, and reduced land acquisition and parking cost. Now, that is from the FBI director. I am sorry, not director, the associate deputy director.

But there was one critical sentence in the end here. It says, we believe that the construction of a secure technologically advanced facility in the current location near mission partners and multiple forms of transit will best meet the FBI's need. That is from the FBI themselves and not Ms. Murphy.

With that, I will yield back.

Mr. QUIGLEY. Mr. Crist.

Mr. CRIST. Thank you.

Yeah. I just—confused, I guess, because it seemed that—I think you said for like 10 years this plan to be outside the District had been pursued.

Ms. MURPHY. The prior—yes. The—I believe the plan began at the end of the Bush administration and throughout the Obama administration. That was indeed the—that was the plan that GSA was pursuing.

Mr. CRIST. So back as far as 2008?

Ms. MURPHY. Yes.

Mr. CRIST. Okay. And so the idea for that long period of time until, I guess, January of last year?

Ms. MURPHY. Until January—in my mind, until January—was when GSA learned was January 4. I believe that records reflect that the FBI began changing its mind as soon as August of 2017.

Mr. CRIST. Okay. So the run-up had been significant?

Ms. MURPHY. Yes. But the requirements also changed. So when GSA and GAO and the FBI—

Mr. CRIST. If I might, I have got more questions.

Ms. MURPHY. I am so sorry.

Mr. CRIST. That is quite all right. That is quite all right.

So the run-up had been a long time. Apparently a consensus had been developed that it was smarter and wiser and I guess you defended that to have the suburban location where other intelligence facilities after all are based. And then we have a change of direction where you are going to be able to house less employees, and it is going to be more expensive to do it than what the majority of people in a bipartisan way apparently thought was a better way to go.

And I think what is confusing to some of us at least is if that thought had been embraced by so many for so long, it is hard to explain why all of a sudden there is a dramatic change in the direction of what should be done with the FBI headquarters, and that is why we are kind of scratching our heads here. Some of us. Some of us are not.

But that is a frustration, and, you know, that you won't let us know, you know, who you consulted with, not the content but even

who you consulted with to come before here today is—that is a little troubling.

Mr. GRAVES. If the gentleman would yield, I would like to just comment that this debate predates Ms. Murphy, predates Christopher Wray. We have had—prior to you being on the committee many discussions as well, this is nothing new. Actually, it goes back a couple years, several years.

Mr. CRIST. That is exactly my point. It had been in play for a long time and all of a sudden it got abandoned.

Mr. GRAVES. There are two different viewpoints and have been under previous administrations, as well.

Mr. CRIST. Well, the point I am trying to make is, and I think the chairman made it better than me, is that the plan that is being pursued now, the new direction is to have less people housed in a contiguous location to look out for the safety and welfare of the American people and cost them more to do it. Now, who does that make sense to?

Ms. MURPHY. May I respond, sir?

Mr. CRIST. Of course you can. It is not a question, but you may.

Ms. MURPHY. Well, you asked what had changed. And, again—and I don't want to put myself in the FBI director's shoes because he has far greater insight into the FBI's mission requirements than I could ever hope to have. And I am grateful that he is doing that job. But taking—

Mr. CRIST. And I want to be clear, I am not attacking you.

Ms. MURPHY. No.

Mr. CRIST. I am trying to find out why a change in decision and direction came about. It may or may not have been your decision. I suspect it wasn't because you were defending the suburban location.

Ms. MURPHY. But—

Mr. CRIST. So you don't have to defend this.

Ms. MURPHY. But the 2,300 employees that are proposed to move, it is my understanding that they provide payroll, administrative, support functions so that they—and that in looking at how the FBI headquarters staff was functioned, GSA has its payroll function located in Kansas City. It is still a headquarters function, but it is in Kansas City and operates very well there.

We have—so it is not unusual that agencies would have administrative functions being carried out on behalf of the agency outside of the District of Columbia.

Mr. CRIST. Thank you.

Mr. QUIGLEY. Mr. Joyce.

Mr. JOYCE. Thank you, Mr. Chairman.

And while I have found all this to be fascinating if, in fact, there was some movement of this office, we could have some lovely land in the 14th District of Ohio on Lake Erie there that would provide a beautiful setting for the—all 2,300, 5,000, all the employees that would love to come to Ohio.

But I am also very interested—pardon?

Mr. QUIGLEY. Both of them.

Mr. JOYCE. I am very supportive of the streamlining of certain government systems for efficiency. But I know a number of my col-

leagues and I have concerns regarding the suitability of certain healthcare products being purchased on the e-commerce portal.

If certain healthcare-related products are not exempt, we could see unintended consequences for the healthcare facilities and the patients they treat. Could you give us an update on GSA's consideration of either a full exemption or a delayed implementation for healthcare products from the procurement through commercial e-commerce portals program?

Ms. MURPHY. Thank you, Congressman.

And I believe you are referring to the fiscal year 2017, I believe it was, NDAA directed the GSA administrator to put in place an e-commerce platform in a portal. GSA submitted its—

Mr. JOYCE. Like you didn't have enough on your plate.

Ms. MURPHY. This is one of those things where it started off as an idea when I was working on the Hill as a congressional staffer, so it has sort of come full circle. I have been able to watch it evolve and change, and it has been a fascinating lesson.

But the GSA submitted its first report last March detailing how we intended to proceed on the project. Our second report is due this month, and we will hopefully be getting it to you—getting it to anyone who is interested by the end of this month. Our plan to proceed though has always been not to look at things like office supplies first.

GSA's own contracting we delegate responsibility for those healthcare products to the Veterans Administration believing that they have better subject matter expertise than that to run those. So my understanding is that we would be starting something along the lines of office supplies in any demonstration or pilot program that we were on.

Mr. JOYCE. Well, is it possible that you would wait to implement this portal for healthcare products after the programs have been tested for safety and effectiveness?

Ms. MURPHY. As I say, it would not be for healthcare—it wouldn't be for healthcare products as we start it. It would be for office supplies.

Mr. JOYCE. Correct. But, I mean—

Ms. MURPHY. And we would start with that and do it as a proof of concept to make sure that works, and then as we continue to test and learn and refine potentially add new items in. So we are not looking to—and we would especially, at least my inclination would be we would not start with items that we delegate contract and responsibility to other agencies for. We would work with things that we had the subject matter expertise in first.

Mr. JOYCE. And that being so, because I know you have got so much time on your hands to look into these things, but would you make one that would be healthcare specific then versus being one of a general portal for all?

Ms. MURPHY. So the requirement is that we have multiple portals, and so that is already our plan is to have multiple portals. If we get to a point—and, again, this is an iterative process by which we are going in doing proofs of concepts, studying what happened, I think that that would be something we would be very interested in looking at whether that would make more sense.

One thing we are doing right now though, to make it easier to buy any item GSA sells, is modernizing our schedules program and the systems that support that, and then we would be able to make those tools available to VA, so that would make it easier for anyone in the Federal Government to contract with those healthcare supply providers and vendors that have already been vetted by VA.

Mr. JOYCE. Got it.

And I know I have a little bit of time remaining. But I wanted to let you know that if there is any agency of the Federal Government that would like to move to the 14th District of Ohio, we would welcome them with open arms. And our office would help in the procurement process in making sure that they are taken care of and their safety needs will be addressed on the lovely shores of Lake Erie.

Thank you, Mr. Chairman. I yield back.

Mr. QUIGLEY. Thank you.

I am tempted to ask you if anyone told you how to answer questions about healthcare products, but I am concerned there would be some assertion of privilege. I am just kidding.

Mr. Graves brought up—

Mr. JOYCE. It is covered by occupation.

Mr. QUIGLEY. Okay, Doctor.

Mr. Graves brought up the first White House meeting and you mentioned who was there, correct? Was anyone else—

Ms. MURPHY. In the picture, I want to be clear, that was not the first meeting.

Mr. QUIGLEY. I know. But was someone else—

Ms. MURPHY. That was the first meeting I ever had with the President.

Mr. QUIGLEY. Okay.

Ms. MURPHY. There was a meeting that preceded that meeting that day that had all—that had the Deputy Attorney General Rod Rosenstein, the FBI Director Christopher Wray, the OMB Director Mick Mulvaney, you know, General Kelly was the chief of staff at the time, and myself, and that was a discussion of the demolish-rebuild versus the renovation in place.

So there were—in my mind there were three maybe four decisions that have taken place in this procurement. There was the decision in July of 2017 before I was confirmed to discontinue that procurement that—the prior lease exchange.

There was the decision on the location which was made by the FBI, in my mind, on the 4th of January of 2018. There was a decision that was made on what were we going to do on that site, so were we going to renovate it, are we going to demolish and rebuild it, and that was made on the 24th by the FBI in a meeting with—

Mr. QUIGLEY. Okay. But I just want to—I told Mr. Graves we would just wrap that part up.

So there was a meeting earlier this day at the White House?

Ms. MURPHY. Yes.

Mr. QUIGLEY. With the people you just referenced?

Ms. MURPHY. Yes.

Mr. QUIGLEY. And this was the second meeting that day?

Ms. MURPHY. That was the second meeting that day.

Mr. QUIGLEY. Okay. And that discussion you said before was just about—

Ms. MURPHY. How were we going to pay for it. What we concluded at that meeting was how we were going to pay for this project. And we agreed that we were going to use a ground-lease leaseback and that was a big decision for GSA.

Mr. QUIGLEY. In either of those meetings did you raise any concerns with abandoning the original relocation plan?

Ms. MURPHY. Again, I apologize. Please don't read into this yes or no, but I can't discuss the contents of the conversations. I can tell you who was there and what we concluded.

Mr. QUIGLEY. No, and I get it. And just so I can put that on the record. For the record, you are going to say—have the same answer, did anyone overrule and push back about your concerns, did you receive any directions from the President of the United States about these issues, your answers are all going to be the same about all these meetings, correct?

Ms. MURPHY. What I can tell you explicitly is that what was concluded on the January 4 meeting was the location. What was concluded in the first meeting that did not have the President in it on January 24 was the how we were going to address the project that we were going to do a demolish-rebuild. And in the meeting with the President what we concluded was that we were going to use a ground-lease leaseback.

Mr. QUIGLEY. And the second White House meeting, which was a second date, would be June 15, correct?

Ms. MURPHY. There was a meeting on June 15 as well, yes.

Mr. QUIGLEY. And who was there for that?

Ms. MURPHY. So all of the individuals from the January 24 meeting were there, and then there were additional individuals who were present as well.

Mr. QUIGLEY. And who were they?

Ms. MURPHY. Mark Schwartz was there.

Mr. QUIGLEY. Mark who?

Ms. MURPHY. Mark Schwartz was at the time, I believe, the head of congressional affairs.

Mr. GRAVES. What year are you speaking of on this June 15 date?

Ms. MURPHY. 2018.

Mr. QUIGLEY. It is 2018, right?

Ms. MURPHY. Yes.

Mr. QUIGLEY. Okay. I am sorry. And who else?

Ms. MURPHY. Don McGahn who was the White House counsel was there at the time. And I am trying to remember everyone who was there, and I know I gave a list to the inspector general when they asked me. And I apologize, sir, it was 9 months ago, and I am not exact—I know there were other people in the room but I am not clear. My memory is not great on it.

Mr. QUIGLEY. Okay. And you are not going to answer any questions about what was discussed but just generally overview, correct?

Ms. MURPHY. I can tell you what was concluded, which was that we were going—the topic of the meeting was an update on where

we were, and the conclusion was we were to go forward with the plan as articulated in the February 2018 report.

Mr. QUIGLEY. All right. Look, I respect you have made your decisions. I disagree with them. We are going to conclude with that. But general awareness is a different question.

In all that you have been through with this, was any influence that you were aware of, made, saw, heard, was any influence brought to bear that would impact this decision based on what would help the President's personal interest?

Ms. MURPHY. None whatsoever.

Mr. QUIGLEY. Mr. Graves.

Mr. GRAVES. Thank you, Mr. Chairman.

And thank you for your time today. I know these are tough questions and pointed questions, but you have answered them to the best of your ability today.

Mr. Chairman, thank you for the way you have conducted the meeting. You have allowed everybody to have sufficient time, and the tone has been appropriate.

I would like to submit the letter from the FBI for the record for the committee.

Mr. QUIGLEY. No objection.

[The information follows:]

**U.S. Department of Justice****Federal Bureau of Investigation**

Office of the Deputy Director

Washington, DC 20535-0001

February 8, 2019

Ms. Emily Murphy  
Administrator  
General Services Administration  
1800 F. Street, NW  
Washington, D.C. 20405

Dear Ms. Murphy,

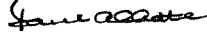
As you are aware, the Federal Bureau of Investigation (FBI) has been exploring various paths to obtaining a new Headquarters building for a number of years. Most recently, after the July 10, 2017 cancellation of the original procurement for a new FBI Headquarters building and the expiration of related land purchase option agreements, the FBI decided to revalidate the project's requirements, as it had been a decade since the original requirements were developed. This "reset period" enabled the FBI to look at the project anew and reexamine the proposed size and location. The FBI reached out to Maryland, Virginia and the District for ideas, and also began to evaluate the feasibility of staying at the FBI's current Pennsylvania Avenue (J. Edgar Hoover (JEH) building) site.

After careful consideration, the FBI decided that demolishing and rebuilding the Pennsylvania Avenue facility best balanced the equities at stake for the organization. While a suburban campus would have offered certain advantages, maintaining the FBI's current location addressed several equally significant concerns, including the proximity to FBI partners, transportation concerns, and reduced land acquisition and parking costs.

In addition, predating and concurrent to the New Headquarters procurement process, the FBI initiated several projects, including the construction of a new Data Center in Pocatello, Idaho, renovations to better utilize space within the Criminal Justice Information Services (CJIS) Division facility in Clarksburg, West Virginia, and the establishment of a campus at Redstone Arsenal in Huntsville, Alabama. These projects enabled the FBI to strategically realign its Headquarters workforce, thereby reducing the size of the Headquarters footprint and making a rebuild on the JEH site more viable. The FBI also concluded, in coordination with GSA, that security concerns could be mitigated sufficiently to permit erection of a Level V facility at the Pennsylvania Avenue site.

In sum, while the FBI's requirements have evolved over the past decade, the need for a modern facility that adequately supports the FBI's complex and increasingly technology dependent mission still exists. We believe that the construction of a secure, technologically advanced facility in the current location -- near mission partners and multiple forms of transit -- will best meet the FBI's need. I look forward to continuing to work with you and your dedicated GSA team to bring this project to fruition.

Sincerely,



Paul M. Abbate  
Associate Deputy Director  
Federal Bureau of Investigation



Mr. GRAVES.

Ms. Murphy, what I hear from you is that in your opinion the decision about the facility location was made prior to you being confirmed and sworn in. Is that correct? Did I get the timeline right?

Ms. MURPHY. So I believe that the FBI director was working on that decision—it was conveyed to me that that was—when I left the meeting on January 4, it was my understanding that that was the decision and from that point forward GSA only worked on, you know, developing plans for how we would rebuild on that site. And that was within, I think, less than 3 weeks of my being confirmed after I was confirmed. But—

Mr. GRAVES. But prior to that—

Ms. MURPHY. But my understanding is that the FBI began working on the idea of—

Mr. GRAVES. Prior to you being confirmed?

Ms. MURPHY. Yes.

Mr. GRAVES. You mentioned they had stepped away from that.

Ms. MURPHY. I believe they actually—they had a contractor who was going through and looking at designs so that—

Mr. GRAVES. And who was the FBI director then?

Ms. MURPHY. Well, August of 2017 was when Director Wray was confirmed. So that was—

Mr. GRAVES. So prior to that the decision, in your mind, was made. I was trying to walk through the timeline Mr. Quigley has stated there. There was a summer decision to move away from the—

Ms. MURPHY. There was a summer 2017 decision to terminate the lease exchange because there simply wasn't enough funding to go forward with it.

Mr. GRAVES. Right. Okay.

Ms. MURPHY. The—which then sort of—and then within, I think, 2 to 3 weeks the FBI director was confirmed. So he became the director at a time when there was the opportunity to go in and reshape those plans. And he took that opportunity and began work on what it would mean to stay on that location, on that site.

Mr. GRAVES. You are in a tough spot. I know that. And the chairman has highlighted that from the appropriation side. We do have oversight and so—

Ms. MURPHY. Of course.

Mr. GRAVES [continuing]. You have been kind to give us as much time as you have today. I think it is appropriate for us no matter who is in the White House or who is in certain offices or majorities in the House and the Senate to recognize sometimes there is a change of direction when there is a change of leadership.

In fact, we have noticed that just in the last 2 months. In the House there are different decisions being made. There is different direction, different play calls being made from last year. And that is just part of the nature of the changing of leadership.

So, Mr. Chairman, it has been a good hearing. I appreciate the way it has been conducted.

And, Ms. Murphy, thank you for your time today.

Mr. QUIGLEY. And I do need to add, Mrs. Torres ask that we introduce the interagency agreement between the U.S. General Serv-

ices Administration and the U.S. Department of Interior into the record. So without objection, I would appreciate that.

[The information follows:]

## INTERAGENCY AGREEMENT

**Between the  
U.S. GENERAL SERVICES ADMINISTRATION,  
PUBLIC BUILDINGS SERVICE  
and the  
U.S. DEPARTMENT OF THE INTERIOR,  
NATIONAL PARK SERVICE,  
NATIONAL MALL AND MEMORIAL PARKS**

**I. Purpose**

The purpose of this Interagency Agreement between the U.S. General Services Administration (GSA) and the U.S. Department of the Interior, National Park Service, National Mall and Memorial Parks (NPS) is to carry out the obligations of GSA and NPS (Parties, each individually, Party) as defined in Section 4 of Public Law 98-1, 97 Stat. 4 (Feb. 15, 1983)(the Act), which directed GSA to "...execute an agreement with the Secretary of the Interior providing for operation of the observation tower...by the National Park Service and further providing...for transfer to the National Park Service...such sums as may be necessary to operate the observation tower." The Old Post Office Tower (Tower) is listed on the National Register of Historic Places pursuant to 54 U.S.C. Chapter 3021, and is a primary element in the Pennsylvania Avenue National Historic Site. The tower is part of the Old Post Office Building (OPO), which is located on the southeast corner of Pennsylvania Avenue and 12th Street, NW, Washington, D.C. In August 2013, a 60-year ground lease was signed between GSA and the Trump Organization to redevelop the OPO and operate it as a hotel.

**II. Roles**

GSA administers the OPO Building and leases it to the Trump Organization, which has the primary responsibility for the overall management of the OPO Building pursuant to the ground lease referenced above. The NPS is solely responsible for providing visitor services for the Tower, as described below.

**III. Responsibilities**

The Parties mutually agree:

1. The Tower shall be operated in a manner consistent with the requirements of the Act, this Agreement, and the annual NPS Operations Plan and Budget (Plan and Budget) described below.
2. Any operational concerns regarding the Tower noted by either Party shall be brought to the attention of the other Party and shall be resolved in a timely and mutually acceptable manner. Both parties agree to use their best efforts to resolve any concerns and cooperate in good faith.

**A. NPS will provide:**

1. Education and interpretation services for visitors to the Tower. The GSA and NPS shall mutually agree upon the hours and operational conditions of the Tower in the

annual Plan and Budget, described below. GSA will not require NPS to host, plan, or staff any special events or alter its normal operations to accommodate any hotel special events. Any special events allowed by GSA or its lessee should not impact the normal business operations of the Tower nor should the NPS incur any additional expenses such as overtime to accommodate them. Special events will not be allowed in the NPS office areas, only in the visitor areas of the OPO Tower.

2. Identification of any additional design needs for the visitor spaces on the ground, 9<sup>th</sup>, 10<sup>th</sup>, and 12<sup>th</sup> floors of the Tower.
3. Proposed modifications, alterations, and construction plans for space alterations to GSA for review and written approval to ensure the integrity of the historical character of the Tower and its fixtures.
4. An annual Plan and Budget to be submitted to GSA by each July 15th for the following fiscal year. The Plan and Budget will be reviewed and approved by GSA by September 1st for the following fiscal year's operation and attached following the last page of this agreement. Any modification to the Plan and Budget must be mutually agreed upon in writing by the Parties. Upon enactment of GSA's appropriation, operating funds will be transferred to the NPS/NAMA within 30 days per section "VI. Funding".
  - a. The Plan and Budget will provide:
    - i. Proposals and estimated costs for exhibits or other visual aids to interpret key themes of the site such as planning and development of the Nation's Capital; the L'Enfant Plan; Pennsylvania Avenue National Historic Site; historic places, national landmarks, and cityscape; historic preservation; the OPO Building and Tower; and the Ditchley Bells of Congress;
    - ii. Operational staffing needs and costs;
    - iii. Hours of operation; and,
    - iv. A plan for potential volunteer services and/or partnerships to support NPS operations.
  - b. Each fiscal year's Plan and Budget shall be deemed to be incorporated into this Agreement by reference
  - c. Public information services for the NPS activities in the Tower.
5. Coordination with the Washington Ringing Society for the ringing of the Ditchley Bells of Congress on holidays and on special occasions, as well as weekly practice sessions.
6. Reasonable notice of all activities of the NPS at the Tower that may affect GSA or the Trump Organization.
7. Visitor and staff safety in a manner consistent with NPS safety and management policies, in areas assigned to NPS at the Tower. This will include following the 25-person maximum occupancy limit for the Tower.
8. Coordination with GSA contractors providing services relating to the Tower, consistent with NPS management responsibility.

9. An Occupant Emergency Plan for the NPS-operated space to be approved by GSA.
10. Notice when NPS elects to furnish services or events outside the scope of this agreement.

**B. GSA will provide:**

1. Finished spaces in the ground floor waiting area, the 9<sup>th</sup>, 10<sup>th</sup>, and 12<sup>th</sup> floors of the Tower including adequate public access (including access for those with disabilities) to elevator facilities to all levels, as well as equipment necessary for the presentation of approved NPS activities related to the Old Post Office Building and Tower and the Pennsylvania Avenue National Historic Site. GSA agrees to future improvements of the finishes for the public spaces on the 9<sup>th</sup> floor as funding is available, to the extent consistent with the Secretary of Interior's Standards for the Treatment of Historic Properties and permitted under the Programmatic Agreement entered into between GSA, NPS, and other parties on May 23, 2013, pursuant to Sections 106, 110, and 111 of the National Historic Preservation Act, 54 U.S.C. §§ 306108, 306107, 306121, and 306122.  
Recommended finishes include the following:
  - a. all hallways from the 9<sup>th</sup> floor elevator entrance through the hall/balcony area in and around the bell ringer space and back hall areas will include a 12"x24" tile in running bond pattern by Dal-Tile, Invoke Colorbody Porcelain, Sheer Glow ID01 with matching grout;
  - b. the bell ringer platform to have a 24" border around the entire platform of the same floor tile, and a carpet insert by Mohawk Group, Bending earth line, Caliber tile, color Feldspar – 7858;
  - c. base trim in these spaces shall be a wood base, one-piece of similar profile to Smoot Lumber Company Baseboard #163E - 9/16" x 5-1/4" throughout; door and window casing shall be wood, one-piece of similar profile to Smoot Lumber Company Adams Casing #97 - 1-1/16" x 3-1/2".
2. Design recommendations and approvals for any modifications to the visitor spaces in the waiting area on the ground floor, 9<sup>th</sup>, 10<sup>th</sup>, and 12<sup>th</sup> floors of the Old Post Office Tower. Such recommendations may be submitted to the NPS for review and comment.
3. The NPS operation and staffing funds as agreed to in the Plan and Budget. This amount will be agreed to by the Superintendent of National Mall and Memorial Parks each year preceding the beginning of the affected fiscal year and will be documented by GSA.
4. Maintenance services including elevator maintenance, repair and rehabilitation of space and audiovisual equipment in all areas assigned to the NPS, lighting, electrical, plumbing, painting, and miscellaneous fit and finish needs and all outside signs at no expense to the NPS. These services and repairs shall be completed in a timely manner so as not to affect the operation of the Tower. Any

mutually agreed-upon exceptions must be funded through the Plan and Budget.

5. Janitorial services for NPS occupied office and visitor spaces to include trash pickup, vacuuming, sweeping, restroom cleaning, etc.
6. All utility services (electricity, heat, air conditioning, water, local phone services and a reasonable cost of long distance services), reasonably necessary for NPS operations in accordance with agreed-upon services.
7. Public restrooms on the ground floor accessible to all visitors, including those with disabilities, and provisions for emergency public restroom use by visitors or NPS/staff in the 9<sup>th</sup> floor NPS space.
8. Reasonable notice of all activities GSA is aware of that may affect NPS activities at the Tower.
9. The identification of cost effective measures, mutually agreed upon by both parties, for providing Tower services to ensure continued public services and access.
10. The design, construction, and installation of interpretive exhibits for the visually impaired visitors and will manage the contracting requirements and coordinate with the NPS on content and design.
11. Assistance to NPS, as needed, in collaborating with the Trump Organization on the building-wide Occupant Emergency Plan and the Occupant Emergency Plan for the NPS-specific space.
12. Security services for the NPS-occupied Clock Tower space.
13. GSA shall comply with 36 CFR part 1191, Appendices C and D (Architectural Barriers Act Chapters 1 and 2, and Chapters 3 through 10) to provide a fully accessible or approved alternative visitor experience throughout the Tower. During the term of this agreement GSA will complete an independent feasibility study to examine the modification or removal of the tiered concrete structure on the 12th floor to bring the observation tower into compliance. GSA will also produce and make publicly available a video about the tower experience to be installed with the exhibits, for visitors with accessibility needs who cannot access the observation tower. GSA will share the results of the feasibility study with NPS.

GSA shall comply with all emergency egress requirements throughout the Old Post Office Tower, including the public and staff spaces. GSA agrees to ensure necessary modifications are made to areas that do not currently meet the egress requirements of National Fire Protection Association 101 - The Life Safety Code, or GSA shall provide alternate means and methods to meet the intent of the Life Safety Code as approved by the Authority Having Jurisdiction (GSA Fire Protection Engineering Team).

#### **IV. Term of Agreement**

This agreement will commence on the date of the last signature affixed by GSA or NPS and will remain in effect until September 30, 2019, at which time the Agreement may be renewed upon the written agreement of both Parties, such writing to contain the new term and be attached to this Agreement. Consistent with the provisions of the Act, or any other superseding law or regulation, either Party may terminate this agreement upon 90-day notification to the other Party.

#### **V. Assignment**

No transfer or assignment of this Agreement, or of any part thereof or interest therein, directly or indirectly, voluntarily or involuntarily, shall be made unless such transfer or assignment is first approved in writing by the Parties.

#### **VI. Funding**

Pursuant to Part III, Responsibilities (A)(4) of the agreement, the approved annual operating plan provides funding for fiscal year 2019. Funding will be transferred via a 7600B, United States Government Interagency Agreement Form, to NPS and is not provided in advance of expenditures. Expenditures charged toward this agreement will not exceed the approved annual operating plan. If expenditures are projected to exceed the originally approved annual operating plan, a modification to the annual operating plan will be submitted by NPS to GSA for concurrence.

Due to continuing resolution constraints, funding will be provided by GSA to NPS on a periodic basis using the form 7600B. This document will be used for the justification and transfer of funds and expenditures between parties for the period of time listed on the 7600B, section 27, and funding provided for in the same period, not to exceed the approved annual operating plan for the applicable fiscal year.

#### **VII. Accounting and Billing**

Accounting: Accounting information will be provided in the 7600B, section 28 with reference to the Agency Location Code, Treasury Account Symbol, ordering activity DUNS code, and supplemental accounting information.

Billing: Billing information will be provided in the form 7600B, sections 32 through 34. Expenditures will cease to be collected 6 months after the fiscal year due to administrative changes in expenditures from the applicable fiscal year in which they were charged are made.

#### **VIII. Liability**

Each Party agrees to assume responsibility for any and all claims resulting from the acts or omissions of its employees or representatives, to the greatest extent permitted by law. In the event a claim is brought under the Federal Tort Claims Act, 28 U.S.C. 2671 *et seq.*, (FTCA), it shall be the responsibility of the Party receiving the claim to coordinate with the other Party regarding responsibility to investigate any such claim, to issue an administrative

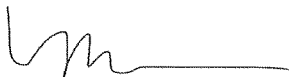
determination as required by the FTCA, and to assist in the defense of any litigation arising from any such claim, and the other Party to cooperate in this effort.

#### IX. General

1. Nothing herein contained shall be construed as binding the United States to expend in any one fiscal year any sum in excess of appropriations made by Congress for the purpose of this Agreement for that fiscal year, or to involve the United States in any contract or other obligation for the further expenditure of money in excess of such appropriations.
2. No Member of Congress shall be admitted to any share or part of any contract or agreement made, entered into, or accepted by or on behalf of the United States, or to any benefit to arise thereupon.
3. GSA and NPS agree that the term "days", as used in this Agreement, means Federal business days.
4. GSA and NPS agree to provide contact information, updated annually, for key contacts in both organizations, including those staff who are responsible for operation and maintenance of the tower. Each Party will include as key contacts those managers who are able to make decisions and support resolution of disputes related to operation and maintenance of the Tower.

#### X. Approval

For the National Park Service



\_\_\_\_\_  
Lisa Mendelson  
Regional Director  
National Mall and Memorial Parks

Date \_\_\_\_\_

For the U.S. General Services Administration



\_\_\_\_\_  
Darren J. Blue  
Regional Commissioner  
Public Buildings Service  
National Capital Region

12/28/2018  
Date



Mr. QUIGLEY. Thank you so much for being here. I get you walked into a lot of this. We appreciate your coming back today. I would just conclude there are coincidences and then there are things that go beyond commonsense. And we have more information to uncover.

We are aware that there was—in response to our letter a document dump, I guess, you might want to describe of 2,500 that we have yet to see, the letter that we sent you asking for information. So we are going to sort through that and see what other information still has to come forward. But we appreciate your sending that and hope that the rest of the requests in that letter comes soon.

Other than that, we thank you for your participation today and, again, your service.

Ms. MURPHY. Thank you, sir.

[Questions and answers submitted for the record follow:]

**Financial Services and General Government Subcommittee**  
**Hearing on GSA Oversight**

**Questions for the Record Submitted by Congressman Sanford D. Bishop, Jr.**

***AbilityOne Program***

The AbilityOne Program provides employment opportunities for over 45,000 Americans who are blind or have significant disabilities. I applaud GSA for highlighting the AbilityOne Program as one of the “*Unique Government requirements that advance key national interests...*” in its March 2018 Implementation Plan. I strongly concur with that statement and support the AbilityOne Program and the opportunities it affords people who are blind or significantly disabled to secure quality employment and enhance their opportunities for personal and economic independence.

**Question 1:** *I would like to ask how GSA is continuing to support the AbilityOne program, particularly as it moves to the use of commercial e-Commerce portals in order to streamline federal government acquisition? It is imperative that this move be achieved while also strengthening socioeconomic programs such as AbilityOne that support the federal marketplace.*

Response: GSA has had regular meetings with AbilityOne throughout the market research and consultation phase of this program. Through these discussions, GSA has heard and acknowledges the important public policy concerns, including the requirement to buy certain products from mandatory sources, such as AbilityOne. GSA remains committed to the AbilityOne Program (and other socioeconomic programs) and will continue to maintain an open and ongoing dialogue to identify ways to promote this important community as part of the implementation of commercial e-Commerce portals.

**Questions for the Record Submitted by Congressman Crist**

***Topic: GSA and OMB e-Commerce Program***

§846 of the National Defense Authorization Act for FY 2018 directed the General Services Administration (GSA) and the Office of Management and Budget (OMB) to jointly develop an e-commerce program for federal agencies wishing to purchase commercial off-the-shelf through portals. After an initial period during which the agency

sought comments and input from affected stakeholders, the GSA identified three models for this program moving forward: e-commerce, e-marketplace, and e-procurement. For many in industry, there was an expectation that GSA would test each of these models to determine how best to proceed with this sweeping change in federal acquisition policy.

**Question 2:** GSA's decision announced this past December to select the e-marketplace model for proof of concept came as a great surprise to many in the contracting community. By moving forward based on this limited testing, we run the risk of embracing a business model that could limit competition and produce results that are exactly the opposite of what Congress intended when §846 was enacted. Why was the decision made to limit testing in this manner?

Response: GSA views competition as the foundation of this program. As part of its Phase II research, GSA reviewed the various commercial e-commerce models to better understand the capabilities of each. For the initial proof of concept, GSA intends to start with the e-marketplace model, as it maximized competition across both portal providers and amongst suppliers on those portals. This affords both buyers and suppliers the greatest level of choice. GSA views the e-marketplace model as a starting point and will continue to assess opportunities to leverage the benefits of the other business models throughout implementation.

### ***Fly America Act and City-Pair Program***

In 2015, the GSA issued an opinion on the Fly America Act, and its implementation through the City-Pair Program, that has allowed foreign carriers to conduct much more flying under the government contracts than they had before. The GSA's decision allows foreign carriers to execute government contracts as long as a U.S. airline lends them their code. I am concerned about this decision because it completely eliminates the connection between U.S. airlines, their workers, and the tax dollars they are providing that is actually paying for this travel. The original purpose of the Fly America Act, as stated in the statute, is to "ensure that the transportation of passengers and property by air is provided by" a U.S. carrier.

**Question 3:** What direction from Congress did the GSA rely on when it made this decision?

Response: On October 19, 1996, the General Accounting Office Act of 1996, Pub. L. 104-316, became effective. That Act, among other things, transferred the responsibility for interpreting the Fly America Act from the General Accounting Office (now known as

the U.S. Government Accountability Office [GAO]) to the Administrator of the U.S. General Services Administration (GSA). Specifically, the Act amended 49 U.S.C. § 40118(c) of the Fly America Act to read:

The Administrator of General Services shall prescribe regulations under which agencies may allow the expenditure of an appropriation for transportation in violation of this section only when satisfactory proof is presented showing the necessity for the transportation.

In 1998, GSA issued a Final Rule (63 FR 63417, dated November 13, 1998, preceded by Proposed Rule 63 FR 16936, dated April 7, 1998) to the Federal Travel Regulation (FTR) interpreting certain provisions of the Fly America Act. That rule states, in the relevant part, that "U.S. flag air carrier service also includes service provided under a code share agreement with a foreign air carrier in accordance with Title 14, Code of Federal Regulations [CFR] when the ticket, or documentation for an electronic ticket, identifies the U.S. flag air carrier's designator code and flight number."

On November 30, 2015, GAO issued a decision in the *Matter of United Airlines, Inc.* (B-411987), denying the protest and concluding that GSA's decision to award to a U.S. flag air carrier for a flight route to be performed by a foreign airline under a code-share agreement, where the tickets will be issued under the U.S. air carrier's designator code and flight number, does not violate the Fly America Act and is unobjectionable under GSA's implementing regulations. The GAO decision referenced in this response can be found at <https://www.gao.gov/assets/680/674329.pdf>.

**Question 4:** Under this decision, the GSA has awarded contracts for flights over 9,000 miles to air carriers that do not own any wide-body aircraft, for instance, JetBlue. Does JetBlue own any aircraft capable of flying 9,000 miles or more? Long haul routes generally require special safety certifications from the FAA before an airline is allowed to fly them – for instance, the FAA has to be satisfied that an airline can safely fly extended distances over open water before it will allow a carrier to file a flight plan across the Pacific Ocean.

Response: GSA cannot speak to the composition of JetBlue's fleet and defers to JetBlue on that question.

**Question 5:** Does the GSA consider these safety certifications required to fly routes of this distance in their CPP considerations?

Response: Yes. GSA's Fiscal Year (FY) 2019 City Pair Program (CPP) contract solicited scheduled air passenger transportation service by certified United States air carriers, under 14 CFR Part 121, including all safety standards and airworthiness requirements therein.

Specifically, Section H.3 of the FY 2019 CPP contract requires, prior to award and in accordance with the provisions of 32 CFR 861.4 (U.S. Department of Defense [DOD] Air Transportation Quality and Safety Requirements), DOD approval for all offerors and their U.S. air carrier code-share partners proposed for service on offered line items. Furthermore, Section K.8 requires U.S. air carriers proposing to provide service through foreign code-share air carriers eligible for award on international line items to represent that the foreign air carrier provides a substantially equivalent level of quality and safety as that provided in the offeror's commercial practice. More information on U.S. air carrier programs accepted by the Federal Aviation Administration to audit foreign air carrier code-share partners is available at [https://www.faa.gov/air\\_traffic/international\\_aviation/media/code\\_share\\_guidelines.pdf](https://www.faa.gov/air_traffic/international_aviation/media/code_share_guidelines.pdf).

**Question 6:** Were you aware that foreign air carriers are now advertising to government employees about their ability to fly passengers under the Fly America Act?

Response: GSA was not aware of any foreign air carriers' advertisements prior to receiving this inquiry; however, GSA does not contract with foreign air carriers.

**Question 7:** Have these carriers contacted the GSA about participating in the program?

Response: CPP has not received inquiries from any foreign air carrier about participating in the program given that the scope of CPP provides for award only to certified U.S. air carriers under 14 CFR Part 121.

**Question 8:** Is it the GSA's position that foreign air carriers should be encouraging government employees to fly on their aircraft over American competitors?

Response: It is not GSA's position that foreign air carriers should be encouraging Government employees on official travel to fly on their aircraft over American competitors. The Fly America Act generally requires that Government-financed air transportation is provided by a U.S. flag air carrier unless one of the exceptions in 41 CFR § 301-10.135 through § 301-10.137 applies. Additionally, in accordance with FTR § 301-10.106, civilian employees of an agency as defined in FTR § 301-1.1 must always use a contract city pair fare for scheduled air passenger transportation service unless one of the limited exceptions in § 301-10.107 applies.

**Question 9:** Is there anything in the government's CPP contracts that requires an airline to maintain its codeshares with the foreign airlines if these partners are needed to complete these routes?

Response: No. If a U.S. air carrier is servicing an international city pair using a foreign code-share and the code-share relationship ceases, rendering the awardee unable to fulfill service on that city pair, then according to Section F.5 of the FY 2019 CPP contract, the awardee must notify GSA of discontinuance of service. In such situations, the Government reserves the right to reevaluate all offers for that line item, and the Contracting Officer may re-award the line item to a carrier that is capable of performing and whose offer represents the best value to the Government.

**Question 10:** Would an airline like JetBlue be capable of fulfilling all of its contracts if not for these foreign carriers?

Response: Only an offeror that is able to meet all solicitation requirements and possesses all required certifications is eligible to receive a contract award.

In 2015, the GSA effectively awarded a contract for travel between Washington, DC, and Dubai, UAE, to a foreign carrier. That contract was worth 15,000 passengers and millions of dollars each year to United Airlines, which served as the contract carrier for many years prior. The loss of that contract resulted in United cancelling that route altogether – a decision that has cost our economy more than 1,500 jobs. Since that time, the government rate on that route has risen ~30%.

**Question 11:** Is GSA comfortable with this massive price increase?

Response: GSA does not award CPP contracts to foreign air carriers. Since FY 2015, CPP contract prices have dropped approximately 35% in the Washington, DC–Dubai, UAE market:

- United's CPP Average Award Price FY 2012–FY 2015: \$1,094
- JetBlue's CPP Average Award Price FY 2016–FY 2019: \$711

**Question 12:** If United were still competing with the foreign carrier serving this route, would you agree that it would likely save U.S. taxpayers money?

Response: United Airlines competed with U.S. air carriers, including JetBlue, in the DBX-WAS market during the FY 2016 CPP solicitation cycle. As the Government does

not know in advance if a carrier will or will not submit an offer for a line item, what the offered price will be year over year, or any other factors that could potentially affect an offeror's price (e.g., fuel surcharges), GSA cannot predict whether an offer from United Airlines would save U.S. taxpayers money.

**Question 13:** When making its awards, does the GSA consider the future costs of travel in markets like this where its decision could drive U.S. carriers out of the marketplace, creating a monopoly for a foreign competitor?

Response: GSA's annual CPP solicitation for scheduled air passenger transportation service is a commercial item acquisition through which the Government obtains, in essence, the same service offered to the general public. As a general matter, Government traffic is typically a small fraction (less than 5%) of the total traffic for an air carrier for a particular city pair.

In accordance with Section M—Evaluation Factors for Award of the CPP solicitation, all offers are evaluated and awarded on a line-item-by-line-item basis. Each line item solicited is assigned to one of three evaluation groups. Separate evaluation criteria apply for Group 1, Group 2, and Group 3 offers.

For Group 1 line items, offers are evaluated based on the following three evaluation factors:

*Factor 1: Meet Minimum Requirements* (i.e., the offeror meets the requirements listed in Section C.3 of the solicitation)

*Factor 2: Quality of Service*

Subfactor (1)—Timeband/Service Distribution (i.e., the time when a carrier flies a route and the type of service [nonstop vs. connect] offered)

Subfactor (2)—Average Elapsed Flight Time (i.e., how fast a government traveler arrives at his/her destination)

Subfactor (3)—Number/Type of Flights (i.e., the amount and type of flights offered by a carrier)

Subfactor (4)—Full Jet vs. Propeller Planes, Turboprops, and Regional Jets (RJs) (i.e., the type of aircraft the government travelers will fly on)

*Factor 3: Price*

For Group 1 offers, award may be made to other than the lowest priced offer where the technical superiority of that offer outweighs the price differential from the lower priced offers and where the price has been deemed fair and reasonable. Technical factors will be considered of greater importance than price, but as competitive proposals vying for a specific line item become more technically equal, price becomes an increasingly important factor.

For Group 2 and Group 3 offers, award is made using a lowest price technically acceptable (LPTA) methodology. Award is made on a line-item-by-line-item basis to the technically acceptable offeror who meets Factor 1, Meets Minimum Requirements, and offers the lowest price to the Government.

### **Questions for the Record Submitted by Congressman Graves**

#### ***Commercial Platforms Initiative***

Since language regarding the commercial platforms initiative was originally included in the FY 2018 NDAA, GSA has been working hard to implement these provisions. In rolling out the implementation plan that you are scheduled to release in the next few weeks, it's of vital importance that everyone is on a level playing field.

**Question 14:** What is GSA doing to address the fears that some have about ensuring a level playing field for sellers on a third party marketplace?

Response: GSA will award to multiple commercial e-commerce providers, offering suppliers a choice as to platforms with which they choose to partner. Additionally, GSA will require that portal provider fees be transparent to all suppliers.

**Question 15:** Is GSA taking concerns regarding access to proprietary data seriously?

Response: Throughout Phase II, GSA heard the concerns of industry regarding proprietary data and the security of that data. This feedback came from dozens of one-on-one meetings, two industry days, and three separate Requests for Information (RFIs). GSA fully intends to implement Section 838 of the FY 2019 National Defense Authorization Act (and the associated data protections) as part of its contracts with portal providers.



GSA also heard the concerns from portal providers about the need for access to this proprietary data in order to manage their marketplaces. As part of the iterative implementation approach, GSA will start with an initial proof of concept to assess impacts before expanding the program more broadly.

**Question 16:** Will the substance of these concerns be addressed in the implementation plan?

Response: The implementation plan elaborates on these concerns, and the draft solicitation (expected in the late spring timeframe) will address GSA's approach to mitigate these risks.

### **Questions for the Record Submitted by Congressman Joyce**

#### ***Commercial E-Commerce Portal***

I am very supportive of streamlining certain government systems for efficiency, but I know a number of my colleagues and I have concerns regarding the suitability of certain healthcare products to be purchased on an e-Commerce portal. If certain healthcare-related products are not exempt, we could see unintended consequences for healthcare facilities and the patients they treat.

**Question 17:** Could you provide an update on GSA's consideration of either a full exemption or a delayed implementation for healthcare products from the Procurement Through Commercial e-Commerce Portals program?

Response: GSA met with industry associations from both communities to ensure GSA understood the risks and found that there are real concerns focused primarily around supply chain security. For this reason, GSA does not intend to start specialized marketplaces for the information technology (IT) or healthcare product categories until GSA has performed appropriate research to know when and how such specialty marketplaces fit.

In keeping with the requirements of Section 846 to follow commercial practices, GSA will make the full range of common consumables available and allow agencies to establish further limitations. However, as required by the legislation, GSA paid special attention to healthcare products and IT in working through this issue.

**Question 18:** Is it possible that GSA would wait to implement the portal for high-risk healthcare products until after the program has been tested for safety and effectiveness?

Response: Yes, the intent is to conduct further research before launching any sort of specialty marketplace.

**Question 19:** Has GSA given any consideration to a separate, healthcare specific e-commerce portal to utilize additional safety and industry-specific standards?

Response: Yes, as part of Phase II market research and consultation, GSA was introduced to the concept of specialty marketplaces, particularly in the healthcare category. Several healthcare companies expressed an interest in participating; however, GSA feels additional research is warranted and intends to revisit this opportunity after the initial proof of concept has been tested.

### ***Federal Real Property Profile***

I understand that one of your priorities at GSA is to improve the accuracy of geospatial data and enable the completeness of a geo-enabled version of the Federal Real Property Profile (FRPP).

**Question 20:** What is GSA doing to work with civilian agencies to overcome potential security concerns and fully provide real property data to the FRPP?

GSA is strictly following and has implemented the requirements and guidance of the 2016 Federal Sales and Transfer Act (FASTA) in regard to FRPP data that civilian agencies provide to GSA. The law states the database should be accessible to the public while also adhering to national security and procurement information protection laws. FASTA also gives agencies the ability to exempt data from being accessed consistent with the Freedom of Information Act (FOIA). Agencies continue to cooperate and work with GSA to provide requested real property data to FRPP. GSA is committed to providing maximum transparency while also protecting sensitive information protected from disclosure.

**Question 21:** What are some of the other challenges and benefits of updating data into the FRPP?

The FRPP database is an annual inventory snapshot of the Government's real property; agencies are individually responsible for asset management decision-making. A

challenge GSA faces regarding FRPP data is that it must design requirements and tools that can be used by both large landholding agencies and small agencies with single leases. GSA provides specific guidance and allows access to necessary system tools by which agencies can submit their real property data to the FRPP. These tools and guidance documents include 1) the annually published FRPP data dictionary, which lists, defines, and provides technical reporting requirements and guidance for data submission to ensure agencies follow validation rules for reporting data; 2) the FRPP Management System (FRPP MS), which is programmed to alert users to erroneous data that does not conform to the general guidance on data submissions; and 3) analytic tools and dashboards for agencies to visualize their inventory to further identify erroneous or anomalous data.

Together, the guidance and tools GSA provides to agencies allow them to analyze their portfolio to help inform individual management decisions and assist them in operating in the best interests of the Federal Government and the American taxpayer.

**Question 22:** Overall, how is GSA working to increase transparency, accuracy and accountability given the expansive amount of data that could be added to the FRPP?

GSA continues to enhance the functionality and usability of the FRPP public data set and the FRPP map. Consistent with FASTA requirements, GSA will make additional FRPP data fields accessible, including several new fields added in FY 2018 to assist the telecommunications industry in identifying Federal real property on which it could install its infrastructure to enhance access to broadband and other forms of telecommunications technology. GSA remains committed to providing the public with as much access to the submitted FRPP data as possible, consistent with FASTA's requirement to exempt national security and FOIA exempt information.

GSA provides specific guidance and allows access to necessary system tools by which the landholding agencies can submit their real property data to the FRPP. These tools and guidance documents include 1) the annually published FRPP data dictionary, which lists, defines, and provides technical reporting requirements and guidance for data submission to ensure agencies follow validation rules for reporting data; 2) the FRPP MS, which is programmed to alert users to erroneous data which does not conform to the general guidance on data submissions or business validation rules, such as zero being entered for the square footage of a building; and 3) analytic tools and dashboards for agencies to visualize their inventory to further identify erroneous or anomalous data.

In addition, GSA in FY 2018 incorporated a geospatial analysis to alert the user to inconsistent geographic data that an agency entered so the user can review and make

necessary corrections. The system will automatically compare agency-submitted geographic data fields to those identified by the given latitude and longitude values. If there is a variance, the user will be notified of the anomaly, and agencies can determine the error and take corrective action where necessary. For instance, if an asset is reported to be in the state of Maine, but the geospatial analysis determines the coordinate point is in New Hampshire, the system will alert the user to the inconsistency so it can be resolved. GSA understands and strongly agrees with the need for accurate FRPP data, and so will continue to assist agencies as necessary to ensure they provide accurate data to the FRPP.

TUESDAY, MARCH 26, 2019.

**OFFICE OF MANAGEMENT AND BUDGET REQUEST FOR  
FISCAL YEAR 2020**

**WITNESS**

**RUSS VOUGHT, ACTING DIRECTOR, OFFICE OF MANAGEMENT AND  
BUDGET**

Mr. QUIGLEY. Good morning. Thank you all for joining us today.

I would like to welcome the Acting Director of the Office of Management and Budget, Russ Vought.

This is a fitting topic for this subcommittee's first budget hearing of the year because OMB oversees the implementation of the President's agenda and prepares the President's budget.

That budget offers a chance for this Administration to lay out in detail its vision and priorities for America. Unfortunately, it is hard to imagine being more frustrated by what OMB has delivered this year. The budget deeply slashes programs that support the most vulnerable among us, the sick, the elderly, the poor, while doubling down on a discredited economic policy that widens the inequalities in our society.

Overall the budget cuts non-defense discretionary spending by 9 percent in 2020. To get there, it slashes programs that working- and middle-class Americans rely on for bare necessities, like food, transportation, medical care, and housing.

As justification for these cuts, the budget cites the pressing need to cut deficits and stabilize the national debt, conveniently forgetting that the deficits are ballooning right now because of the tax cuts for the wealthiest.

As a reminder, this Administration has claimed and continues to claim that its 2017 tax cuts will pay for itself and more. Yet Goldman Sachs, hardly a liberal bastion, concluded that it will add as little .3 percent to GDP in 2018 and 2019 and could be slightly negative in 2020 and beyond.

And the nonpartisan Congressional Budget Office has estimated the tax cut bill will increase the total deficit by almost \$2 trillion over the next 10 years.

To pay for this, the President breaks his promise to the American people and cuts as much as \$1.5 trillion out of Medicaid and \$500 billion from Medicare, while once again calling for the repeal of the Affordable Care Act.

In short, this budget puts the price of these tax cuts for the rich squarely on the backs of hard working, regular Americans, and it gets worse.

The budget relies on gimmicks, false savings, and unsustainable assumptions to cover up the full impact of its disastrous policies. For example, the budget makes extremely unrealistic economic

growth assumptions to mitigate the true impacts of its policies on the deficit. It estimates that the GDP will grow by roughly 3 percent each and every year over the next decade.

That is a full percentage point higher than most serious economic experts believe is possible, and according to the President's own economic report, that growth is contingent on even more tax cuts and non-existent increases in infrastructure spending.

The budget also relies on a so-called 2-penny plan to further reduce non-defense discretionary spending to 27 percent below the 2019 level. They hardly can be called a plan. The budget does not spell out any of the hundreds of hard choices that would be necessary to cut spending that drastically, and it is completely unrealistic.

Meanwhile, OMB asks other agencies to make drastic cuts, but is hardly willing to do so itself. It proposes a cut of less than 1 percent after accounting for funding it shifts elsewhere or that are not part of OMB's core responsibilities.

On defense, the budget rejects the longstanding principle of parity and once again avoids making hard choices. Rather than making a workable proposal to increase budget caps for defense and non-defense spending in tandem, the budget uses sleight of hand to sidestep the issue entirely.

The Administration makes no adjustment to the budget caps. Instead it proposes, quite unapologetically, to get around them and bump up defense spending by 5 percent by increasing the Overseas War Fund to the tune of \$100 billion. And I quote Mr. Mulvaney, "If appropriations come across with any OCO money hidden in it, I will do everything I can to strip it. It is a slush fund and a gimmick, and our own budget called it a backdoor trick last year," Politico, 4/30/2015.

The budget also proposes \$5 billion of additional funding for a border wall that Congress and the majority of the American people have already rejected.

Despite all of these fantastical growth numbers, unrealistic cuts, and numerous gimmicks, the Administration still fails to balance the budget by the end of the decade, a standard set by Republicans when deficits will still exceed \$200 billion. This budget strays so far from reality, in fact, that we really have no choice but to disregard it entirely.

We will continue to exercise the power of the purse to benefit all Americans, even if the Administration does not seem interested.

Finally, it would be remiss if I did not mention frustrations by the way OMB has conducted its management and oversight work. OMB does not just prepare the President's budget. It clears regulations and testimony and oversees government-wide policies and initiatives.

Yet this Administration's officials at multiple agencies have committed repeated and egregious violations of ethics rules and other government regulations, costing taxpayers potentially millions of dollars. We do not have enough time to mention all of the questionable spending decisions appointees have made on travel, office renovations, and furniture.

We also continue to be concerned about the general lack of transparency and responsiveness from this Administration on ethical

and budgetary issues. Agencies continue to complain to us that their reports, testimony, and questions get routinely stuck in the OMB clearance process. This subcommittee provides significant budgetary resources to OMB to help address and improve these and other government-wide policies, and it is aggravating to only see the problems get worse.

I look forward to discussing these issues in more detail.

Before I turn to the Acting Director, I would like to recognize Mr. Graves for his opening remarks.

Mr. GRAVES. Thank you, Mr. Chairman. I always enjoy your positive and encouraging opening statements.

Mr. QUIGLEY. I learned from the master.

Mr. GRAVES. You did not let us down today at all.

Well, Acting Director, welcome. I want to thank you for joining us today, but most importantly, it is your birthday. Thank you for spending your birthday with us.

That shows where we all are in life. I think I have spent my birthday here several times, too. But great to have you. I appreciate your efforts and what you have done with the budget and your staff.

I know it has taken a lot of work, and I hear the comments from the chairman here about, you know, his insights into the budget you have presented, and so I actually look forward to seeing the budget they present someday, one which I have not seen presented.

So at least you have taken that first step, and we are grateful for that. I know it is a lot of hard work, and I have publicly said, I mean, you have taken a courageous step forward in what you have presented to us, as Congress, and how you foresee budgeting in a recommendation to us.

And not only have you done that. You have done it in a way where some would say your hands were tied just a bit. You know, you are operating under constraints, and there are budgetary caps that were adopted by Congress 8 years ago, I believe, and it was the Congress that said, "Hey, if you allow us to raise the debt limit, we promise we will not spend more than these amounts of dollars over the next several years."

But each time it seems like it has been raised, and I appreciate your intent as you looked at this. There is no anticipation of a cap raise. In fact, you say, "Congress, that is your job. If you are going to change the spending levels, do that, but until then, we will show you how we would recommend spending dollars under certain constraints we have."

So thank you for what you have done there. It is clear to me that you have recognized the national debt is \$22 trillion. It is not something that happened on your watch nor on this President's watch. In fact, under the previous Administration the debt doubled or nearly doubled in those short 8 years, and so it is, in fact, an inherited debt that I would say that you are trying to manage right now, and you have taken some great strides forward to show us how we can reduce spending by \$2.7 trillion over the next 10 years, which takes a lot of work, and I applaud the Administration for embracing what we would say is reality.

I mean, these are bold steps you are showing us and making some tough choices rather than playing it safe, like many like to do in this town.

I agree with a lot of parts of what you have presented, and I look forward to hearing your presentation today, but let me just point out the investment in our military and national defense is something that we should all be supportive of and not critical of in any way. That should be our number one focus, and I know that has been the Administration's number one focus all the way down to not only national security from abroad context, but national security here locally at home on our border and how the Administration is doing everything possible within their legal means to make sure our country is safe.

So let me thank you for that as well, keeping a promise to secure our border, whether it means building a wall, whether it means investment in technology, infrastructure, personnel, whatever it is. You guys have done a fantastic job of staying at it and not yielding to some of the political whims around here.

I do want to point out to the chairman that OMB is actually operating or proposing an operation of less, spending less. I think you mentioned 1 percent with some money movement, but my understanding under this budget is there is actually an 11 percent reduction. That is living by example and something that I think a lot of your agencies are actually looking at.

I think it was a 5 percent mandatory cut in some cases that you all were looking at all across the board. So thank you for your willingness to do that.

I just wanted to correctly point out that you are willing to do more with less and live within the constraints that Congress has imposed upon the Federal Government in our spending levels, and you have taken some steps to show us some bold answers in how it can be done.

I know they are not easy choices, but somebody had to make them, and I am glad you were there to make those choices for us.

So I look forward to working with the chairman here as we go through this hearing and as we put together the appropriations request in the days ahead.

But, Mr. Vought, again, thanks for being here, and happy birthday. I look forward to spending some time with you.

Mr. QUIGLEY. Mr. Vought, I did not know. In Jack Benny's paraphrase, happy 29 again.

We are glad you are here, and we look forward to your opening statement, keeping in mind, as Mr. Graves would have always, that we have your official statement on record. So if you can stay as close to 5 minutes as possible it would be appreciated.

Mr. VOUGHT. Thank you, Mr. Chairman.

Chairman Quigley, Ranking Member Graves, members of the subcommittee, I appreciate the opportunity to be here today to discuss the President's budget request for 2020 for the Office of Management and Budget, or OMB.

I submitted to you my full opening statement, and I will just give a brief overview here today.

The full request for OMB is \$116.6 million, which is an 11 percent cut from the fiscal year 2019 enacted level. This reduction



demonstrates OMB's own commitment to fiscal discipline and efficiency as we enforce these same principles across the executive branch.

Within OMB's request, \$101.6 million will support a staffing level of 477 FTEs. The request reflects a decrease of \$1.4 million and 16 FTEs below the enacted level in 2019.

OMB is also requesting \$15 million for the Information Technology Oversight and Reform Fund, of ITOR, another OMB account. This is a \$13.5 million decrease below the 2019 enacted. To ensure that its important work continues, ITOR anticipates collecting \$3 million in reimbursable funding from the U.S. Digital Service Agency teams for personnel that USDS details to those in agencies.

The proposed funding will allow OMB to continue to modernize and improve government operations and service and delivery of IT.

On top of the \$116.6 million request, OMB is requesting an additional \$400,000 in three FTEs to establish a new office that will provide government-wide strategic direction on Federal human capital policy and coordinate personnel policies, regulations, and procedures for the executive branch.

This request is part of a legislative proposal to reform the Office of Personnel Management and OMB's human capital leadership will be in conjunction with OPM's activities that will be vested within the General Services Administration.

OMB continues to focus on strengthening and improving not only OMB's organizational effectiveness, but also increasing the effectiveness of the Federal Government to serve the needs of the 21st Century.

For example, regulatory reform where OMB reviews tax-related and similar regulations with the goal of ensuring that the regulations adhere to core government principles and are transparent, simple, efficient, and pro-growth, and implementation of the President's management agenda consistent with the Administration's reshaping of the American government reform and reorganization recommendations, which serves as the cornerstone for a productive, bipartisan dialogue on structurally realigning the Federal Government to more effectively operate in this century.

Before I close, I know based on past hearings that there is a large interest in this subcommittee to discuss the overall President's [sic] budget request. Similar to President Trump's previous budgets, the fiscal year 2020 budget was written with everyday Americans in mind.

This year President Trump directed most agencies to meet a target of 5 percent reduction to non-defense discretionary spending. I am proud to report to you that the fiscal year 2020 budget achieves that goal, and OMB has held itself to the same high standard of fiscal discipline.

The President came to Washington with a commitment to help get our fiscal house in order and end wasteful spending, and we believe this President's budget does that.

With that I want to thank you and look forward to your questions.

[The statement of Russ Vought follows:]

**TESTIMONY OF  
RUSSELL T. VOUGHT  
ACTING DIRECTOR**

**OFFICE OF MANAGEMENT AND BUDGET  
BEFORE THE HOUSE APPROPRIATIONS SUBCOMMITTEE ON  
FINANCIAL SERVICES AND GENERAL GOVERNMENT**

**MARCH 26, 2019**

Chairman Quigley, Ranking Member Graves, Members of the Subcommittee:

I appreciate the opportunity to be here today to discuss the President's Fiscal Year (FY) 2020 budget request for the Office of Management and Budget, or OMB. The full request of \$116.6 million is an 11 percent cut from OMB's FY 2019 enacted level. This reduction demonstrates OMB's own commitment to fiscal discipline and efficiency as we enforce these same principles across the executive branch. This request reflects a realignment of OMB's responsibilities, while still making sure the agency has the staff and resources necessary to carry out its mission.

Within OMB's request, \$101.6 million will support a staffing level of 477 full-time equivalents (FTE) to help OMB carry out its responsibilities in an effective and efficient way. The request reflects a decrease of \$1.4 million below the FY 2019 enacted \$103 million appropriation. In order to achieve the lower request level, OMB will reduce its FTE level by 16 (from 493 FTE in FY 2019 to 477 FTE in FY 2020) – this includes a reduction of five FTE consistent with the realignment of the Intellectual Property Enforcement Coordinator outside of OMB.

OMB is also requesting \$15 million for the Information Technology Oversight and Reform (ITOR) fund. The staffing level for ITOR in FY 2020 is 69 FTE. This is a \$13.5 million decrease below the FY 2019 enacted appropriation of \$28.5 million. To ensure that its important work continues, ITOR anticipates collecting \$3 million in reimbursable funding from United States Digital Service (USDS) agency teams for personnel that USDS details to those agencies. The proposed funding will allow OMB to continue to modernize and improve government operations and service delivery, improve cybersecurity, and continue to improve analytics and oversight aimed to achieve cost efficiencies in agencies' use of IT. It must be noted that our request assumes that funding for the maintenance of the IT dashboard is accounted for in GSA's Office of Government-wide Policy.

On top of the \$116.6 million request, OMB is requesting an additional \$400,000 and three FTE to establish a new office that will provide Government-wide strategic direction on federal human capital policy, and coordinate personnel policies, regulations and procedures for Executive agencies. This request is part of a legislative proposal to reform the Office of Personnel Management, and OMB's human capital leadership will be in conjunction with Office of Personnel Management activities that will be vested within the General Services Administration. The new OMB office will ensure alignment of Federal workforce planning and policies with other Government-wide management activities. It will be modeled after other

statutory offices in OMB, such as OMB's Office of Federal Procurement Policy, which provides leadership on Federal procurement issues and works closely with the General Services Administration on Government-wide implementation.

At the core of its mission, OMB, in consultation with the President and agencies, develops the President's budget proposals, submits the President's Budget to Congress, supports its enactment, and oversees the Executive Branch's implementation of enacted appropriations. OMB also ensures agencies develop, express, and implement policies and practices in accordance with the President's priorities and statutory direction, and is committed to improving the effectiveness and efficiency of federal programs. OMB also serves as the central point for review and clearance of Executive Branch legislative proposals, executive orders, and presidential memorandums.

OMB continues to be a leader in strengthening and improving not only OMB's organizational effectiveness, but also increasing the effectiveness of the Federal Government to serve the needs of the 21<sup>st</sup> Century. OMB's responsibilities have increased with changes in Administration priorities and policies as well as new legislative direction from Congress. At the same time, OMB's budget and staff have decreased. Since FY 2010, OMB has significantly reduced its FTE number – dropping from 527 in FY 2010 to 477, requested in FY 2020, a reduction of 50 FTE (or approximately 10 percent).

OMB has taken on numerous new and expanded responsibilities, including:

- Regulatory reform, where OMB reviews tax-related and similar regulations with the goal of ensuring that the regulations adhere to core good government principles, and are transparent, simple, efficient and pro-growth; and
- Implementation of the President's Management Agenda consistent with the Administration's 2018 *Reshaping American Government in the 21<sup>st</sup> Century: Reform and Reorganization Recommendations*, which serves as a cornerstone for productive, bipartisan dialogue on structurally realigning the Federal Government to more effectively operate in the 21<sup>st</sup> Century; and

OMB also continues to play a leading role in making sure that taxpayer dollars are used effectively, and that limited resources are redirected from lower to higher priorities.

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Before I close, I would like to take a minute to discuss the President's overall FY20 Budget request.

Similar to President Trump's previous budgets, the FY2020 Budget was written with the everyday American in mind. All across the country, hardworking taxpayers have to balance their household budgets, finding ways to do more with less and save for the future. Our federal agencies and departments should be held to the same level of responsibility, and with accountability.

This year, President Trump directed most agencies to meet a target of 5 percent reduction to nondefense discretionary spending. I am proud to report to you that the FY20 Budget achieves his 5 percent goal, and OMB has held itself to the same high standard of fiscal discipline while producing this Budget.

Over the past two years, President Trump has unleashed the American economy through his pro-growth agenda, resulting in a return to prosperity for the American people.

OMB has been a key leader in implementing much of this agenda, such as robust regulatory reform, resulting in small businesses and the American economy saving more than \$33 billion in burdensome, regulatory costs.

However, these great achievements will be challenging to maintain if we do not get our fiscal house in order. Annual deficits are continuing to rise and will exceed \$1 trillion a year, and interest payments on the national debt are projected to exceed military spending by 2024. The national debt nearly doubled under the prior Administration and is now more than \$22 trillion. This level of debt is unsustainable and threatens the prosperity and economic freedom of future generations.

The President came to our nation's capital with a commitment to help get our fiscal house back in order and end the wasteful spending in Washington. OMB is using every tool at our disposal to support the President's efforts to put taxpayers first, including by developing a Budget containing more spending reductions than any other in history.

I look forward to working with Congress to prove to the American people that their government is capable of balancing a budget by prioritizing efficient and effective spending. These principles will help define the course of our freedom and prosperity for decades to come.

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Mr. QUIGLEY. Thank you.

Let me begin, sir. Just some policy issues and procedures within the Administration.

According to recent press reports, senior White House officials appear to be using WhatsApp to conduct official government business. First question would be: are you aware of this?

And does the practice comply with OMB's official guidance on recordkeeping?

Mr. VOUGHT. I have read in the paper what you have read. I cannot speak to whether it complies. Obviously, we need to be doing official government business in areas such as email that comport with the Federal Records Administration.

I cannot speak to what steps other senior Administration officials have taken, but I have read the same press reports that you have.

Mr. QUIGLEY. If you cannot speak to it, with all due respect, who can?

Is it not OMB's responsibility to manage this from the overall point of view?

And I understand you cannot officiate every person's activities, but you set the policy, correct?

Mr. VOUGHT. We do set many of these types of policies. I know that you mentioned some of the instances of waste, fraud, and abuse that we have attempted to identify, and whether it came to private travel or other areas, we do set policies, and then we expect agencies to take those policies to heart and align their behavior and practices and work with their Inspector Generals that are in the enforcement business.

Mr. QUIGLEY. So who can answer the question does WhatsApp comply with the government policy regarding recordkeeping?

Mr. VOUGHT. I would have to refer you to the various General Counsel's Offices for the agencies that are within the executive branch to comply with the laws that are in place.

Mr. QUIGLEY. What law is in place right now as it involves recordkeeping and the use of WhatsApp, for example?

Even if a person wanted to know, who would they go to?

Mr. VOUGHT. I think first and foremost they would probably go to the Federal Records Act that requires Federal officials to keep track of the documents that they are working on, to be able to preserve an accurate historical record.

Mr. QUIGLEY. Respectfully, let's just say someone, a senior official at the White House, wants to use WhatsApp. They call you because apparently, as you say, you set this policy.

Would you then refer them to General Counsel?

I mean, if you set the policy, do you not refer to General Counsel and others to find out what the law is and then set the policy?

Mr. VOUGHT. We do. We also work with the General Counsels to make sure that their staff are complying with the various laws that are in place.

And I know that the agencies do that. You know, I would refer you to each one of those agencies to decide as to how well they are doing and complying. The White House does that as well through their own White House counsel.

Mr. QUIGLEY. I will just try one more time. What is the policy? What is your understanding of the policy about using WhatsApp?

Mr. VOUGHT. To my knowledge——

Mr. QUIGLEY. Or official government work.

Mr. VOUGHT [continuing]. Mr. Chairman, it is to comply with the laws that are in place, including the Federal Records Act, to ensure that Federal officials are keeping an historical record of their documents.

Mr. QUIGLEY. Is it okay to use WhatsApp as an official record under the guidance of recordkeeping?

Mr. VOUGHT. It should not be used. We should not be using personal devices for government business. So I think that answers your question.

You know, there are often times where things come in, and you have to get it to your device and do as best you possibly can to comply with the Federal Records Act.

Mr. QUIGLEY. And I want to make it generic. I do not know for sure if anybody is using WhatsApp. I just want to know, first, they should not be using a personal device. Second, if they are using a personal device or an official one, I would assume that if we were trying to keep records, that they should not use WhatsApp. Is that not correct?

Mr. VOUGHT. I think that is fair.

Mr. QUIGLEY. Thank you very much.

I refer now to the ranking member, Mr. Graves.

Mr. GRAVES. Mr. Joyce has another hearing to step into that he is ranking on. So I would yield some time to him, if you do not mind. Is that okay?

Mr. QUIGLEY. Yes.

Mr. GRAVES. Thank you.

Mr. JOYCE. Thank you very much for your generosity, Mr. Ranking Member.

And thank you for being here on your birthday.

And I agree with where Mr. Quigley was going. Certainly as a former prosecutor, the collection of records and documents that have been part of your government activity should be stored someplace, and certainly you should not have like a Secretary of State acting out and setting up service in their own home and dealing in instruments of top-notch security, top clearance security outside that premise.

So it would certainly be something that OMB, if they have opportunity, should put even stricter guidelines on and make sure all of the people who have not complied with the law in the past are held to account for that as well.

There are, speaking of holding people to account, there are several financial regulators, such as the Office of Financial Research and Consumer Financial Protection Bureau, whose operations are outside of the appropriations process. These agencies do not have to present a budget request to the Congress, and they receive their funding without annual congressional action.

Do you believe, sir, that putting CFPB and other financial regulators in the appropriations process would improve their accountability to Congress and the taxpayer?

And also, with deficits approaching \$1 trillion a year, would you support reducing the number of agencies whose operations are considered mandatory and not reviewed each year?

Mr. VOUGHT. Thank you for that question.

And it is something that we think should go through the appropriations process to the extent that there are agencies like the CFPB, like the Office of Financial Research. It is important that we move in a direction, and we do it in 2-year steps, by 2020 to be able to ensure that this committee and other subcommittees across the appropriations process get an opportunity to bring those requests before it and have Congress actually pass on it.

The appropriations process is something that is very important. It is an important oversight. Congress has the power of the purse. To the extent that Congress has delegated its power of the purse to provide some of these automatic spending situations, we do not think that is a healthy scenario, and it is one of the reasons we have tried to reform it.

Mr. JOYCE. What progress have we made towards that?

Mr. VOUGHT. Well, we have had proposals in our budgets. We certainly need Congress to act on our budgets, and we would love to continue the conversation as to if there are any particular questions that this committee has on roadblocks that it sees to moving that in that direction. We would be willing to have that conversation.

But Congress needs to act.

Mr. JOYCE. Once again, we are failing to do our job?

Mr. VOUGHT. We have many proposals that we believe that are important for this committee and Congress to enact on.

Mr. JOYCE. That was a softball for you. [Laughter.]

I know the United States faces many threats, terrorist organizations, international criminal drug cartels, regimes in China, Russia, Iran, Venezuela. How does the current Administration's request for defense spending rebuild our Nation's security responsibilities?

Mr. VOUGHT. Well, we think it is one of the promises that this President is keeping with this budget, and we think it is absolutely vital that in a situation of \$22 trillion in debt, \$1 trillion deficits as far as the eye can see, that we do not take a backseat to anyone in being able to defend the country.

This President came to office promising to rebuild the military. We think a 5 percent increase for defense is something that is justified. And we believe that we have put forward a strategy to be able to continue the defense rebuild within the current caps.

Mr. JOYCE. And what, if any, steps, just because I do not work in your office and I do not know what you are doing, but I am sure something is happening; what, if any, steps are being taken to use the electronic age to reduce and secure and speed up the way we do transitions?

Let me give you an example. I go to the VA. The VA tells me that the biggest problem they have in the intake process is they have to refer the member back to their discipline, whether it is Army, Navy, get their records, come back to the VA, where they are then scanned in.

That seems sort of stupid in this day and age, do you not think?

Mr. VOUGHT. It does sound that way. It is also one of the reasons we have invested in making sure that health records are electronic and portable between DOD and VA.

One of the things that the United States Digital Service does is they spend a lot of time in agencies, such as VA, to be able to streamline these kinds of processes to make them as smooth for the consumer as possible.

So that is something that we do get involved with and working with agencies across the government to do.

Mr. JOYCE. With all due respect, sir, these are consumers. I mean, these are our veterans, and they deserve better treatment.

Obviously, we know who they are when they are in the service, and they should be transitioned properly, and that is something I think we all owe more attention and duty to.

And I do not mean to be rude to get up and leave, but I have a 10:30 hearing downstairs in Interior, and I appreciate the chair's indulgence.

Thank you.

Mr. QUIGLEY. Mr. Bishop.

Mr. BISHOP. Thank you very much, Mr. Chairman.

And welcome to you, Mr. Vought.

As you may or may not know, I come from a rural district in Georgia, and I am an avid supporter of USDA's Rural Development Programs. I also happen to serve as the chair of the Agriculture Rural Development and FDA and related agencies subcommittee of the Appropriations Committee.

It was disheartening, very disheartening to see the third consecutive year a budget that drastically cuts or eliminates several of the Rural Development Programs. The budget cut Rural Development by almost 20 percent, and 29 programs are eliminated.

These programs are vital to communities like mine and are often the only means to access credit or grant funding. They help unserved and underserved markets that are often forgotten or left behind by larger financial institutions. They are not duplicative of other Federal Government programs because they are the only ones available.

They create private sector jobs, and they grow economies. I just believe very strongly that rural America needs to be protected. There is no reason why a child or a family in rural America should not have the resources and access to all of the necessary resources to realize their full potential.

And of course, this budget would undermine that possibility. So can you tell me why the budget continues to drastically reduce or eliminate USDA Rural Development Programs?

And please do not say it is a question of priorities because serving rural America should be a priority for all of us.

And I just am very, very upset. And, fortunately, the will of Congress has not been such as to go along with those drastic cuts, and I just want to know what is going through the head of the people over in your agency that would propose such a drastic cut.

Mr. VOUGHT. Well, we would certainly agree with you on the importance of rural America. It is something that we have designed the last three budgets with an eye towards. If you look at our infrastructure proposal, one of the things that it speaks to, one of the reasons we wanted to not just be surface transportation is because we think that there are important rural needs that can be addressed through infrastructure.



If you look at the broadband funding that we provide within USDA, that is another attempt to make sure that the needs that rural American has are being addressed.

To the extent that we reform or eliminate programs, it is always done with the vantage point that we think that the programs do not work. I understand there would be a disagreement with you on that, but it is also something where we are willing to engage in a conversation about.

Mr. BISHOP. Just look at the USDA Reconnect Program. It was initially funded in the 2018 omnibus at \$600 million, and in the 2019 omnibus provided an additional \$550 million. It was intended by Congress to expand broadband access and facilitate deployment to unserved and underserved populations, which are predominantly in rural areas.

And one of the features that makes this an important improvement over the current USDA broadband loan program would be to enable the energy to pay our loans with grants and to make projects financially viable.

Funding projects with both loans and grants would significantly limit the risk to the Federal Government, but OMB recently calculated substantive rates for the Reconnection Loan Grant Program that will make it even more expensive than the current loan program. This means less money would be available to connect communities to the world that we all take for granted.

Tell me why would you do something like that. It just does not make any sense.

Mr. VOUGHT. Well, we are never trying to take away. When we calculate loan rates and subsidy rates, what we are trying to do is get the best estimate that we have at the time.

We believe that we put forward a very healthy request regarding rural broadband. We think that there is money in the system, and that needs to be spent wisely over time.

And it is priority for the Administration, and we look forward to working with you on it.

Mr. BISHOP. Well, there are just too many rural communities that do not have access, and the programs that are designed to give access are being cut or at least you are attempting to cut them from the Office of Management and Budget.

And it just makes no sense. You are speaking out of both sides of your mouth, and I find it very unacceptable.

I yield back.

Mr. QUIGLEY. Mr. Graves.

Mr. GRAVES. Thank you, Mr. Chairman.

And, you know, I think it is important for all of us on different subcommittees to understand that what is being presented to us is a budget request based on a current cap environment that might not lead to where the Administration's priorities are. It just leads to the Administration to make tough decisions.

And so what Mr. Vought has presented to us is a budget recommendation that abides by current law. I imagine if the cap were in a different position, then the priorities may be differently funded as well. So they are having to make difficult choices.

Just revisiting real quick for the chairman here, my understanding is that it is not prohibited nor illegal for a White House

official to use a personal device for official business. It is not recommended, obviously, but it is not illegal, but it is required that any kind of communication be documented and relayed to archives and such within 20 days or so. So just as long as the information is documented.

So there is no prohibition against using any app or no app on a personal device that I am aware of.

Mr. QUIGLEY. Can I ask a question in response?

If it has to be documented, how could WhatsApp comply with that?

Mr. GRAVES. My understanding is screen shots, forwarding emails, forwarding text messages, things like that. Yes.

Mr. QUIGLEY. The time is yours.

Mr. GRAVES. Mr. Vought, I am going to give you an opportunity. I think, as I talked about earlier, that you have put a lot of work into this. Your team has as well. The Administration has a vision for our country. You have recognized the difficulty of the inherited debt that you have had to embrace.

But you have put together a vision for our country through this budget recommendation, and that really is a vision, right?

So I am going to give you an opportunity to at least share with us your vision, the Administration's vision for where you see where the country can be and go in our economy with the American people, investments and such like that based on what has been presented to us.

Because you had presented a really good op-ed that I recommend to all of the members to read and which I will quote, you said, "Annual deficits are on the verge of exceeding \$1 trillion each year for the foreseeable future in interest payments."

And this is what should be shocking to everybody, that our interest payments on the national debt are projected to exceed military spending by 2025, and that is an amazing and astonishing quote from your op-ed.

But we should recognize that the national debt did double, nearly double under the previous Administration. So please take an opportunity to share with us your vision and the Administration's vision before we get back into, I know, some more detailed questions.

Mr. VUGHT. Sure. Thank you, Congressman.

Our vision is to ensure that we can pay off our debt and deal with our trillion-dollar deficits in the years ahead; that this is not a way that an ordinary family across the country does their fiscal business.

We want to get back in the business of balancing our budget. It is one of the reasons why we do it. We say we are going to do it within 15 years. It would have been easy to say that we can never balance, but we do not actually agree with that.

We want to be able to engage in the conversation about balance and try to lower our spending.

We also want to be able to continue to ensure that the American people keep the revenue that is their own, and that revenues coming into the Federal Government stay at their historical level of GDP. We do not want the American people to have to pay more of their hard-earned money to be able to support the government that

we have. And that has been something that is part of the promises kept.

We also think it is important that Congress needs to get after its spending problem. We have put forward more spending reductions than any Administration in history. We have put forward them from the beginning of the Administration.

This is now the third budget in which we have put forward more spending reductions than any President's budget in history.

People talk about mandatory spending. We have put forward more mandatory spending reforms, reforms and savings proposals, than any Administration in history.

And so we do believe that this is an important conversation to have about how we are spending the hardworking people's tax dollars.

But Congress has the power of the purse, and we need Congress to act on these proposals.

Mr. GRAVES. That is a great point. It reminds back, I guess, in the first couple of months of the Administration. You presented through at the time, I guess, Director Mulvaney who was over at OMB a rescissions package of here is a lot of money, you know, I guess billions of dollars. Was it five, six, \$7 billion that is not going to be spent, has not been spent?

The programs have been fully exhausted, and here is money sitting here. And my recollection is that Congress' action was nothing.

Mr. VOUGHT. That is exactly right.

Mr. GRAVES. Rejected cutting spending of funds that are just dollars that are sitting there that will not be spent and cannot be spent.

So I appreciate your boldness with this proposal, and I think it is important for us, as Congress, to understand this is an Administration making a recommendation to Congress on a way to save money in the future and to assist the taxpayers.

And it is really up to us to embrace it or not embrace it, and as history has shown, we typically do not embrace reductions in spending.

Mr. Chairman, I yield back.

Mr. QUIGLEY. Thank you.

Mrs. Torres.

Mrs. TORRES. Thank you, Mr. Chairman.

And thank you, Mr. Vought, for being here.

In your statement you state that OMB is reducing its budget by 11 percent below its fiscal year 2019 enacted level and that this demonstrates its commitment to fiscal discipline and efficiency as it asks other agencies to make severe cuts; is that correct?

Mr. VOUGHT. That is correct.

Mrs. TORRES. A closer look at the actual budget request reveals that your statement is misleading at best. In fact, when comparing apples to apples, the OMB budget request reflects a cut of just 0.4 percent, below the current level, nowhere near the 11 percent, as you suggest in your testimony.

It seems to me that you are inflating the extent to which OMB is trimming its own bottom line by including the proposed reduction for the U.S. Digital Service, which is not a core part of OMB's statutory responsibilities.

And in addition, your calculation counts as a cut a function that you are simply transferring elsewhere. If you are going to count the \$1 million transfer of the intellectual property enforcement coordinator out of OMB in its own appropriation, you must also subtract that function from the figure you are using for comparison purposes.

So, Mr. Vought, is it not more accurate to say that OMB's budget is really only decreased by \$400,000?

Mr. VOUGHT. No. Here is why.

Mrs. TORRES. Do you think that it is appropriate for OMB to ask agencies to make 9 percent cuts, on average, without being willing to do the same?

Mr. VOUGHT. Congresswoman, we have an 11 percent cut, and we actually took the challenge from this subcommittee to heart when we put this budget together to be able to put forth reductions that we have asked other agencies to do.

The OMB has both accounts, OMB's normal main budget request and the ITOR Fund. The ITOR Fund does not just fund USDS. It also funds all of our management responsibilities as it pertains to financial information and control.

So from the standpoint of OMB, just think of it as two different accounts all within the OMB banner. We are moving \$1 million out of OMB for IPEC, and we are paying for that within other savings within the larger Executive Office of the President.

So you are right. If we were saying that we were not going to absorb that cost with savings elsewhere within the EOP, that would be double counted. We are not doing that.

But we are saying from the standpoint of OMB, we can find many, many millions in savings from areas within the USDA that we think in this environment we need to do less of, and we need to work with agencies to make sure that we are getting reimbursed for the essentially consulting services that we are providing for those agencies.

Mrs. TORRES. So OMB received \$8 million more in funding between 2017 and 2019, an 8 percent increase; is that correct?

Mr. VOUGHT. That sounds about right.

Mrs. TORRES. So you propose what is essentially flat funding in the budget request. Does that really demonstrate a commitment to fiscal discipline within the agency or is that a case of what is mine is mine and what is yours is negotiable when it comes to dealing fairly with other agencies?

Mr. VOUGHT. Absolutely not. As I just said, Congressman, we have two accounts. We have an 11 percent cut for OMB. We reduce one of those accounts greater than the other account, but those are fully part of OMB. They are fully part of our responsibilities.

We do think that from the standpoint of within ITOR where we can find savings, we have prioritized our statutory responsibilities under the E-Gov Act, but the work of the United States Digital Service is very important. They found about \$8 billion in savings for agencies based on their important work. We want that work to continue.

And that is one of the reasons that we tried to figure out in this environment how do we structure USDS with reimbursable agree-

ments so that it is a long-term, sustained way to be able to do business.

Mrs. TORRES. I would like an opportunity to dive more into those numbers with you to see exactly where you are coming up with a 9 percent cut.

On another issue, I have introduced the 9-1-1 SAVES Act, a bipartisan bill that directs OMB to update their classification for public safety telecommunicators as a protective service within the standard occupations classification, SOC, catalogue.

The current version of the SOC categorizes public safety telecommunicators as office and administrative support occupations, which includes secretaries, office clerks, and taxicab dispatchers.

Someone who negotiates with someone who is trying to kill themselves, someone who negotiates with somebody who is holding someone hostage, I hardly would describe them as something equal to a secretary or a taxicab dispatcher.

Public safety communicators should be categorized as protective service occupations, which includes a broad range of protective occupations, lifeguards, fish and game wardens, parking enforcement workers, et cetera.

On September 8th, 2016, I sent a letter requesting that this change be reviewed, and OMB has denied this request to change the classification. The rationale on this SOC Website stated, "The work performed as that of a dispatcher is not of a first responder."

As I stated to you, most dispatchers are dealing with critical incidents at any given time.

Mr. Chairman, I ask for unanimous consent to submit a letter into the record that I wrote. It is dated September 8th, 2016, asking for OMB to review this classification.

Mr. QUIGLEY. Without objection.

[The information follows:]

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**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515**

September 8, 2016

COMMITTEES  
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**NATURAL RESOURCES**  
SUBCOMMITTEES  
**INDIAN, HOMELAND AND ALASKA NATIVE AFFAIRS**  
**WATER, POWER AND OCEANS**

The Honorable Shaun Donovan  
Director  
Office of Management and Budget  
725 17<sup>th</sup> Street, NW  
Washington, D.C. 20503

The Honorable Howard A. Shelanski  
Administrator  
Office of Information and Regulatory Affairs  
725 17<sup>th</sup> Street, NW  
Washington, D.C. 20503

Dear Director Donovan and Administrator Shelanski:

I write to express my disappointment in the recent recommendation by the Office of Management and Budget (OMB) to classify public safety telecommunicator as an "Office and Administrative Support Occupation" in the draft Standard Occupational Classification (SOC). As a former 9-1-1 dispatcher, I know that public safety telecommunicators are professionals who are critical partners to our first responders, and I urge the Office of Management and Budget (OMB) to classify these public safety workers as a "Protective Service Occupation" in the final SOC structure.

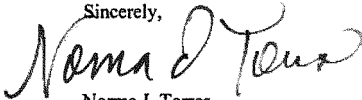
Public safety telecommunicators are required to receive specialized training and must either obtain national certification, state certification, or a combination of the two. National dispatcher certification associations often require advanced coursework to complete certification. For example, the Association of Public Safety Communications Officials (APCO) offers an emergency medical dispatcher (EMD) certification which requires courses in anatomy and physiology, legal and liability issues, and stress management. These are rigorous subjects that virtually no administrative support personnel in any field is required to learn or understand. Additionally, dispatchers often have to take additional exams offered by their potential employers, including a written exam to ensure knowledge of local law enforcement rules and procedures. Dispatchers also are tested regularly by their departments for knowledge of local, state, and federal laws. Initial and ongoing training is a vital part of a 9-1-1 dispatcher's career, and these training requirements clearly demonstrate that dispatchers must possess a level of knowledge and education that far exceeds what is generally required of administrative personnel. OMB must take this training into account if it hopes to develop an accurate occupational classification structure.

I know firsthand that public safety telecommunicators are not just support staff, but are integral members of first responder teams who do far more than answer a phone and send help. During critical incidents such as large fires, civil unrest, or weather related incidents, telecommunicators are mobilized just like police and fire personnel. My fellow dispatchers also work in life-or-death situations, often talking to callers in their greatest hour of need. As a former dispatcher I know firsthand that on any given day, they may take a call from an individual on the brink of committing suicide or must gather key information if a crime is in progress to be later be used in court. In fact, conversations between dispatchers and suspects are often Miranda exempt, and testimony from dispatchers can serve as critical evidence in court proceedings. I also know that too often dispatchers may be forced to act as hostage negotiators and, in some instances, they may even have to provide life-saving first aid until first responders can arrive. Furthermore, the decisions dispatchers make can impact not only the lives of callers, but also the lives of many others. For example, in the immediate aftermath of the San Bernardino shooting, it was a 9-1-1 dispatcher who took the initial emergency call and helped law enforcement track down the shooters. Just as other first responders, our public safety telecommunicators must remain calm and use their training to think quickly about how best to respond to an emergency, and without the unique skills and abilities of our dispatchers, first responders would simply be unable to do their jobs.

It is clear that our dispatchers do not simply provide administrative support but are an important part of the first responder community. This is a specialized occupation that requires professionals to think critically and use skills and training that are vital to the lifesaving efforts of first responders. I sincerely hope OMB will take these factors into account as it adopts its revised SOC and therefore urge you to categorize public safety telecommunicators appropriately as a "Protective Service Occupation."

Thank you for your attention to this request.

Sincerely,

A handwritten signature in black ink, reading "Norma J. Torres". The signature is fluid and cursive, with the first name "Norma" being larger and more prominent than the last name "Torres".

Norma J. Torres  
Member of Congress

Mrs. TORRES. Thank you.

And while you may not have been working for the OMB at the time, can you explain that decision, making the process behind this response?

Mr. QUIGLEY. Mrs. Torres, I think we can come back. We are past the time.

Mrs. TORRES. Oh, I am sorry.

Mr. QUIGLEY. No problem.

Mrs. TORRES. I did not realize. I lost track of my time.

Mr. QUIGLEY. That is all right. We will come back. Thank you.

Mr. Amodei.

Mr. AMODEI. Thank you, Mr. Chairman.

Mr. Vought, I have got an issue that I would kind of like the opportunity to speak with your staff as a beginning thing at some point in time in the relatively near future, and here it is.

My State is a little unique in that the Department of the Interior, primarily through the Bureau of Land Management, but also through the Bureau of Reclamation and then also through the Forest Service, owns about 85 percent of the State.

Now, I am not here to lament that fact. I am just saying that is a fact. Regardless of who you are, what you like, what you do not like, they own most of it.

So at a higher percentage than any other State in the Nation, the Federal Government has a Federal estate that is a super majority of the land.

And as we look at this, and as I go through, for instance, BLM has six district offices that are over that, and as I go through, and by the way, this is not new. It crosses Administrations.

But, for instance, I was in the district office in a place called Winnemucca, which is not a Yiddish swear word. It is really the name of a town in Nevada.

And they have about 120 people on the books for that BLM district office in Winnemucca. About a third of those positions are empty, not positions that somebody fought to have added or whatever. They are part of their standard here is what it takes to operate that district office.

That fact is not unusual for all of those offices, all of those six offices, and it is probably a fact district-wide and as well as the State office.

But here is my problem. We sit there and say we did not add positions because somebody is trying to build an empire. These are consistently on the books.

And then we look at budget, and we go there is consistently a budget that says you do not have money to fill a third of the people that somebody thinks you need to run your district in a State where you own 8-plus acres out of every 10.

You say, "Well, okay. So what is the problem?"

The problem is, and this Administration has made no secret of the fact they value the Federal estate and they do not want to transfer much in lands bills. Okay?

So, on the one hand, it is like we value the Federal estate and we do not want to be rid of a single acre. On the other hand, from the historical manpower things that it takes to run owning and



managing those resources, recreation, energy, you name it, we are a third down the whole time.

And then to add the final piece for your consideration, where you have just got to chuckle is you go, "Oh, and by the way, the money sitting in that account by virtue of the Southern Nevada Public Lands Management Act," which does resource-related Federal estate things, which turned 20 last year, "we are going to strip that to balance the budget."

Now, I am not going to get into with you whether that is legal or not or whatever, but it is like so we are taking money from Federal lands, using it to balance the budget, but we do not want lands bills, which, by the way, the Southern Nevada Public Lands Management Act of 20 years sold about 35,000 acres out of the 56 million-acre Federal estate.

So you are getting my gist here where it is like there are some serious mixed messages floating around.

So my challenge to you before I go back to Interior, because we have tried that before, as I sit here and look at continually cutting budgets for a Federal estate that grows in value and complexity to make all of those different land uses work, and at the same time saying, "By the way, the money you got from those proceeds we are going to take into not even some resource-related account. Instead it is just going to go to the Treasury of the U.S.," and you are sitting there going, "Do not sell land, but we want the money from the sales, and, oh, by the way, we do not want to man it."

Final piece. During the last shutdown when it was time to say who was key and who was not key, that shutdown started out with one person in the Bureau of Land Management, who owns two-thirds of the State. That was the only key person.

And so as we are sitting here looking at the policy and we are going, "Wow, you control, that one agency, two-thirds of the land in the State and yet one person is considered key if you have that person's cell phone."

Now, towards the end of the shutdown, that got a little bit better, but quite frankly, I think it is time for people in OMB, when you talk about budget, how do you function as a Federal agency? Well, guess what. Budget is a fairly significant part of that.

So I want to have that conversation with your folks to say, "Hey, listen. If it is just all bad news and that is the way it is, then fine, but I think it would be a good time for a healthy dose of (a) reality and (b) if you really need those people to run owning 85 percent of that sixth largest State in the Nation, we probably ought to fund them."

I will look forward to our meeting.

Mr. VOUGHT. I would welcome the conversation. I have got some responses to various of the pieces. I do not have much time, but I would just say I welcome that conversation, and I look forward to working with you on those issues.

Mr. AMODEI. Thank you.

Thank you, Mr. Chairman.

Mr. QUIGLEY. Thank you.

Mr. Cartwright.

Mr. CARTWRIGHT. Thank you, Mr. Chairman.

Acting Director Vought, your budget would slash non-defense discretionary funds by more than \$1 trillion, crippling our economic and our national security by disinvesting in education, public health, energy, health care research, infrastructure, veterans' health care, law enforcement, food safety, disease prevention and control, and the list goes on and on.

But I am to focus today on the massive, gargantuan cuts to Medicare, some half a trillion dollars, or as you have referred to those cuts yourself previously as savings.

I know you have said the spending will increase in Medicare year over year, but it will not increase as much as is scheduled, as if this Administration had not taken a hatchet to health care.

I have seniors in my hospitals in my district, seniors that come to Seniors Fairs and talk to me about they are cutting Medicare. How can this be? The President promised he would never touch it.

So I have to ask. In calculating these cuts to Medicare, did you calculate for the fact that health care inflation is rising faster than general inflation, and the increased need that would create?

Did you calculate the increase in the aging population, because of the Baby Boomers, and the growth in Medicare enrollment?

Did you calculate the effects of these cuts and what those effects would be on access to care, especially in districts like mine in Northeastern Pennsylvania where access to care can often be a life or death issue?

Those are three questions. If you forget one, let me know.

Mr. VOUGHT. I will let you know.

We certainly considered all of those factors. We do not cut Medicare in this budget. Medicare grows every year. The President has made no structure changes to Medicare in this budget.

We do have savings in Medicare from things like trying to lower drug pricing, which I know this Democrat majority has an interest in trying to work with us on.

Mr. CARTWRIGHT. You say "Democratic" actually.

Mr. VOUGHT. Sure. We also have proposals to take out of Medicare certain things that we do not think should be in Medicare. We do not do away with them. Uncompensated care to non-Medicare beneficiaries we think is something that should be provided for. We take it out of the Medicare Trust Fund so that it does not impact the solvency of that important trust fund, and we allow it to grow.

Similarly, bad debt is something that in the private marketplace insurance companies go and make sure that they are getting the cost sharing of their beneficiaries. We pay for that at the Federal Government level, and we say instead of paying 65 percent of those bad debts, we are only going to pay 25 percent of it.

So these are waste, fraud, and abuse. Everyone wants to kind of malign the notion of waste, fraud, and abuse. We have identified specific proposals that allow us to save money in Medicare, push the solvency of the trust fund out 8 years, and keep the President's commitments.

Mr. CARTWRIGHT. Did you calculate the increase in the aging population? Did you include that in your calculations?

Mr. VOUGHT. We assumed all of the baseline drivers of our mandatory spending in assessing these proposals. That does not mean that we did not attempt, particularly in Medicaid, and I could not

tell from your proposal whether you were talking about Medicare or Medicaid.

Mr. CARTWRIGHT. Medicare.

Mr. VOUGHT. On Medicaid, we are growing as well each and every year.

Mr. CARTWRIGHT. Did you calculate for the fact that health care inflation is rising faster than general inflation?

Mr. VOUGHT. We are aware of that, but are also saying that the Federal Government's policy—

Mr. CARTWRIGHT. That is a yes or no kind of question.

Mr. VOUGHT. Well, it actually is not, Congressman, because the Federal Government's policies have an impact on how fast health care expenditures grow. So to the extent that we do not have policies that allow for States at the Medicaid level to slow the growth of these important programs, we are also increasing the rate at which health care spending grows.

So we think that the two are completely in line.

Mr. CARTWRIGHT. And did you calculate the effects that these cuts would have in access to care, especially in districts like mine where access to care can be a life or death issue?

Mr. VOUGHT. We considered all of these factors in putting together our proposals. We do not think that it will have adverse impacts on the populations that depend on these proposals.

Mr. CARTWRIGHT. And in your world, just so I am clear on it, taking a half a trillion dollars out of the planned expenditures is not a cut. I still have to work on that, grasping that whole concept, Acting Director Vought.

I yield back.

Mr. QUIGLEY. We are going to go to a second round, but since Mr. Crist has walked in, I want to finish the first round where everyone gets one shot if that is okay.

Mr. Crist, do you have questions at this point?

Mr. CRIST. Yes, Mr. Chairman.

Mr. QUIGLEY. Please go ahead.

Mr. CRIST. Thank you very much.

And thank you, sir, for being here today. I appreciate that.

Do you know who in America depends on Medicare and Social Security?

Mr. VOUGHT. Seniors.

Mr. CRIST. Yes, mostly seniors and disabled individuals, millions of seniors, the seniors that built this country and got us to this point.

And let's try if you know who depends upon Medicaid.

Mr. VOUGHT. The elderly, the disabled, pregnant women and their children. Unfortunately, we are in a situation now where the populations that Medicaid was designed for get a lower match than populations it was not designed for.

One of the proposals that we have in this budget is to go towards a block grant so that States would have more of an opportunity to design their programs to ensure that the populations that Medicaid was established for get the care that they need.

Mr. CRIST. Thank you.

I understand that you are here to talk about and defend the budget request, and I appreciate that you are doing that, but it is

hard for me to understand the Administration breaking a campaign promise to not cut Medicare and Medicaid and, you know, Social Security and programs that are so important to certainly my constituents and I would imagine the constituents of all of us on this committee.

The proposal is over a trillion-dollar cut in Medicare and Medicaid. Can you explain that to me?

Mr. VOUGHT. Yes. I would just unpack the numbers in a different way. We do not cut Medicare or Medicaid. Medicare, we have \$517 billion in savings. Medicare will keep going up. There are no structural changes to Medicare.

If we make a change to lower drug pricing, that causes a savings for Medicare because of the fact that the government pays for the drug bills of seniors.

In Medicaid, one of the things that is important to understand in the numbers is that we are shifting a lot of the spending that is currently going into Medicaid into the State health care block grants, and so the Medicaid number does not tell the story as much as the combined picture of both Medicaid and the State health care block grants, at which point we do have a \$271 billion saver, but Medicaid and the State health care block grants are all going to go up every year if you compare it to 2018.

Mr. CRIST. So reported reductions in Medicare of over \$800 billion are not accurate?

Mr. VOUGHT. Those are false because they do not characterize the reforms that we are doing to take things that are not rightfully a part of the Medicare Program, take them out of Medicare Trust Fund and ensure that they grow separately.

So, for instance, uncompensated care to non-Medicare beneficiaries, we still fund it. We do not fund it in Medicare, and so it shows that it is now not in Medicare, and so that the higher number that you reference does not take into account some of those reforms where we are doing it elsewhere in the Federal budget.

Mr. CRIST. If it is not in Medicare, where does it go?

Mr. VOUGHT. It still goes to hospitals. It is still uncompensated care. It grows at a different rate, and it is part of the other aspects of the Federal Government's spending.

Mr. CRIST. So you are representing today that there are no reductions in Medicare, no reductions in Medicaid, the reports that we have been provided are inaccurate, and that the Administration is going to increase Medicare and Medicaid this year?

Mr. VOUGHT. Yes.

Mr. CRIST. To what extent? How much?

Mr. VOUGHT. I do not have the Medicare figures in front of me or the Medicaid figures, but they are going to be going up each and every year.

Mr. CRIST. You are the head of OMB?

Mr. VOUGHT. I have a lot of numbers at my disposal. I can get you the numbers on a year-by-year basis as it pertains to those specific line items.

Mr. CRIST. Yes. I would appreciate it if you would prioritize Medicare and Medicaid.

Thank you, Mr. Chairman.

Mr. QUIGLEY. Thank you.

We will start a second round. Mr. Graves, we will let you start.  
Mr. GRAVES. Thank you, Mr. Chairman.

Mr. Vought, you are probably aware one of my emphases or priorities has been cybersecurity and what are we going to do to enable and particularly the private sector to actively defend themselves, as individual.

I feel like that as a country we really do not have good policy when it comes to this new theater that is out there, cyber warfare.

In fact, the Cyber Fraud and Abuse Act really has not been updated in decades, and so I have been putting forward some bold proposals on how we might address that to allow others to actively engage outside of the network to help with attribution, to defend their own network, outside of their network to use beaconing technology, some other things such as things such as that.

That is one silo of cybersecurity that is something that I am very focused on, but then there is the other silo that we hear about here, and that is the public sector, and each agency comes before us, and they will say that cyber is a major concern, and we all know it is, and they are all asking for unique proposals on funding requests as it relates to cybersecurity.

Can you just share with us the overall plan as you know it or how we could best help and assist in not putting together a patchwork kind of cyber defense system for the Federal Government?

But what might we do and how can we best help moving forward as you see it from your perch?

Mr. VOUGHT. Thanks for the question.

It is a priority for this Administration. In terms of cybersecurity spending, we spend about \$15 billion on it. That is a 5 percent increase.

One of the things our management colleagues have been very interested in prioritizing is making sure that we have enough cyber security workers. We have shortages as it pertains to the number of people that we need in the Federal Government to fulfill these roles.

So we have been working to come up with different training programs to make sure that we take people that might have different skills and then can be reskilled into cybersecurity. That has been a priority of the President's management agenda.

So I think engaging where the problem is is something that we would love to continue to work with this committee and you on and trying to make sure we are doing it from a comprehensive way as best we possibly can.

Mr. GRAVES. Sure, and I think there is a lot of overlap, too, and what I have proposed and I encourage you and your team to look at, the Active Cyber Defense Certainty Act and just trying to give some certainty as to what can be done to actively defend that works.

In that overlap, I feel like the private sector can join with the public sector, and rather than be dependent on, hoping somebody else is doing this or somebody else is assisting somewhere else.

The passive nature in which we sit as a country should be alarming to everyone, that we are basically in a passive posture when it comes to cybersecurity and the threats that exist out there.

So I look forward to working with you and the team on that because I think that should be a priority that is bipartisan all the way around.

And then with just a few seconds left here, I want to talk about the border security plan as proposed in this budget. I think it is right to come back at this and address this as a crisis.

And I was a part of the conference committee that worked on this. We heard the facts. We heard the information in classified settings, and it was extremely alarming and disturbing.

And had every member had access to that information, I have a feeling that the tone might be different because when you hear from the experts and you hear the true facts and you see the data, it should be something that we want to address.

So maybe just take, you know, the last 60 seconds here to tell us about what the upcoming plan is there.

Mr. VOUGHT. Sure. We have put forward what we think is resources necessary to secure the border to keep the President's commitment to build the full wall.

The situation has gotten worse on the border. I remember those very meetings that we would have in December where the Secretary of Homeland Security was attempting to get Speaker Pelosi's attention. She was trying to put forward the facts as we knew them now about the situation on the border.

They have gotten worse. In the first 6 months in terms of apprehensions, we are going to exceed what we did last year. We are approaching the same levels that we saw 10 years or so when apprehensions out there were at their all-time historical high.

Here is the difference. Ten, 15 years ago, those were apprehensions of single adults that would come across the border, and then we would typically return them within 48 hours. The difference now is that these migrants are coming across as families from regions of the world that we do not have the ability, because of our laws, to just send them back.

And so they end up staying here even when nine times out of ten they do not have a legal right to stay here because of the asylum laws that are in place, and as a result, we are saddling ICE and CBP with their responsibilities, but they do not have the resources and the facilities to be able to house all of these individuals.

So it is a crisis. This is an area where we are tired of being right, and we have put forward a resources request that we believe is necessary to secure the border, and our hope is that Congress engages with us on the facts going forward.

Mr. GRAVES. Thank you.

Thank you, Mr. Chairman.

Mr. QUIGLEY. Thank you.

Continuing a second round, sir, in September of 2017, OMB issued a memorandum reminding agency heads of existing travel policies for government officials and requiring the White House Chief of Staff to approve travel on government-owned, rented, leased, or chartered aircraft.

The memo also said that OMB is reviewing the existing guidance on the use of such aircraft. Is the guidance requiring the White House Chief of Staff to approve travel on government aircraft still in place?

Mr. VOUGHT. The guidance that we put in place is still in effect, and we are in the midst of updating that guidance as well right now.

Mr. QUIGLEY. Well, and I want to get to the update in just a second, sir.

What does the guidance say when there is a vacancy in the Chief of Staff at the White House?

Mr. VOUGHT. The Acting Chief of Staff has assumed all the responsibilities of the Chief of Staff in the same way that as Acting OMB Director I have assumed all of the responsibilities of the OMB Director.

So from the standpoint of the Acting Chief of Staff, he is a detailee from OMB to the Chief of Staff, but he is reviewing. He makes all of those types of decisions.

Mr. QUIGLEY. Now, has the OMB collected information about the overall use of such aircraft since the issuance of that memorandum?

Mr. VOUGHT. I do not believe we have.

Mr. QUIGLEY. Is it possible for you to do so?

Mr. VOUGHT. I am happy to work with the committee and look into that.

Mr. QUIGLEY. Okay. And you talked about reviewing this guidance. Where are you in this?

And do you have proposed changes at this time?

Mr. VOUGHT. It is too soon to be able to reveal where we are headed on that, but we are in the midst of updating that guidance, and it is part of the deliberative process to work through that.

Mr. QUIGLEY. This process that you are talking about began in September of 2017?

Mr. VOUGHT. Yes. I am not sure when we officially began the update process.

Mr. QUIGLEY. That is sort of a ballpark though, right?

Mr. VOUGHT. It is about the ballpark, yes.

Mr. QUIGLEY. So that is over a year and a half ago, roughly. Any guess on when you might be completed with that review and issuance of new guidance?

Mr. VOUGHT. I do not have a date to give the subcommittee at this point, but we are working on it.

Mr. QUIGLEY. I am going to ask you to hazard a guess just because it has been a year and a half. The Administration has about that much time left. Is it going to be done before the Administration is through with this term?

Mr. VOUGHT. We are working as quickly as we possibly can on it, sir.

Mr. QUIGLEY. All right. Mr. Amodei.

Mr. AMODEI. Thanks, Mr. Chairman.

Mr. Vought, the chairman commented after my last question that that was quite a speech leaving you 8 seconds to respond. Therefore, if you have any thoughts that come to mind based on that to turn it into an actual potential question, please feel free to respond regarding the staffing at those Federal land management agencies as well as the SNPLMA raid thing, and "raid" is about as nice of a word, and I have heard the South Carolina explanation.

So anything new to that would be much appreciated.

Mr. QUIGLEY. And you get an 8 second bubble as well.

Mr. VOUGHT. All right. Thank you, Mr. Chairman.

Mr. QUIGLEY. With the account that you reference, we look at it there is \$600 million in the fund. We have proposed to rescind \$200 million of it. None of the rescissions that we have identified are geared toward anything that is specifically allotted for a particular project right now.

Now, I think your point might be you have not accounted for the fact that new projects may arise, and that is fair. But we have also had a hard time, at least from our analysis, of seeing additional new projects that are arriving.

So from our standpoint, \$200 million is something that we could return to taxpayers and not hurt the intent of the program.

Mr. AMODEI. Well, and I appreciate that, except if you look at the base legislation, it does not allow that.

Mr. VOUGHT. And that is why it is a proposal. It is a proposal for Congress.

Mr. AMODEI. I have got it. I have got it.

Mr. VOUGHT. And it pertains to the shutdown. The length of the shutdown obviously caused us to update our lapsed plans in real time to account for the factual situation on the ground.

So I was not aware over the situation with only one BLM employee working under a lapse. But I know that we were working with all of the agencies as they were seeing real needs and then by the law to make it as painless as possible consistent with the law and engaging in that conversation.

And then as it pertains to the BLM staffing issues, I know that has been an interest of yours for a long time. I welcome that conversation. Our reforms to Interior are not designated to not have BLM fully staffed up.

They are attempting to get at things like the fact that we want to put a halt on land acquisition and to ensure that the Federal Government does not own more than 25 percent of the land in this country.

So that is the intent behind our budget proposal, and we are certainly willing to work with you.

Mr. AMODEI. Well, and I appreciate that, but as you can appreciate, and they are kind of connected, when you bring an agency to full stop that is doing land management in a State that in the Southwest basically competes for fastest growing State in the Nation for probably a decade or two. They compete with the Valley of Sun.

And you say, "No, we are not processing any right-of-way applications, even though they are an existing right-of-way. No, we are not doing any of the ESA stuff. We are not updating any of our resource management plans, our travel management plans. We are not doing anything for that period of time."

Then you go back and say, "Okay. We are back. Well, wait a minute because we have got to catch up from the shutdown."

And so all I am saying is if it is going to end up being the equivalent of a double or triple shutdown by the time they catch back up, we probably ought to think about that before we say you are not key.



Because, quite frankly, the shadow that that one month or whatever it was casts is much longer than a month in an operations sense and is exacerbated by the fact that you are staffed at 67 percent of what is on the books.

Thank you, Mr. Chairman, and I yield back.

Mr. QUIGLEY. Thank you.

Mr. Bishop.

Mr. BISHOP. Thank you very much, Mr. Chairman.

Mr. Vought, the President's fiscal year 2020 budget request once again proposes a pay freeze for Federal employees, despite low unemployment and Federal law suggesting that employees receive a 2.6 percent raise before the locality pay is factored in.

Furthermore, the budget request calls for cuts to employee pay through increased retirement contributions and reduced government contributions to employee health care.

As the 35-day government shutdown demonstrated, Federal employees provide critical services that the American people rely on every single day. If you want to recruit and retain top talent, we have to provide employees, at the minimum, with a pay increase to keep up with the cost of living.

Can you explain why the Administration is working so hard to harm Federal employee paychecks?

Mr. VOUGHT. We are not, Congressman. We think it is important to ensure that we have a healthy Federal workforce. It is one of the priorities of the President's management agenda.

The type of data that we look at is the fact that if you look at the Federal employee viewpoint survey, which is basically a survey of all Federal workers, only 25 percent of the current Federal workforce thinks that pay has any connection with performance.

We think that that is the wrong way to be able to align incentives, and so what we have said is putting forward a proposal in this budget to give agencies more discretion to be able to have bonus payments, increased salaries for recruitment and retention.

What we have rejected is just to do an across-the-board cut because we think that that is the wrong way to align incentives.

Mr. BISHOP. Well, your budget proposes that agencies use their performance awards accounts to finance more strategic workforce award spending and innovative approaches to meeting critical recruitment, retention, and reskilling needs across government by using their award funding to reward their most critical employees with the best performance.

Can you provide some additional details as to which you mean by this?

Does it mean that only certain occupations will receive pay increases? An outstanding performance by attorneys, law enforcement officers, customer service representatives, and administrative staff, among others would not be recognized?

Mr. VOUGHT. Not necessarily. We would be working with the agency heads to be able to design plans that would be able to fill and assure high priority areas are addressed, but also high performance across the agency are also receiving the kinds of incentive payments that their merit, their performance had justified.

And then I would also note that we did not have it in our 2019 budget, but Congress gave these workers an across-the-board cut or

an across-the-board increase in their pay, and so that is something that is also going to be there for them to benefit from as well.

Mr. BISHOP. Yes, but that certainly was not at the instance of the Administration.

Mr. VOUGHT. I agree with that.

Mr. BISHOP. That was in the wisdom of Congress.

It appears to me from where I sit and from talking with Federal employees that the Office of Management and Budget is doing everything that it can to cleverly conceal an effort to reduce the Federal workforce, therefore having fewer people to provide the services that the public requires, particularly those involving the health, safety, and welfare of our people, particularly in commercial regulations.

It seems to me that all of this is a sleight of hand, if you will, with mumbo-jumbo justifications for actually cutting the size of the Federal workforce at the expense of the benefits of our Federal Government from the benefits that really should be inuring to the people.

That is just the way that it appears to me, and it seems to be very disingenuous.

And I yield back, Mr. Chairman.

Mr. QUIGLEY. Thank you.

Mrs. Torres.

Mrs. TORRES. Mr. Vought, on the non-defense side, you have asked agencies to make a 9 percent cut, plus additional 2 percent cuts year over year under your 2-penny plan. Much of this is based on the assumption that agencies will grow more efficient over time.

Does your budget treat the Defense Department similarly?

Mr. VOUGHT. We do not, and I think this would get to a fundamental difference of visions, that this Administration believes it is the most critical of priorities of the executive branch and the Commander-in-Chief to continue to provide the resources that the Commander-in-Chief needs to rebuild the military, in addition, from the standpoint of securing the border.

So from the standpoint of a different path in the out-years, we do have different paths. We are trying to be able to pay for that rebuilding of the military and the securing our border by looking for where we can do less things at the Federal Government level in the out-years on the non-defense side.

Mrs. TORRES. The Defense Department recently underwent its first ever auditing process, and only five of the 21 individual audits checked received a fully passing grade.

Do your estimates account for the potential savings as the department comes into full audit compliance?

Mr. VOUGHT. We do within the amounts that we have provided. We do ask Department of Defense to identify savings that can be transferred to other defense needs. They have already been doing that to the tune of a couple billion dollars with being able to change the way they buy things, to make other efficiencies.

There is a lot of work that needs to be done. I mean, we will be the first to tell you that, but from the standpoint of the proposal that we have put forward, we think it is defensible.

Mrs. TORRES. So even though they are not compliant, you think it is defensible to just continue with growing?

Mr. VOUGHT. Personally, I think it is important to judge the Administration based on what we found.

Mrs. TORRES. I am not talking about the Administration. I am talking about these agencies, the Defense Department undergoing its first ever auditing process.

Mr. VOUGHT. Right.

Mrs. TORRES. And they were noncompliant.

Mr. VOUGHT. From our standpoint, that was a huge success. It is something that Congress had asked us to do.

Mrs. TORRES. Five out of 21 individual audits checked received a full passing grade. That is a complete success?

Mr. VOUGHT. A complete success was doing the audit and beginning the work so that we can make improvements each and every year to be fully compliant in the years ahead.

Mrs. TORRES. How are you going to do that? How are you going to ensure that the bulk of these individual audits the next time you audit, and when will you audit them again?

Mr. VOUGHT. We will be doing this on a regular basis.

Mrs. TORRES. What does that mean?

Mr. VOUGHT. All I can tell you, Congresswoman, is that the Department of Defense is very committed to the audit. It has the support of its top leaders in making sure that this is an ongoing process, to make sure that they have improvements in all the key areas.

Mrs. TORRES. So since you continue to bring up the border, I was not going to talk about that, but I want to just reassure you that some of us have been very focused on working on the root causes of migration, specifically from the Northern Triangle.

Unfortunately, we have received very little support from this Administration at ensuring that we support CICIG for example in Guatemala, MACCIH in Honduras, and because of that, the rule of law continues to be ignored.

Democracies should be moving in the right direction, but they have not. We have chosen to allow them and the presidents there to continue business as usual in a very corrupt way.

So the current policies that we have in place to deal with the migrants in our southern border, it is not shocking to me that people are coming north.

Current policies have put us in a position that we are liable for the deaths of children, several children, a transgender individual, people who have been blatantly denied health care.

So where are you looking at fulfilling the payouts that we may have to be responsible for?

Mr. VOUGHT. Payouts in terms of what?

Mrs. TORRES. In lawsuits.

Mr. VOUGHT. That is something that is in the purview of the Department of Homeland Security and Department of HHS, but I would just say that any time we lose a life, it is tragic. It is something that is—

Mrs. TORRES. Any time we lose a life because we deny them medical health care is criminal.

Mr. VOUGHT. I do not think we have denied anyone health care.

Mrs. TORRES. My time has expired. So I yield back.

Mr. QUIGLEY. Mr. Cartwright.

Mr. CARTWRIGHT. Thank you, Mr. Chairman.

All right. Mr. Vought, you and I were talking before about cuts to Medicare, and one of the things that you said was it is not really a cut because we are cutting back on the unholy trinity of waste, fraud, and abuse. I think, and correct me if I am wrong, I think you said 15 percent was a figure you attributed to waste, fraud, and abuse?

Mr. VOUGHT. No, I was describing our proposal on bad debt.

Mr. CARTWRIGHT. Let's stick with waste, fraud, and abuse. What would you assign to that?

Mr. VOUGHT. I did not do a percentage for waste, fraud, and abuse. I was describing one of the proposals that we have in the budget.

But we have not done a kind of percentage allocation that is waste, fraud, and abuse.

Mr. CARTWRIGHT. Well, you mentioned waste, fraud, and abuse.

Mr. VOUGHT. I did as it pertains to the specific proposal on bad debt.

Mr. CARTWRIGHT. And so the question is how long have you known about the waste, fraud, and abuse as pertains to bad debt?

Mr. VOUGHT. I believe it has been in previous budgets. I would have to check to see whether it was in our first two budgets. It was not in our first budget. It may have been in our second.

It is something that we made an assessment throughout the year that this is something we wanted to tackle. We do not always have each and every proposal as they change each and every year.

Mr. CARTWRIGHT. Well, let's talk about that. An assessment is really an assumption, is it not? You are taking a certain amount of money that you are assuming is wasted or the subject of fraud and abuse, and you figure you can cut it out.

And my question is: do you have specific instances of waste, fraud, and abuse that you can put your finger on?

And if so, why have you not raised the call before this year about rooting out those wastes of money?

Mr. VOUGHT. Well, (a) we have put forward many different proposals about waste, fraud, and abuse when we have proposed historic spending reductions in each and every budget we have put forward.

As it pertains to the Medicare proposals, we had Medicare proposals last year. We have them again this year. This specific proposals that I was referring to gets at trying to ensure that there is an incentive structure for hospitals to recoup the cost sharing that beneficiaries are supposed to pay as opposed to just saying we are going to write it off because we know that 65 percent of it is going to be paid for by the Federal Government.

We do not actually say that it should go down to zero. We think it should go to about 25 percent, and we think that allows for the fact that hospitals are not going to be able to recoup all of it, but it does change the incentive so that they at least try.

Mr. CARTWRIGHT. Well, here is why I am asking these questions, Acting Director Vought. I am very concerned when I hear this kind of number being attributed to waste, fraud, and abuse, and I want you to undertake to contact my office when you can drill down and tell me where you think money is being wasted, where you think

abuse is occurring, and where you think fraud is occurring. Will you do that?

Mr. VOUGHT. I am happy to, Congressman.

Mr. CARTWRIGHT. All right.

Mr. VOUGHT. Just this one proposal would save \$38 billion. So that is real money that we think could actually go to extending the life of the Medicare Trust Fund.

Mr. CARTWRIGHT. Well, in 5 minutes of questioning I do not think I can get out of you exactly where you think we can save that. So we need to talk offline about this.

Now, I also wanted to talk about your budget slashes student loans by more than \$200 billion, nutrition assistance by more than \$220 billion, and completely crushes the EPA with a cut of more than 30 percent.

And I am wondering: did you have a specific calculation model that you used to come up with those numbers?

Mr. VOUGHT. You asked about three different programs. I am going to go one by one.

Mr. CARTWRIGHT. Exactly.

Mr. VOUGHT. With student loans, we feel like we have a reform proposal that will benefit any student in the country in terms of being able to have a single income-driven repayment plan.

Mr. CARTWRIGHT. Is this a new proposal?

Mr. VOUGHT. It is not a new proposal. It has been in previous budgets.

Mr. CARTWRIGHT. What is it called?

Mr. VOUGHT. Single income-driven repayment plan.

Mr. CARTWRIGHT. Okay.

Mr. VOUGHT. It allows you to have certainty. There are all sorts of different programs out there. We are saying that you pay about 12.5 percent of your discretionary income to be able to then have after 15 years, you get rid of all your student loan debts.

For graduate students, that would be 30 years.

Mr. CARTWRIGHT. I want to follow up with you about that, too.

How about your one-third cut to EPA? How did you come up with that?

Mr. VOUGHT. In an era of trillion-dollar deficits where we have a \$22 trillion national debt, we think that we should make tough choices in agencies, and to the extent that EPA—

Mr. CARTWRIGHT. Well, is it an indiscriminate cut or is it a targeted cut?

Mr. VOUGHT. To the extent that at EPA we found that they could do their statutory responsibilities to make sure we have clean air, clean water, and at the same time ensure that other discretionary activities are not done or are either done at the States. We thought that was something that was defensible.

Mr. CARTWRIGHT. A subject of robust disagreement, Mr. Acting Director.

My time is up, and I yield back.

Mr. QUIGLEY. Thank you, sir.

Mr. Crist will wrap up.

Mr. CRIST. Thank you, Mr. Chairman.

Acting Director, I wanted to talk to you about FEMA for a moment. FEMA had recently announced proposed changes to the way

that they calculate flood risk under the National Flood Insurance Program. I think they call it Risk Rating 2.0.

Rather than using just the broad 100-year flood plain, FEMA will instead rely on more granular data to calculate the threat of flooding for each individual home.

I have concerns about the impacts that this could have on vulnerable communities, including the likelihood that this could sharply raise rates and send home values plummeting, exacerbating the existing affordability challenges that many constituents and millions of other policy holders already face.

However, I can also appreciate FEMA's desire to obtain more accurate data and share that data with consumers. And while I take issue with the Administration's method, I think that we can both probably agree that accurate flood risk data is a good thing, right?

Mr. VOUGHT. Yes.

Mr. CRIST. And I think we can also further agree that flood plain mapping is a huge part of providing better data.

Mr. VOUGHT. Yes.

Mr. CRIST. Yes. So here is the question. I find it interesting then that the budget request for flood hazard mapping and risk analysis program cuts the program by 60 percent.

How can you reconcile these cuts with what we just discussed of trying to improve upon it?

Mr. VOUGHT. I believe it gets to the fact that we think that it was one-time spending that had already largely been committed and that we would not need that on a year-to-year basis.

Mr. CRIST. So you are confident that we can go forward, have better mapping.

Mr. VOUGHT. Yes.

Mr. CRIST. And cut 60 percent from it.

Mr. VOUGHT. Yes.

Mr. CRIST. Thank you.

Mr. QUIGLEY. Thank you.

Thanks to all who participated. Thank you, Acting Director, for being here today. We look forward to working with you in the future.

Take care.

Mr. VOUGHT. Thank you.

[Questions and answers submitted for the record follow:]

## **Rep. Cartwright**

**As OMB works to implement the Presidents Management Agenda, OMB takes a leadership role implementing a number of activities that are performed by federal agencies. Goal 14, of the President's Management Agenda is to Improve Management of Major Acquisitions.**

**Question: In the December 2018 update posted on the Performance.gov website, the Administration says they now offer certifications for program managers. What are those certifications?**

Intended for acquisition project and program managers, a Federal Acquisition Certification for Program and Project Managers is offered, and has 3 levels of certification in addition to an IT specialization. Detailed information on the certification can be found at:  
<https://obamawhitehouse.archives.gov/sites/default/files/omb/procurement/memo/fac-ppm-revised-dec-2013.pdf>

## **Rep. Cartwright**

**The December 2018 document says a meeting of the Program Management Policy Council was held on September 27, 2018 and Program Management Improvement Officers were named for each agency. The document even provides a link to the list – but that link is broken.**

**Question: Does each agency have a Program Management Improvement Officer?**

**Question: Can you provide a list and ensure this information is available to the public via the agencies updates and websites?**

**Question: Does the Administration have any minutes or summaries of the meeting held on September 27, 2018? Will you make those available to the public or this Committee?**

**Question: Does each agency have a Program Management Improvement Officer?**

Yes. OMB's guidance to Federal agencies implementing provisions of the Program Management Improvement Accountability Act requires agency heads designate a senior executive of the agency to serve as the agency's Program Management Improvement Officer (PMIO).

**Question: Can you provide a list and ensure this information is available to the public via the agencies updates and websites?**

The list of agency PMIOs was published as part of a short news update to Performance.gov highlighting the Program Management Policy Council's first meeting. The list is available at <https://www.performance.gov/2018-10-15-policy-council-blog-post/>. Agencies are encouraged but not required to make the names of senior officials for many management functions available on their agency-specific website.

**Question: Does the Administration have any minutes or summaries of the meeting held on September 27, 2018? Will you make those available to the public or this Committee?**

Attached is the agenda from the Sept. 27 PMPC meeting. As its name implies, the Administration uses this Committee as a policy-making body; as such, meeting minutes and agendas are not publicized due to the pre-deliberative nature of the discussions and its role in helping inform the development of new policies.



**Program Management Policy Council**  
**(PMPC)**

Inaugural Meeting  
September 27, 2018  
9:30am-11:00am  
EEOB, Room 430ABC

**Agenda**

9:30am-9:40am	Welcome and Opening Remarks	Margaret Weichert
9:40am-9:55am	Introduction of PMIOs/PMPC Members	
9:55am-10:10am	Status Updates from OMB	Mark Bussow Matthew Blum April Davis
10:10am-10:25am	Discussion of Implementation Plans (w/ Q&A)*	Mark Bussow
10:25am-10:30am	Survey Results	Cheryl McDonald
10:30am-10:50am	Breakout Session** Identifying Opportunities and Setting Priorities for the PMPC	Small Group Discussions
10:50am-11:00am	Summaries from Breakout Groups Wrap-Up/Next Steps for the PMPC	Each Group Mark Bussow

## **Rep. Cartwright**

**Question:** What is the current turnover rate for individuals designated the Program Management Improvement Officer role in each agency?

**Question:** How many Program Management Improvement Officers are also Performance Improvement Officers?

**Question:** What other roles do these individuals have to fulfill in addition to being Program Management Improvement Officers? How many are also Chief Acquisition Officers? How many are also Chief Procurement Officers?

**Question:** What is the current turnover rate for individuals designated the Program Management Improvement Officer role in each agency?

OMB does not track data on the turnover rates for PMIOs.

**Question:** How many Program Management Improvement Officers are also Performance Improvement Officers?

OMB does not currently have an exact count of officials that share both of these titles.

**Question:** What other roles do these individuals have to fulfill in addition to being Program Management Improvement Officers? How many are also Chief Acquisition Officers? How many are also Chief Procurement Officers?

As is the case with the enactment of many statutory requirements that create new senior accountable management positions and roles, but do not provide additional funding for these positions, the duties of these positions are often added roles and responsibilities of already existing management officials. OMB is not aware of any instance at a major CFO-Act agency where the title and roles of PMIO were not added onto that of an already existing management position (e.g., the Performance Improvement Officer, the Chief Financial Officer, the Senior Procurement Executive, the Chief Human Capital Officer, etc). OMB does not currently have an exact count of officials that share these titles.

## Rep. Quigley

The 2019 GAO High-Risk Report (<https://www.gao.gov/assets/700/697259.pdf>) discussed the importance of implementing a 2016 statute, the PMIAA. The report said “that, if implemented effectively, [it] will help foster progress on high-risk issues government-wide”:

**Program Management Improvement Accountability Act (PMIAA):** Enacted in December 2016, the act is intended to improve program and project management in certain larger federal agencies.... OMB officials told us their 2018 Strategic Review meetings did not address each high-risk area but did address government-wide high-risk areas, such as cybersecurity, information technology, and strategic human capital as they related to the President’s Management Agenda.

In the past, senior management officials from OMB, applicable agencies, and our agency have met to address areas where additional management attention could be beneficial to high-risk issues. These trilateral meetings, beginning in 2007 and predating PMIAA’s 2016 enactment, have continued across administrations.

However, OMB has organized only one of these high-risk meetings since the last high-risk update in 2017, on the Government-wide Personnel Security Clearance Process. In November 2018, OMB told us of plans to hold additional meetings on priority high-risk areas, including the 2020 Decennial Census, Strategic Human Capital Management, Ensuring the Cybersecurity of the Nation, National Aeronautics and Space Administration (NASA) Acquisition Management, and Managing Federal Real Property.

Effective implementation of PMIAA provides an important opportunity to enhance progress on high-risk areas by focusing leadership attention through the portfolio reviews and trilateral meetings. Further, a number of high-risk areas have longstanding or significant program and project management concerns, including the acquisition-related high-risk areas for DOD, DOE, NASA, and VA. These and other programs can benefit from improving program and project management.

**Question:** Given the dollars appropriated to agencies and programs within the high-risk list, does OMB disagree with the GAO’s findings or views on PMIAA? What actions will be taken to make progress implementing PMIAA and when can we expect that progress to be completed and the law be implemented as GAO suggests?

The OMB views implementation of the PMIAA as an opportunity to drive government-wide improvements in both mission-outcomes and cost effectiveness, and is in general agreement on with GAO on the role improved program and project management can have not only on areas identified by GAO as ‘high-risk,’ but on program delivery more broadly.

The Act complements implementation of the President’s Management Agenda and the broader Administration goal of ensuring taxpayer dollars are providing critical Federal services to citizens efficiently and cost-effectively. In 2018, the OMB issued initial implementation guidance to begin

a coordinated and government-wide approach to strengthen program and project management practices in Federal agencies and improve government performance. OMB's guidance outlined key strategies and milestones to achieve full-implementation as part of the five-year strategic plan required by the law, including prioritizing establishment of the law's governance, program and project management standards, accountability and review, and personnel training and development policies in the initial phase of the five-year strategic plan.

Since OMB's Nov. 2018 update to GAO two additional tri-lateral meetings have been held, addressing the 2020 Decennial Census and Managing Federal Real Property. OMB continues to work with the GAO and federal agencies to address additional 'high risk' areas utilizing these tri-lateral engagements, focusing on priority 'high risk' areas agreed to by OMB, GAO, and agencies.

WEDNESDAY, MARCH 27, 2019.

**MEMBERS' DAY**

**WITNESSES**

**HON. ABBY FINKENAUER, A REPRESENTATIVE IN CONGRESS FROM  
THE STATE OF IOWA**

**HON. SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM  
THE STATE OF TEXAS**

Mr. QUIGLEY. Welcome to Members' Day. We are officially beginning. So welcome.

Our first witness is Congresswoman Abby Finkenauser.  
Welcome.

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**WITNESS**

**HON. ABBY FINKENAUER, A REPRESENTATIVE IN CONGRESS FROM  
THE STATE OF IOWA**

Ms. FINKENAUER. Thank you.

Well, thank you, Chairman Quigley and Ranking Member Graves. It means a lot as a freshman to be here and have this important opportunity to really uplift the issues that are really important to Iowa and ensure that the voices are heard of folks all across my State, and then also folks that are impacted by the subcommittee that I chair on small business.

So as a member of the Small Business Committee, I am also the chairwoman of Rural Development, Agriculture, Trade, and Entrepreneurship Subcommittee. And it is incredibly important to keep elevating these voices on matters affecting small businesses, which include our farmers and also our entrepreneurs.

From the Committee's first hearing on the longest shutdown in our Nation's history to our first subcommittee hearing on the State Trade and Export Programs, to the STEP Program, we have heard directly from Iowa and small business owners across the country about the support they need, what harms their ability to grow, and then barriers for folks to even start talking about starting a new business, which is incredibly important.

You know, one of the things that I have faced and have heard from folks all across my district is the fact that, you know, I am 30, and I have friends that I graduated high school with who maybe have moved away from Iowa, to have to pay off their student loans and live in Denver. Some live in Austin. Some live in Minneapolis and would love to be able to come back home, start a business, and raise their families. They are getting married, having kids, and want to live next to their parents and, again, have a good life like the one that I grew up with in Iowa.

And having access, starting a small business is one way to do that, and so, again, this is incredibly important to me and why I want to make sure that we are uplifting these issues.

And what I have found, and again, why I am here, is because what we know right now is that the initial support to start up a business and the ongoing mentoring that is needed is how we actually support the business' growth and find new markets. And it is vital to our Nation's business and job creation engines.

I know the SBA, Small Business Administration, has numerous initiatives that help with this, whether it is providing low-cost or no—assistance or no-cost assistance to help the small business market find new markets and manage their businesses, while ensuring competitive access to contracts and provide capital investments and loans.

You know, I came to Congress, again, with one of my goals of creating conditions for businesses to succeed in Eastern Iowa and across the country. SBA's Entrepreneurial Development Programs, or EDPs, are helping to meet that goal. The suite of EDP is included in the small business development centers' microloans and, again, the STEP Program, veteran and women-owned business centers, and the SCORE Program.

I am happy to be leading our bipartisan Dear Colleague letter right now with Representatives Dr. Joyce of Pennsylvania, Murphy of Florida, and Stauber of Minnesota, that we will be sending to the subcommittee urging robust funding levels for these programs.

You know, entrepreneurial development programs provide support to our Nation's small businesses and are key to increasing the number of young people who want to be entrepreneurs and develop start-ups. Again, as I said earlier, this is incredibly important for States like Iowa to grow.

I have heard from young people about the barriers they are facing as entrepreneurs to retain and attract new talent to areas like many of the communities in Iowa. We need to invest in these initiatives and thereby invest in our small business environment.

Unfortunately, we recently reached a 24-year low in young Americans starting and owning small businesses. To reverse these trends, I urge the subcommittee to support strong funding levels for these entrepreneurial development programs and continue the momentum of the past increases.

In fiscal year 2018, they were collectively funded at \$247.1 million, and \$247.7 million in fiscal year 2019. Unfortunately, the President's budget proposes a large cut to these programs that will discourage entrepreneurship at a time where we cannot afford it.

Small business development centers located in States nationwide provide critical assistance to small businesses like marketing and business strategy and export assistance. Microloans target new and early stage businesses in underserved markets.

We have got women's and veterans' business centers supporting aspiring and existing entrepreneurs, including service-disabled veterans, National Guard and Reserve members, and military spouses. Women's business centers run evening and weekend hours to support entrepreneurs working full time.

The State and Trade Export Program, incredibly important right now, provides States with matching grants to open new markets and help small business export.

SCORE is engaged with other business owners and executives as volunteers at 350 chapters who serve as counselors, advisors, and mentors.

Cuts to these programs are not sustainable, as we look to grow our economy and support new businesses. We want to signal to entrepreneurs right now and small businesses, again, in places like Iowa and across the country that we are looking out for them.

These are the things I hear in my State of Iowa. They want common sense and someone who is going to listen to what they care about and what they need to raise a family and make a decent living.

I know these entrepreneurial development programs are important to obviously not just Iowa but communities across the country, and I again urge you in your intention to increase this funding to help our entrepreneurs and small businesses.

And I thank you for the opportunity to testify, but before I am done, I would be remiss if I did not ask you, you know, while supporting entrepreneurs is very critical, I also have to ask the committee to please, please pay attention to the devastating flooding that is happening across the Midwest and in Iowa.

Our families' homes, farms, and small businesses are literally under water right now in Iowa, specifically Southwest Iowa and then parts of my district as well. In Iowa alone the damage is already estimated over \$1.5 billion.

The President over the weekend recognized the seriousness of the situation, provided an expedited major disaster declaration, which we are very grateful for, but I do urge the subcommittee and also the full committee to provide timely supplemental disaster aid to our flood affected States. It is desperately needed, and we, again, are very grateful for all of the support here in Washington.

And I am grateful for the opportunity today to testify in front of you all, and thank you for your service.

[The information follows:]

March 27, 2019

**Testimony of Congresswoman Abby Finkenuaer (IA-01)**

***House Appropriations Subcommittee on Financial Services and General Government***

**The Small Business Administration's Entrepreneurial Development Programs**

Chairman and Ranking Member – thank you for the opportunity to testify today. As a freshman Member of Congress, it is important to me to have opportunities like this to elevate issues important to Iowans here and ensure their voices are heard, and the needs of our state are heard.

As a member of the Small Business Committee, and as Chairwoman of the Subcommittee on Rural Development, Agriculture, Trade and Entrepreneurship - I have had a unique position to elevate those voices on matters affecting small businesses, which includes farmers, and entrepreneurs. From the committee's first hearing on the longest shutdown in the nation's history to our first subcommittee hearing examining the State Trade and Export Promotion program, we have heard directly from small business owners about the support they need, what harms their ability to grow, and for folks to even think about starting a new business. I've heard similar stories from my time in the district visiting different manufacturers, restaurants and other businesses.

What I've found, and why I'm happy to testify here today, is because that initial start-up support and ongoing mentoring on how to grow one's business and find new markets, is vital to our nation's business and job creation engine. The Small Business Administration (SBA) has numerous initiatives aimed at those start-ups and entrepreneurs that provide low-cost and no-cost



assistance to help businesses market, find new markets, and manage their businesses while ensuring competitive access to contracts and provide capital investments and loans.

I came to Congress with a goal of creating conditions for businesses to succeed in Eastern Iowa. SBA's Entrepreneurial Development Programs – or EDP's – are helping to meet that goal. The suite of EDP's includes the Small Business Development Centers, Micro-Loans, the State Trade and Export Promotion program, veteran and women-owned business centers, and the SCORE program. I'm happy to be leading a bipartisan Dear Colleague right now with Reps. Joyce of Pennsylvania, Murphy of Florida, and Stauber of Minnesota, that we will be sending to the subcommittee urging robust funding levels for these programs.

While supporting our entrepreneurs is critical – I also have to ask the committee to please pay attention to the devastating flooding that is happening across the Midwest and in Iowa. Our family's homes, farms, and small business have been underwater – in Iowa alone the damage is already estimated over \$1.5 billion. The President over the weekend, recognizing the seriousness of the situation, provided an expedited Major Disaster Declaration. I urge the subcommittee and full committee to provide timely supplemental disaster aid to our flood-affected states if needed.

Entrepreneurial Development Programs provide support to our nation's small businesses outside of times of disaster, and are key to increasing the number of young people who want to be entrepreneurs and develop start-ups. I've heard from young people about the barriers they face to being entrepreneurs. To retain and attract new talent to areas like many communities in Iowa, we need to invest in these initiatives and thereby invest in our small business environment.

Unfortunately, we recently reached a 24 year low in young people starting and owning small businesses.

To reverse these trends, I urge the subcommittee to support strong funding levels for these entrepreneurial development programs and continue the momentum of past increases. In FY18 they were collectively funded at \$247.1 million and \$247.7 million in FY19. Unfortunately, the President's Budget proposes a large cut to these programs that will discourage entrepreneurship.

Small Business Development Centers, located in states nationwide – provide critical assistance to small businesses like marketing and business strategy, and export assistance. Micro-Loans target new and, early-stage businesses in underserved markets. Women's and Veterans Business Centers support aspiring and existing entrepreneurs, including service-disabled veterans, National Guard and Reserve members, and military spouses. Women's Business Centers run evening and weekend hours to support entrepreneurs working full-time. The State and Trade Export Promotion program provides states with matching grants to open new markets and help small businesses export. SCORE is engaging other business owners and executives as volunteers at 350 chapters who serve as counselors, advisors, and mentors.

Cuts to these programs are not sustainable as we look to grow our economy and support new businesses. We want to signal to entrepreneurs and small businesses that we are looking out for them. These are the things I hear in my State of Iowa – they want some common sense, and someone to listen to what they care about and what they need to raise a family and make a decent living.

I know these entrepreneurial development programs are important to that and important to communities around the country. I again urge your attention to increased funding to help our entrepreneurs and small businesses and thank you for the opportunity to testify.

Mr. QUIGLEY. You mentioned the barriers to entrepreneurs. Other than being short on capital, are there other things that they mention to you?

Ms. FINKENAUER. There is. You know, we actually had a young woman from State Center, Iowa. It is one of our small towns in my district, and she has an Internet business, and so she sells paper flowers and also wood flowers. They look very real. It is actually very impressive, all across the country and also actually internationally as well.

And she is able to do this, and she has a husband who helps with the children as well. He is disabled, and she is able to work from home, and she is grateful for that. But the reality is, given that it is an Internet business, which a lot of young people are starting up, she needs reliable broadband.

So that is part of it as well. So we need to make sure that in places like Iowa people have access to Internet, and right now she has it, but again, it is the reliability factor that can be an issue. When your business quite literally depends on it, you know, we have to make sure that we are fixing that and folks across my State and across the country have that access.

The other thing, you know, it is talking about childcare. It is talking about paid family leave issues. Working family issues are also small business issues, and these are things that, you know, I was passionate about in the State House in Iowa and continue to be here in Congress as well, and we need to be looking at this in a holistic way.

Mr. QUIGLEY. Thank you.

Mr. Graves, do you have any questions?

Mr. GRAVES. I just want to thank you for coming before the committee.

It was a wonderful presentation, very compelling, but the fact that you would just take time out of your day to come be before us and share the concerns that you have from your district is what this is really all about.

So thankful that you are doing that, and as a former small business owner myself, I appreciate your insights and your advocacy for additional small businesses and the opportunity for individuals to be able to engage and have a dream and see that out.

And then to the disaster challenges you faced, certainly we are very supportive of whatever we can do to be helpful, and you can let everybody know back in the Midwest, Republican and Democrat alike, that our hearts are with you.

Ms. FINKENAUER. Thank you.

Mr. GRAVES. Thank you.

Mr. QUIGLEY. Thank you so much.

Ms. FINKENAUER. I appreciate it. Thank you all.

Mr. QUIGLEY. Thank you so much for your testimony.

Our next witness is Ms. Jackson Lee from Texas.

We are so glad you are here. Thank you.

WEDNESDAY, MARCH 27, 2019.

WITNESS

**HON. SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS**

Ms. JACKSON LEE. Mr. Chairman and Ranking Member, I thank both of you for this time given to members.

I would like to ask unanimous consent for my full statement to be submitted into the record.

Mr. QUIGLEY. Absolutely.

Ms. JACKSON LEE. And I want to speak to certain elements of your jurisdiction and make mention of another point.

Let me just say that I have always said in my constituency and coming from Texas, in Houston we are lovers of small business. They are everywhere we look. Both as I heard the previous member speak of home businesses, we have those, too. We have, you know, the barbecue shops or stores on the corner and hamburger store, and it is not necessarily the brand names. They are just people who are business entrepreneurs and it crosses various ethnic groups and certainly age groups.

So the small business development centers are extremely important to us. I have a number of them in my district and would encourage the support of that \$131 million, but I am always eager to see in the markup whether or not those dollars can be increased primarily because they provide a lifeline for start-ups to know the ABCs of business.

And part of it is finance and part of it is surviving. And I think one of the most difficult parts for small businesses is to be able to survive.

So I support that. I also support \$20 million for women's business centers. With more and more women going into business, many women going into business after retiring from another job, I think it is extremely important.

I support the \$1.15 billion for Federal defenders' services. The idea, as a member of the Judiciary Committee, for the Federal defenders' service to provide access to counsel, other necessary defense services for those who are indigent, fully funding the defenders' services at the Judiciary request of \$1.06 billion, which is in your appropriations more than what has been asked for, will help to maintain public confidence in our commitment to equal justice under the law and ensures the successful operation of the constitutionally-based adversary system of justice.

Having the courthouses in my district—the Federal courthouses—having practiced in the Federal courts, having seen cases from civil rights or criminal justice cases in the Federal court, questions of the equal access to education in the courts now, of course, dealing with the Texas v. Azar case as it relates to health care; just overall the ability to be represented in the Federal courts if you happen to be on the short end of the stick is valuable, and the Federal defenders' services are enormously valuable.

I support the \$20 million for the community volunteer assistance, income tax assistance. People want to pay their taxes, but many times are not prepared, do not know how to prepare their taxes, and I think that is an important contribution to our revenue.

I support the \$9.89 million for tax counseling for the elderly and, as well, I support the \$1.9 million for the Harry S. Truman Scholarship Foundation. The foundation program encourages exceptional young men and women to pursue careers in public service, celebrating its 42nd anniversary, and the program has seen over 3,000 Truman Scholars go on to serve in presidential administrations and many of them in various positions.

As I said, I would like my entire statement to be in the record, but I do want to make a point as relates to disasters, and that is Texas has seen its share of disasters, and recently we know the terrible tornado that saw 23 lives lost in Alabama. I was listening to Congressman Billy Long, who reminded us of a tornado when he came to office, that killed 161 people in his congressional district.

So we know disasters can be devastating, and they can be economically devastating, devastating to businesses. And so as we were working to fund the relief for the devastation of Hurricane Harvey, which hit my district head on, we are still attempting to recover. One of the things that I attempted to do and did do, but I was just curious (sic), and that is to set aside money for small businesses in the form of grants.

And I had wanted the Small Business Administration to administer it, which they punted and indicated that they do not know how to give out grants. They do not even know how to give out loans.

And so, of course, it got into HUD, the community block grant, which I am unhappy with, because it is under the large funding pool that is coming under Hurricane Harvey. We modeled it after the 9/11 disaster where monies were put aside for businesses.

But I would raise the question that Small Business Administration needs to be creative, and whatever mechanism needs to be reviewed, that if this money was set aside for small businesses, they certainly have the skill set that I think is more appropriate than the block grant dollars, because they can make better assessments of these small businesses. They see them all the time.

This means that the block grant entity in my district that deals with housing, trying to put people back in housing, put their lives back together, now has to set up a criteria of giving these monies to the small businesses.

Mr. QUIGLEY. I just want to understand. You are talking about disaster money being used in the form of grants for recovery from small businesses?

Ms. JACKSON LEE. The way they formulated the amount that we secured for small businesses was supported in the disaster funding.

Mr. QUIGLEY. Okay.

Ms. JACKSON LEE. And they put it under community development block grants.

Mr. QUIGLEY. And you are suggesting instead of that it should go through?

Ms. JACKSON LEE. Small Business, who said they could not do it because they are only used to loans, and they would rather not take the grant money.

And I am saying—

Mr. QUIGLEY. So they are more used to doing this sort of thing, and they know how to do it better.

Ms. JACKSON LEE. My opinion, and learn how to do it in a grant form.

Mr. QUIGLEY. Okay.

Ms. JACKSON LEE. But that was their concern, that they do not give grants. But they know how to judge small businesses, and I would think they would be a faster, more expedited process than the process putting in the block grant.

It is now done, but I raise this question—

Mr. QUIGLEY. Sure.

Ms. JACKSON LEE [continuing]. As a thought as you look at the agency.

Mr. QUIGLEY. And finally, on Harvey, your best guess the experts have on total recovery is complete to the extent it will or just do not know?

Ms. JACKSON LEE. No, we do not know. We are not complete. We are now using the disaster money. Thank you to all of the appropriators. We are just receiving it really in the last couple of months because we had a regulatory snap in terms of getting the OMB to approve the regulations that had been set by HUD.

And then we had the shutdown from January 3rd, and there was no action going forward, and so we, you know, have finally moved dollars down into the State and into the counties that need it.

But we had towns that were literally flattened by Hurricane Harvey, and so they are just coming back online. I think the housing is the greatest issue, and then, of course, the infrastructure.

Mr. QUIGLEY. Mr. Graves.

Mr. GRAVES. I just want to thank you for your valuable insights and input. It is helpful for us to hear this.

And a lot of what you have discussed we are very supportive of and have been in the past, but having members who are not on the committee come before us and to share that support is very, very helpful.

But thank you for your time today. I know you are tremendously busy as well.

Thank you.

Mr. QUIGLEY. Thanks for your years of service and your testimony today. Thank you so much.

Ms. JACKSON LEE. Thank you very much for giving us this time. [The information follows:]

**CONGRESSWOMAN SHEILA JACKSON LEE (TX-18)**

**STATEMENT BEFORE THE  
COMMITTEE ON APPROPRIATIONS  
SUBCOMMITTEE ON FINANCIAL SERVICES**

**MEMBER DAY HEARING ON  
FINANCIAL SERVICES APPROPRIATIONS ACT FOR FY2020  
WEDNESDAY, MARCH 27, 2019  
2362-B RAYBURN  
10:00 A.M.**

*Chairman Quigley, Ranking Member Graves and distinguished Members of the Subcommittee:*

- As a senior member of the Committees on the Judiciary Subcommittee and on Homeland Security, let me offer my appreciation and thanks to Chairman Quigley and Ranking Member Graves for the difficult work and choices that must be made to produce a truly bipartisan Financial Services-General Government spending bill, and for their commitment to producing a bill that fairly reflects the interests and priorities of the American people.
- Mr. Chairman, I understand that my entire statement will be made part of the record, so I will keep my remarks brief.
- In the few minutes allotted I wish to highlight the small business and general government programs which warrant the Committee's continuing attention and support.

**I. SMALL BUSINESS PROGRAMS**

**I support \$131 million for the Small Business Development Centers (SBDC)**

The SBA's Small Business Development Centers (SBDC) support 940 locations nation-wide through a vast array of technical assistance to small businesses and



aspiring entrepreneur, with coordination with Microloan Technical Assistance to help business get started.

**I support \$20 million for Women’s Business Centers (WBC) Grants**

The SBA’s Women’s Business Centers (WBC) is a national network of nearly 100 educational centers designed to assist women start and grow small businesses.

**I support \$10 million for the Boots for Business Program**

The SBA’s Boots to Business, this initiative builds on the program’s success and aims to reach an estimated 25,000 veterans across all military branches and train returning veterans on how to start their own business.

**I support robust funding for Small Business Export Trade Promotion**

The STEP program is a pilot program to increase the number of small businesses that are exporting, and to increase the value of exports for those small businesses that are currently exporting. More than 3,737 small businesses have already received assistance through the program. Many states have effectively leveraged program resources resulting in a return on investment for the majority of states of \$10 to \$1. In fact, six states had a return of investment of \$20 to \$1.

**II. GENERAL GOVERNMENT**

**I support \$1.150 billion for Federal Defender Services**

The Federal Defender Services program ensures access to counsel and other necessary defense services for those who are indigent. Fully funding the Defender Services at the Judiciary request of \$1.06 billion will help to maintain public confidence in our commitment to equal justice under the law and ensures the

successful operation of the constitutionally-based adversary system of justice by which Federal criminal laws and federally guaranteed rights are enforced.

**I support \$20 million for the Community Volunteer Assistance Income Tax Assistance**

Requesting \$20 million for Community Volunteer Income Tax Assistance matching grants. VITA is staffed by trained volunteers who provide free tax preparation services to underserved populations in all 50 states and the District of Columbia. The program helps improve working families' understanding of and access to federal tax credits, and increases tax compliance and e-filing rates.

**I support \$9.89 million for Tax Counseling for the Elderly**

Tax Counseling for the Elderly is staffed by trained volunteers who provide tax help to all taxpayers, but specialize in assisting those who are 60 years of age and older who may have questions about pensions and retirement-related issues unique to seniors.

**I support \$22 Million for the Healthy Food Financing Initiative**

The Healthy Food Financing Initiative provides loan and grant financing to attract grocery stores and other fresh food retailers to underserved urban, suburban, and rural areas, and renovate and expand existing stores so they can provide the healthy foods that communities want and need.

**I support \$100 million for the Drug Free Communities Program**

The Drug Free Community Program is a proven and cost-effective way to prevent youth drug abuse. DFC-funded coalitions are community-based, data-driven, and require a dollar-for-dollar match. DFC-funded coalitions have reduced

marijuana, alcohol, and tobacco use to levels lower than the national average at statistically significant rates.

**I support \$1.9 million for Harry S Truman Scholarship Foundation**

This request will help fund the Truman Scholarship Foundation, a living memorial to President Harry S. Truman. The Foundation Scholarship program encourages exceptional young men and women to pursue careers in public service. Celebrating its 41st anniversary, the program has seen over 3,000 Truman Scholars go on to serve in Presidential administrations, as Members of Congress, in federal agencies, as judges and law clerks, and as leaders in a variety of private and nonprofit organizations.

**CONCLUSION**

Mr. Chairman, I thank you and the Ranking Member for your leadership and for extending me this opportunity to share my major priorities with the Subcommittee.

Mr. QUIGLEY. Thank you.

I believe that concludes our witness list for today. We appreciate all of those involved and those who testified.

This meeting is adjourned.

WEDNESDAY, MARCH 27, 2019.

## **TESTIMONY OF INTERESTED INDIVIDUALS AND ORGANIZATIONS**

Mr. QUIGLEY. Good afternoon. This public witness hearing will come to order. We are pleased to welcome you all to the Public Witness Hearing Day. I believe the appropriation process benefits tremendously from direct civic engagement and input from stakeholders such as yourselves.

Our public witnesses represent a wide array of backgrounds and expertise, the important issues covered in the FSGG bill. These testimonies help us assess the effectiveness and impact of our work here in Congress, and analyze the best way to serve our constituents and the country.

Many of the programs and agencies in this bill have a direct impact on the lives and communities of Americans. The testimony each of you shares with us today stands to expand this committee's perspective as we strive to be responsible stewards of the American tax dollar.

With that, I welcome all of our witnesses to the subcommittee, and remind them to please limit their remarks to five minutes.

The ranking member, Mr. Graves.

Mr. GRAVES. Thank you, Mr. Chairman. Thank you for holding this Public Witness Hearing. It is great to have the opportunity to hear from the American people who come before our committee and share with us what your priorities are. As the representative body here and being a reflection of the voices of our districts and constituencies, it is good to have folks here.

So Mr. Chairman, thanks for doing this, and I am happy to yield back. And I look forward to the hearing.

Mr. QUIGLEY. Thank you. Our first witness is General Arthur T. Dean, Chairman and CEO, the Community Anti-Drug Coalition of America. Please step forward.

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WEDNESDAY, MARCH 27, 2019.

## **COMMUNITY ANTI-DRUG COALITIONS OF AMERICA**

### **WITNESS**

**GENERAL ARTHUR T. DEAN, CHAIRMAN AND CEO, COMMUNITY ANTI-DRUG COALITIONS OF AMERICA (CADCA)**

Mr. DEAN. Chairman Quigley, Ranking Member Graves, and other distinguished members of the Finance Services and General Government Appropriations Subcommittee, I thank you for the opportunity to testify before you to day on behalf of Community Anti-Drug Coalitions of America, CADCA, which is a national association composed of more than 5,000 community coalitions nationwide.

I have had the honor and the opportunity to serve as CADCA's CEO and board chair for the last 20 years. CADCA strongly supports the funding of the DFC program in 2020 at the highest possible level, at a minimum of \$100 million in fiscal year 2020, which was the final appropriation that the program had in 2019. And CADCA strongly supports that you let the DFC program and the HIDTA program remain intact in the Office of National Drug Control Policy, ONDCP.

We also ask that you include a minimum of \$2 million to continue the National Community Anti-Drug Coalition Institute, known as the institute, which provides all the specialized training and required training and technical assistance for the DFC program.

Additionally, CADCA opposes the President's fiscal year 2020 request to dramatically reduce the salaries and the expenses in the Office of National Drug Control Policy. We believe that the proposal will weaken these vital programs and significantly impact ONDCP's ability to carry out their mission in an effective and efficient manner.

The DFC program is a tremendous program is a tremendous example of how a very small investment of Federal funds can achieve a major impact at the community level. DFC's coalitions are only provided up to \$125,000 a year, and they must provide a dollar-for-dollar match, cash or in-kind, for every Federal dollar received.

They must reduce youth substance use through the involvement of the required 12 sectors in the community that must be a part of their coalition. In addition, all year one coalitions are required to go through a yearlong training, and that training is provided by CADCA's institute and provides them the necessary training they need to be successful.

ONDCP policy-level oversight has directly caused the DFC program to obtain exceptional positive results in reducing rates of all substance use for youth. I know from both my experience traveling the country as well as the national evaluation of this program that significant results have been obtained throughout the country. Just some quick examples.

Chairman Quigley, in your district, the DuPage County Prevention Team in your district is a great example of a successful coalition. The leadership there, after four years of receiving DFC funding and receiving the required yearlong training from the institute, has obtained the following results I would like to share with you very quickly.

Past 30-day use reductions in 12th grades from 2014 to 2018: Binge drinking decreased at a rate of 28 percent. Alcohol use decreased at a rate of 13.3 percent. Perception drug use/misuse decreased at a rate of 40 percent.

Ranking Member Graves, I want to talk quickly about Floyd Against Drugs, the DFC-funded coalition in your district working in Rome, has also achieved some outstanding results as well. In a very short period of time—I am only talking about a one-year span, from 2016 to 2017—they have reduced past-month marijuana use at a rate of 20.6 percent, alcohol use at a rate of 17.1 percent.

And quickly, the final example I want to share with you is a county in Kentucky called Carter County. In the early 2000s, some

local school and faith-based leaders noticed that prescription drug abuse had skyrocketed, and that it had infiltrated into the school system. They developed a coalition. They obtained a grant. They were trained by CADCA. And this is what happened as a result of that.

They reduced 30-day prescription drug use/misuse rates for 8th graders, 10th graders, and 12th graders. The 10th graders' 30-day prevalence decreased from 12 percent in 2006 to 1 percent in 2016. At the same time, college and career readiness scores rose from 23 percent in 2010 to 76.5 percent, and graduation rates rose from 81 percent in that county to 98.8.

I submit to you that the Drug-Free Communities Program is truly the backbone of a successful community-based substance use prevention. Therefore, we at CADCA strongly recommend that you keep DFC and HIDTA in ONDCP, and you fund them at the highest possible level in 2020. And I thank you for the opportunity to share this information with you, and stand ready to answer any questions you might have.

[The information follows:]

Written Testimony of General Arthur T. Dean, Major General U.S. Army Retired, Chairman and  
CEO of Community and Anti-Drug Coalitions of America (CADCA)

Before the House Financial Services and General Government Appropriations Subcommittee

Title of Hearing: Public Witness Hearing for the Financial Services and General Government  
Appropriations Subcommittee

Date: March 27<sup>th</sup>, 2019

Location: 2362-A Rayburn House Office Building



Written Testimony of  
General Arthur T. Dean, Major General, US Army, Retired  
Chairman and CEO  
Community Anti-Drug Coalitions of America (CADCA)

Chairman Quigley, Ranking Member Graves and other distinguished members of the Financial Services and General Government Appropriations Subcommittee, thank you for the opportunity to testify before you today on behalf of Community Anti-Drug Coalitions of America (CADCA) and our more than 5,000 coalition members nationwide. CADCA's mission is to strengthen the capacity of community coalitions to create and maintain safe, healthy and drug-free communities globally. We are the leading organization dedicated to improving the community-based infrastructure of substance use prevention in the world. I have had the honor of being CADCA's CEO and Board Chair for over 20 years and during this time have seen firsthand the impact of community coalitions generally, and the Drug Free Communities (DFC) program specifically, in reducing population level rates of youth substance use in the communities where they operate. CADCA strongly supports funding the DFC program in FY 2020, at the highest possible level. At a minimum, DFC should be funded at a level of \$100 million, the final FY 2019 appropriated level, and remain intact in the Office of National Drug Control Policy (ONDCP). We also ask that you include a minimum of \$2 million, from within the total amount appropriated for the DFC program, to continue the National Community Anti-Drug Coalition Institute, (the Institute), which provides all the specialized and required training and technical assistance for the DFC program.

CADCA is very concerned about the President's Fiscal Year 2020 request to dramatically cut ONDCP through a combination of reducing salaries and expenses and removing its two critical programs, DFC and the High Intensity Drug Trafficking Area (HIDTA). As part of this proposal the DFC program would be moved to SAMHSA's Center for Substance Abuse Prevention (CSAP) and funded out of CSAP's existing substance use prevention budget, resulting in a cut to other critical substance abuse prevention programs of \$61 million. Similarly, the HIDTA program is proposed to be moved to the Drug Enforcement Administration and cut by \$21 million below its FY 2019 appropriated level. Not only would this proposal drastically weaken these vitally important programs, it would significantly impact ONDCP's ability to effectively carry out its mission. ONDCP oversees federal efforts to combat every drug problem facing our nation, to include the opioid overdose epidemic, methamphetamines, synthetic drugs, cocaine, marijuana etc., by coordinating all federal agencies responsible for helping to address the drug issues facing our nation across both supply and demand reduction programs, policies and funding. No other agency has the unique responsibility to coordinate efforts across the entire federal government to execute a shared drug strategy. Cutting ONDCP's budget would significantly harm the effectiveness of a coordinated response to the drug crises now facing our nation. CADCA strongly opposes any attempts to cut ONDCP as well as to move the DFC and HIDTA programs out of ONDCP, as direct White House leadership is critically important to successfully address the multifaceted drug issues facing our nation.

CADCA is proud to have been involved as a partner with Congress in developing the original DFC authorizing legislation as well as all the DFC program's reauthorizations, including

the most recent one that was included in the SUPPORT for Patients and Communities Act, as part of ONDCP's reauthorization, that passed into law at the end of the last Congress.

The DFC program, housed in ONDCP, is the only federal prevention program that goes directly to communities to specifically tackle their local drug issues. It promotes comprehensive substance use prevention strategies and has helped communities across the nation build the capacity to respond to and address local drug crises as they arise. It is because of this program that communities across the nation, including those in the epicenter of the opioid epidemic, in places like Carter County, Kentucky have been able to achieve significant reductions in opioid use and misuse as well as secondary outcomes in increased high school graduation rates and college and career readiness scores.

The DFC program is structured to ensure effectiveness, outcomes, and sustainability. It requires a community to demonstrate local commitment before becoming eligible to receive federal funds. This includes participation from at least 12 sectors in the community. All grantees are required to provide a dollar-for-dollar match in non-federal funds, up to the maximum grant amount of \$125,000 per year. The required emphasis on local data collection, community buy-in and participation among multiple sectors is central to DFC coalitions' success. This emphasis also allows DFC coalitions to respond effectively at the local level to emerging drug trends such as prescription drug misuse, heroin, meth, K2, spice, bath salts, and other synthetic drugs, as well as misuse of over the counter drugs.

The DFC program has been a central, bi-partisan component of our nation's demand reduction strategy since its passage in 1998. What makes the DFC program so unique is that the funding goes directly to local communities and offers maximum flexibility to respond to needs that are specific to each community. It is for this reason that DFC recipients can shift their attention to issues as they arise – whether it be the opioid epidemic, underage drinking, juuling, or notable spikes in the use of other illicit and prescription drugs. In short, the DFC program provides a successful long-term solution for tackling substance use and misuse in our country.

The DFC program is also a tremendous example of how a very small investment of federal funds can inspire a great deal of concerted, coordinated and steadfast efforts at the community level. As mentioned previously, DFC coalitions are only provided up to \$125,000 a year and must provide a dollar-for-dollar match (cash or in-kind) for every federal dollar received. They must have significant community-wide involvement to reduce youth drug, underage drinking and tobacco use through the involvement of twelve required sectors (e.g., schools, law enforcement, youths, parents, businesses, media, youth serving organizations, faith-based organizations, health care providers and civic and volunteer organizations, and other relevant community departments, sectors and participants). In addition, all year 1 grantees are required to go through a yearlong training Academy, coordinated by the National Community Anti-Drug Coalition Institute – a grant to CACDA - that provides state of the art, customized training and technical assistance for the DFC program. This training is invaluable because it gives all DFC coalition grantees access to the best, latest available knowledge, tools and strategies to comprehensively plan, implement and evaluate their efforts and outcomes over time. The National Community Anti-Drug Coalition Institute helps maximize the success of DFC grantees in achieving and documenting population level reductions in youth drug use.

The DFC program warrants, at a minimum, stable funding of \$100 million in FY 2020 because it has proven effective in reducing youth substance use, including misuse of prescription drugs. The program reduces drug use through building multi-sector coalitions to plan, implement and evaluate a comprehensive set of strategies specifically tailored to each community's locally

identified needs. Currently, 731 communities across the nation have Drug Free Communities Coalitions that provide support to 2.4 million middle school students and 3.3 million high school students across the nation.

ONDCP has exercised its policy level oversight on the DFC program to ensure that it remains exclusively focused on reducing youth substance use. It has managed the DFC program to be optimally effective and data driven by establishing one set of core metrics for the entire program. Every grantee must collect and submit outcomes to the national evaluators for the program, every two years, for at least 3 grades from 6th to 12th grade. ONDCP has also designed, managed and funded ICF to conduct the robust independent evaluation of the DFC program and has ensured that the focus of the DFC program has stayed true to the mission of substance use prevention for 12 to 17-year olds.

The national evaluation for the DFC program has had stunningly positive results. According to independent research (ICF International, National Evaluation of the Drug-Free Communities Support Program, June 2018 Report), in DFC community coalition grantees, funded in the FY 2016 cohort, rates of past 30-day drug use among middle school students for alcohol, tobacco, marijuana and prescription drugs declined by 33.9 percent, 37.9 percent, 14.9 percent and 7.4 percent respectively. Among high school students in these DFC-funded communities, rates for alcohol, tobacco, marijuana and prescription drugs declined by 24.5 percent, 39.2 percent, 8.8 percent and 18 percent respectively. These outcomes are due to both ONDCP's consistent, high level leadership and commitment in managing the policy level and national evaluation components of the program as well as the training and technical assistance all the grantees get from the Institute. The synergistic combination of ONDCP leadership working with the Institute, has ensured that data collection and analysis have been fully funded and prioritized as a core component of the program so that coalition grantees are all trained to collect, evaluate and report on their local data. This is what enables the DFC program to show both national level outcomes for the entire program, as well as local outcomes for every grantee.

I know, from the national evaluation of the DFC program as well as visiting Drug Free Communities grantees across the country, that this program is making a real difference in lowering population levels of youth substance use in diverse communities throughout the nation. Although the local outcomes from this program are too numerous to include in detail in my testimony today, I would like to take a few minutes to highlight some of the significant results that have been achieved by Drug Free Communities grantees.

Chairman Quigley, a great example of the types of significant outcomes from this program can be seen in your congressional district. The DuPage County Prevention Leadership Team after four years of DFC funding and receiving the yearlong training from the National Community Anti-Drug Coalition Institute has had the following outstanding outcomes for 12<sup>th</sup> graders: past 30-day use for binge drinking decreased at a rate of 28% from 25% in 2014 to 18% in 2018, past 30-day use of alcohol decreased at a rate of 13.3% from 45% to 39% in 2018, and past 30-day misuse of prescription drugs decreased at a rate of 40% from 5% in 2014 to 3% in 2018.

Ranking Member Graves, Floyd Against Drugs, the DFC funded coalition in your District working in Rome, has also had great success in a very short time in reducing middle and high alcohol, marijuana and prescription drug misuse from 2016 to 2017. The reductions experienced in high school youth include a decrease at a rate of 17.1% from 15.2% in 2016 to 12.6% in 2017 of past 30-day use of alcohol, a decrease at a rate of 7% from 4.3% in 2016 to 4% in 2017 for past 30-day use of tobacco, a decrease at a rate of 20.6% from 8.7% in 2016 to 6.9%

in 2017 for past 30-day use of marijuana, and a decrease at a rate of 13.8% from 8.7% in 2016 to 7.5% in 2017 for past 30-day use of prescription drugs.

The final example I would like to share today is that of Carter County, Kentucky. In the early 2000's, some local school and faith-based leaders of Carter County noticed that prescription drug abuse had skyrocketed in their community and that it had infiltrated into the school system. High school students were documented as having extremely high levels of 30-day prescription drug misuse as well as very poor educational attainment related to it. This was in the early 2000's, before the opioid epidemic was widely covered or even recognized as an issue. Carter county was truly in the epicenter of the epidemic.

After developing a multi-sector coalition, acquiring a DFC grant and being trained by the Institute's required yearlong Coalition Academy, the Carter County Drug Free Coalition went to work to strategically and comprehensively address every local condition that contributed to their community's opioid epidemic. Through their comprehensive multi- sector, multiple strategy efforts the Carter County Drug Free Coalition was able to substantially reduce 30-day prescription drug misuse rates for 8<sup>th</sup>, 10<sup>th</sup> and 12<sup>th</sup> grade students. For instance, among 10th graders, they documented a reduction in 30-day prevalence from 12% in 2006, which was exponentially higher than national averages down to 1% in 2016, which is exponentially lower than national averages. While they markedly reduced their youth drug use rates, college and career readiness scores rose from 23% in 2010 to 76.5% in 2016 and graduation rates for Carter County schools rose from 81.34% in 2011 to 98.8% in 2015.

All of these impressive results from around the nation, have been achieved by community coalitions through the implementation of an array of programs and strategies specifically crafted to meet each community's individual issues, needs and problems.

The Drug Free Communities program is truly the backbone of successful community-based substance use prevention in the nation. The program needs to be fully funded, at a minimum of last year's appropriated level of \$100 million, to include \$2 million from within the total amount appropriated for the Institute and must remain intact in ONDCP in order to be optimally effective.

In order to continue achieving its goals, we believe the DFC program needs to remain in ONDCP where both the national and local level data collection and evaluation efforts for the program have always been fully managed. The DFC program has proven to be an extremely cost-effective use of federal dollars to achieve very impressive and documented outcomes in reducing youth substance use in funded communities, including those hardest hit by the opioid epidemic. CADCA strongly recommends that you maintain the existing funding structure for the DFC program, within ONDCP, which has produced measurably positive results among 12 to 17-year-old youth in funded communities. We also recommend that ONDCP's budget be maintained at its FY 2019 appropriated level of \$18.4 million and that the HIDTA program remain intact and fully funded as well.

Thank you for the opportunity to testify today. I am happy to answer any questions you may have.

Mr. QUIGLEY. I will start with Ranking Member Graves.

Mr. GRAVES. Thank you, Mr. Chairman.

General Dean, thanks for being here, and for your commitment to safer, healthier communities, and for your investment in young folks' lives.

Mr. DEAN. Thank you.

Mr. GRAVES. I know you have served in so many different capacities throughout your careers. But that is probably one of your greatest accomplishments, I imagine, as you have looked back and you recite some of these statistics.

So thank you for that. Thank you for, as the chairman pointed out to me, your involvement in the Atlanta community and the Boy Scouts there.

Mr. DEAN. That's correct.

Mr. GRAVES. So you have done great work. Thank you. Thanks for being here today. No questions.

Mr. DEAN. My pleasure. Thank you very much.

Mr. QUIGLEY. I want to join the Ranking Member in thanking you for your service for the U.S. Army, the United States of America, and working to keep our communities drug-free. We are proud of what you are doing.

We will do our best in this appropriation bills to appropriately fund the programs that you talked about. Your testimony is an additional boost to our efforts in understanding these issues and promoting them and doing the best we can. So thank you so much for your service. We appreciate your having been here today.

Mr. DEAN. Well, thank you for the opportunity. And it has been my pleasure. Thank you.

Mr. QUIGLEY. Thank you.

Our next witness is Daniel Schuman, Policy Director, Demand Progress. Welcome back.

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WEDNESDAY, MARCH 27, 2019.

## **FEDERAL SPENDING TRANSPARENCY**

### **WITNESS**

#### **DANIEL SCHUMAN, POLICY DIRECTOR, DEMAND PROGRESS**

Mr. SCHUMAN. It is a pleasure to be back. Mr. Chairman, Mr. Ranking Member, Representative Torres, thank you for the opportunity to testify. I am here to discuss Federal spending transparency, which I know is always of interest to this committee.

But I actually wanted to start first by commending the committee for providing the public with this opportunity to testify. Public witness testimony provides an additional measure of transparency and accountability as Congress conducts oversight of the Executive Branch.

Chairman Quigley, I know that transparency is a watchword for you, and I know for Congressman Graves there can be no doubt of his dedication to making Congress work better. I would like to thank you both for that.

Let me briefly turn and outline an issue that would bring improved transparency and accountability to Federal spending. Each

year Federal agencies submit plain English explaining to Congress concerning their request for appropriated funds.

Unlike other budget documents, these congressional budget justifications use language that most people can actually understand, and they describe in useful detail each agency's programs and activities so you can actually get a sense of what they intend to do.

The Office of Management and Budget approves the contents of these congressional budget justifications because they are submitted to Congress, and OMB also requires agencies to publish them online within two weeks of submission.

While this process seemingly would provide for transparency and accountability, unfortunately it does not. My colleague Amelia Strauss and I looked at 456 agencies to see whether they published their congressional budget justifications online.

We found that 21 percent of them did not publish these justifications online. In addition, 6.1 percent of these agencies published a justification online for 2018 or for 2019, but not for both.

Now, OMB does not release the list of all of the agencies that must make congressional budget justifications. We do not know if our survey of all 456 agencies counted the right agencies. But it seems likely that the agencies that published only one year's justification failed to meet their obligations. And it is also likely that there are a lot of missing justifications.

Now, right now there is no way to know which agencies must publish their congressional budget justifications, and there is no easy way to know where they can be found. This impedes both your ability and our ability to understand how agencies intend to spend these funds.

We suggest a straightforward approach to addressing both of these problems: OMB, which already approves all Executive Branch congressional budget justifications, should publish all of them on OMB's website, right alongside all the other budget information that they already publish. This is not a new idea; in fact, it is probably familiar to members of this committee because you encouraged OMB to publish the congressional budget justifications on their website in your report language accompanying the 2018 and 2019 appropriations bills.

And, Mr. Quigley, I remember back in 2014 when you asked the then-OMB administrator about this issue as well, and at the time, she was not able to give you a satisfactory answer, which is why I am back before you again on this topic.

So what we respectfully urge the committee to do is to require OMB to publish all congressional budget justifications on their website. Requiring OMB to publish all the justifications in one place would make it easier for congressional staff and for the public to find these documents. It would be an important step towards improving transparency and accountability around Federal spending.

Now, we submitted draft legislative language in our written testimony. We hope that you will consider it. And I am very appreciative of your making the time for me to come and testify today. So thank you.

[The information follows:]

**Daniel Schuman, Policy Director, Demand Progress Action**  
**Written Testimony Submitted to the**  
**House Appropriations Financial Services and General Government Subcommittee**  
**Concerning the FY 2020 Appropriations Bill**

Dear Chairman Quigley, Ranking Member Graves, and members of the committee:

Thank you for the opportunity to submit this testimony regarding the FY 2020 Financial Services and General Government Appropriations bill. Our request singularly focuses on transparency regarding Congressional Budget Justifications, which are overseen by the Office of Management and Budget, a component of the Executive Office of the President.

Congressional Budget Justifications (CBJs) provide a plain-language explanation of how an agency has spent money and how it intends to spend appropriated funds during the upcoming year. The CBJs are essential to understanding agency activities, but they can be hard to locate.

In March, we released a report examining public access to Congressional Budget Justifications across 456 federal agencies for FY 2018 and FY 2019.<sup>1</sup> As there is no central website containing the reports, we examined each agency's website to evaluate public availability. Our key finding:

**21 percent of the 456 agencies we surveyed did not publish a CBJ.** This is in addition to the 6.1 percent that published only one CBJ for 2018 and 2019, which suggests they were required to publish a CBJ online but failed to do so. We do not know how many agencies were required to publish a CBJ, or whether their CBJ might be aggregated under another agency that did not publish its CBJ. Unfortunately, OMB does not release a list of agencies that must publish these budget justifications.

The Office of Management and Budget publishes a significant amount of budgetary information on its website, including the president's budget, the analytical perspectives, the budget appendix, historical tables, supplemental materials, fact sheets, and so on.<sup>2</sup> In addition, the OMB has the authority to control the format of the CBJs and to review the contents of executive branch CBJs prior to their submission to Congress.<sup>3</sup> OMB requires

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<sup>1</sup> "Feds lag in Publishing Funding Requests," Demand Progress (March 11, 2019), available at <https://firstbranchforecast.com/2019/03/11/feds-lag-in-publishing-funding-requests/>

<sup>2</sup> <https://www.whitehouse.gov/omb/budget/>

<sup>3</sup> See OMB Circular A-11 section 22.6(c).

reach agency to publish their CBJ on that agency's website. And yet, OMB has not yet exercised its authority to publish agency CBJs on OMB's website. (Nor did OMB publish its own CBJ online, whether independently or as part of the Executive Office of the President CBJ.)

Nevertheless, the House Appropriations Financial Services and General Government subcommittee included language in its FY 2018<sup>4</sup> and FY 2019<sup>5</sup> committee reports requesting that OMB publish agency CBJs on OMB's website. To date, OMB has not complied.

Accordingly, we urge the committee to *require* OMB to publish all Congressional Budget Justifications that it reviews on OMB's website within two weeks of their submission to Congress. This mirrors the language in OMB Circular A-11, in which OMB requires agencies to publish CBJs on their respective websites within two weeks of submission to Congress.

We recommend the following language be included for the Executive Office of the President in the section concerning the Office of Management and Budget:

*Consolidated Public Access to Agency Congressional Budget Justifications:* Within two weeks of agency transmittal of a Congressional Budget Justification to Congress, the Director of OMB shall publish that agency's Congressional Budget Justification on OMB's website as part of a permanent online archive of all agency Congressional Budget Justifications that are in a consistent searchable, sortable, and machine readable format.

We thank the committee for its steadfast commitment to encouraging OMB to publish agency CBJs online on a central website. Government transparency is essential to our democracy, and the CBJ's provide an unusually clear window into agency plans and a tool for holding them accountable. We thank you for considering our request.

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<sup>4</sup> See p. 31, H. Rpt 115-234, "Financial Services and General Government Appropriations Bill, 2018," available at <https://www.congress.gov/115/crpt/hrpt234/CRPT-115hrpt234.pdf>. "Online Budget Repository.—The Committee encourages OMB to develop a central online repository where all Federal agency budgets and their respective justifications are publicly available in a consistent searchable, sortable, and machine readable format."

<sup>5</sup> See p. 27, H. Rpt 115-792, "Financial Services and General Government Appropriations Bill, 2019," available at <https://www.congress.gov/115/crpt/hrpt792/CRPT-115hrpt792.pdf>. "Online Budget Repository.—The Committee encourages OMB to develop a central online repository where all Federal agency budgets and their respective justifications are publicly available in a consistent searchable, sortable, and machine readable format."



Mr. QUIGLEY. Thank you for being here. Is there another way this could be done besides putting it on there if the statutes dictate it? In a perfect world, the justifications would be where?

Mr. SCHUMAN. On a central website. So either OMB can publish it alongside all the other budget information they already publish—because they publish the actual budgeting; they publish statistics; there is a whole slew of materials they have on their website. Ideally, this would be right alongside that.

If you cannot publish it there, the next best place would probably be to give it to GPO since GPO acts as a repository of all Federal documents and that would be a reasonable place for it to exist. Appropriators could do this themselves, like Congress itself could have a website where you do this type of work. But it would be harder to do.

OMB is already telling the agencies to publish them online on their websites, and to go through a process to make sure that what is published is appropriate. And OMB already has the final documents. Since they already have it all, it makes sense, at least from my perspective, for them to publish it themselves.

Mr. QUIGLEY. And that is why I asked the question. Thank you. Mr. Amodei.

Mr. AMODEI. Thanks, Mr. Chairman.

Daniel, if I heard your testimony correct, which we will find out in a second here, is it already a requirement that this be available? Did you say that?

Mr. SCHUMAN. Yes. That's right. OMB requires all of the agencies to publish the congressional budget justifications on their websites within two weeks of submitting them to Congress. So they are already required to be publicly available. Ironically, OMB is one of the agencies that does not publish its own congressional budget justification online, which is kind of an interesting fact.

Mr. AMODEI. Thank you for putting it delicately. I yield back. [Laughter.]

Mr. QUIGLEY. Thank you so much for being here, sir. We appreciate your work.

Mr. SCHUMAN. My pleasure. Thank you.

Mr. QUIGLEY. Sure. Take care.

Our next witness is Rachel Weintraub, Legislative Director and General Counsel, Consumer Federation of America.

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WEDNESDAY, MARCH 27, 2019.

## **CONSUMER FEDERATION OF AMERICA**

### **WITNESS**

**RACHEL WEINTRAUB, LEGISLATIVE DIRECTOR AND GENERAL COUNSEL, CONSUMER FEDERATION OF AMERICA**

Ms. WEINTRAUB. Chairman Quigley and Representative Amodei, I am Rachel Weintraub, legislative director and general counsel for Consumer Federation of America. CFA is an association of nearly 300 nonprofit consumer organizations across the United States that was founded in 1968 to advance the consumer interests through education, advocacy, and research.

CFA very much appreciates the opportunity to testify before you today, and today I will focus primarily on the Consumer Product Safety Commission, the Consumer Financial Protection Bureau, and the Securities and Exchange Commission.

CFA strongly urges the House Appropriations Subcommittee on Financial Services and General Government to significantly increase funding for the U.S. Consumer Product Safety Commission in fiscal year 2020, and to reject the include of any policy riders that would undermine essential protections for consumers.

The CPSC has a critical mission to protect the public from risks associated with consumer products, but its funding and staffing levels are insufficient to carry out the work necessary to fulfill this mission. The scope of work is enormous. The CPSC reviews about 8,000 unintentional product-related death certificates each year, and is aware of at least 15.5 million emergency department-treated injuries per year associated with consumer products.

In addition, the societal costs of consumer product incidents amount to more than \$1 trillion annually. We urge you to significantly increase the CPSC's funding above the fiscal year 2019 enacted level of \$127 million.

CPSC's budget is less than its first budget in 1974, when Congress appropriated \$175 million in today's dollars, accounting for inflation. The agency then had 786 full-time employees and now has 539 during the current fiscal year. CPSC's budget also falls short of the general authorization of appropriations, as pathed in the bipartisan Consumer Product Safety Improvement Act of 2008.

Under this language, the appropriations level for CPSC in 2014 was authorized to over \$136 million. Unfortunately, the fiscal year 2020 level of \$127 million is obviously \$9 million less than that authorization for the CPSC five years earlier.

In Appendix A of the CPSC's fiscal year 2020 performance budget request to Congress, a list of unfunded priorities previously submitted by the commission was included. This list includes pay inflation, non-pay inflation, expansion of data analysis including exposure surveys and market scans; urgent care centers' pilot programs; e-commerce, retail reporting; IT systems; and security, including incremental systems modernization, which includes an important consumer reporting disburse, SaferProducts.gov; IT security, and Virginia Graeme Baker Pool and Spa Safety Act grant program.

The total cost of these unfunded priorities totals \$8 million. But the commission needs significantly more resources to conduct research and finalize rulemaking to address emerging and documented hazards, and establish necessary mandatory standards for chronic and acute hazards associated with consumer products.

The Consumer Financial Protection Bureau has proven itself to be a transparent, deliberative, and data-driven agency. The CFPB has worked closely with consumers and the financial services industry to develop sensible safeguards against harmful and discriminatory products and practices, has returned \$12.4 billion in relief to more than 31 million harmed consumers, and the agency's authority, structure, and independent funding must be preserved.

The CFPB's independent rulemaking authority should not be limited by establishing an unprecedented congressional review and

approval authority over CFPB rulemakings. This agency is critical to protecting consumers in the financial marketplace, and we oppose policy riders that have been proposed in the past that limit the CFPB's ability to fulfill its consumer protection mission.

The Securities and Exchange Commission, which is tasked with overseeing our Nation's capital markets, has had a growing workload in recent years but has not been provided sufficient resources to keep pace with that workload.

This is particularly the case with regard to investment advisor oversight. In addition, funding long-term capital investments and information technology poses a significant challenge for the agency, which could and should be addressed by retaining the SEC's reserve fund.

According to the SEC, its reserve fund has been critically important in their efforts to keep pace with the rapid technology advancements occurring in their regulatory areas as well as meeting the challenges of cybersecurity. Without access to these funds and the ability to make technology upgrades, however, the SEC will be at a continued disadvantage relative to industry. Constantly struggling to detect wrongdoing will ultimately hinder the agency's ability to protect investors foster market integrity, and promote capital formation.

Thank you very much for your consideration.

[The information follows:]



## Consumer Federation of America

Testimony of Rachel Weintraub, Legislative Director and General Counsel

Consumer Federation of America

Before the Financial Services and General Government Subcommittee

Public Witness Hearing

March 27, 2019

I am Rachel Weintraub, Legislative Director and General Counsel for Consumer Federation of America (CFA). CFA is an association of nearly 300 nonprofit consumer organizations across the United States that was founded in 1968 to advance the consumer interest through education, advocacy, and research.

CFA very much appreciates the opportunity to testify before you today. As a consumer organization we work on a broad array of consumer issues and work to strengthen our nation's consumer protection safety net. Today, I will focus on the Consumer Product Safety Commission, the Consumer Financial Protection Bureau, and the Securities and Exchange Commission.

### **Consumer Product Safety Commission**

As an organization working to enhance product safety and prevent needless deaths and injuries, CFA strongly urges the House Appropriations Subcommittee on Financial Services and General Government to significantly increase funding for the U.S. Consumer Product Safety Commission (CPSC) in FY 2020 and to reject the inclusion of any policy riders that would undermine essential protections for consumers. The CPSC has a critical mission to protect the public from risks associated with consumer products, but its funding and staffing levels are insufficient to carry out the work necessary to fulfill this mission. The scope of work is enormous: for example, the CPSC reviews about 8,000 unintentional product-related death certificates each year, and is aware of at least 15.5 million emergency department-treated injuries per year associated with—if not necessarily caused by—consumer products.<sup>1</sup> In addition, the societal costs of consumer product incidents amount to more than \$1 trillion annually.<sup>2</sup> We urge you to significantly increase the CPSC's funding above the FY 2019 enacted level of \$127 million.

<sup>1</sup> U.S. Consumer Product Safety Commission, "2016 Annual Report to the President and Congress," at 6 and 11, available online at [https://www.cpsc.gov/s3fs-public/CPSC\\_FY16\\_Annual\\_Report.pdf](https://www.cpsc.gov/s3fs-public/CPSC_FY16_Annual_Report.pdf).

<sup>2</sup> U.S. Consumer Product Safety Commission, "Fiscal Year 2019 Performance Budget Request to Congress," available online at <https://cpsc.gov/s3fs-public/FY2019PBR.pdf>.

Established by Congress in 1972, the CPSC is charged with protecting the public from hazards associated with over 15,000 different types of consumer products. Its statutes give the Commission the authority to set mandatory safety standards; participate in voluntary safety standards; require labeling; remove defective products from the shelves and order product recalls and other corrective actions when necessary; collect injury, death, and incident data; and educate the public about consumer product safety.

In 1974, the first full year that the CPSC was operating, Congress appropriated \$34.7 million, which would be about \$175 million in today's dollars, accounting for inflation, and 786 FTEs to the agency. CPSC's staffing levels rose to a high of 978 employees in 1980 before facing severe and repeated cuts during the 1980s. The CPSC has 539 FTEs during this current fiscal year.

In July 2008, the bipartisan Consumer Product Safety Improvement Act (CPSIA) of 2008 overwhelmingly passed the House of Representatives by a vote of 424-1 and the Senate by a vote of 89-3. Section 201 of the CPSIA added a "General Authorization of Appropriations" to the CPSC's original statute due to the critical importance of ensuring that the CPSC has the resources to fulfill its product safety mission. Under this language, codified at section 32 of the Consumer Product Safety Act (15 U.S.C. 2081), the appropriations level for the CPSC in 2014 was authorized to be \$136,409,000. Unfortunately, the FY 2020 level of \$127 million is \$9 million less than that authorization for the CPSC four years earlier. We are concerned that the CPSC's FY 2020 Budget Request includes 539 FTEs, the same as 2019, and down from 552 in FY 2017. This proposed budget does not allow the CPSC to maintain its current workforce nor the workload needed to sufficiently protect the public.

In CPSC's Fiscal Year 2020 Performance Budget Request to Congress from this month, the CPSC included that the "CPSC, like all federal agencies, operates in a constrained fiscal environment. Unfortunately, the CPSC's funding level has been insufficient to keep pace with the evolving consumer product marketplace and staying abreast of issues such as e-commerce, analysis of expanding data streams, and modernization of data analysis tools. Specifically, the agency has had insufficient funding to meet its rising payroll costs to maintain staff at prior years' levels and also maintain the necessary IT systems, product analysis, and rent escalation costs. Consequently, the agency has made a number of unsustainable trade-offs, reallocating funding from capital investments and product analysis to cover rising payroll costs. Even with these shifts in funding, the agency cannot sustain the necessary workforce levels because payroll costs continue to move incrementally higher."<sup>3</sup>

In Appendix A of the CPSC's Fiscal Year 2020 Performance Budget Request, a list of unfunded priorities previously submitted by the Commission was included. This list includes: pay inflation; non-pay inflation; expansion of data analysis including exposure

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<sup>3</sup> U.S. Consumer Product Safety Commission Fiscal Year 2020 Performance Budget Request to Congress, March 2019, available online at [https://www.cpsc.gov/s3fs-public/FY%202020%20Congressional%20Justification.pdf?2rDJohfEbN6lAgu5l\\_kLtcV3W1W\\_JNqo](https://www.cpsc.gov/s3fs-public/FY%202020%20Congressional%20Justification.pdf?2rDJohfEbN6lAgu5l_kLtcV3W1W_JNqo), page 7.

surveys and market scans, urgent care centers pilot, e-commerce, and retailer reporting; IT systems and security including incremental systems modernization, which includes SaferProducts.gov, and IT security; and Virginia Graeme Baker Pool and Spa Safety Act (VGB Act) Grant Program.<sup>4</sup> The total costs of these unfunded priorities totals \$8 million, but the Commission needs significantly more resources to conduct research and finalize rulemaking to address emerging and documented hazards, and establish necessary mandatory standards for chronic and acute hazards associated with consumer products.

Consumers depend on the CPSC to protect them from unsafe products. We urge you to provide the agency with significantly more funding and oppose efforts to limit, through policy riders, the CPSC's authority or its activities supporting consumer product safety.

### **Consumer Financial Protection Bureau**

The Consumer Financial Protection Bureau has proven itself to be a transparent, deliberative, and data-driven agency. The CFPB has worked closely with consumers and the financial services industry to develop sensible safeguards against harmful and discriminatory products and practices. The CFPB has returned \$12.4 billion in relief to more than 31 million harmed consumers.<sup>5</sup> The CFPB's authority and structure should be preserved. It is essential that the CFPB's independent funding be preserved as well. The CFPB should not be singled out as the only banking regulator without independent funding.

The CFPB's independent rulemaking authority should not be limited by establishing an unprecedented Congressional review and approval authority over CFPB rulemakings. This agency is critical to protecting consumers in the financial marketplace and we oppose ideological policy riders that have been proposed in the past that limit the CFPB's ability to fulfill its consumer protection mission.

### **Securities and Exchange Commission**

The Securities and Exchange Commission (SEC) which is tasked with overseeing our nation's capital markets, has had a growing workload in recent years, but has not been provided sufficient resources to keep pace with that workload. This is particularly the case with regard to investment adviser oversight. In addition, funding long-term capital investments in information technology poses a significant challenge for the agency, which could and should be addressed by retaining the SEC's Reserve Fund. According to the SEC, its Reserve Fund has been "critically important in [their] efforts to keep pace with the rapid technology advancements occurring in [their] regulatory areas as well as meeting the challenges of cybersecurity." <https://www.sec.gov/files/secfy18congbudgetjust.pdf> Without access to these funds and the ability to make technology upgrades, however, the SEC will be at a continued disadvantage relative to industry. Constantly struggling to detect wrongdoing will ultimately hinder the agency's ability to protect investors, foster market integrity and promote capital formation.

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<sup>4</sup> Ibid at Appendix A, page 43.

<sup>5</sup> CFPB, Standing up for you, <http://bit.ly/2tNs4Lu> Data updated on 6/12/2018.

Mr. QUIGLEY. Thank you. I appreciate your—we appreciate your testimony.

Focusing on just the Consumer Product Safety Commission for a moment, I understand the areas that you are talking about of unfunded priorities. Has your research detailed the type of workers they have lost that they need most or are short of?

Ms. WEINTRAUB. There is definitely—

Mr. QUIGLEY. Researchers and—

Ms. WEINTRAUB. I think it is across the entire staff. And there has definitely been a discussion of a brain drain of knowledgeable, experienced staffers who are leaving, and I really think it is across their substantive areas.

Mr. QUIGLEY. And to the extent that you are aware, to what extent do they use outside experts to analyze the information they are dealing with?

Ms. WEINTRAUB. I think it really depends on their board and what money they have to contract with others. It does happen, but depends on the issue and the financial appropriation to that particular issue.

Mr. QUIGLEY. I appreciate that.

Mr. Amodei.

Mr. AMODEI. Thank you, Mr. Chair. I yield back. Oh, Mr. Chairman—and by the way, thanks for pronouncing my last name better than I usually do. [Laughter.]

Ms. WEINTRAUB. I listened very carefully. Thank you.

Mr. QUIGLEY. Our next witness is Kel McClanahan, Executive Director of the National Security Counselors.

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WEDNESDAY, MARCH 27, 2019.

## NATIONAL SECURITY COUNSELORS

### WITNESS

**KEL McCLANAHAN, EXECUTIVE DIRECTOR, NATIONAL SECURITY COUNSELORS**

Mr. McCLANAHAN. Thank you for having me here. My firm, NSC, is a public interest law firm that deals primarily in information and privacy law and Federal employment law, especially when it pertains to the intelligence community. I am here with two relatively narrow asks pertaining to what should be noncontroversial ideas: Transparency litigation should be transparent, and Inspectors General should be independent.

On the first issue, I will not explain how the Freedom of Information Act litigation works in any great detail because I presume everyone here is familiar with the process. I am here instead to talk about the exception to the rule. Simply put, sometimes an agency tells a judge that it cannot prove its case publicly. In those cases, it attempts to file a declaration *ex parte* and *in camera* so that only the judge can read it and not the other parties.

There is a time and place for this, but this is greatly abused and judges almost never deny it. In fact, in my research, I have only been able to identify three instances since 1994 where a judge denied one of these motions. In the worst cases, all that the request receives is a statement from the agency saying that FOIA is good

and FOIA should yield the relief of documents. And then something like the in camera declaration submitted with this motion will explain the rest.

In one such case, the judge ruled not only that FBI's in camera declaration was proper, but that the requester, my client, did not even deserve a chance to file an opposition brief because: "The evidence presented in camera was so conclusive as to the questions presented that further briefing and argument was clearly unnecessary."

Bizarrely, the judge also observed that the unredacted declaration is the quintessence of bureaucratic obfuscation, and that he thought of George Orwell "while attempting to decipher its meaning." Nevertheless, despite this indictment, he ruled in the FBI's favor.

A preliminary analysis of publicly available FOIA court dockets since 1994 shows that these filings have steadily increased over 350 percent in the past 27 years. And yet, as noted before, I could only find three instances of judges denying them.

Additionally, my personal experience has shown that agencies are increasingly including information in these declarations that does not need to be kept secret, as evidenced by the fact that I have been able to get redacted versions through my own FOIA requests.

Many of these filings are historically important and newsworthy. For instance, I obtained a declaration which had been sealed since 1982 which provided information about the NSA's ability to intercept records about the Kennedy assassination.

But historians and reporters should not have to rely on someone like me, who has nothing better to do than chase after these records. These records, which often pertain to information later released through FOIA, should automatically become public after a certain time period.

But I am not here to ask for that. Right now we just need data on the problem. So our ask is simple. Please appropriate sufficient funds to the Administrative Office of the U.S. Courts to discount a comprehensive survey of all such in camera declarations in the last 10 years or so. Find out how many there are and in what circumstances they are filed, and anything else relevant to the issue.

And also specify that using this information, the administrative office should conduct a feasibility study for a process in which all such declarations would automatically be filed in the public record after five years or so unless the agency convinces a court at the time that they warrant continued secrecy by the automatic declassification review process for classified documents.

The second issue is pretty simple. Inspectors General are supposed to be independent, they are often not. This problem often arises in the context of IT and information access. When an IG's office relies upon the agency's IT infrastructure, it creates vulnerabilities and conflicts of interest.

Consider Dan Meyer, the former head of whistleblower protection at the Intelligence Community Inspector General. CIA intercepted his emails to and from Senator Grassley for the simple reason that the ICIG uses CIA email servers, and CIA claims the right to read anything on a CIA computer "for counterintelligence purposes." As a result, and operational office of CIA is given virtually unlimited



access to the confidential whistleblower files of the Inspector General charged with its oversight.

Contrast this DHS and GSA. DHS OIG possesses its own dedicated IT staff and has established numerous firewalls and protocols to ensure that its files cannot be access by non-OIG personnel. The GSA OIG even has a separate domain, GSAIG.gov.

Same as before, the ask is simple. Congressman Connolly is already working with the council—can I continue?

Mr. QUIGLEY. Yes.

Mr. MCCLANAHAN [continuing]. Is already working with the Council of the Inspectors General on Integrity and Efficiency to attempt to survey OIGs to understand whether DHS and GSA are the norm or if more OIGs are captured like CIA and the ICIG.

But they need support. So we are asking you to appropriate sufficient funds to allow them to do this, and more importantly, to prohibit the use of appropriated funds by any agency to obstruct or refuse to cooperate with this survey. Thank you.

[The information follows:]

Kel McClanahan, Executive Director  
National Security Counselors<sup>1</sup>  
Testimony Before the House of Representatives  
Financial Services and General Government Appropriations Subcommittee  
27 March 2019

Chairman Quigley, Ranking Member Graves, and members of the Financial Services and General Government Appropriations subcommittee, thank you for the opportunity to speak with you today.

I come before you today to discuss two separate areas where we believe that Congressional action is needed to address subtle issues which nonetheless have significant deleterious effects for transparency and accountability. The first subject pertains to agencies' expansive use of secret filings in Freedom of Information Act ("FOIA") cases and the resulting inability of journalists, academics, and members of the public to access these court filings years or even decades later. The second subject pertains to the problems posed when agency Inspectors General rely on the information technology and information access resources of the agencies they oversee.

*In Camera* FOIA Declarations

FOIA cases are somewhat unique in civil litigation, due to the fact that the agency being sued must demonstrate through admissible evidence that information must be withheld from disclosure without disclosing the information in question. Agencies generally do so by submitting sworn declarations from FOIA officers which "must prove that each document that falls within the class requested either has been produced, is unidentifiable, or is wholly exempt from the Act's inspection requirements."<sup>2</sup> These declarations "must be 'relatively detailed' and nonconclusory,"<sup>3</sup> but "would not have to contain factual descriptions that if made public would compromise the secret nature of the information."<sup>4</sup> In some cases, an agency will assert that it cannot meet its burden on the public record, and in such cases it generally attempts to file a declaration *in camera* and *ex parte* so that only the judge—and not the plaintiff or their attorney—sees it. This mechanism is an imperfect compromise at best, but it is increasingly overused and abused by agencies with the passive acquiescence of judges, who cite the presumption of good faith that they must afford to agency declarations and virtually never refuse to accept such filings.

**It is not unheard of for a judge to grant summary judgment to an agency solely on the basis of an *in camera* declaration, in which the agency kept from public view not only the facts which would support its case but even the legal arguments.** In such cases, the actual legal brief for the agency's motion includes little more than boilerplate language about the burden of proof and the proper conduct of FOIA litigation, and then refers the judge to the *in camera* declaration for all the relevant analysis. In one such case, the judge found not only that the

<sup>1</sup> Joined by the Government Accountability Project and the Project on Government Oversight.

<sup>2</sup> *Nat'l Cable Television Ass'n v. FCC*, 479 F.2d 183, 186 (D.C. Cir. 1973).

<sup>3</sup> *Goland v. CIA*, 607 F.2d 339, 350 (D.C. Cir. 1978).

<sup>4</sup> *Vaughn v. Rosen*, 484 F.2d 820, 826-27 (D.C. Cir. 1973).

declaration filed *in camera* by the Federal Bureau of Investigation (“FBI”) was proper, but that **the plaintiff did not even deserve a chance to file an opposition brief because “the evidence presented *in camera* was so conclusive as to the questions presented that further briefing and argument was clearly unnecessary.”**<sup>5</sup> Bizarrely, that same judge had the following to say about this purportedly incontrovertible proof:

Nonetheless, the court must state that **Hardy’s unredacted declaration is the quintessence of bureaucratic obfuscation.** While attempting to decipher its meaning, I recalled one of Orwell’s observations when confronted with such writing:

As soon as certain topics are raised, the concrete melts into the abstract and no one seems able to think of turns of speech that are not hackneyed; prose consists less and less of words chosen for the sake of their meaning, and more and more of phrases tacked together like the sections of a prefabricated henhouse.

George Orwell, “Politics and the English Language,” in *A Collection of Essays* 162, 165 (Anchor Books 1954). Which begs the question, why did the government resort to hackwork here? Orwell again:

The inflated style is itself a kind of euphemism. A mass of Latin words falls upon the facts like soft snow, blurring the outlines and covering up all the details. The great enemy of clear language is insincerity. **When there is a gap between one’s real and one’s declared aims, [the writer] turns, as it were, instinctively to long words and exhausted idioms, like a cuttlefish squirting out ink.**<sup>6</sup>

My research has determined that the number of such filings has shown a slow increase over time, from approximately 15 instances in 1994 to the high-water mark of approximately 56 in 2017.<sup>7</sup> **I was only able to identify three instances of a judge denying an agency’s request to file an *in camera* declaration since 1993.** My personal litigation experience has suggested an increase in the expansiveness of agencies’ claims that information must remain secret. **I have in fact received redacted versions of such declarations through FOIA or similar means that the agency insisted could not be filed on the public record.** Some of the newly released information has been mundane, and some has been of significant historical importance. For example, in the landmark FOIA case *Weberman v. NSA*, the National Security Agency (“NSA”) argued that it could neither confirm nor deny the existence of records about a telegram that Jack Ruby was alleged to have sent to Havana the year before the assassination of President Kennedy.<sup>8</sup> The district court and the 2nd Circuit granted summary judgment to NSA on the basis of an *in camera* classified declaration, and it was not publicly revealed whether NSA had

<sup>5</sup> *Truthout v. DOJ*, 20 F. Supp. 3d 760, 770 (E.D. Cal. 2014).

<sup>6</sup> *Id.* at 768-69.

<sup>7</sup> This research was performed by searching court dockets from 1993-2018 for the term “in camera” and then parsing out the appropriate entries. These dockets were provided by the Transactional Records Access Clearinghouse’s FOIA Project. The degree to which these dockets accurately reflect court filings during this time period cannot be ascertained at this time, and so these figures may not represent the totality of the practice. Detailed information about this analysis and my bases for making any other claim in this testimony is available upon request.

<sup>8</sup> 668 F.2d 676, 677 (2d Cir. 1982).

intercepted such a telegram. However, in 2011, I obtained a redacted version of the classified declaration from NSA, which revealed for the first time that NSA had not intercepted the alleged telegram because it had lacked the technical capacity at the time.<sup>9</sup> **This was historically important information which would never have seen the light of day but for my efforts.**

It is for these reasons that I bring this issue to the Subcommittee's attention. It is arguably beyond the jurisdiction of this subcommittee, or even of the Appropriations Committee as a whole, to make a significant change to the way in which *in camera* declarations are handled in FOIA cases, but such an effort should not be undertaken without hard data. It will be important for legislators to understand how prevalent this practice truly is and under what circumstances these filings are made by agencies and accepted by courts. To this end, **I ask that the Subcommittee appropriate sufficient funds to the Administrative Office for U.S. Courts to conduct a comprehensive survey of all *in camera* agency declarations filed in FOIA cases within the past 10 years (or another reasonable time period),** specifically for the purpose of: 1) identifying with certainty the number of such filings; 2) identifying any geographic or temporal trends; 3) specifying whether the agency sought leave for the filings or simply filed them without asking; 4) indicating the depth of the court's discussion of the appropriateness of the *in camera* filings; 5) indicating the nature of the claims being supported by the *in camera* filings; and 6) providing any other relevant data.

**I also ask the Subcommittee to appropriate sufficient funds to the Administrative Office to perform a feasibility study for a process in which all agency declarations filed *in camera* in FOIA cases would automatically be filed on the public record after 5 years (or another reasonable time period).** This study would allow Congress to intelligently decide whether it would be appropriate to legislate such a proposal, so that these important court records would ultimately become accessible to journalists, academics, and the general public without relying on individual persons to pursue their release as I did. **If any type of sealed court filings should be presumptively open after a period of time, it would most assuredly be filings made in litigation over government transparency.**

#### Practical Independence of Inspectors General

Offices of agency Inspectors General are designed to be legally unique entities within the government because their purpose is to conduct audits and investigations of agency operations.<sup>10</sup> However, even though these offices retain *legal* independence from the agencies they oversee, in many cases they are still *practically* compromised. This problem primarily arises in the context of information technology and information access.

**When an Inspector General's office relies upon the agency's IT infrastructure, it creates vulnerabilities and conflicts of interest.** For example, one need only consider the case of Daniel Meyer, formerly the Director of Whistleblowing and Source Protection for the Intelligence Community Inspector General ("ICIG"). Mr. Meyer exchanged emails about confidential whistleblower disclosures with Senator Grassley's office, and the Central

<sup>9</sup> I obtained this record by filing a Mandatory Declassification Review ("MDR") request with the NSA pursuant to Executive Order 13,526. MDR is a different mechanism than FOIA which is limited to classified documents.

<sup>10</sup> Inspector General Act of 1978, Pub. L. No. 95-452 (Oct. 12, 1978), 5 U.S.C. app. 3.

Intelligence Agency (“CIA”) intercepted and reviewed those emails, allegedly for security reasons.<sup>11</sup> **CIA was able to do this because the ICIG, even though it is housed in the Office of the Director of National Intelligence and exercises oversight over the entire Intelligence Community, uses CIA email servers.** ICIG employees have email accounts on the ucia.gov domain (the domain used by CIA employees), and as a result CIA claims the right to review any information stored therein, arguing that the fact that the information is stored on a CIA computer brings it within the scope of CIA’s counterintelligence mission. As a result, an operational office of CIA is given virtually unlimited access to the confidential whistleblower files of the Inspector General charged with its oversight. Moreover, there appear to be little restrictions on CIA’s use of this information; Mr. Meyer’s emails were then given to the CIA OIG, which itself falls under the ICIG’s oversight jurisdiction.

This arrangement stands in stark contrast to the relationship between the Department of Homeland Security and its Inspector General. In that case, the DHS OIG possesses its own dedicated IT staff and has established numerous firewalls and protocols to ensure that its files cannot be accessed by non-OIG staff. The General Services Administration (“GSA”) OIG has a separate domain of its own: gsaig.gov. However, it is currently unknown whether DHS and GSA represent the norm, or whether CIA does.

A similar issue can be seen with respect to the control of access to information. For example, **it creates an unavoidable conflict of interest for an agency’s security office to make adjudications about security clearances or other access to information restrictions (e.g., public trust suitability determinations) about employees who might be in a position to investigate the security office.** While a total duplication of effort would likely be wasteful, it is reasonable to expect a truly independent Inspector General’s office to have its own personnel security staff to handle its own personnel security issues such as access determinations, to avoid this conflict. Such a dedicated staff could share resources and coordinate with the agency’s security office, but decisions about what access to grant to OIG employees would need to be made by OIG security staff, just as Inspectors General are required by law to obtain and maintain legal counsel separate from agency counsel.

Because the extent of these problematic relationships is currently unknown, **I ask the Subcommittee to appropriate sufficient funds to allow the Council of the Inspectors General on Integrity and Efficiency (“CIGIE”) to conduct a comprehensive survey of all Inspectors General to determine the extent to which their offices are entangled with the agencies they oversee in an IT and information access context. In recognition of the tension between CIGIE and several agency Inspectors General, I also ask the Subcommittee to prohibit the use of appropriated funds by any agency to obstruct or refuse to cooperate with this survey.**

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<sup>11</sup> Charles Clark, *Grassley Wins Declassification of CIA Documents on Monitoring Whistleblowers*, Gov’t Exec. (Nov. 2, 2018), at <https://www.govexec.com/oversight/2018/11/grassley-wins-declassification-cia-documents-monitoring-whistleblowers/152546/>.

Mr. QUIGLEY. Thank you for your testimony and your suggestions.

Just a detail. You are talking about the fact that these should automatically become public record unless the agency can justify this. Obviously, there is a spectrum here of how important some of this is, and some of this is really important to keep public—I mean, not public. Correct? You would agree that there is some information out there that would span more than five years that is particularly important to keep classified. Correct?

Mr. MCCLANAHAN. Oh, yes, Your Honor—sorry—yes, Chairman. This is simply—right now questions like this are things that we would hope the study would—

Mr. QUIGLEY. And who do you think should complete the study?

Mr. MCCLANAHAN. I think the Administrative Office of U.S. Courts is best placed to it because they have the best accessibility to the records.

Mr. QUIGLEY. Okay. And has anyone else written on this besides yourself, or discussed these groups?

Mr. MCCLANAHAN. Well—

Mr. QUIGLEY. To the extent you are aware, if you could pass that on to the committee, we would appreciate it.

Mr. MCCLANAHAN. Certainly.

Mr. QUIGLEY. Okay. Mr. Amodei.

Mr. AMODEI. Thanks, Mr. Chairman.

When you were talking about the hearings and you referred to the judges at the first part of your testimony, were you referring to Federal district court judges or administrative law judges in the Federal system? What judges were you—or maybe both. I do not know.

Mr. MCCLANAHAN. Well, no. Administrative law judges do not generally play much of a role in FOIA cases. I was talking about Federal district court judges.

Mr. AMODEI. Okay. So the in camera examples that you have provided the committee, for an example, did those happen in a Federal district court judge's chambers?

Mr. MCCLANAHAN. Well, in a courtroom. But yes, a Federal district judge did issue the acceptance or the denial of the motion. And in most cases, actually, the agency does not even ask leave to file something in camera. It just does it. And if the judge is pressed on it they generally say, I will allow it, after the fact.

Mr. AMODEI. Okay. Thank you. Thank you, Mr. Chairman.

Mr. QUIGLEY. Thank you. Sir, thank you for your testimony. Appreciate it.

Mr. MCCLANAHAN. Thank you very much.

Mr. QUIGLEY. Our next witness is Bartlett Collins Naylor, Financial Policy Advocate, Congress Watch, Public Citizen.

It is good to be a public citizen.

WEDNESDAY, MARCH 27, 2019.

**FINANCIAL POLICY ADVOCATE, CONGRESS WATCH****WITNESS****BARTLETT COLLINS NAYLOR, FINANCIAL POLICY ADVOCATE, CONGRESS WATCH—PUBLIC CITIZEN**

Mr. NAYLOR. Mr. Chairman, Member Amodei, thank you for having me. My name is Bartlett Naylor. I am a Financial Policy Analyst for Public Citizen. We are a half-century-old group composed of about 500,000 members and supporters. I am here to urge you in two categories. One category is things not to do and one category is things that I urge you to advance on.

And one of them is that this committee has originated legislation in the past that carried riders that stifled what we think were important reforms, such as a reform to require companies under the auspices of the Securities and Exchange Commission to disclose political spending. It is an initiative that is supported by something like 1.2 million investors.

This committee has carried a rider that has stifled the IRS from drawing a bright line around what nonprofits can do in a political way. It has stifled needed reform at the Consumer Protection Agency that deals with off-road vehicle safety. We urge this committee to not carry these riders, to allow these agencies to continue in these needed areas of reform.

We also urge you to fund the various agencies under your portfolio to do the jobs that Congress has mandated them to do. Mr. Chair, you were, earlier in your tenure, overseeing some of the financial crisis response, TARP and so forth. I think it is sadly revealing that some of the statutes that you authorized regarding executive compensation have been left unattended by the regulators, in particular the Securities and Exchange Commission.

What caused the crash? Why did bankers crash the global economy? Well, they were paid to do it. Take two firms, Bear Stearns and Lehman Brothers. If you count the compensation of the top five officers of those two companies—that is 10 in all—over the eight or so years leading to the crash, they were paid \$140 million each—\$140 million each.

Both of those firms failed, one in official bankruptcy, one absorbed with Government funding into another bank. A hundred and forty million dollars to crash their companies. There are 2,000 people at J.P. Morgan that make more than a million dollars a year, and those employees are overseeing misconduct, a rap sheet that fills many pages.

Congress understood that money was the root of the problem, and it passed a number of provisions in Dodd-Frank, Title IX. Only a few of them have been implemented. The most important one have not been. 953 is a simple provision that simply asks the relationship of the board's decision to make payments to senior officers and what performance metric they are using.

J.P. Morgan spends roughly 15 pages explaining why Jamie Dimon deserves \$30 million, but nowhere is it concrete. Nowhere can an investor say, well, I can tell that if the revenue goes up by this amount or customer base grows this amount, he is going to be

paid. It is simply 15 pages of flattery. What is needed is that 953(a) and (b) are brought to the finish line.

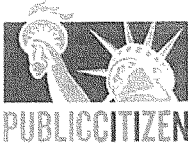
954 is a clawback. It says that if you actually have results that are based on fake results, erroneous results, that that money be clawed back, and that the policy be stated, and ideally that the public understand that. We do not understand that as the public or as shareholders.

Wells Fargo has told us they have clawed back some of the money from some of the people accountable for the misconduct, but not much of it. J.P. Morgan has explained some of the clawbacks from the London Whale perpetrators, but not much. So in other words, even shareholders, even people that own the company, of when the money is clawed back. And this is not chump change. This is something like 2 percent of corporate profits are going to senior pay.

Then finally and most seriously, 956 languishes. That is the most important provision, that says that there cannot be excessive payment for inappropriate risk-taking. This has been languishing at the SEC. Next when Chair Clayton appears before you, I would urge you to ask him what he is doing about this. Thank you.

[The information follows:]





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**Testimony  
Bartlett Collins Naylor  
Financial Policy Advocate  
Congress Watch, a division of Public Citizen  
Public Witness Hearing  
House Committee on Appropriations  
Subcommittee on Financial Services and General Government  
March 27, 2019**

Chair Quigley, Ranking Members Graves, and members of the subcommittee: On behalf of more than 500,000 members and supporters of Public Citizen, we offer the following comments on funding for federal agencies within the portfolio of the subcommittee.

My name is Bartlett Naylor. I'm the financial policy advocate for Public Citizen's Congress Watch division. Previously, I was chief of investigations for the Senate Banking Committee during the savings-and-loan crisis, director of Corporate Affairs for the Teamsters, and principal of Capital Strategies Consulting.

Our comments focus primarily on financial services, with a brief discussion of the Internal Revenue Services, the Federal Trade Commission, the Federal Elections Commission and the Consumer Product Safety Commission. Broadly, we oppose poison pill riders carried by Appropriations measures approved in the past that stifle needed reforms. We ask the subcommittee to remove these "legacy poison pill" policies, and direct the respective agencies to complete needed rulemaking, including those rules mandated by law. These comments are informed by contributions from Congress Watch colleagues Emily Peterson-Cassin, Rachel Curley, Dr. Craig Holman, Remington Gregg, and by peers from organizations with which we work in coalition.

**Financial Services**

In ordinary times, the financial sector is the pivot on which the economy balances. Financial institutions intermediate between savers and users of capital. When this exchange works fluidly, the economy grows, workers find employment and growing wages, and prosperity results in affordable nutrition, health care, housing, education, and more. In extraordinary times, such as the Wall Street crash of 2008, misconduct and poor Washington oversight of the financial sector can lead to devastation. The crash cost millions of Americans their jobs, savings and homes.

Health care deteriorated as average people suffered despair. Education suffered as municipalities faced budget constraints, or students could no longer afford tuition. In short, the decisions that this subcommittee makes are critical to ensure a sound financial sector.

Public Citizen supports appropriate funding for financial sector regulators. At the Securities and Exchange Commission (SEC), we support funding in line with the task of protecting the integrity of markets. We believe that the SEC now operates with funding well below what's necessary to make sure that firms faithfully disclose their financial results, that brokers are not exploiting their customers, and that bad actors be held to account.

In the past, this appropriations bill has carried a rider preventing the SEC from finalizing a rule that requires publicly traded companies to disclose their political spending. The absence of such a requirement deprives investors and the public of critical information on corporate political activity. In *Citizens United*, the U.S. Supreme Court decision that opened the flood gates for unlimited corporate spending in our elections, Justice Anthony Kennedy assumed that prompt internet disclosures would be the norm. However, this rider stops the type of critical disclosure regime Kennedy believed was in place from being implemented, and deprives investors and the public of critical information on corporate political activity. More than 1.2 million institutional and retail investor as well as regular Americans have petitioned the SEC to require this disclosure.

With its current funding, we believe the SEC should be able to complete rules mandated by the Dodd-Frank Wall Street Reform Act regarding executive compensation. This includes Section 953(a), regarding performance metrics; Section 954, regarding claw backs; and Section 956, regarding "inappropriate" compensation. When SEC officials appear before the subcommittee, we urge that this unfinished business be addressed.

Congress approved Section 953(a) to provide investors with a means of measuring senior management pay in the context of firm performance.<sup>1</sup> This provision derives from a troublesome trajectory of senior executive pay that absorbs increasing percentages of shareholder capital. The legal ability of a shareholder to bridle CEO pay is limited; shareholders even lack a convenient means of assessing whether management pay accords with performance. The SEC proposed a rule on April 29, 2015, but has taken no action since then.

Dodd-Frank Section 954 mandates the SEC to adopt rules requiring all publicly traded companies to adopt a claw back policy. Claw backs clearly serve the interest of shareholders. To date, however, firms have failed to police this area. Prior to 2005, only three Fortune 100 companies disclosed claw back policies.<sup>2</sup> Now, most major companies provide for a basic claw back policy. But it isn't clear that the policies are strong, nor that they are implemented.<sup>3</sup> We believe that claw back practices should be disclosed. In 2012, JP Morgan Chase clawed back

<sup>1</sup> S. Rep. No. 111-176, at 135 (Apr. 30, 2010),

[http://www.banking.senate.gov/public/ files/Committee\\_Report\\_S\\_Rept\\_111\\_176.pdf](http://www.banking.senate.gov/public/ files/Committee_Report_S_Rept_111_176.pdf).

<sup>2</sup> "Does Voluntary Adoption of Claw back Provision Improve financial Reporting Quality," by Ed DeHaan, et al, (April, 2012), available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2049442](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2049442)

<sup>3</sup> Claw backs still a Rare Breed," by Gretchen Morgenson, New York Times (December 2013), available at: [http://www.nytimes.com/2013/12/29/business/clawbacks-theyre-still-a-rare-breed.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2013/12/29/business/clawbacks-theyre-still-a-rare-breed.html?pagewanted=all&_r=0)

certain compensation from three traders involved in the so-called London Whale fraud. But the firm did not detail the amount of the claw back.<sup>4</sup> Walmart reportedly clawed back certain pay, but it was unclear if this was related to a Mexican bribery case. Even in the case of Wells Fargo, shareholders are only informed of those individuals that the firm chooses to publicize. The SEC proposed a rule July 1, 2015, but has taken no action since then.

Section 956 addresses the excessive pay that led to “inappropriate” risk-taking that led to the financial crash. Dangerous compensation plans figured at the center of the financial crash. The 10 senior executives of Bear Stearns and Lehman Brothers were paid \$1.4 billion in eight the years leading to the crash (2000-2008). That’s an average of \$140 million each.<sup>5</sup> Under this perversion, these executives were rewarded lavishly for creating failure. Congress understood the urgent need to reform this arena, and set a deadline for completion of this rule: May, 2011. Again, we ask the subcommittee to address this unfinished business with SEC officials.

### Internal Revenue Services

This Appropriations bill should not carry a rider that prevents the IRS and the U.S. Treasury Department from setting standards for 501(c)(4) political activity that clearly define what nonprofits can and cannot do in elections. Without clear guidance, nonprofits that want to spend in elections without disclosing their donors can abuse the system with impunity.

The IRS is woefully underfunded and has been for years. This underfunding losses the United States about \$18 billion per year, according to one account, and may be tens of billions of dollars higher.<sup>6</sup> Underfunding the IRS harms even parts of public life that seem tangential. For example, enforcement of the rules surrounding nonprofit political activity has nearly ceased, facilitating abuse of the rules that leads to dark money spending in our elections.<sup>7</sup> The budget should underline the importance of the IRS’s role, restore funding to pre-2011 levels.

Relatedly, though outside the IRS, this Appropriations bill must not contain a rider that blocks an Executive Order requiring government contractors to disclose their political spending. The public has the right to know whether companies are being awarded contracts because of campaign donations.

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<sup>4</sup> “Whale Claw backs About Two Years of Compensation,” by Dan Fitzpatrick, Wall Street Journal, (July 13, 2012), Available at: <http://www.wsj.com/articles/SB10001424052702303740704577524730994899406>

<sup>5</sup> Bebchuk, L., Cohen, A., Spamann, H. *The Wages of Failure: Executive Compensation at Bear Stearns and Lehman 2000–2008*. YALE JOURNAL ON REGULATION 27, 257–282

<sup>6</sup> Jesse Eisinger, How the IRS was gutted, ProPublica (Dec. 11, 2018) <https://www.propublica.org/article/how-the-irs-was-gutted>

<sup>7</sup> *Review of the Processing of Referrals Alleging Impermissible Political Activity by Tax-Exempt Organizations*, TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION (October 4, 2018) [https://www.treasury.gov/tigta/auditreports/2019reports/201910006fr.pdf?utm\\_campaign=Washington%20Snapshot&utm\\_source=hs\\_email&utm\\_medium=email&utm\\_content=66618699&\\_hsenc=p2ANqtz-9jxaIODqHpcw3Lg3ePCaLlohXo8vYpqEpbWgd3phs3nF1GaHojQYHtjprqQTTrgo2xb90oxp3u8uNaMTAb52d01Epld-KV\\_3WOXcY8MKjreMo77v4&\\_hsmi=66618699](https://www.treasury.gov/tigta/auditreports/2019reports/201910006fr.pdf?utm_campaign=Washington%20Snapshot&utm_source=hs_email&utm_medium=email&utm_content=66618699&_hsenc=p2ANqtz-9jxaIODqHpcw3Lg3ePCaLlohXo8vYpqEpbWgd3phs3nF1GaHojQYHtjprqQTTrgo2xb90oxp3u8uNaMTAb52d01Epld-KV_3WOXcY8MKjreMo77v4&_hsmi=66618699)

### Federal Trade Commission

As the subcommittee reviews needed funding for the Federal Trade Commission (FTC), we urge members to insist that FTC officials meet their obligations to contest mergers that restrain trade. Four food companies control 82 percent of meatpacking. Travelocity, Orbitz, Hotels.com are all one company. Four airlines control 80 percent of traffic. Four banks control nearly half of all consumer deposits.<sup>8</sup> These consolidations raise prices and reduce wages. We believe more robust anti-trust enforcement would serve the American economy.

### Federal Election Commission

As the subcommittee considers the Federal Election Commission (FEC) budget, we ask members to question whether commissioners will restore enforcement of donor disclosure of independent expenditures and electioneering communications in light of the recent District Court decision in *CREW v. FEC*.<sup>9</sup> In this 2018 decision, the court found that the FEC's donor disclosure requirement does not conform to the disclosure requirements established under the Federal Election Campaign Finance Act and is therefore invalid. The current FEC policy allows widespread evasion. The FEC determined that outside groups only need disclose donors who earmark their campaign contributions for an electioneering communication or independent expenditure. Since few donors earmark campaign contributions for a specific campaign use, outside campaign organizations understood they need not disclose their donors and have declined to do so – hence, the invention of “dark money.” Before the FEC relaxed its requirements, disclosure of sources of funds used for electioneering communications and independent expenditures by outside groups approached nearly 100 percent. We believe the FEC should follow federal law and require that all donors behind the funds used to pay for electioneering communications and independent expenditures be subject to disclosure – as it used to be.

### Consumer Product Safety Commission

We object to a policy rider that would delay implementation of the Consumer Product Safety Commission's (CPSC) proposed rule to set minimum safety standards for recreational off-highway vehicles (ROVs).<sup>10</sup> The CPSC's proposed rule for ROVs seeks to strengthen the voluntary standard by effectively addressing key issues that pose potential hazards to consumers, including lateral stability, vehicle handling, and occupant protection. The proposed ROV rule would address these issues to better protect the safety of all ROV riders, and must be permitted to move forward. Delaying this rule would result in further fatalities.

<sup>8</sup> Robert Reich, *Does America Have a Monopoly Problem?* SENATE JUDICIARY COMMITTEE (March 5, 2019) <https://www.judiciary.senate.gov/imo/media/doc/Reich%20Testimony.pdf>

<sup>9</sup> *CREW v. Federal Election Commission*, No. 16-259 (BAH) (D.D.C. Aug 3, 2018)

<sup>10</sup> CPSC Briefing Package. Pg. 91.

[www.cpsc.gov/Global/Newsroom/ECHA/CommissionBriefingPackages/2014/SafetyStandardforRecreationalOff-HighwayVehicles-ProposedRule.pdf](http://www.cpsc.gov/Global/Newsroom/ECHA/CommissionBriefingPackages/2014/SafetyStandardforRecreationalOff-HighwayVehicles-ProposedRule.pdf)

Mr. QUIGLEY. In your written testimony, you talked a little about the IRS?

Mr. NAYLOR. Yes. I am the former chief of investigation for the Senate Banking Committee, so I am skillful enough to say that that is an area outside my expertise and I will have to get back to you with a follow-up question on the bright lines project. My colleague, Emily Peterson-Cassin, can help you with that.

Mr. QUIGLEY. Okay. And if you could pass that information on to the committee in terms of our interests and that, and getting more input from the public. I appreciate that.

Mr. NAYLOR. Of course.

Mr. QUIGLEY. Mr. Amodei.

Mr. AMODEI. Thanks, Mr. Chairman. I yield back.

Mr. QUIGLEY. Thank you, sir, for your testimony and for your work.

Mr. NAYLOR. Thank you.

Mr. QUIGLEY. Our next witness Jacque Simon, Director of Policy, American Federation of Government Employees.

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WEDNESDAY, MARCH 27, 2019.

## **AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES**

### **WITNESS**

#### **JACQUE SIMON, DIRECTOR OF POLICY, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES**

Ms. SIMON. Thank you for the opportunity to testify. I will focus on three issues today: Federal pay, the outsourcing of Federal Government work to private contractors, and the proposed acquisition of OPM by GSA.

Federal pay is extremely important to Federal employees, for obvious reasons. But it should be important to everyone because how Federal employees are paid, as well as how much Federal employees are paid, is important to the maintenance of an apolitical civil service.

Opponents of Government and Government employees often hurl unfounded insults against the Federal pay system. They work hard to undermine trust in the numbers, and try in various ways to argue that it needs replacing. The truth is that the Federal pay system is extremely well-designed, and its only really problem is that it has never been properly funded.

Federal pay systems share two important characteristics: They are market-based, and they assign pay according to the duties and responsibilities of the job, not the characteristics of the individual who holds the job. As a result, there is very little discrimination in pay in the Federal Government.

According to the most recent study by OPM, women earn 95.6 percent of what men earn in the Federal Government, and most of this small 4.4 percent gap is explained by occupational differences. Among Federal executives, the pay equity gap——

Mr. QUIGLEY. Let me interrupt you and ask you: How does that compare to the private sector?

Ms. SIMON. I do not have data with me from the private sector, but it something like 56 percent, which is quite different.

Mr. QUIGLEY. So this better.

Ms. SIMON. It is drastically better.

Mr. QUIGLEY. I understand.

Ms. SIMON. I was going to tell you that among senior executives in the Federal Government, the pay equity gap is just 0.8 percent, even though there are far fewer women in the SES than men. But I am not here to represent SES.

The market comparability gap, however, is far larger. The most recent pay agent report, using BLS data, shows the average pay gap still 33.7 percent. Although you will hear critics say the Federal pay system is antiquated and rigid, the only antiquated thing about it is that it does not produce extreme inequality between the top and the bottom. The rigid part has no truth to it at all.

The current system was designed to close pay gaps on a local basis, and thus the law requires the Government to measure pay gaps by city and provide a two-part pay adjustment each year: a nationwide ECI adjustment and a localized adjustment. Once local gaps are closed to within 95 percent of the market, there would be no more increases in locality pay.

In the years since locality pay was enacted, little progress has been made in closing local pay gaps. That is why we are asking Congress for a 3.6 percent increase for 2020 to help raise Federal salaries so they will be a positive factor in recruitment and retention.

We ask further that the Federal workers in the skilled trades who are paid on an hourly basis receive the same adjustment as their GS coworkers, and that Congress pass legislation to align the local pay area boundaries between the two pay systems, the one for salaried and for hourly Federal workers.

Regarding the Federal Government's process and policy for outsourcing Government work, we ask that Congress extend the moratorium on the use of OMB Circular A-76. A-76 sets forth a cost comparison process for agencies to use prior to deciding whether to contract out Government work. The flaws of A-76 are quite serious and include systematic over-counting of in-house costs.

The moratorium is meant to prod OMB to address the circular's flaws. But it also requires agencies to inventory their service contracts so that these enormous costs are no longer hidden in the budget process. Since neither of these things have occurred, fiscal prudence dictates that the moratorium stay in place.

Finally, I would like to address the administration's plan to abolish OPM and merge most of its operations into GSA. OPM's policy function would go to the Executive Office the President. Both of these moves are ill-conceived and potentially dangerous.

We have seen no analysis of the impact on operations, jobs, risks, or even costs or benefits. No good rationale is apparent, but a bad one does come to mind. GSA manages office space and fleets of vehicles. The administration, in its effort to degrade the Federal workforce by turning all Federal jobs into temporary positions with low pay, no rights, and few if any benefits, seems to see its workers in the same terms as a fleet of vehicles: Lease them, abuse them, and then dispose and replace. If you think of it like that, the merger starts to make a strange kind of sense.

We believe the merger poses a danger to the apolitical civil service. Moving the policy function of OPM into the White House is a blatant attempt to politicize the Federal civil service.

The administration has questioned the political loyalties of Federal employees, and it has tried to eliminate, restrict, or otherwise undermine due process and collective bargaining rights. Abolishing the agency that has primary responsibility for upholding the merit system facilitates this agenda.

Thanks for the opportunity to testify. I would be happy to answer any questions you may have.

[The information follows:]



**STATEMENT BY**

**JACQUELINE SIMON  
POLICY DIRECTOR  
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO**

**BEFORE**

**SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT  
HOUSE COMMITTEE ON APPROPRIATIONS**

**PUBLIC WITNESS HEARING**

**March 27, 2019**

Mr. Chairman and Members of the Subcommittee: My name is Jacqueline Simon and I am the Policy Director of the American Federation of Government Employees, AFL-CIO (AFGE). On behalf of the more than 700,000 federal and District of Columbia employees represented by AFGE, I thank you for the opportunity to testify today on our union's top priorities in the appropriations process.

**Federal Pay**

Our first priority is pay. In accordance with the Federal Employees Pay Comparability Act (FEPCA), enacted in 1990, federal employees who are paid under the General Schedule are supposed to receive salaries that are 95 percent of local "market comparability" as measured using data from the Bureau of Labor Statistics (BLS). FEPCA established the local market comparability principle for federal salaries; prior to the enactment of this law, all federal employees received one nationwide annual salary adjustment.

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The language of FEPCA reads: "It is the policy of Congress that federal pay fixing for employees under the General Schedule be based on the principles that—

1. there be equal pay for substantially equal work within each local pay area;
2. within each local pay area, pay distinctions be maintained in keeping with work and performance distinctions;
3. federal pay rates be comparable with non-federal pay rates for the same levels of work within the same local pay area; and
4. any existing pay disparities between federal and non-federal employees should be completely eliminated."<sup>1</sup>

The Federal Salary Council, an advisory body created under FEPCA that includes representatives of federal employee unions and outside experts but is chaired by a political appointee, makes recommendations to the President's "Pay Agent" (a group made up of the Directors of the Office of Management and Budget and Office of Personnel Management plus the Secretary of Labor), regarding the rules for the operation of this local market comparability system. Among the issues addressed by the Federal Salary Council are the proper measurement of local pay gaps, the boundaries for local labor markets called "localities," and the allocation of the annual adjustment among localities.

FEPCA set forth a gradual schedule for closure of the pay gaps to within 95 percent of market comparability. The formula is supposed to be an annual nationwide adjustment that is one half a percentage below the BLS's Employment Cost Index (ECI) plus ten percent of the remaining pay gap each year for ten years. The ECI adjustment, which tracks changes in private sector and state and local government wages and salaries, is meant to ensure that the pay gap did not grow nationally; the locality adjustment is meant to close gaps that vary by metropolitan area. Had the schedule for closing the pay gaps put forth in law been followed, comparability would have been realized more than a decade ago in 2002. However, remaining pay gaps still average 32.71 percent taking into 2017 payments, which was the last time locality payments were adjusted.

The administration has attempted to use the Federal Salary Council advisory report to muddy the waters with regard to the measurement of the pay gap. This year's Pay Agent Report includes a description and critique of the methods used by BLS to measure locality gaps. However, try as they might, the administration was not able to find fault with the work of BLS. Indeed, BLS's detailed and rigorous regression model and its scrupulous adherence to scientific methods of calculation proved impervious. The Pay Agent's Report includes a full description of the methods employed to arrive at the average 32.71 pay gap measurement.<sup>2</sup> All that was left for the administration was a recommendation for further study.

<sup>1</sup> <https://www.law.cornell.edu/uscode/text/5/5301>

<sup>2</sup> <https://www.opm.gov/policy-data-oversight/pay-leave/pay-systems/general-schedule/pay-agent-reports/2017report.pdf>

The law has loopholes which have been utilized almost every year since FEPCA was implemented. When Congress was considering FEPCA, the initial plan was to remove the President's discretion to deviate from the law's provisions for closing the pay gaps. However, the final version of the law did give the President the authority to ignore FEPCA's gap closing schedule in the face of "national emergency or serious economic conditions." That authority has been utilized continuously since 1994. There is always a budget deficit and someone can always describe a deficit as a "serious economic condition" regardless of the actual economic conditions.

The four principles underlying FEPCA that I listed above have been under attack for several years by various politicians and contractors who advocate a different kind of pay system, usually one that gives managers broad authority to give or withhold pay adjustments on an individual-by-individual or sometimes an occupational basis.

In the course of trying to promote the false notion that BLS's measurement of the pay gap is faulty, the administration's Federal Salary Council representatives asked the BLS to recalculate the pay gap to include the cost to the federal government of providing non-salary benefits as compared to average costs for employer-provided benefits in the private sector, despite the fact that non-salary compensation has no place in a salary comparison. Further, the Federal Employees Health Benefits Program (FEHBP) and the Federal Employees Retirement System (FERS) both cost the government more than identical programs would cost a private employer or a state or local government. The reasons for this include the fact that FEHBP's private health insurance plans have used their political clout to exempt themselves from numerous cost-accounting and other cost-saving practices upon which non-federal purchasers would insist. These exemptions cost FEHBP dearly. The assets in the trust fund used to finance the FERS defined benefit are invested solely in US Treasury bonds, which have a lower rate of return than the private equities that private, state, and local pensions routinely invest in. Thus, not only is it dishonest to pretend that non-salary benefits can offset part of the gap between federal and non-federal salaries, it is dishonest to do so in a way that does not account for the dramatic structural differences between federal and non-federal employee benefit programs.

A favored line of attack against FEPCA that the administration and its supporters among the conservative think tanks and contractors utilize is to complain about across-the-board pay adjustments. In some cases, they advocate "pay for performance" along the line of the notorious National Security Personnel System (NSPS), a George W. Bush era pay scheme Congress repealed because its outcomes were undeniably discriminatory against women and racial minorities.

Another line of attack that effectively produces the same objective is to reallocate the payroll by adjusting salaries by occupation. This approach would provide much higher salaries to those already at the top of the General Schedule (GS) by denying adjustments to those toward the bottom. In short, they find the GS system has not sufficiently matched the inequality and "race to the bottom" pursued by many private firms. They contend that the regular, rank and file working and middle-class federal employees who make up the bottom

two thirds of the GS scale make too much and their bosses make too little. Their answer is to reallocate payroll so that GS-13 and above receive large annual salary increases and salaries for the lower grades be effectively frozen until the GS system looks more like WalMart's.

The federal government's pay system has many virtues, but none is more important than its proven success in avoiding pay discrimination. It is a system that bases pay solely on objective factors. Salaries are assigned to jobs, not individuals. Everyone who holds a particular job classified under the General Schedule receives roughly the same salary, with some variation on the basis of locality and experience. Whether a federal worker is black or white, young or old, male or female, Democrat or Republican, a GS-9 job pays the same amount. So-called "pay for performance" schemes or occupationally-specific schemes that vary pay on the basis of favored individual traits or occupations allow the introduction of discrimination, whether intentional or not.

The Office of Personnel Management (OPM) has produced several reports that verify this lack of discrimination.<sup>3</sup> The most recent report found the male-female pay gap had shrunk to 11 percent but most of that number was due to occupational differences. Indeed, the most striking fact is that *the average federal salary paid to women was 95.6 percent of the average federal salary paid to men; for those in the Senior Executive Service, the number was 99.2 percent*. This is testament to the strong anti-discrimination attributes of the General Schedule and in any system that introduced discretion and subjectivity, this simply would no longer hold. The failed NSPS system served as a natural experiment in allowing pay adjustments to vary by occupation and a supervisor's opinion (with political appointee approval). The discriminatory impact was stark and immediate and Congress rightly repealed authority for NSPS.

The administration has used its opposition to the structure of FEPCA as grounds for proposing to freeze federal salaries and wages for this year and next year. Congress rightly overruled the President and provided a 1.9 percent adjustment for 2019, although at this writing the administration has still not implemented the adjustment, complaining that the process of doing so was very difficult.

AFGE supports following the provisions of FEPCA. With regard to the nationwide increase based on the Employment Cost Index, the relevant nationwide measure for January 2020 is the 12-month period ending September 30, 2018, during which time the ECI rose by 3.1 percent. FEPCA provides an annual national increase of the ECI measure minus 0.5 percentage points. Thus, the January 2020 ECI adjustment should be 2.6 percent.

There are two long traditions in the modern history of federal pay adjustments. The first is for Congress to respond to a President's invocation of the "national emergency or serious economic conditions" loophole with an adjustment that adds to the ECI adjustment one percentage point of payroll for locality pay increases. The second is to provide "pay parity"

<sup>3</sup> <https://www.opm.gov/policy-data-oversight/pay-leave/reference-materials/reports/Governmentwide-Strategy-on-Advancing-Pay-Equality-in-the-Federal-Government.pdf>

between military and civilian employees of the federal government. This latter has meant parity in the amount of the annual salary adjustment.

In accordance with the tradition of ECI plus an additional percent of payroll, AFGE urges the Subcommittee to adjust the rates of basic pay for employees under the statutory pay systems for FY 2020 by 3.6 percent. This amount is also consistent with the legislation introduced by Rep. Gerry Connolly, H. R. 1073, The Fair Act,<sup>4</sup> which calls for a 3.6 percent pay adjustment for federal workers in FY 2020. At a minimum, the long-standing tradition of parity in the rate of adjustment for civilian employees and military members of the United States government should be followed for 2020.

Further, AFGE asks the Committee to include language in the FY 2020 Financial Service and General Government Appropriations bill language that would equalize the local pay area boundaries for the government's hourly and salaried workforces. The local wage area boundaries for federal blue collar workers were mostly established more than 60 years ago and reflect the location of military installations rather than local commuting areas. The localities for federal white collar workers paid under FEPCA reflect local commuting areas. This discrepancy has created terrible inequities between salaried and hourly pay at certain locations such as Tobyhanna Army Depot in Northeast Pennsylvania and Tracy Army Depot in Central California. To correct this inequity, AFGE urges the Subcommittee to appropriate resources for no more than one wage area under the Federal Wage System.

#### **Government-wide A-76 Moratorium**

OMB Circular A-76 is the federal government's policy document that sets forth the rules for conducting formal cost comparisons between in-house and contractor performance of government work. Under the terms of A-76, agencies are prohibited from contracting out work performed by federal employees without first conducting a cost competition between a "most efficient organization" of federal employees and the bid of a private contractor to perform that same work. The most recent update of Circular A-76 occurred in 1999, during the administration of George W. Bush, whose administration held that all government work that could be contracted out should be contracted out.

The George W. Bush administration required agencies to conduct numerous public-private competitions and in the vast majority of cases, the in-house "most efficient organization" won. However, these wins were very expensive. Agencies often hired private contractors to analyze operations to decide what work should be subject to competition, to compile the "most efficient organization" in-house bid, and to conduct the competition and evaluate the bids.

The most notorious A-76 competition during this era took place at Walter Reed Army Medical Center. In the years leading up to the culmination of the competition, anticipating a

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<sup>4</sup> <https://www.congress.gov/bills/116/house-bills/1073/text>

“win” by a private contractor, in-house staffing declined precipitously and as a result, maintenance of buildings came almost to a halt and wounded warriors were forced to live in dilapidated housing. It was a terrible scandal and it was the direct result of the administration’s forcing DoD to pursue contracting out through the use of a deeply flawed OMB Circular A-76. In the wake of the Walter Reed scandal and with the support of damning analysis by the DoD Inspector General, Congress passed a moratorium on the use of A-76 until its flaws were addressed.

AFGE strongly urges the Committee to maintain the prohibition on the use of OMB Circular A-76 privatization process in the Financial Services and General Government Appropriations bill. Congress established the public-private competition moratorium originally in Public Law 110-81, the National Defense Authorization Act for Fiscal Year 2008, within DoD to stop the numerous flaws and the ruinous effects of staffing shortfalls caused by A-76 competitions in various agencies. The prohibition on the use of A-76 was extended across the entire federal government in Public Law 111-8, the Omnibus Appropriations Act for FY 2009. The language of the moratorium prohibits use of the Circular’s public-private competition processes unless and until the Office of Management and Budget (OMB) corrects A-76’s flaws and agencies comply with Congress’s requirement that they compile inventories of their service contracts.

The moratorium has since been renewed annually. Congress has identified numerous Government Accountability Office (GAO) and DoD IG findings that reported A-76 savings were not substantiated and that, in fact, A-76 competitions incurred substantial unprogrammed investment costs that completely negated any claimed savings, even including the inaccurate double-counting of in-house overhead.

The defects in the A-76 process are legion. They include: the lack of contractor inventories that would allow agencies to know how many service contracts they have, what work is supposed to be performed and on what schedule, the cost of the contracts, data to verify that no inherently governmental work is being performed by contractors, and ideally, information on the cost and quality of contractor performance. These data are a pre-requisite for proper integration of service contract costs into agency budget processes. It is imperative that agencies have comprehensive and accurate contract services budgets in the same way that they have comprehensive and accurate budgets for their in-house workforces. They must also have effective enforcement processes in place in order to prevent unlawful contracting. Finally, agencies need, but do not have insourcing procedures so that when and if they find out that 1) government work has been outsourced unlawfully or improperly, or 2) that the agency is being charged far more for outsourced work than originally promised, or that 3) outsourced work is being performed poorly, they have a policy and procedure in place to allow them to bring that work back in house.

Section 325 of the Fiscal Year 2010 NDAA included Congressional findings concerning the flaws of A-76. The NDAA cited the following:

1. The double-counting of in-house overhead costs as documented by the DoD IG;
2. Failure to develop policies that ensured that in-house workforces that had won A-76 competitions were not required to re-compete under A-76 competitions a second time;
3. The reporting of cost savings that were repeatedly found by the GAO and DoD IG to be unreliable and over-stated for a variety of reasons, including:
  - a. Cost growth after a competition was completed because the so-called Most Efficient Organization and Performance Work Statements that were competed often understated the real requirement;
  - b. Military buy-back costs documented by the Government Accountability Office because A-76 competitions required a Military Department either to reduce its end strength or reprogram the funds to Operations and Maintenance accounts in order to complete the competition.
4. As a result of these flaws, DoD was required to develop comprehensive contractor inventories, improve its services contract budgets, and develop enforcement tools to prevent the contracting-out of inherently governmental functions; to ensure that personal services contracts were not being inappropriately used; and to reduce reliance on, or improve the management over high risk "closely associated with inherently governmental" contracts.

Again, none of these flaws has been addressed and the conditions laid out in the FY 2010 NDAA remain as true today as when the prohibition was originally enacted. Accordingly, the governmentwide A-76 moratorium should continue because none of the aforementioned flaws has been addressed and almost no agency has complied with contractor inventory requirements in support of comprehensive contract services budget submissions.

#### **Abolishing the Office of Personnel Management**

The Trump administration has proposed that the General Services Administration (GSA) acquire almost all of the operations of the Office of Personnel Management (OPM). Two more dissimilar agencies could hardly be found. GSA's focus is on leasing space for government offices, supplying products and contracted services to federal agencies, and providing transportation for federal employees. OPM, established as a result of the Civil Service Reform Act of 1978 to replace the Civil Service Commission, is the government's personnel department. Its focus is on administering pay, health insurance, and retirement systems for federal employees, conducting background checks, making sure that federal job classification comports with the merit system principles, and helping agencies with policies designed to recruit and retain federal employees. The administration intends to move OPM's personnel policy functions to the Executive Office of the President and everything else to GSA.

The administration made the decision to merge these two agencies without any input or involvement from affected employees. The idea appeared first in the President's Management

Agenda and was fleshed out in a relatively obscure document of the President's 2020 Budget (GSA's Congressional Justification document). Indeed, the Administration has brazenly announced its intention to effect parts of the merger proposal administratively, thus bypassing Congress. We would urge this Subcommittee to consider prohibiting any use of appropriated funds, whether directly appropriated to OPM, or appropriated to any other agency which then reimburses OPM for "services," from being used by GSA to perform any functions currently performed by OPM.

We consider this proposal to be rash, ill-conceived, and potentially dangerous. None of us has seen any kind of analysis of the rationale, the cost, or the risk. None of us has seen any kind of analysis of the impact of this acquisition on the workforce or the substantive work of OPM. No one in the OPM workforce we represent has seen any analysis; and federal employees generally, who also are likely to be adversely affected have likewise seen nothing.

One bright caution light concerns the acquisition's likely impact on the ability to retain an apolitical civil service. Moving the policy function of OPM into the White House is a clear attempt to politicize the federal civil service. The administration has questioned the political loyalties of federal employees, a workforce whose political loyalties must be entirely and completely irrelevant to their hiring and firing and work. The administration has likewise proposed numerous actions to eliminate, degrade, restrict or otherwise undermine federal employees due process rights and collective bargaining rights. It is not unreasonable to consider the ill-effects on these rights of the abolishment of the agency that has primary responsibility for upholding the merit system – the apolitical merit system.

### Conclusion

The three priorities highlighted in this testimony are interrelated. The administration's efforts with regard to pay, benefits, privatization through outsourcing and personnel management are all components of its ongoing war against the apolitical civil service. The agenda is clear: by degrading salaries, cutting benefits, reducing civil service protections and gutting collective bargaining rights, facilitating outsourcing, and all but eliminating the agency responsible for upholding the merit system, the civil service doesn't stand a chance.

An apolitical civil service is an often unappreciated but necessary pillar of democracy. An apolitical civil service only exists in so far as its pay system is completely protected from politicization and manipulation and the actual wages and salaries are adequate to recruit and retain a high quality workforce. An apolitical civil service must not be subject to constant threat of outsourcing and the public interest must be paramount in every decision to "make or buy" not only to protect against corruption, but also in the interest of fiscal prudence. Finally, an apolitical civil service requires an independent administrative body to uphold the merit system, and its function cannot be hidden away in an agency whose mission is leasing property, negotiating service contracts, and maintaining fleets of vehicles.

Thank you for the opportunity to testify today. I will be happy to answer any questions members of the Subcommittee may have.



Mr. QUIGLEY. Sure. You talked about the moratorium that is going on that OMB is handling. Are you aware of where OMB is at, analyzing this, if there seems to be any progress? Has there been anything made public about that?

Ms. SIMON. We have had very little conversation with OMB recently. And as far as I know, no progress has been made.

Mr. QUIGLEY. And how long has that been—

Ms. SIMON. Well, it was last rewritten—

Mr. QUIGLEY. How long has the moratorium been put in place, again?

Ms. SIMON. The moratorium has been in place for—

Mr. QUIGLEY. Roughly?

Ms. SIMON. Six years? Eight—six years. About six years. The last time A-76 was revamped was 1999.

Mr. QUIGLEY. Very good. Thank you.

Ms. SIMON. So these laws have been apparent since the George W. Bush administration, when it was used very heavily. And in my written statement, I talk to you about the scandal at the old Walter Reed Medical Center that occurred as a result of very, very long and expensive A-76 competition.

Mr. QUIGLEY. Thank you. Mr. Amodei.

Mr. AMODEI. I yield back.

Mr. QUIGLEY. Thank you. Thank you so much for your testimony.

Ms. SIMON. Thank you.

Our next witness is Sean Moulton, Senior Policy Analyst, Project on Government Oversight.

I am reading these resumes and there are cum laudes everywhere. I am reminded of the president of the Cook County Board once said to me—he was “thank you, Lord” getting out of college. [Laughter.]

Mr. QUIGLEY. Mr. Stroger is well remembered.

Thank you, sir, for being here.

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WEDNESDAY, MARCH 27, 2019.

## PROJECT ON GOVERNMENT OVERSIGHT

### WITNESS

**SEAN MOULTON, SENIOR POLICY ANALYST, PROJECT ON GOVERNMENT OVERSIGHT**

Mr. MOULTON. Thank you for having me. Chairman Quigley, Member Amodei, I appreciate the opportunity to testify today. I am a Senior Policy Analyst with the Project on Government Oversight, which is a nonpartisan, independent watchdog that investigates and exposes waste, corruption, and abuses of power.

I am here to talk about steps this subcommittee can take on two important issues: improving data quality for Federal spending information collected and posted under the Digital Accountability and Transparency Act, or DATA Act, and improving the public availability of work done by Inspectors General.

It is my hope that this subcommittee will require agencies with poor quality financial data to file improvement plans and regular progress report; that you will provide dedicated funding for Oversight.gov, the central repository for Inspector General reports; and

will help create best practices for posting information about those reports.

The Data Quality Act—sorry, the DATA Act was passed to significantly expand and improve the Government spending data available for public examination on USASpending.gov. While this implementation has moved forward, serious data quality problems have emerged.

Inspectors General completed audits required under the DATA Act of agency data submissions in 2017 and revealed widespread problems. POGO reviewed 41 of these audits, including nine for Cabinet-level agencies, and discovered that 25 agencies submitted significantly incomplete information and 30 agencies, about 75 percent, submitted significantly inaccurate information.

If the data cannot be relied upon, then the public and policymakers cannot use the information to draw conclusions or make good decisions. As the old saying goes, garbage in, garbage out. Given many agencies' poor starting point on data quality, we believe the subcommittee should take three steps.

First, instruct agencies whose IG audits identify significant data quality problems to file public data quality improvement plans with the Department of the Treasury, and regularly report on their progress until data quality issues are considered resolved.

Second, Treasury should report to the subcommittee on a semi-annual basis on the current data quality efforts by those agencies and recommendations for any additional steps needed.

Finally, the subcommittee should also encourage the Inspectors General to continue to audit agency implementation of the DATA Act until the agencies have sufficiently addressed any outstanding data quality issues.

The DATA Act audits are just one example of the critical work that Inspectors General produced, but not all of their work is so readily accessible to the public or even to lawmakers. In 2017, the Council of the Inspectors General on Integrity and Efficiency, or CIGIE, established Oversight.gov as a central repository for all Federal agency Inspector General reports, a major step forward for improved accountability of Inspectors General and for public accessibility of their work product.

Recently this subcommittee provided its first funding, dedicated for Oversight.gov, to CIGIE. However, this effort requires a steady funding stream to continue its operation, improve functionality, and provide expanded services. We urge you to continue to support a robust Oversight.gov by providing at least \$1 million in dedicated fiscal year 2020 funding to CIGIE.

We ask that this support be accompanied by report language that outlines some of the expectations for how best to use this funding. Congress should also request that CIGIE articulate best practices for Inspectors General on the publication and public notification of reports.

Individual IGs do not have consistent rules for reporting on and providing access to classified or unclassified but sensitive reports. Even Congress could remain unaware of a nonpublic report as there is no consistent method among IGs for how to make nonpublic reports known to Congress.

The best practices guideline from CIGIE should be modeled on current practices by the Department of Defense Inspector General, which publicly posts the topic, the title, and the report identifier for all of its classified and sensitive reports.

We have prepared suggested report language to accomplish all the goals I have mentioned, which I am happy to provide to the subcommittee. Thank you for the opportunity again to testify on these important issues, and I am happy to answer any questions.

[The information follows:]

**Testimony of Sean Moulton, Senior Policy Analyst  
Project On Government Oversight  
before the House Committee on Appropriations Subcommittee on Financial Services and  
General Government  
March 27, 2019**

Chairman Quigley, Ranking Member Graves, and Members of the Subcommittee:

I appreciate the opportunity to submit testimony about steps this Subcommittee can take on two important issues: improving data quality for federal spending information collected and posted under the Digital Accountability and Transparency Act, and improving the public availability of work done by inspectors general (IG). It is my hope that this Subcommittee will encourage increased agency action on financial data quality by requiring agencies to file publicly available improvement plans and regular progress reports; provide dedicated funding for Oversight.gov, the central repository of inspector general reports; and help create best practices for posting information about those reports.

I am a senior policy analyst for the Project On Government Oversight (POGO), where I focus my efforts on a range of government accountability initiatives. Founded in 1981, POGO is a nonpartisan independent watchdog that investigates and exposes waste, corruption, abuse of power, and when the government fails to serve the public or silences those who report wrongdoing. We champion reforms to achieve a more effective, ethical, and accountable federal government that safeguards constitutional principles. POGO has long worked to strengthen the effectiveness and accountability of federal agencies through fact-based policy analysis.

#### **Quality of DATA Act Data**

Federal agencies currently spend over \$4 trillion in taxpayer money each year.<sup>1</sup> Reliable oversight of and accountability for that spending is one of the few truly bipartisan issues. Strong bipartisan support led to the passage of the Federal Funding Accountability and Transparency Act in 2006, which launched USASpending.gov as the primary portal for federal award data.<sup>2</sup> That bipartisan support was again evident in 2014 when Congress passed the Digital Accountability and Transparency Act (DATA Act) to significantly expand and improve the government spending data available for public examination on USASpending.gov.<sup>3</sup>

But as DATA Act implementation has moved forward, serious data quality problems have emerged. Congress, recognizing the importance of data quality, included provisions requiring each agency's Office of Inspector General to audit a statistically valid sample of their agency's submitted spending data to assess completeness, timeliness, and accuracy.

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<sup>1</sup> Bureau of the Fiscal Service, "FY 2017 Financial Report of the United States Government," February 15, 2018. [https://www.fiscal.treasury.gov/files/reports-statements/financial-report/02142018-FR\(Final\).pdf](https://www.fiscal.treasury.gov/files/reports-statements/financial-report/02142018-FR(Final).pdf)

<sup>2</sup> Federal Funding Accountability and Transparency Act of 2006, Pub. L. No. 109-282, 120 Stat. 1186.

<sup>3</sup> Digital Accountability and Transparency Act of 2014, Pub. L. No. 113-101, 128 Stat. 1146 (2014).

The agency inspectors general completed the first round of audits in 2017 and revealed widespread data quality problems. POGO reviewed 41 audits, including 9 for Cabinet-level agencies, and discovered that 25 agencies submitted significantly incomplete information and 30 agencies—or about 75 percent—submitted significantly inaccurate information.<sup>4</sup> Further, a staff report on federal agency DATA Act compliance by the Senate Committee on Homeland Security and Governmental Affairs' Permanent Subcommittee on Investigations reported that the 2017 inspector general audits found that “over half of the data submitted to USAspending.gov was inaccurate.”<sup>5</sup>

Quality data is paramount to the purpose of publicly posting financial information, which is to allow greater public oversight to federal spending. If the data cannot be relied upon, then the public and policymakers cannot use the information to draw correct conclusions or make good decisions. As the old computer programing saying goes, “garbage in, garbage out.” This sentiment certainly applies to financial information. The Senate staff report concluded that USAspending.gov “does not currently fulfill its legislative mandate as a reliable source of government-wide spending.”<sup>6</sup>

Given many agencies' poor starting point on data quality, this Subcommittee should take steps to ensure that all agencies with data quality problems quickly and fully address all deficiencies in financial information posted on USAspending.gov. The Subcommittee should instruct agencies whose IG audits identify significant problems with timeliness, completeness, or accuracy to file publicly available data quality improvement plans with the Department of the Treasury. The agencies should also be required to regularly report on progress until the data quality issues are considered resolved.

Treasury should report to the Subcommittee on a semiannual basis, in a publicly accessible manner, on current data quality efforts and recommendations for any additional steps needed for full implementation of the DATA Act. These reports should describe agencies' progress toward the data accuracy, timeliness, and completeness necessary to meet the requirements of the Act, and toward addressing the issues identified in each agency's inspector general audit.

The DATA Act requires that each agency's inspector general conduct two additional data quality audits, expected in 2019 and 2021. The Subcommittee should also encourage inspectors general to continue to audit agency implementation of the DATA Act, including correction of key issues identified in previous audits, until the inspector general offices are satisfied that the agencies have sufficiently addressed outstanding issues.

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<sup>4</sup> Sean Moulton, “Government Earns Poor Grades for Spending Data Accuracy,” Project On Government Oversight, December 1, 2017, <https://www.pogo.org/analysis/2017/12/government-earns-poor-grades-for-spending-data-accuracy/>; POGO defined significant errors in timeliness, completeness and accuracy as any error rates above 10 percent reported by an agency's inspector general audit.

<sup>5</sup> Senate Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations, “Federal Agency Compliance with the DATA Act,” July 24, 2018, p. 5. [https://www.hsgac.senate.gov/imo/media/doc/2018-07-24%20PSI%20STAFF%20REPORT%20-%20DATA%20ACT%20\(UPDATED\).pdf](https://www.hsgac.senate.gov/imo/media/doc/2018-07-24%20PSI%20STAFF%20REPORT%20-%20DATA%20ACT%20(UPDATED).pdf) (Downloaded March 22, 2019) (Hereinafter Subcommittee on Investigations Report on Compliance with DATA Act)

<sup>6</sup> Subcommittee on Investigations Report on Compliance with DATA Act, p. 5.

### Inspector General Transparency

The DATA Act audits are just one example of the critical work that inspectors general produce, but not all of their work is so readily accessible to the public, or even lawmakers. In 2017, the Council of the Inspectors General on Integrity and Efficiency (CIGIE) established Oversight.gov as a central repository for all federal agency inspector general reports, a major step forward in improved accountability of the inspectors general and accessibility of their work product. Now, the public can go to one location to easily access nearly all the recent work by the 73 inspectors general, along with links to additional materials on federal oversight. Stakeholders no longer have to visit all 73 separate inspector general websites to access reports on cross-cutting government issues like information technology security or disaster response.<sup>7</sup>

Oversight.gov was established primarily through in-kind work by individual inspectors general.<sup>8</sup> Recently, this Subcommittee provided its first funding for Oversight.gov to CIGIE.<sup>9</sup> However, this effort requires a steady funding stream to continue its operations, improve its functionality, and provide expanded services. We urge you to continue your support of a robust Oversight.gov with increased functionality by providing at least \$1 million in dedicated fiscal year 2020 funding to CIGIE. We ask that this support be accompanied by report language that outlines some of the expectations for how best to use this funding. We are happy to provide suggestions for what that report language could look like.

Congress should also provide guidance to CIGIE as to the importance of Congressional and public accessibility of the work of inspectors general through publication and notification of publication of all reports through their websites, and should request that CIGIE articulate best practices for inspectors general on this topic. The Inspector General Empowerment Act already requires that all IG reports be available online within three days of being sent to the agency; however, the Act also states that reports should not be posted if doing so would contradict other statutes that prohibit disclosure, such as for those considered classified under national security statutes.<sup>10</sup> Individual IGs do not have consistent rules for reporting on and providing access to classified or unclassified but sensitive reports.<sup>11</sup> Even Congress could remain unaware of a nonpublic report, as there is no consistent method among IGs for how to make nonpublic reports known to Congress.

<sup>7</sup> Peter Tyler, "Shining a Brighter Light on the Work of Federal Watchdogs," *Government Executive*, February 13, 2019. <https://www.govexec.com/excellence/management-matters/2019/02/shining-brighter-light-work-federal-watchdogs/154828/> (Downloaded March 26, 2019) (Hereinafter Shining a Brighter Light)

<sup>8</sup> "Statement of Michael E. Horowitz, Chair, Council of the Inspectors General on Integrity and Efficiency, Inspector General, U.S. Department of Justice, before the U.S. House of Representatives Committee on Oversight and Government Reform, concerning 'Recommendations and Reforms from the Inspectors General,'" November 15, 2017, p. 5, <https://oig.justice.gov/testimony/t171115.pdf> (Downloaded March 22, 2019) (Hereinafter Horowitz Statement on Recommendations and Reforms from the Inspectors General)

<sup>9</sup> House of Representatives, "House Report 116-9 Making Further Continuing Appropriations for the Department of Homeland Security for Fiscal Year 2019, and For Other Purposes, Conference Report," February 13, 2019. <https://www.congress.gov/congressional-report/116th-congress/house-report/9> (Downloaded March 22, 2019)

<sup>10</sup> The Inspector General Act of 1978, as amended, 5 U.S.C. App. § 4.

<sup>11</sup> Shining a Brighter Light

The best practices guidance from CIGIE should be modeled on the current practices regarding classified and sensitive reports as demonstrated by the Department of Defense Inspector General, among others, which publicly posts the title, topic, and report identifier of its classified and sensitive reports. The Department of Justice and the Government Accountability Office do the same. Providing the public with this information when it is not possible to publish the full reports online gives interested parties the chance to submit a Freedom of Information Act request for the information, subject to redactions.

We have prepared suggested report language to accomplish these goals for DATA Act implementation and public accessibility of IGs' work, which we are happy to provide to the Subcommittee.

Thank you for the opportunity to submit testimony on these important issues. I am happy to answer any questions.

Mr. QUIGLEY. I appreciate your bringing up the DATA Act, a rare victory for transparency in our world. A little tip of the hat to Mr. Issa, who was involved, the transparency caucus, transparency community. And I just encourage you and others in the community, in terms of making sure as you are talking about that we move forward appropriately on this, if there are changes and additions that need to be made, that we move forward appropriately. Thank you.

Mr. Amodei.

Mr. AMODEI. Thanks, Mr. Chairman. I yield back.

Mr. QUIGLEY. Thank you so much for your testimony, sir.

Mr. MOULTON. Thank you.

Mr. QUIGLEY. Thank you. Our final witness today is Rion Dennis, Legislative Advocacy Specialist, Americans for Financial Reform. Thank you, sir.

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WEDNESDAY, MARCH 27, 2019.

## AMERICANS FOR FINANCIAL REFORM

### WITNESS

#### RION DENNIS, LEGISLATIVE AND ADVOCACY SPECIALIST, AMERICANS FOR FINANCIAL REFORM

Mr. DENNIS. Thank you, Mr. Chairman, thank you, Mr. Amodei, for the opportunity to testify before you today on behalf of Americans for Financial Reform. AFR is a coalition of more than 200 National, State, and local organizations who have come together to advocate for stronger and more effective oversight of the financial industry. Members of our coalition include consumer, civil rights, investor, retiree, community, labor, and faith-based groups.

I would like to focus my testimony on the importance of keeping poison pill policy riders out of appropriations bills. Unfortunately, our organization has had the experience of seeing destructive policy riders affecting financial stability and informative protection inserted into budget deals in conference committees or closed-door negotiations.

A particular risk in the area of financial regulation is that legislation which may seem obscure or technical to non-experts can have dramatic negative impacts on the financial system in areas ranging from investor or consumer protection to protecting the public from another financial meltdown.

This is a particular danger of managing such items of legislation through the appropriations process, where they are not fully vetted by the policy subject matter experts in committees and experts in public interest organizations that track these matters.

The most dramatic example of this in recent years was in the 2014 budget deal, when legislation was inserted that effectively eliminated the so-called swaps push-out provision in Section 716 of the Dodd-Frank Act. Section 716 placed a critical firewall between taxpayer-insured deposits and complex swaps-dealing activities of the kind that helped cause the 2008 crisis.

The Section 716 firewall would have prevented the mingling of the riskiest kinds of swaps-dealing activities and the activities of the taxpayer in insured depository banks. Such activities could still



be continued but would have to have been segregated from deposits and independently funded, a change that would have prevented big banks from benefitting from taxpayer subsidies in this segment of their business.

However, Section 716 never went into effect because it was eliminated in the appropriations process at the behest of major swaps-dealing banks such as Citigroup and J.P. Morgan, language effectively gutting this firewall that was placed into the budget deal.

Press reporting demonstrated that the language placed into the appropriations bill was actually written by Citibank lobbyists. Lobbyists had previously tried to pass this legislation through the normal process but had failed. The firestorm of negative publicity that ensued what the public realized that legislation of this significance had been placed in an appropriations back room demonstrated that they could not have succeeded without taking advantage of the appropriations back door.

Unfortunately, this kind of gaming of the appropriations process was not an isolated incident. Just last year a provision was inserted into the omnibus to benefit business development companies, which you can think of as a kind of private equity fund sold directly to retail investors.

This provision allows BDCs to double their permitted fund leverage from the current one-to-one level, one dollar of borrowed money for each dollar of investor equity, to two-to-one. BDCs are already the beneficiaries of regulatory exemptions since conventional closed-end mutual funds can only leverage one-to-two or borrow one dollar per two dollars of investor equity.

This increase in permitted leverage will boost returns to the managers of the funds, but represent a massive and unjustified expansion in risk to ordinary BDC retail investors, particularly since this fund level leaving in addition to the leverage that already exists in risky BDC portfolios.

This is not a provision that could have been passed in the light of day. In fact, the BDC provision was so unjustified on the face of it that the lobbyists were unable to insert it even into the highly deregulatory S.2155 legislation, which passed last year.

AFR considers it critical that the new leadership of this committee close that back door. It is entirely inappropriate to insert complex technical provisions that create massive benefits to industry into a must-pass appropriations process with limited, if any, debate, public visibility, and expert vetting of the public interest considerations.

In sum, we urge you to resist adding poison pill financial services policy riders in any appropriations bill or omnibus packages passed through this committee. The appropriations process should not be an opportunity for Wall Street to supercharge its insider advantages to sneak through dangerous measures that serve their narrow interests while putting the financial and economic security of the broader public at risk. Thank you.

[The information follows:]

TESTIMONY TO HOUSE APPROPRIATIONS COMMITTEE  
 Subcommittee on Financial Services & General Government  
 March 27, 2019

Chairman Quigley, Ranking Member Graves, and members of the subcommittee, thank you for the opportunity to testify before you today on behalf of Americans for Financial Reform. AFR is a coalition of more than 200 national, state and local organizations who have come together to advocate for stronger and more effective oversight of the financial industry. Members of our coalition include consumer, civil rights, investor, retiree, community, labor, and faith based groups<sup>1</sup>.

I would like to echo much of what my colleagues who have spoken before me have said about the importance of keeping poison pill policy riders out of appropriations bills. Unfortunately, I wanted to draw your attention to two such policy riders that were inserted into spending deals during conference committees or closed door negotiations. Like much of AFR's systemic risk portfolio, these two such provision, which for those who do not deal with the intricacies of financial regulation, may seem like small changes but add significant incentives for financial firms to gamble in similar ways to pre-Dodd-Frank era and could seriously disadvantage investors or lead to another financial meltdown.

One such provision in last year's omnibus allows Business Development Companies (BDCs), a type of private equity fund sold directly to retail customers, to double their permitted fund leverage from the current 1-1 level (one dollar of borrowed money for each dollar of investor equity) to 2-1. BDCs are already the beneficiary of regulatory exemptions since conventional closed-end mutual funds can only leverage 1-2, or borrow one dollar per two dollars of investor equity.

This increase in permitted leverage will boost returns to the managers of the fund but represents a massive and unjustified expansion in risk to ordinary BDC retail investors, particularly since this fund-level leverage is in addition to the leverage that already exists in risky BDC portfolio holdings. BDCs already charge much greater fees to investors than comparable investment products. This change simply serves to increase profits for private equity managers while harming ordinary investors.

Another such provision which was included in the 2014 Budget deal, allows banks to once again use insured deposits and other taxpayer subsidies and guarantees to gamble in the derivatives markets – a form of activity that was one of the drivers of the 2008 financial crisis and of the economic devastation that followed.

Under the Dodd-Frank financial reform law, bank holding companies must segregate, and independently fund, their riskiest and most exotic derivatives trading so that taxpayers no longer

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<sup>1</sup> <http://ourfinancialsecurity.org/about/our-coalition/>

need fear being left on the hook for the bets that go wrong. So buried deep in a stopgap government-funding measure, Wall Street got its way by including this measure and undoing a significant piece of Dodd-Frank.

AFR considers these poison pills riders because their only path to passage is through the appropriations process where members have many more concerns than seemingly minor changes to banking regulations. If these bills had been debated through regular order, members would recognize the danger such hastily passed reforms can pose. For these reasons, AFR urges you to resist adding poison pill financial services policy riders to any appropriations bills or omnibus packages passed through this committee that are giveaways to the biggest Wall Street banks that puts the country's financial and economic stability at risk. Thank you.

Mr. QUIGLEY. Thank you, sir. Your message is delivered. I encourage you and your organization and all others to stay involved as the process begins for another cycle. We certainly appreciate your interest.

Mr. Amodei.

Mr. AMODEI. Thanks, Mr. Chairman.

Mr. DENNIS, I hear what you are saying and it is like, well, so who is not for that? Actually, you probably have a list. But anyway—

[Laughter.]

Mr. DENNIS. I actually do.

Mr. AMODEI. In my experience, it is not like there is a huddle, with most of the members going, "Okay, how are we going to upset the policy committees?" What are we going to yank from? I mean, there is a rule against, hey, you are legislating in an appropriations bill.

So absolutely you have cited instances where, hey, guess what? They legislated in an appropriations bill. But in my experience, if you are trying to do that, somebody goes, "Hey, wait a minute." And one of the somebodies is the committee with the policy jurisdiction.

So the instances you are citing, I am assuming that either that committee did not say, time out, or the committee said time out, and leadership time in. Is that correct?

Mr. DENNIS. Exactly. Most of the—these, especially last year, that was put in during the conference committees. It was after it had passed both houses.

Mr. AMODEI. Okay. So I am not going to ask you the hard question, which is, so is that a Senate problem? Not that they watch these things so nobody will know I said it. So I guess the message is there is no cooking like home cooking, huh?

Mr. DENNIS. Well, I will say I think now, with the change of the leadership with this House, I think you all have a much stronger voice in your negotiations with the Senate. And so we are just asking that you all use that stronger voice.

Mr. AMODEI. Well, and I appreciate that. As a guy closer to the bottom end, closer to grown level, than up there wherever the planets travel, I can assure you that I had no voice with either one. But on that happy note I will yield back, Mr. Chairman.

Mr. QUIGLEY. And I appreciate that.

Sir, thank you so much for your testimony. And I want to thank everyone for their testimony today. We appreciate it. And I again encourage you to stay involved in the process and stay in touch with all of us.

Before we adjourn, I ask unanimous consent for the written testimony submitted by our witnesses who appeared today to be included in the record, and for the following additional testimonies: Number one, Consumer Reports. Two, Fix the Court. Three, National Coalition for History. Four, National Congress of American Indians. Five, National Treasury Employees Union. And finally, six, Project Management Institute.

Without objection, it shall be. Thank you so much. We are adjourned.

[The information follows:]



**Written Testimony on FY 2020 Consumer Product Safety Commission Appropriations  
Presented by William Wallace, Senior Policy Analyst, Consumer Reports**

The Honorable Mike Quigley, Chairman  
The Honorable Tom Graves, Ranking Member  
U.S. House Committee on Appropriations  
Subcommittee on Financial Services and General Government  
2000 Rayburn House Office Building  
Washington, D.C. 20515

March 26, 2019

Dear Chairman Quigley and Ranking Member Graves:

Consumer Reports, the independent, non-profit member organization,<sup>1</sup> strongly urges you and your colleagues on the House Appropriations Subcommittee on Financial Services and General Government to significantly increase funding for the U.S. Consumer Product Safety Commission (CPSC) in FY 2020 and to reject the inclusion of any policy riders that would undermine essential protections for consumers. The CPSC has a critical mission to protect the public from risks associated with consumer products, but its funding and staffing levels are insufficient to carry out the work necessary to fulfill this mission. The scope of work is enormous: for example, the CPSC reviews about 8,000 unintentional product-related death certificates each year, and is aware of at least 16 million emergency department-treated injuries per year associated with—if not necessarily caused by—consumer products.<sup>2</sup> These injuries alone cost society more than \$900 billion a year.<sup>3</sup> Accordingly, we urge you to at least double the CPSC's funding above the FY 2019 enacted level of \$127 million.

Established by Congress in 1972, the CPSC is charged with protecting the public from hazards associated with over 15,000 different types of consumer products. Its statutes give the Commission the authority to set mandatory safety standards; participate in voluntary safety standards; require labeling; remove defective products from the shelves and order product recalls and other corrective actions when necessary; collect injury, death, and incident data; and educate the public about consumer product safety.

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<sup>1</sup> Founded in 1936, Consumer Reports uses its dozens of labs, auto test center, and survey research center to rate thousands of products and services annually. CR works together with its more than 6 million members for a fairer, safer, and healthier world, and reaches nearly 20 million people each month across our print and digital media properties.

<sup>2</sup> U.S. Consumer Product Safety Commission, "2017 Annual Report to the President and Congress," at 1 and 4, available online at [www.cpsc.gov/s3fs-public/FY17-CPSC-Annual-Report.pdf](http://www.cpsc.gov/s3fs-public/FY17-CPSC-Annual-Report.pdf).

<sup>3</sup> *Id.* at 6.

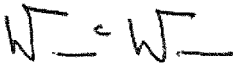
In 1974, the first full year that the CPSC was operating, Congress appropriated the equivalent of more than \$180 million in today's dollars, accounting for inflation,<sup>4</sup> and 786 FTEs to the agency. CPSC's staffing levels rose to a high of 978 employees in 1980 before facing severe and repeated cuts during the 1980s. At the time of its FY 2020 budget request, released last week, the CPSC estimates 539 FTEs under current fiscal year funding.<sup>5</sup>

The consumer product market is changing rapidly, and the CPSC must be able to keep pace. If the CPSC continues to be inadequately funded, it will be unable to protect consumers from either longstanding, well understood hazards, or those that are new or emerging.

The CPSC's budget request for FY 2020 would not allow the agency to maintain the workforce nor the workload needed to sufficiently protect the public. Consumers depend on the CPSC to protect them from unsafe products, and historically, Congress has strongly agreed that the agency should have the resources needed to do so.<sup>6</sup> We urge you to provide the agency with significantly more funding and staffing and oppose efforts to limit, through policy riders, the CPSC's authority or its activities supporting consumer safety.

We look forward to working with you to ensure that the CPSC receives sufficient funding and staffing to keep the public safe from product hazards and protect consumers from product-related deaths and injuries, many of which can be prevented.

Respectfully submitted,



William Wallace  
Senior Policy Analyst  
Consumer Reports

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<sup>4</sup> 88 Stat. 1840, reflecting the \$34,454,000 appropriated by Congress to the CPSC in Pub. L. No. 93-563 (Dec. 31, 1974) as converted from December 1974 dollars to February 2019 dollars using the Bureau of Labor Statistics Consumer Price Index Inflation Calculator (online at [data.bls.gov/cgi-bin/cpi/calc.pl](https://data.bls.gov/cgi-bin/cpi/calc.pl)).

<sup>5</sup> This total of 539 FTEs in FY 2019 is down from the 552 FTEs that were at the agency in FY 2017.

<sup>6</sup> The bipartisan Consumer Product Safety Improvement Act (CPSIA) of 2008 (Pub. L. No. 110-314) overwhelmingly passed both chambers of Congress, including a general authorization of appropriations reflecting significantly greater funding than the agency has now.

**Written Public Testimony – Financial Services and General Government Subcommittee**  
*Submitted by Gabe Roth, Fix the Court executive director, March 26, 2019*

Chairman Quigley, Ranking Member Graves and members of the Subcommittee: thank you for the opportunity to submit written testimony on the judiciary's FY2020 budget. Fix the Court, a national nonpartisan organization that advocates for greater transparency and accountability in our federal courts, is requesting four appropriations totaling \$3,100,00 that are aimed at expanding public access to the third branch and ensuring the courts have the resources they need to fulfill their mission.

Of the \$3,100,000, \$100,000 would be a direct appropriation to the Supreme Court of the United States, and \$3,000,000 would be an appropriation to the Administrative Office of the United States Courts, which would then be distributed as grants to circuit courts carrying out the programs described below.

These requests were also submitted March 12 via the online appropriations form, and they are summarized here:

1. FTC is requesting an appropriation of \$100,000 for conflict-check software to be utilized by the chambers of the justices of the Supreme Court. Over the last four years, Supreme Court justices have, on more than half a dozen occasions, missed statutory conflicts – i.e., they sat on cases from which they should have recused themselves,<sup>1</sup> either due to confusion over which stocks they owned at the time or which cases they had previously participated in.

These mistakes cause the public to doubt the integrity of the Court, which is unnecessary, since the justices make the proper decision on recusals the vast majority of the time. Conflict-check software would then make this process error-free. With all lower federal judges having been required to use conflict check software since 2007<sup>2</sup>, the highest court should be held to the same standard.

2. FTC is requesting an appropriation of \$1,000,000 for a live audio pilot program. From 2011-2015 the federal judiciary ran a cameras-in-courts pilot program in 14 federal districts that, unfortunately, was not designed to succeed: parties could easily opt out of agreeing to be recorded; judges could also opt out of recording their courtrooms; the overall video quality was lacking; and unlike the previous pilot of 1991-1994, no appellate courts were included. Nevertheless, nearly 75 percent of participating judges and attorneys said they were in favor of video recording according to a Federal Judicial Center Report<sup>3</sup>. This demonstrates a

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<sup>1</sup> "Recent Times in Which a Justice Failed to Recuse Himself or Herself Despite a Conflict of Interests," <https://fixthecourt.com/2018/11/recent-times-justice-failed-recuse-despite-clear-conflict-interest>. Retrieved March 26, 2019.

<sup>2</sup> "Every judge is required to develop a list of personal and financial interests that would require recusal, which courts use with automated conflict-checking software to identify court cases in which a judge may have a disqualifying conflict of interest," <https://www.uscourts.gov/about-federal-courts/judicial-administration/administrative-oversight-and-accountability>. Retrieved March 25, 2019.

<sup>3</sup> "Video Recording Courtroom Proceedings in United States District Courts: Report on a Pilot Project," [https://www.fjc.gov/sites/default/files/2017/Cameras%20in%20Courts%20Project%20Report%20\(2016\).pdf](https://www.fjc.gov/sites/default/files/2017/Cameras%20in%20Courts%20Project%20Report%20(2016).pdf). Retrieved March 26, 2019.

willingness from judges and practitioners to try again, and we believe that live audio presents such an opportunity.

First off, audio recording equipment already exists in every appellate courtroom in the country. Second, some appeals courts, including the D.C. Circuit and Ninth Circuit, routinely employ live audio, and other courts, such as the Fourth Circuit, have demonstrated willingness to livestream on a case-by-case basis. Court officials in these locales could assist their associates should any challenges with deployment occur.

A live audio pilot would thus be a fiscally responsible way for the judiciary to determine if this policy is an appropriate way to increase public access to federal courts nationwide.

3. FTC is requesting an appropriation of \$1,000,000 for the execution of circuit-wide judicial wellness seminars aimed at assisting judges identify and mitigate the signs of cognitive decline. According to a March 2019 report from the Administrative Office of U.S. Courts, senior judges are hearing a quarter of all federal court cases<sup>4</sup>. Though there is no reason to be concerned that any judge in particular is experiencing cognitive deterioration, that potential rises with age, as the Supreme Court itself acknowledged in a 1991 opinion written by Justice Sandra Day O'Connor: "It is an unfortunate fact of life that physical and mental capacity sometimes diminish with age" (*Gregory v. Ashcroft*, 501 U.S. 452).

Today, around half of the U.S. courts of appeals have judicial wellness committees comprising programs, both formal and informal, aimed at tackling this problem head on, from a confidential hotline for staff concerned about judges' health to circuit-wide seminars featuring neurological experts to a buddy system, where judges periodically check in with one another. We are hopeful the remaining circuits create wellness plans in short order to ensure judges at all levels can better understand the warning signs of decline.

In the meantime, we envision that this money would be set aside for grants for daylong or weekend cognitive health seminars that circuits could apply for with the AO. As long as our nation's judges have life tenure, there will be judges who will need to proactively manage the aging process and their cognitive health, and this program would assist in that endeavor.

4. FTC is requesting an appropriation of \$1,000,000 for the AO to hire additional directors of workplace relations in the circuit courts. As you are aware, there has been a mixed response at the circuit level to the June 2018 report of Judiciary Working Group on Workplace Conduct that Chief Justice Roberts established in 2017, as it was left unclear the extent to which circuits were supposed to preemptively implement the findings.

In other words, some circuits simply incorporated the Working Group's conclusions into their own conduct policies, while others have proactively created their own Judiciary Working Groups, and others still went further and hired circuit-wide directors of workplace relations.

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<sup>4</sup> "The Federal Bench – Annual Report 2018," <https://www.uscourts.gov/statistics-reports/federal-bench-annual-report-2018>. Retrieved March 25, 2019.



These active measures are positive ones that should be encouraged. Should other circuits wish to hire director of workplace relations, they should have the funding to do so.

Finally, Fix the Court would like to thank the Subcommittee for holding a public hearing on the Supreme Court budget on March 7.

This, as you know, was the first time since 2015 in which the justices testified before the Subcommittee, and we hope that this becomes an annual public event. The American people can learn a great deal from these public hearings: how the court operates, how it spends its money and, most importantly, how justices appointed by presidents of opposite parties can work together in a collegial manner.

Thank you again for the opportunity to submit comment, we look forward to working with the Subcommittee to achieve its goals.



**THE PRESIDENT'S PROPOSED FY 2020 BUDGETS FOR THE NATIONAL  
ARCHIVES AND RECORDS ADMINISTRATION (NARA) AND THE NATIONAL  
HISTORICAL PUBLICATIONS AND RECORDS COMMISSION (NHPRC)**

**Submitted by the National Coalition for History  
to the Subcommittee on Financial Services & General Government**

**Lee White, Executive Director  
(703)772-3516  
lwhite@historycoalition.org**

March 26, 2019

The Honorable Michael B. Quigley  
Chairman  
Subcommittee on Financial Services  
& General Government  
House Committee on Appropriations  
Washington, D.C. 20515

Dear Mr. Chairman:

**The Trump Administration has recommended funding of \$345.6 million for the National Archives and Records Administration (NARA) Operating Expenses in fiscal year 2020, which is a reduction of \$27.4 million from the FY 19 level of \$373 million. The National Coalition for History (NCH) urges funding at a level of \$410 million for FY 20.**

**The Trump Administration is proposing elimination of the National Historical Publications and Records Commission (NHPRC) grants program. NCH urges the subcommittee to reject this proposal and to support funding for NHPRC at a level of \$10 million.**

The National Coalition for History (NCH) is a consortium of more than 50 organizations that advocates and educates on federal legislative and regulatory issues affecting historians, archivists, political scientists, teachers, students, genealogists, and other stakeholders.

Thank you for the opportunity to submit our views on the National Archives and Records Administration's (NARA's) proposed fiscal year (FY) 2020 budget. As researchers and conservators of American history and culture, we care deeply about the programs and activities of the National Archives and the National Historical Publications and Records Commission (NHPRC).

The budget request for NARA's operating expenses in FY 20 is \$345.6 million, which is \$27.4 million less than the FY 19 level of \$373 million. By comparison NARA's budget in FY 11 was \$339 million. No government agency can absorb such significant decreases in funding without concomitant decreases in public services. Current funding levels are not adequate to serve legitimate public needs for accessibility and government accountability. American citizens rely on access to immigration and naturalization and census records (held by NARA) to conduct daily activities. Veterans and their families rely on military records (held by NARA) to gain access to their benefits. And in recent years, NARA has been forced to cut back on public services and research hours at its facilities because of lack of funding.

We understand that Congress continues to face enormous fiscal challenges in crafting the federal budget for FY 20. Although we've come to expect cuts as a result of these tight budget parameters, we are disappointed that the President has chosen to target programs at the National Archives that facilitate public access to the agency's holdings and provide citizens with the historical context to appreciate and understand our democratic heritage. Increased federal spending for archives is necessary to manage, preserve and make accessible the federal government's records.

We repeatedly hear the adage that, like all federal agencies, NARA must learn to do more with less. But the reality is that the National Archives has, in fact, been doing more with less since it gained its independence from the General Services Administration in 1985. According to NARA's 1985 annual report, the agency had 3,096 full-time equivalents (FTEs) in that year. In FY 18, NARA had just 2,787 FTEs! For too long Congress and the administrations of both parties have, unfortunately, come to treat NARA as a mere housekeeping agency—one that makes sure the Charters of Freedom are safe, that records are processed, and that records are stored in an orderly fashion so that a perceived limited universe of stakeholders can access them.

NARA has taken on the added responsibility of setting policy for and providing oversight of the government's classification system—covering 71 federal agencies—through its Information Security Oversight Office (ISOO). It has added a Freedom of Information Act ombudsman, the Office of Government Information Services. It has added a National Declassification Center to expedite the release of classified records to researchers and the public. And it has had to meet an enormous technological challenge to develop and implement an Electronic Records Archive to address the proliferation of electronic records. At the same time NARA has dealt with an exponential increase in the number of traditional archival records it has had to process.

In addition, since 1985 NARA has added five presidential libraries (for Presidents Carter, Reagan, GHW Bush, Clinton, and GW Bush). NARA is also incurring the costs associated with the development of the new "virtual" presidential library for President Obama and preparing for the presidential libraries of the future.

Finally NARA is in the throes of preparing for a December 31, 2022, deadline after which it will no longer accept transfers of permanent or temporary records in analog formats and will accept records only in electronic format and with appropriate metadata.

NARA's budget requests \$22 million to accelerate the processing and release of large volumes of high-value digital government information via mass digitization of paper records and at-risk special media records (audio, video, and motion picture records). The requested funding would provide for the design and renovation of space and related improvements to the National Archives facility in College Park, Maryland. This project would convert existing space into dedicated mass digitization space, modernized special media labs, new cold storage space, and a new storage area for archival records. We support this initiative.

NARA is significantly underfunded when compared to similar organizations supported by the federal government. In FY 19, for example Congress appropriated slightly over \$1 billion for the Smithsonian Institution and \$696 million for the Library of Congress. The National Coalition for History urges Congress to provide the National Archives and Records Administration with the additional funding it needs to serve its core mission. As Americans, we have a fundamental right to access to the records of our government. This is not a luxury that can be swept aside in the name of budget austerity.

#### **National Historical Publications and Records Commission (NHPRC)**

NHPRC is the grant-making arm of NARA. It enables the National Archives to provide leadership through grants that support exploration of major archival issues, such as preservation of electronic records, disaster preparedness, and coordination and communication among archivists nationwide. The agency also provides grants for the creation of documentary collections (books and electronic) of the papers of nationally significant individuals and institutions. As an example, NHPRC has funded an ongoing project to make the papers of the Founding Fathers available for free online.

NHPRC grants leverage state, local, institutional, foundation, and other private funding by requiring 50 percent cost sharing—that is, every federal dollar invested is matched by a dollar from another source. NHPRC grants serve as the linchpin of many projects' funding structures; without federal dollars, even long-standing projects could be terminated.

For the third year in a row, the Administration has recommended eliminating the NHPRC grants program. Thankfully Congress has rejected these proposed cuts and instead provided funding of \$6 million—which is less than half of the \$13 million provided in FY 10. This is barely adequate to support ongoing programs and implement critical new digital initiatives.

We urge the subcommittee to reject the Administration's proposal to eliminate NHPRC and instead provide funding of \$10 million for this small but important program. To provide context, the NHPRC received \$10 million twenty years ago in FY 1999.

To summarize, NARA's operating budget has remained stagnant over the last decade at a time when the transition to use of electronic records by federal agencies has increased exponentially. Despite added responsibilities, NARA today has fewer employees than it did in 1985. We ask the subcommittee to reverse these years of financial neglect for this agency that is so vital to our democracy.

Thank you for the opportunity to submit these comments.

Sincerely,

A handwritten signature in cursive script that reads "Lee White".

Lee White  
Executive Director  
National Coalition for History

**House Committee on Appropriations  
Subcommittee on Financial Services and General Government**

**Written Testimony of the National Congress of American Indians for Fiscal Year 2020  
March 26, 2019**

On behalf of the National Congress of American Indians (NCAI), the oldest, largest, and most representative American Indian and Alaska Native organization dedicated to protecting the rights of tribal governments to practice self-determination to achieve self-sufficiency, thank you for the opportunity to provide written testimony regarding Fiscal Year (FY) 2020 appropriations for economic development, workforce development, and telecommunications programs that are vital to tribal nations and their citizens. Indian Country continues to face daunting challenges – notably high rates of unemployment and poverty as well as the lack of infrastructure – which primarily stem from longstanding shortfalls in federal funding obligations and unnecessary barriers to private and philanthropic investments on tribal lands. Adequate federal funding, coupled with reduced regulatory burdens, will empower tribal nations’ efforts to develop robust, sustainable economies through increased access to capital resources, programs designed to train their workforces, and access to telecommunications infrastructure resources. NCAI supports the Subcommittee’s consideration of FY 2020 appropriations for tribal economic and workforce development programs and urges the Subcommittee to work to pass adequate funding levels for tribal nations.

**U.S. Small Business Administration**

*Fund the Small Business Administration’s (SBA) Office of Native American Affairs at a minimum of \$2 million:* SBA’s Office of Native American Affairs (ONAA) provides vital assistance to tribal nations and Native-owned businesses in navigating SBA’s business assistance, procurement-related, and lending programs. Recent FY budgets have provided SBA line-item funding of \$2 million for “Native American Outreach” to facilitate ONAA’s outreach to and coordination with tribal governments and businesses to connect them with business tools and other important resources for tribally-owned businesses and individual Native American entrepreneurs. Maintaining a \$2 million funding level for ONAA would enable the Office to continue its efforts to maximize outreach to Native people, advance successful initiatives like its tribal and business executive training, and enhance its participation in multi-agency workshops and Native supplier initiative events around the country. ONAA also can be instrumental in spurring business development with SBA loans, and initiating review of the extent to which SBA loan guarantees are used in financing business loans in Indian Country and ways to increase such usage. ONAA is an important resource for tribally-owned and Native-owned businesses, as it works to ensure these businesses gain access to capital, build capacity, generate increased revenues, create more jobs, develop tribal business codes, and strengthen the economic security of Native communities.

**U.S. Department of the Treasury**

*Community Development Financial Institutions (CDFI) Fund:* The Native Initiative of the CDFI Fund is an important program that expands access to capital for individuals and small businesses

in Indian Country. Native CDFIs provide a wide range of loans to micro-enterprises, small businesses, consumers, and for housing and homeownership. Native CDFIs also offer financial education and entrepreneurial development training, homebuyer education and foreclosure prevention counseling, credit counseling, small business planning, debt relief counseling, counseling to improve financial capability, match savings programs called Individual Development Accounts, and free tax preparation services in Native communities across the country. In many areas, Native CDFIs provide the only affordable alternative to predatory financial services providers. Appropriations at the requested levels outlined below for each of the CDFI Fund programs is a critical step in addressing disparities that limit access to capital in Indian Country.

- *Provide a minimum of \$20 million for technical and financial assistance under the Native American CDFI Assistance (NACA) Program:* Each year, the CDFI funds the NACA program, which includes financial and technical assistance components. The program makes awards that assist CDFIs in increasing their lending services and financial products, and in building their own internal capacity to serve their target markets. For FY 2018, the NACA program received 53 applications for Financial Assistance and Technical Assistance funding totaling \$33.6 million, but the CDFI Fund was only able to award 38 organizations with funding that totaled \$15.1 million. With more than 73 certified Native CDFIs and many more in the certification pipeline, demand for support under the NACA program is expected to continue to increase.
- *Make permanent the waiver of the non-federal match requirement for the NACA financial assistance program:* Congress should continue to waive the non-federal match requirement for NACA financial assistance. This budget-neutral provision would continue to stimulate the flow of capital in underserved Native communities and help to address the unmet capital need of \$47 billion in Native communities.
- *Provide a 10 percent set-aside and revise 'service area' to include Indian Country for the New Markets Tax Credit (NMTC) Program:* The CDFI's robust budget should include a 10 percent set-aside for Indian Country to ensure that Native Community Development Entities (CDE), which can include Native CDFIs, receive NMTC allocations commensurate with the tremendous need for greater business and economic development in Native communities across the country. Alternatively, the Department could accord all tribal applicants an extra five "priority" points to make them more competitive in the application process, thereby increasing their chances of receiving NMTC investments. To enhance the likelihood that tax credits will be deployed in Indian Country, the service area of all participating CDEs should be revised to include Indian Country, so that CDEs are free to use allocations in any tribal project nationally, or the set-aside should be allocated to CDEs dedicated to serving Indian communities as their target populations.

### **Federal Communications Commission (FCC)**

*Provide a permanent fixed annual budget of \$500,000 to fund the Office of Native Affairs and Policy (ONAP):* Since 2010, ONAP has held consultations, trainings, and provided vital technical assistance throughout Indian Country that has resulted in tribal inclusion in FCC regulatory matters at unprecedented levels. Through this enhanced tribal engagement, the FCC has revamped regulations to assist in bridging the digital divide on tribal lands. However, the ONAP office was created without dedicated funding and it was not until passage of the FY 2014 Omnibus that the office received \$300,000 to support its tribal consultation and training directives.

ONAP must receive dedicated, ongoing funding to support the staffing levels necessary to close the digital divide in Indian Country. Consultation in federal decision-making that impacts tribal nations, greater representation in telecommunications infrastructure and media, and increased access for tribal citizens to mobile and fixed broadband internet will result in economic and community development that can increase the efficiency of certain federal programs by delivering more cost effective or proactive services that result in better program delivery. This goal can be facilitated by providing long-term certainty and increased funding to ONAP. A dedicated annual budget of at least \$500,000 for ONAP is a necessary investment in the digital future of all tribal nations.

### **Conclusion**

Thank you for the opportunity to provide testimony and your consideration of Indian Country's economic development, workforce development, and telecommunications priorities. For more information, please contact NCAI Government Affairs Director Jacob Schellinger at [jschellinger@NCAI.org](mailto:jschellinger@NCAI.org) or NCAI Wilma Mankiller Fellow Ashleigh Fixico at [afixico@ncai.org](mailto:afixico@ncai.org).





**Testimony of Anthony M. Reardon, National President  
National Treasury Employees Union  
House Appropriations Committee  
Subcommittee on Financial Services and General Government**

**March 27, 2019**

Chairman Quigley, Ranking Member Graves and members of the Subcommittee, thank you for allowing NTEU to share its thoughts on the President's Fiscal Year (FY) 2020 Budget Request and funding for the agencies and programs funded by this Subcommittee. As National President of NTEU, I represent nearly 150,000 federal employees in 33 agencies and I appreciate the opportunity to discuss these important issues.

Following the 35-day partial government shutdown, which demonstrated the critical services provided by federal employees, I had hoped that our government leaders would, in recognition of this, submit proposals to retain these dedicated workers and attract new hires. However, the Administration's budget request for FY 2020 once again lays out a multitude of funding and policy proposals that cut government services and constitute nothing less than an all-out assault on the pay, benefits, and rights of federal workers.

**PAY**

NTEU opposes the Administration's proposal to implement another pay freeze for federal workers in 2020 and to slow the frequency of within grade step increases. In addition, the Administration plans to issue guidance to agencies to change the way they allocate performance awards so that they are given to their most critical employees with the best performance instead of to all employees, regardless of occupation, that perform outstanding work. By focusing on the "most critical employees" for pay increases, we fear that agencies will focus on high demand skill sets, but ignore critical jobs needed to make agencies work, risking an increase in the number of career federal employees who leave the government and take their institutional knowledge with them. A pay system that limits compensation to randomly-selected occupations will prohibit agencies from executing a whole-of-government approach to operations and will threaten agency performance.

Under current law (the Federal Employee Pay Comparability Act), federal employees should receive a 2.6% across-the-board pay increase in January 2020, prior to any amount being provided for locality pay rates. In recent years, the federal workforce has endured multi-year pay freezes and five years of below-market pay raises, and federal employees, like all other Americans, face rising food, utility, college, and health care costs. NTEU supports the FAIR

Act, S. 426 and H.R. 1073, providing employees a 3.6% pay increase for 2020 which would help address years of below-market pay increases. Federal employees, and their families, deserve a fair pay raise in 2020.

### **BENEFITS**

The President's budget proposal once again asks federal employees to pay for unrelated funding decisions by paying more for their benefits while simultaneously reducing the value of those benefits. NTEU opposes proposals that would impact federal employee retirement benefits including proposals to: (1) significantly increase Federal Employee Retirement System (FERS) employee contributions by about 1 percentage point each year until they equal the agency contribution rate, resulting in a 6 percent pay cut (2) base future CSRS and FERS retirement benefits on the average of the high five years of salary instead of the current high three, thereby lowering the value of the benefit (3) eliminate the FERS supplement which approximates the value of Social Security benefits for those who retire before age 62, including for those who must retire early due to their law enforcement work (4) eliminate the annual cost of living adjustments (COLA) for the pensions of current and future FERS retirees and significantly reducing the COLA for the pensions of current and future CSRS retirees by about 0.5 percent annually, and (5) reduce the G Fund interest rate under the Thrift Savings Plan, thereby lowering the value of this TSP option.

The average federal employee cannot absorb the six to seven percent pay cut they would see with the increased retirement contributions and annuitants need their COLA to keep up with the cost of living when on a fixed income. These are middle class workers who cannot afford a retirement benefit that fails to keep up with inflation and will require them to work long into their senior years.

NTEU also opposes the Administration's proposal to change the Federal Employees Health Benefits Program (FEHBP) by significantly modifying the government contribution rate by tying it to each plan's performance rating. For many FEHBP enrollees, this will mean that the government's overall contribution rate will be lower than it is now, requiring enrollees to pay significantly higher premiums. Such a change will force employees to drop coverage or move to cheaper plans that provide less coverage and fail to meet the health care needs of their families.

In addition, NTEU opposes the Administration's proposal to convert paid federal holidays, earned sick and annual leave days into general 'paid time off' and reduce the total number of leave days. This proposal also includes adding a short-term disability insurance policy to protect employees with a serious medical situation, which would require an employee contribution.

A robust paid leave program helps to attract top talent and reduce turnover. Paid leave programs impact engagement because the benefit helps employees feel they're being supported by the employer. That engagement is expressed through hard work, which improves productivity. That is one of the many reasons why NTEU supports expanding federal employee leave benefits and supports the Federal Employee Paid Leave Act, H.R. 1534, which would provide 12 weeks of paid Family Medical Leave Act leave to care for a new child or a critically ill family member. Few employees can go weeks without pay and no one should be forced to choose between caring for a loved one and a paycheck. The Administration should get behind

the Federal Employee Paid Leave Act instead of proposing these cuts which will only make the federal government less competitive for talented workers.

### **RIGHTS AND PROTECTIONS**

Following last year's Executive Orders aimed at rolling back employee due process and collective bargaining rights, the President's budget request for FY 2020 attempts to implement similar changes via legislation. NTEU opposes these efforts to undermine the process for taking an adverse or performance-based action on the basis of unacceptable performance by shortening the length of certain notice and response periods and providing agencies with additional flexibility to use longer probationary periods, making those employees essentially at-will. Shortening time frames for taking adverse action increases the likelihood of agency final decisions that do not fairly consider all relevant information. This is particularly true in cases involving factually complex allegations of misconduct.

NTEU also opposes all efforts to roll back the limited rights provided to federal labor unions, including limits on official time. The President's budget request includes a number of proposals that would undermine employees' rights in the grievance process and give greater deference to agency management in disputes. Federal law clearly states that the right of employees to organize, bargain collectively, and participate through labor organizations in decisions which affect them safeguards the public interest and contributes to the effective conduct of public business. Front-line employees and their union representatives have ideas and information that are essential to improving the delivery of quality government services to the public and through the collective bargaining process and the use of pre-decisional involvement, employees can have meaningful input resulting in better quality decision-making, more support for decisions, timelier implementation, and better results for the American people. It is important that these rights are maintained and employees continue to have a voice in their workplace.

That is why NTEU is supporting the Federal Labor-Management Partnership Act, H.R. 1316 and S. 530, which would reinstate the National Labor Relations Council and agency-level forums disbanded by the President's September 2017 EO (which revoked the 2009 EO 13522). The Council and agency forums allow frontline employees to share their perspective and the reality on the ground with agency leadership. The President's proposals to eliminate key bargaining rights and the right to use the grievance process in many instances eliminates the ability of federal employees to use a less costly process and takes away their ability to have affordable representation to challenge personal vendettas, agendas, and retaliation.

### **OUTSOURCING FEDERAL WORK**

NTEU remains opposed to new outsourcing initiatives, which will only cost taxpayers more money and provide the public with less transparency and accountability. Reliance on contractors has already eroded the government's ability to perform essential tasks in-house and has caused the federal government to spend more than it should to get the job done for the American public. NTEU supports the continuation of the ban on new A-76 competitions.

### **OFFICE OF PERSONNEL MANAGEMENT**

The President's request assumes that last year's reorganization proposal to eliminate the Office of Personnel Management (OPM) by moving core employee policy divisions to the White

House and the majority of the agency's functions to the General Services Administration (GSA) will take place in 2020. NTEU remains concerned about this proposal, namely eliminating OPM's independent authority to ensure a non-partisan career civil service and GSA's lack of experience with retirement and health care policy and administration. NTEU is also concerned that additional information has not yet been provided regarding a cost-benefit analysis for this proposal or whether this reorganization can take place without congressional approval.

### **INTERNAL REVENUE SERVICE**

The Administration's budget request includes a total of \$11.4 billion in base funding for the Internal Revenue Service in FY 2020, which is a small increase over FY 2019. However, NTEU believes the administration's request for this minimal increase in funding is wholly inadequate and will do little to help the IRS reverse the adverse impact of previous budget reductions. Indeed, despite calling for an overall increase in funding, the administration's request is projected to reduce overall staffing at the IRS by more than 1,600 FTEs.

As you know, the IRS has absorbed almost \$845 million in cuts since FY 2010 which has resulted in the loss of more than 22,000 full-time employees, including many frontline customer service and enforcement personnel. The lack of sufficient staffing has strained the IRS's ability to serve taxpayers and enforce our nation's tax laws. Without increased and sustained funding, taxpayers could experience a degradation of services, including longer wait times to receive assistance over the telephone, the inability to assist victims of identity theft and other types of fraud in a timely manner and a decreased ability to collect additional revenue. We request that Congress provides the IRS with the resources it needs to accomplish its mission.

### **SECURITIES AND EXCHANGE COMMISSION**

The Administration has requested an appropriation of \$1.746 billion for the Securities and Exchange Commission (SEC). As you know, since SEC funding is fully funded by fees paid by the industry, this funding is deficit neutral. American investors benefit from the highly skilled employees at SEC and NTEU believes this level of funding is insufficient to recruit and retain the workforce skill levels needed at the agency. SEC competes with high paying Wall Street firms for the best and the brightest in their profession. For 2019, SEC management has proposed merit and cost of living pay adjustments that are one the lowest in the history of SEC's pay system. Therefore, NTEU believes an increase in funding is required. For each \$10 million in additional funding over the Administration's request, SEC could improve compensation by 1%. It is NTEU's position that any such additional funds should be applied to SEC's merit pay.

Without properly compensated SEC staff, we will see an increasing number of Americans at risk of being cheated out of their retirement savings and investments. American investors should not lose their retirement or savings to dishonest firms because of an understaffed or weak SEC.

### **CONCLUSION**

Thank you again for the opportunity to share my views with you. Once again, the Administration has put forward untenable proposals that decimate employee pay, benefits, rights and protections and makes the federal government a less attractive place to work. I urge this Subcommittee to provide adequate funding for agencies within your jurisdiction, reject these anti-worker proposals and provide employees with a fair pay increase in 2020.



**Statement of Murat Bicak, Senior Vice President, Strategy, Project Management Institute**

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

**March 26, 2019**

Chairman Quigley, Ranking Member Graves and members of the Subcommittee:

The Project Management Institute (PMI) is the world's leading association for those who consider project, program or portfolio management their profession. Founded in 1969, PMI delivers value for more than three million professionals working in nearly every country in the world through global advocacy, collaboration, education and research. On behalf of our 437,508 members and certification holders in the United States, as well as 84,870 federal government employees engaged in project and program management work, PMI is pleased to share its views on important issues facing several federal agencies under jurisdiction of the Subcommittee.

Importantly, PMI is not advocating for an appropriation of funds from the Subcommittee. Rather, we request the Subcommittee's engagement in overseeing implementation of law and policies impacting federal employees engaged in project and program management, whose work has a significant impact on the effective use of funds appropriated by the Subcommittee and the full Committee.

In 2016, Congress passed Public Law 114-264, the Program Management Improvement and Accountability Act (PMIAA), which codified many project and program management best practices recommended by the Government Accountability Office (GAO), the National Academy of Public Administration (NAPA), PMI, and others. PMIAA incorporated several key process and workforce-development improvements that federal agencies, including those under the Subcommittee's jurisdiction, can implement to ensure that agencies are better equipped to undertake large and complex initiatives, oversee programs, deliver services and adapt and improve ongoing projects and programs in today's rapidly-changing environment.

PMIAA passed with overwhelming bipartisan support and included significant milestones to drive timely implementation. To date, PMIAA implementation is still being carried out by the Office of Management and Budget (OMB), the Office of Personnel Management (OPM) and the General Services Administration (GSA) Office of Government-wide Policy. In 2018, OMB promulgated initial [implementation guidance](#) to help agencies implement provisions of PMIAA and incorporated elements of PMIAA in the *President's Management Agenda*, as part of the "Improve Management of Major Acquisitions" cross-agency priority goal.

Those initial steps were vital, and PMI appreciates the efforts of OMB and OPM leadership and staff to date. That said, PMI encourages the Subcommittee to actively engage with senior leadership at OMB, OPM, and GSA regarding PMIAA implementation progress and oversight going forward to ensure

improvement in appropriated projects and programs being delivered on-time, on-budget, and with the outcomes your constituents and all citizens have come to expect nationwide.

Last month, GAO released the 2019 *High-Risk List*, which identified 35 federal programs and operations that are vulnerable to waste, fraud, abuse, mismanagement or in need of broad reform. As part of his biennial report to Congress, the Comptroller General highlighted PMIAA as a statute “that, if implemented effectively, will help foster progress on high-risk issues government-wide.” With regard to OMB, he noted:

“According to OMB, it began implementing PMIAA’s requirement to conduct portfolio reviews on high-risk areas by requiring relevant agencies to provide several items for discussion during the 2018 Strategic Review meetings. These annual meetings are to consist primarily of a discussion of agency progress towards each of the strategic objectives outlined in their strategic plans, but also cover other management topics such as enterprise risk management and high-risk area progress. According to OMB documents, in advance of these meetings, OMB required agencies to provide a high-level summary of (1) any disagreements with our recommendations, (2) progress barriers, and (3) actions needed by OMB, other agencies, or Congress to help the agency achieve progress towards removal from our High-Risk List.

OMB officials told us their 2018 Strategic Review meetings did not address each high-risk area but did address government-wide high-risk areas, such as cybersecurity, information technology, and strategic human capital as they related to the President’s Management Agenda.

In the past, senior management officials from OMB, applicable agencies, and our agency have met to address areas where additional management attention could be beneficial to high-risk issues. These trilateral meetings, beginning in 2007 and pre-dating PMIAA’s 2016 enactment, have continued across administrations.

However, OMB has organized only one of these high-risk meetings since the last high-risk update in 2017, on the Government-wide Personnel Security Clearance Process. In November 2018, OMB told us of plans to hold additional meetings on priority high-risk areas, including the 2020 Decennial Census, Strategic Human Capital Management, Ensuring the Cybersecurity of the Nation, National Aeronautics and Space Administration (NASA) Acquisition Management, and Managing Federal Real Property.

Effective implementation of PMIAA provides an important opportunity to enhance progress on high-risk areas by focusing leadership attention through the portfolio reviews and trilateral meetings. Further, a number of high-risk areas have longstanding or significant program and project management concerns, including the acquisition-related high-risk areas for DOD, DOE, NASA, and VA. These and other programs can benefit from improving program and project management. In December 2019, we will report on OMB’s progress in implementing PMIAA, including what further steps it has taken to use the portfolio review process required in PMIAA to address issues on our High-Risk List.”

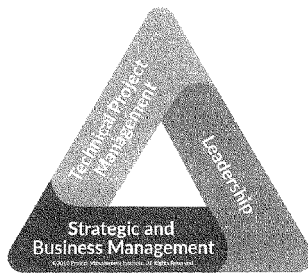
Along with ensuring that OMB meets its obligations under PMIAA to improve the overall delivery and execution capability of government agencies beyond simple performance management and measurement efforts, PMI further encourages the Subcommittee to engage with OPM to ensure that the new job series

and career path for federal project and program managers required by PMIAA is established in accordance with both statute and Congressional intent. Specifically, OMB and OPM have discussed establishing a job “identifier” for project and program management professionals in lieu of the job series and career path required by the new law. While bringing forward both simultaneously would advance efforts to help build and further develop a robust federal project and program management workforce, there is no substitution for the job series and career path required by law and supported by NAPA in its 2017 study *Implementing the Program Management Improvement and Accountability Act of 2015*.

The adoption of project and program management employment best practices, including those codified in PMIAA, provides the federal government with the opportunity to be an employer of choice for this workforce. Given the demand on appropriated resources, there is a widening gap between the need for these skilled project and program managers and the availability of qualified professionals to fill those roles. This gap is particularly acute given the dramatic increase in the number of federal jobs requiring project-oriented skills taking place at the same time many professionals are retiring from the workforce.

PMI’s just-released 2019 *Pulse of the Profession*® global project management survey found that organizations waste nearly 12 percent of their project investment spend each year—or \$119 million for each \$1 billion invested—due to poor performance. Further, in their 2015 report *Delivering Public Service for the Future: Navigating the Shifts*, Accenture and Oxford Economics concluded that the United States could save as much as \$995 billion over ten years by increasing public-sector efficiency by just one percent annually, which includes better project and program management practices.

Federal agencies need a skilled and certified project and program managers to deliver effectively and efficiently. These stewards of taxpayer dollars require a unique set of technical competencies, detailed in the *PMI Project Manager Competency Development Framework—Third Edition*, combined with leadership skills and strategic and business management expertise, as embodied in the PMI Talent Triangle™.



By prioritizing investment in the federal project and program workforce in a manner aligned with GAO, NAPA, and PMI-recognized best practices, the Subcommittee will ensure progress in reducing unnecessary wasted spending on appropriated projects and programs. This will allow both the Subcommittee and the full Committee to expand its capability to expand member services and fund more meritorious projects and programs going forward.

In closing, PMI appreciates the opportunity to highlight the importance of project and program managers and discuss their needs from the agencies overseen by the Subcommittee. PMI looks forward to working with the Subcommittee to implement policies that directly impact the important work of the Subcommittee and the full Committee to ensure the effectiveness of appropriated funds is maximized. If you have any questions, or if we can provide further information on these issues, please contact Tommy Goodwin at (202) 823-1096 or [tommy.goodwin@pmi.org](mailto:tommy.goodwin@pmi.org). Thank you very much.



WEDNESDAY, APRIL 3, 2019.

**FEDERAL COMMUNICATIONS COMMISSION BUDGET  
HEARING**

**WITNESSES**

**AJIT PAI, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION**

**JESSICA ROSENWORCEL, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION**

Mr. QUIGLEY. The subcommittee meeting will come to order.

Good afternoon. Thank you for joining us today. Sorry for the delay. This pesky constitutional requirement of voting always gets in the way, but I would like to welcome Federal Communications Commission Chairman, Ajit Pai, and Commissioner Jessica Rosenworcel.

The toughest challenge of the day having been completed, I am glad to have multiple commissioners here again, unlike recent years, because this is always an interesting and impactful hearing. The FCC oversees a sixth of the U.S. economy and its work touches our lives every day. An FCC decision paved the way every time we look something up on a smartphone, send a text message, or use Wi-Fi. In fact, for better or worse, the FCC is one of those rare agencies that has become a household name.

For the better. The FCC's work is key to winning the race for 5G, which is essential for our economy and national security. The U.S. led the world in 4G because of the winning playbook the Congress and the FCC developed of opening up new spectrum bands and letting companies innovate. Former Chairman Wheeler started us down the path in 5G with the Spectrum Frontiers Proceeding, which aims to get huge amounts of high-frequency spectrum onto the market.

Chairman Pai, I know you and Chairman Wheeler didn't always see eye to eye on many things, but I'm glad to see you continuing the important work he started with frontiers. We also appreciate the progress the commission has made on bipartisan basis on wireless issues, whether by exploring new, unlicensed options or potentially repurposing mid-band airwaves for 5G and you know from previous hearings that I had serious concerns about the proposed merger of Sinclair and Tribune, so I was glad to see the FCC took the action it did.

Now, for the worse. Unfortunately, the commission continues to advance policies that tend to favor large industry players at the expense of consumers and small businesses. We saw it with the innovation ban. There, the FCC replaced a unique licensing scheme, carefully crafted to foster innovation and experimentation, but the more traditional system, favored by big wireless carriers.

I am also concerned the commission is moving too quickly to auction spectrum and the 24 gigahertz band. Agencies have raised significant concerns about the potential impact to weather radars essential to public safety and national security. I am disturbed to see the FCC take such a heavy-handed approach on cell tower siting by preempting the ability of state and local officials to make decisions in the best interest of their communities, but nowhere was this more apparent when the commission decided as one of the first actions under the Chairman to undo the 2015 net neutrality order. That was wrong, both on the law and policy. It hurt small businesses and consumers.

Poll after poll shows overwhelming public support for net neutrality and I continue to be concerned with the process the FCC filed to get there. The net neutrality proceeding has been the subject of numerous controversies and investigations, some of which are still ongoing. Just a couple weeks ago, the FCC agreed to pay over \$43,000 in attorney's fees over a four-year request on fraudulent comments and the agency's own IG found the Chairman made an inaccurate statement about a denial of service and tech, yet the commission still managed to plow ahead in just 7 months.

This is a distressing pattern. Time and again, the commission has fast-tracked proposals favored by industry, while important consumer issues remain in limbo. It took just three months after the Chairman took over to reinstate the UHF Discount, paving the way for more consolidation in the broadcasting market and the commission deemed most of the business broadband market competitive after three months as well. That is roughly \$50 billion, part of the economy. Yet, the FCC has not yet adopted a long-term broadband funding plan for Puerto Rico and The Virgin Islands that was proposed last May.

Nowhere has the FCC clarified what rules apply to the sale of phone tracking data, even after multiple stories about how easy it is to buy this information. The FCC hasn't finalized a proposal after a year to prohibit the use of broadband subsidies to do business with companies that might pose a national security risk and robo calls have reached crisis levels. Yet, the FCC is relying on industry to figure out a system for authenticating calls rather than issuing strong rules with firm deadlines.

The FCC is reviewing two major mergers. Now, the Spring T-Mobile deal could harm working families and minorities that rely on these companies for affordable care cell service, and Nexstar Tribune is another broadcast merger that once again could hurt media diversity and choice. The commission's actions today raise serious concerns about whether the commission will put consumers ahead of corporations on these and other issues. Getting this right couldn't be more important. These issues touch every aspect of our lives. It could undermine the benefits of broadband and hinder our competitiveness in 5G.

I look forward to discussing in more detail how the commission can best use its resources.

Mr. QUIGLEY. Before I turn to the witnesses, I would recognize that playing the role of Ranking Member today for now is Mr. Amodei, who has informed me that there are no opening remarks. Is that correct, sir?

Mr. AMODEI. That is correct, Mr. Chairman. Thank you for acknowledging that, and I yield back.

Mr. QUIGLEY. Thank you so much. Thank you. I would now like to recognize Chairman Pai for his testimony.

Sir?

[The information follows:]

**STATEMENT OF  
CHAIRMAN AJIT PAI  
FEDERAL COMMUNICATIONS COMMISSION**

**HEARING ON THE FCC'S FISCAL YEAR 2020 BUDGET REQUEST**

**BEFORE THE  
SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT  
COMMITTEE ON APPROPRIATIONS  
U.S. HOUSE OF REPRESENTATIVES**

**APRIL 3, 2019**

Chairman Quigley, Ranking Member Graves, and Members of the Financial Services and General Government Subcommittee, thank you for inviting me here to present the Federal Communications Commission's Fiscal Year 2020 Budget Request. The Commission's Office of Management and Budget-designated spending level for FY20 is \$335,660,000, derived exclusively from regulatory fees for regular FCC operations, and an auction spending cap of \$132,538,680.

But before I discuss the Commission's plans for the next fiscal year, I want to take this opportunity to thank this Subcommittee for its support during the prior year. We greatly appreciate your decision to provide us with funds above the FY19 request, as well as your permission to complete internal reorganizations to advance agency reform efforts.

Let me highlight a few positive impacts of this Subcommittee's decisions.

First, you increased auction funding by more than \$17 million. The funds provided by this Subcommittee have enabled us to meet our statutory deadline to complete our rulemaking to implement changes to the TV Broadcaster Relocation Fund and provide money to reimburse low-power television, TV translator, and FM radio stations impacted by the post-Incentive Auction spectrum repack. They have also helped us establish a dedicated call center and launch a public education campaign to assist consumers impacted by the relocation of broadcast stations. And they have funded monthly reports to Subcommittee staff on our progress with respect to the repack.

Second, you authorized two agency reorganization initiatives to help the Commission better carry out its mission. You approved the creation of the Office of Economics and Analytics, which brought together economists who were previously scattered throughout the Commission. The Office is already having a positive impact on the Commission's work, and going forward, I am confident that it will allow us to continue expanding and deepening the use of economic analysis in the Commission's decision-making. This Subcommittee also permitted us to transfer the audit and enforcement responsibilities associated with our Equal Employment Opportunity rules from the Media Bureau to the Enforcement Bureau. This reorganization, which took place earlier this year, was supported by many civil rights organizations and will help us to more effectively enforce these rules.

Third, you gave us nearly \$6 million above our general request for FY19, which is supporting a broad range of Commission efforts essential to our core mission. The FCC greatly appreciates your decision to return our funding to \$339,000,000 in FY19. This means a great deal to a small agency and aids our efforts to expand the deployment of rural broadband, improve public safety, foster technological innovation, protect consumers, and modernize our information technology.

Turning to the future, I'd like to discuss some of the Commission's most important priorities for next year—priorities that the funds requested in this budget submission are critical to advancing.

First, we will continue our work to secure our nation's leadership in 5G, the next generation of wireless connectivity. 5G networks will be 100 times faster than today's networks, maybe even more. They will have lag times that are a tenth of what they are today. And they'll have much more capacity, being able to connect as many as 1 million devices per square kilometer.

This will open the door to new services and applications that will grow our economy and improve our standard of living. Smart transportation networks that link connected cars—reducing traffic, preventing accidents, and limiting pollution. Ubiquitous wireless sensors that enable healthcare professionals to remotely monitor your health and transmit data to your doctor before problems become emergencies. Connected devices that empower farms to apply precision agriculture. And even more innovations that we can't even conceive today.

These breakthroughs will boost our economy. One study pegs 5G's potential at three million new jobs, \$275 billion in private investment, and \$500 billion in new economic growth.

To realize this potential, we've developed a comprehensive strategy that will "Facilitate America's Superiority in 5G Technology"; it's called the "5G FAST" plan. It has three key components: (1) pushing more spectrum into the marketplace; (2) promoting the deployment of wireless infrastructure; and (3) modernizing outdated regulations. In my testimony today, I'd like to concentrate on the first prong, spectrum.

The applications and services of tomorrow will require much more bandwidth. That cannot happen without spectrum. This critical resource represents the lifeblood of the communications industry—and with it, the future of our economy. That's why the FCC must continue its work to aggressively make more spectrum available for commercial use.

In my testimony to this Subcommittee last year, I said that the FCC would hold two high-band spectrum auctions during FY19: one for the 28 GHz band and another for the 24 GHz band. And I noted that conducting these auctions successfully and promptly would be important to U.S. leadership in 5G.

I am pleased to report that we have done what I said we would do. Our 28 GHz auction began last November and concluded this January. All in all, bidders won 2,965 licenses, and the auction raised \$702,572,410 in gross bids for the U.S. Treasury. Our 24 GHz auction began last month and is still underway. But as of now, there have been bids placed on over 99% of licenses, and gross bids have more than doubled the amount raised in the 28 GHz auction.

While these auctions are significant accomplishments, the FCC cannot and will not rest on our laurels. Instead, we will continue to free up spectrum for commercial use. Later this year, for example, we will hold a single auction of the upper 37 GHz, 39 GHz, and 47 GHz bands, which will release 3.4 gigahertz of spectrum into the commercial marketplace. During the next fiscal year, we also intend to auction mid-band spectrum in the 3.5 GHz band. And we will continue our work to make additional mid-band spectrum bands available for flexible use.

All in all, these auctions will free up for the commercial marketplace over 5 gigahertz of spectrum for flexible use. For context, that's more spectrum than is currently used for mobile broadband by all mobile broadband providers in the United States *combined*.

As part of our balanced spectrum strategy, we have also been working to make more spectrum available for unlicensed use. Just last month, for example, we allocated over 21 gigahertz of spectrum above 95 GHz for unlicensed operations. And we are continuing our effort to open up a large amount of unlicensed spectrum in the 6 GHz band.

The second priority I'd like to address involves our continuing efforts to close the digital divide. Last year, the Commission took a variety of steps to better enable the private sector to deploy broadband infrastructure. For example, we made it easier and cheaper for competitive providers to attach fiber to utility poles through a groundbreaking reform called "one-touch make ready."

Of course, there are some areas where the business case for broadband deployment just won't exist—no matter how much red tape we cut. These are typically rural areas with sparser populations and lower incomes. The FCC manages programs to connect these rural communities through what is called the Universal Service Fund (USF). And we've been aggressively taking action to maximize the USF's impact—to stretch scarce dollars as far as we can.

Last year, for example, we finished a landmark reverse auction called Connect America Fund Phase II. Through this novel approach, we're awarding about \$1.5 billion to connect over 713,000 homes and businesses nationwide. Before the auction, we identified parts of our country that were unserved by broadband. This was so that we could target funding to leverage—not displace—private capital expenditures. We didn't want to fund overbuilding. We also made sure the auction was open to providers of all types, including rural telecom companies, cable, fixed wireless, satellite, and electric utilities. This ensured that there would be plenty of competition.

The outcome of the auction was a tremendous success. We distributed funding much more efficiently thanks in part to intermodal, competitive bidding, saving \$3.5 billion from the \$5 billion price we initially thought would be required to connect these unserved areas. We also ensured that 99.7% of the winning bids would provide consumers with service of at least 25/3 Mbps. And we enabled a variety of entities, from fixed wireless to electric utilities, to win.

Last year, we also took many other steps through the Fund to help close the digital divide. For example, we increased the annual cap on rural healthcare program spending by nearly 43%, to \$571 million per year for that funding year. These additional funds will help to provide critical connectivity to rural healthcare institutions. We also enacted important reforms and devoted additional funding to our program providing funding to small carriers in rural areas to deploy broadband. Among other steps, we created incentives for rural carriers to provide more of their customers with access to faster broadband speeds.

Of course, it is important that we spend USF funds wisely and eliminate waste, fraud, and abuse in these programs. That's why we will soon be sending you a reorganization plan to create a Fraud Division within the Enforcement Bureau. I am pleased that this proposal was unanimously endorsed by the Commission. This reform will embed a permanent effort to combat USF fraud within the structure of the Enforcement Bureau.

In the coming year, we plan to continue our emphasis on closing the digital divide. For example, we will soon be offering many small, rural carriers the opportunity to opt into model-based universal service support, tying greater funding to greater accountability and increased deployment of high-speed broadband. We also expect to move forward with additional funding through the Uniendo a Puerto Rico and Connect USVI Funds in the coming months, and we just recently opened up a proceeding to ease the deployment of fiber for schools and libraries participating in our E-Rate program. I look forward to working with you and my colleagues to follow through on our responsibility to bring high-speed broadband to all Americans.

Third, we will continue to fulfill our important mission to protect public safety. Last year, for example, we took important steps to improve Wireless Emergency Alerts, which play a critical role in notifying Americans when emergencies strike. And we began work to implement laws passed by Congress to improve 911 calling. For example, we proposed rules to implement Kari's Law. Kari's Law requires multi-line telephone systems—which commonly serve hotels, office buildings, and campuses—to enable users to dial 911 directly. And it also contains a notification requirement so that when a 911 call is made in these settings, a front desk or security office will be alerted in order to facilitate building entry by first responders.

We have also proposed rules to help first responders locate wireless 911 callers in multi-story buildings. Just last month, we proposed to adopt a vertical, or "z-axis," metric as part of our 911 location

accuracy rules. That's because in a multi-story building, it's not good enough for emergency personnel to know a wireless 911 caller's horizontal location. They also need to know the caller's vertical location in order to find him or her and provide assistance. And in an emergency, time wasted locating someone can be the difference between life and death.

In the coming year, the Commission intends to take further steps to improve 911 calling. Among other things, I believe that we will be able to take final action to add a z-axis metric to our location accuracy rules and finalize rules implementing Kari's Law. Last month, I traveled to New Jersey and Delaware and visited 911 call centers. These interactions underscored to me the importance of thanking and supporting those who work every day to help their fellow Americans in their time of need. And it is our mission at the FCC to do whatever we can to allow them to do their jobs to the best of their ability.

Fourth, we will continue our efforts to modernize and reform the Commission's media regulations. In particular, I am proud of the work that we have done to promote diversity in the media sector. After over two decades of debate, the FCC finally voted last year to adopt a broadcast incubator program. This was an important step towards increasing diverse participation in the broadcast industry. We anticipate being able to begin accepting applications to participate in the incubator program later this spring, and I look forward to getting started with implementation of the program shortly thereafter. I would also like to thank the FCC's Advisory Committee on Diversity and Digital Empowerment for all of its work on diversity issues. This Committee was allowed to go dormant under the prior Administration, but we revitalized it in 2017 and will be re-chartering it for another two-year term this year.

\* \* \*

I would like to conclude by highlighting the FCC's most important resource: our staff. Day in and day out, they come to work ready and eager to advance the public interest. Whether they are working to expand broadband deployment, combat robocalls, promote wireless innovation, protect public safety, or address consumer complaints, they serve the American people with skill and dedication, and I am honored to have them as colleagues. The funds that you provide to our Commission enable them to do their jobs, and for that I am very grateful.

Thank you for this opportunity to discuss this budget proposal. I will be pleased to answer any questions that you may have.

Mr. PAI. Thank you, Mr. Chairman. Chairman Quigley, Ranking Member Amodei, members of the subcommittee, thank you for inviting me to present the FCC's Fiscal Year 20 Budget Request. Our OMB designated spending level for fiscal year 20 is \$335,660,000, derived from regulatory fees for regular FCC operations and an auction spending cap of \$132,538,680.

But first, I would like to thank you for providing us with generous funding in the omnibus as well as permission to complete internal reorganizations to advance agency reform efforts. The additional auction funds are allowing us to implement Congress' expansion of the TV Broadcaster Relocation Fund to reimburse low-power television, TV translator, and FM radio stations for costs related to the post-incentive auction spectrum repack.

We have also been able to establish a dedicated call center and launch public education campaign to assist consumers who were affected by the relocation of broadcast stations and we greatly appreciate your authorization to create the Office of Economics and Analytics. As a result, we are making great strides expanding and deepening the use of economic analysis in our decision-making.

Our budget proposal for next year for operations is slightly below what we received for fiscal year 19 and our auction cap is only adjusted upward for inflation, so we will maintain our FTE level and those 1,448 FTEs during the next fiscal year will be focusing on four important priorities.

First, we will continue to implement our 5G FAST plan so that the U.S. continues to lead the world in the next generation of wireless connectivity. Our plan has three components, two of which are infrastructure deployment and regulatory modernization but this afternoon, I would like to focus on the third: the critical task of pushing more spectrum into the commercial marketplace.

Our 28 gigahertz auction concluded last month and yielded about \$702 million in gross bids for the U.S. Treasury. Our 24 gigahertz auction is underway and so far has more than doubled that amount, but more importantly, we are making essential spectrum available for 5G and we will keep it up.

Later this year, we will hold a single auction of the upper 37, 39, and 47 gigahertz bands. Next year, we will auction mid-band spectrum in the 3.5 gigahertz band. These auctions will free up over 5 gigahertz of spectrum for commercial use. Now, for perspective, that is more spectrum than is currently used for mobile broadband by all mobile providers in the United States combined.

Second, we will continue our work to close the digital divide. Because of the groundbreaking Connect America Fund phase two reverse auction, we are awarding about \$1.5 billion to over 713,000 homes and businesses nationwide. This represents \$3.5 billion in savings from the \$5 billion price we initially thought would be required to connect these unserved areas.

Moreover, 99.7 percent of the winning bids will provide consumers with service of at least 25 megabits per second. We have also increased funding to provide connectivity to rural health care institutions and soon, we will offer many small rural carriers the opportunity to opt into model-based universal service support, tying greater funding to greater accountability and increased deployment of high speed broadband. We also expect to move forward with ad-



ditional funding for broadband deployment in Puerto Rico and the U.S. Virgin Islands and to complete a proceeding to ease the deployment of fiber for schools and libraries participating in our ERE Program.

Third. We will continue our work to protect public safety. Last year, we strengthened wireless emergency alerts, which play a critical role in notifying Americans when disaster strikes. We proposed rules to implement Kari's Law. That law requires multi-line telephone systems which commonly serve office buildings and hotels to let people dial 911 directly and it requires the notification of building staff in order to get first responders inside ASAP and just last month, we proposed rules to improve our ability to locate wireless 911 callers in multi-story buildings. In a multi-story building, emergency personnel need to know a caller's vertical location in order to provide assistance. Our 911 location accuracy proposal aims to supply that information and in the year to come, we plan to adopt final rules here.

Fourth and finally, we will continue to highlight the importance of a diverse communication sector. For example, after over two decades of debates, the FCC last year adopted a broadcast incubator program to encourage employment and ownership for underrepresented communities. We continue to rely on our advisory committee for diversity which is focusing among other things on the lack of representation in Silicon Valley and we established Supplier Diversity Conferences to ensure the capital and expertise are matched with talent and ambition.

Let me conclude by thanking the FCC's terrific career staff for their work advancing the public interest and thank this committee for the work they do to provide us the resources necessary to discharge that responsible.

Mr. AMODEI. Thank you, Mr. Chairman.

Mr. QUIGLEY. Thank you, Chairman. Committee chair Rosenworcel. I had it.

Ms. ROSENWORCEL. Good afternoon, Chairman Quigley, Ranking Member Amodei, and to the members of the subcommittee, thank you for the opportunity to appear here today.

As you heard from the start, communications technologies power about one sixth of our nation's economy and every American needs access to these technologies to have a fair shot at 21st century success, and that is why the work of the FCC matters. It is also why the budget request from the administration that is before you is so striking. It asks for less than the \$339 million the agency is set to spend in the current fiscal year, and it is about \$4 million less than the budget level authorized by Congress.

If adopted, it would result in the smallest payroll in decades at a time when communications technologies loom larger than ever before in all of our lives. So many people think that Washington is rigged against them. It saddens me that with this budget and with the actions of the FCC during the past two years, it appears they are right. That is because too often, the FCC has acted at the behest of the corporate forces that surround it, shortchanging the American people and undermining our digital future.

This is a problem that requires resources to fix. Plus, Congress entrusted the FCC with significant new work in the RAY BAUM'S

Act. We have mergers to review, spectrum auctions to hold, and a tremendous increase in equipment authorizations to oversee with the growth of 5G wireless and the internet of things. On top of this, we have a digital divide in this country we sorely need to address.

I believe budgets are not just about accounting. They are a statement of values and I believe the four basic values in communications laws—consumer protection, universal service, competition, and public safety—need refocus and attention.

First, consumer protection. Consumer protection requires the FCC to be nimble because the communications industry changes at a breakneck pace, but our efforts to stem the growing tide of robo calls have been anything but. At the start of this administration, American consumers received roughly two billion robo calls a month. That number now exceeds five billion a month. That is crazy.

The FCC has responded with a series of fines for bad actors responsible for robo calls, but according to the Wall Street Journal last week, the agency has collected no more than a grand total of \$6,790 in fines. That's insane. It is clear the agency's current approach is not working. It is like trying to empty the ocean with a teaspoon. We don't have time for that.

So, let me propose three things. First, it's time for the agency to require in its rules call authentication technology. Second, I have written the major carriers, calling for them to make free tools to avoid robo calls available to every consumer. I think it is time for my colleagues to join me in this quest. Third, it is time for the agency to create a new division to focus on robo calls. Robo calls are the largest single source of consumer complaints at this agency. It is time for the FCC to organize its work to reflect that.

The second value is universal service and as I said at the outset, no matter who you are or where you live in this country, you are going to need access to modern communications to have a fair shot at 21st century success but the fact of the matter is that today, millions and millions of Americans lack access to broadband and it is becoming increasingly clear that the FCC does not know exactly where they are.

That is unacceptable. The way to fix this mess is to develop honest and accurate broadband and wireless maps that detail where service is and is not in every community in this country. After all, we will never manage problems that we do not measure.

The third value is competition. Of course, it yields lower prices and higher quality services, but today, too few American consumers have any competitive choice for broadband service and that is one of the reasons why in 2015, the FCC adopted net neutrality rules. With net neutrality in place, your broadband provider does not have the right to block websites, throttle online services, or censor online content, and that sounds good to me. In fact, it sounds good to most of the American public because a study from the University of Maryland found that 86 percent of the public supports net neutrality but over my objection and theirs, the agency rolled back its net neutrality rules in 2017.

A few weeks ago, I was the only FCC commissioner to sit through the oral argument at court reviewing the FCC decision to eradicate net neutrality. What's obvious to me is that some part of

our decision, if not all of it, will be remanded. When that happens, I don't think the agency should be allowed to waste another dime of taxpayer money to sustain its flawed rollback with additional appeals to the courts.

Finally, the fourth value is public safety and to this end, I believe the FCC needs to update our policies to reflect new cybersecurity challenges, modernize emergency alerting, and improve location accuracy with 911 and I worry that our current budget is not substantial enough to allow for those things.

Now, in closing, I want to make a quick note about 911 operators and offer my support for Congresswoman Torres' bipartisan work to give 911 operators the regulatory classification they deserve. Right now, the Office of Management and Budget classifies them as clerical workers and it does not reflect the public safety duties they have taken on.

In closing, thank you, and I look forward to any questions you may have.

[The information follows:]

**STATEMENT OF  
JESSICA ROSENWORCEL  
COMMISSIONER  
FEDERAL COMMUNICATIONS COMMISSION  
BEFORE THE  
SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT  
COMMITTEE ON APPROPRIATIONS  
UNITED STATES HOUSE OF REPRESENTATIVES  
WASHINGTON, DC  
APRIL 3, 2019**

Good morning, Chairman Quigley, Ranking Member Graves, and Members of the Subcommittee. Thank you for the opportunity to appear before you today.

At the start of this year, the Federal Communications Commission shuttered its doors for nearly a month—the longest shutdown of the agency in its history. Dedicated employees were sent home without pay. Consumer complaints and inquiries went unanswered. Testing and approval of next-generation technologies stopped. Robocalls went totally unchecked—and that's crazy.

Today our doors are open, but we are still catching up on what we missed. But what should be obvious—perhaps more than ever before—is that the work of this agency matters. Communications technologies power one-sixth of the nation's economy—and every American needs access to these technologies to have a fair shot at 21<sup>st</sup> century success.

That is why the budget request from the Administration before you today is so striking. It asks for less than the \$339,000,000 the agency is set to spend in the current fiscal year and is almost \$4,000,000 less than the budget level authorized by Congress. If adopted, it would result in the smallest payroll in decades—at a time when communications technologies loom larger than ever before in every aspect of civic and commercial life.

So many people think that Washington is rigged against them. It saddens me that with this budget and with the actions of the FCC during the past two years—it appears they are right. This agency is already mocked in the media, criticized by the public, and derided by consumers for failing to take their interests to heart. That is because too often the FCC has acted at the behest of the corporate forces that surround it, shortchanging the American people and undermining our digital future.

This is a problem that needs resources to fix. On top of this, Congress has entrusted the FCC with significant new work. This includes implementing the many requirements in RAY BAUM'S Act of 2018. We have major mergers to review in both wireless and media markets. We have an exponential increase in equipment authorizations with the growth of the Internet of Things and deployment of 5G mobile technologies. We are executing first-of-their-kind spectrum and universal service auctions. We are trying to address the persistent problems of the digital divide—and expand the reach of broadband and wireless services to every school, library, business, and community. These are good and necessary things that require resources.

I believe budgets are not just about accounting. They are a statement of values. And I believe this budget falls short of what is needed to uphold essential values in our communications laws. I believe the most basic values in our laws—consumer protection, universal service, competition, and public safety—need refocus and attention.

#### *Consumer Protection*

Consumer protection is always in the public interest. It requires the FCC to be nimble, especially as the communication industry changes at a breakneck pace. But our efforts to stem the growing tide of robocalls have been anything but.

At the start of this Administration, American consumers received roughly 2 billion robocalls a month. That number now exceeds 5 billion a month. That is about two thousand robocalls a second every day. So if you think the problem has gotten worse, you're right. Consumers are complaining to this FCC that we're doing too little to stop this problem and they're right, too.

While I have supported the FCC's efforts to take on a handful of bad actors with enforcement fines, the *Wall Street Journal* reported last week that the agency has collected no more than a grand total of \$6,790. That's insane. It is clear the agency's current approach is not working. It's like trying to empty the ocean with a teaspoon.

We don't have time for that. So let me propose three things. First, it's time for the agency to require in its rules call authentication technology, known as STIR/SHAKEN that will help return trust to our communications networks. Second, I've written the major carriers calling for them to make free tools to avoid robocalls available to every consumer. It's time for my colleagues to join me in this quest. Third, it's time for the agency to create a new division in its Enforcement Bureau to focus strictly on robocalls. Robocalls are the largest single source of consumer complaints at this agency. It's time for the FCC to organize its work to reflect that.

#### *Universal Service*

Universal service is a cherished principle in communications law. As I said at the outset, no matter who you are or where you live in this country, you need access to modern communications to have a fair shot at 21<sup>st</sup> century success.

But the fact of the matter is that too many Americans lack access to broadband. According to the FCC's last-published report, 24 million Americans lack access to high-speed internet service, with 19 million in rural areas. That's troubling. But the digital divide may be a lot wider than we think. One study has found that 162 million people across the country do not use internet service at broadband speeds. That turns our digital divide into a yawning chasm.

We have to figure out what is going on. It is becoming clear that the FCC does not have an accurate picture of just where service is and is not all across the country. This is unacceptable. It is time to fix this mess with accurate and honest broadband and wireless maps. This is essential because we will never be able to manage problems that we do not measure.

I am not the only one who feels this way. In a congressional hearing during the month before last, a cabinet official called the FCC's maps "fake news." While this is a loaded term, I think it's obvious we need to do better. Our wired maps have serious inaccuracies. Our wireless maps are so suspect they are now the subject of an ongoing investigation—and I appreciate that the Chairman has acknowledged as much.

Getting this right matters. If we don't have proper maps, we will not be able to target policy solutions effectively. The FCC distributes billions of dollars each year to help accelerate the build out of broadband, so we can connect all our communities. It's wasteful and irresponsible for the agency to do so without having a truly accurate picture of where those resources should go. I believe it is time to press the FCC to identify with precision where service is and is not, the total cost of reaching every household, and the plan the agency has to make it happen.

### *Competition*

Competition is fundamental. It yields lower prices and higher quality services. But there is a troubling trend in the state of competition. Right now, too few American consumers have a choice for high-speed broadband service. I know this personally, because I'm one of them. But I also know this professionally, because the FCC's data show that half the households in this country have no choice of broadband provider.

This is one of the reasons why the FCC adopted net neutrality rules in 2015. With net neutrality in place, your broadband provider does not have the right to block websites, throttle online services, or censor online content. That sounds good to me—and to American consumers everywhere. In fact, a study from the University of Maryland found that 86 percent of the public support net neutrality. And yet, the FCC—over my objection—stripped net neutrality from our rules. I believe this put the agency on the wrong side the law, the wrong side of history, and the wrong side of the American public.

A few weeks ago, I was the only FCC Commissioner to sit through the oral argument at the court reviewing the FCC decision to eradicate net neutrality. What was obvious to me is that some part of our decision—if not all of it—will be returned to us. When that happens, I don't think this agency should be allowed to waste another dime of taxpayer money to sustain its flawed rollback with additional appeals to the courts. In other words, it's time to halt the agency's efforts to roll back net neutrality.

### *Public Safety*

Finally, public safety is paramount. In the very first sentence of the Communications Act, Congress instructed the Commission to make available, "to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide radio and communication service" in order to promote the "safety of life and property."

To this end, I believe the FCC has to update our policies to reflect new cybersecurity challenges, modernize our emergency alerting capabilities, and improve the location accuracy of every 911 call. All of this requires resources. I am concerned this budget may fall short of providing what is needed to address each of these significant public safety matters.

Let me close with a quick note about 911 operators. Before a blue and red-light flashes, before a whistle on a fire station blows, or an air horn blares—on the front line of public safety are the men and women who answer our 911 calls. They are first responders who play an essential role in keeping us safe.

I know this from the dozens of 911 call centers across the country that I have visited—from Alaska to Alabama, California to Colorado, Virginia to Vermont, and many more places in between. But I also know that in Washington these professionals do not always get the recognition they deserve. So I want to acknowledge my support for Congresswoman Torres' bipartisan work to give 911 call takers the regulatory classification they deserve. Right now, the Office of Management and Budget classifies 911 professionals as clerical workers. This is outdated. It is not right. It's time to classify them as protective service professionals. I've spoken at length on this topic and I sincerely hope we will be able to fix this error and make it right.

Chairman Quigley, Ranking Member Graves, and Members of the Subcommittee, thank you once again for holding this hearing. Thank you for providing me with the opportunity to offer my views. I look forward to any questions you may have and to working with you and your staff in the days ahead.

Mr. QUIGLEY. Thank you. It's as if we had this planned. I'm going to let Ms. Torres go first because she has to go to the floor. Thank you.

Mrs. TORRES. Thank you so much for your patience, Mr. Chairman. I do appreciate going first. And Commissioner Rosenworcel, thank you so much for visiting the 911 center where I spent 17-and-a-half years of my life working as a 911 dispatcher.

Chairman Pai, I invite you to come. And, trust me, you'll have a great time with these ladies learning about the work that they do every single day. 911 Saves Act, I think, is a critical step in the right direction at ensuring that when we continue to send more work, more critical work, to these 911 dispatchers, text to 911, video to 911, having to deal with, I would call it, unimproved location accuracy, we are demanding so much of them.

Certainly they deserve to be classified as anything other than taxi cab dispatchers. That is offensive to the nature of the work that they are doing every single day, and I hope to get your support on this bill and thank you, Commissioner Rosenworcel for being one of the first champions to champion this issue for 911 dispatchers.

Improved 911 location accuracy—let me speak a little bit around that with my experience. Unregistered phones are a hazard. They are an incredible hazard for children. We teach our kids to dial 911 whenever they come across danger and they do. At my 911 center, we had a call. I did not take that call, but one of my colleagues did. We think it was a five-year-old boy. We think it was his mother. All we could do is listen to the assault in progress.

He was taught to dial 911 when he needed help. Unfortunately, his cell phone had ran out of minutes. Because his cell phone was—ran out of minutes, there was no mandate for that phone company to provide the accurate location information from where that victim was calling from. So we sat there and we listened to him cry, scream while he was being kicked, while he was being slapped, while he was being cursed at.

To this day, I don't know what happened to that child, but I will live with that forever. It's a failure of the system like that where we teach our children—we teach our population to call 911. And when they do, we are not able to help them. I think 911 dispatchers are critical to the first responder communities. Without them answering the phone, you know, you can't get a police officer, a paramedic or a fire truck to the scene. So we have to do more to ensure that we are empowering these individuals with the proper training that they need.

The attrition rate for this group of people is horrific. It used to be 70 percent at my 911 center until we improved training and conditions, working conditions, for them. I would like for you to talk about where you see ensuring that 911 surcharges that are collected at the state level are truly being utilized not as a—or as a personal checkbook, you know, to phone companies but the delivery of a 911 call does not stop at the door of the 911 center. It actually does not stop until you get the emergency personnel to the location where it's needed. Would you comment on that, please?

Chairman PAI. Thank you for your comments, Congresswoman, and for your leadership on these public safety issues. I could not



agree with you more. Having visited public safety answering points in big cities like New Orleans and New York—

Mrs. TORRES. Yes.

Chairman PAI [continuing]. And in small towns like rural West Virginia where a two-woman PSAP literally was the only thing keeping a community together when floods were ravaging that center, it is heroic work. And I think often about Tyrell Morris, who was the head of the New Orleans 911 Call Center, who told me the story about a dispatcher who was handling a call that somebody had been shot in a particular neighborhood. She had to continue handling the call professionally once she realized her brother was the one who had been shot and killed. Just think about—because we—

Mrs. TORRES. It's not unusual.

Chairman PAI. It's a very common story. And so I'm very sensitive to the fact that a lot of these dispatchers work longer shifts. Oftentimes, the shifts are—go from eight hours to twelve hours to cover the shortages. Many times, it's very stressful as it is. There are no avenues for them to get some of the help they need. The training is very difficult.

You have to be trained across a variety of areas. In addition to that, as you pointed out, the classification for these workers is not necessarily where it needs to be. And so I stand four-square behind you on making sure that we heighten the importance of preserving this public safety system that we've got, including recognizing the tremendous value the dispatchers bring to the table.

Mrs. TORRES. Thank you. I yield back. Please join me in my district and tour one of my centers.

Chairman PAI. I would love to do so. Thank you.

Mr. QUIGLEY. Thank you.

Mr. Amodei.

Mr. AMODEI. Thank you, Mr. Chairman. I yield my time to Mr. Stewart, who has requested it.

Mr. STEWART. No.

Mr. AMODEI. Mr. Chairman, I rescind that and yield my time back to the committee to make up for my lateness, which I should just be just about back to even by now, huh?

Mr. QUIGLEY. In the interest of going back and forth, Mr. Stewart?

Mr. STEWART. Thank you to my friend, Mr. Amodei, and to the chairman for holding and to both of you for being here. Commissioner, it's good to see you and, Chairman, thank you too—again to both of you. You can guess what I'm going to ask about, the Suicide Prevention Hotline number that you and your—the people that work with you have been so helpful working on this, working with us on that. We are grateful for that so a couple questions.

When will the final report be delivered to Congress? As you know, the legislation required for you to deliver us a report. Will it include a number recommendation? And, of course, you know, I'm hoping that it's 611 and that we don't have to share a number, at least. And then will you, the FCC, move unilaterally to declare that number? And, sir, if you would answer those questions, then I would like to follow up, if I could, with one other concern.

Chairman PAI. Thank you, Congressman Stewart. I appreciate the hospitality you and Former Senator Hatch gave me to talk about the importance of this issue, and it's something I recognize the importance of as well. In terms of timing, we will meet the statutory deadline of getting that report out. We have been working with our public safety staff to make sure that we do. In terms of a number, we've been working with various stakeholders, taking meetings and the like on the wisdom of this particular number versus another. We haven't made a determination on that front because we're still taking meetings.

And in terms of moving unilaterally, there might be some concerns where we would like to work through with you, if you and your staff would like to do so. But we recognize the importance of this legislation and are on track to implement the directives that you have given to the FCC.

Mr. STEWART. Well, we appreciate that. I mean, look, it's dramatic to say—and we hear it often. You know, this legislation will save lives or, in some cases, the lack of this legislation will cost lives. But this literally is true. I mean, this idea that you can have this universal, national, you know, three-digit number for suicide prevention is such a necessary thing.

And if I were to ask people in this room, you know, in a moment of honest and being candid, how many of us have been impacted either in our family or people that we love, people close to us, by suicide or attempted suicide? It would be a startling number. It's many of us, and this is a very helpful thing for that. And again, we would like to thank you and the rest of the Commission for working with us on that. Now, a concern that we have, not only—not only the number—I'm not sharing the number—is this similar to what has been raised here, the geolocation. And that is, you know, if I called the suicide prevention hotline number on my phone here, it would be routed to Utah and provide me a resource in Utah. Have you looked at that and considered the importance of geolocation like they do with the regular 911 call? And can we have that important option on this as well?

Chairman PAI. Absolutely, Congressman. We have taken a number of initiatives in terms of geolocation, making sure that the call actually tracks back to where you are as opposed to where someone in a 911 call center might think you are. That disjunction can mean the difference between life and death in many cases. And so we are working on a number of different fronts.

For example, we have an initiative to make sure that when your cell phone—if you're calling from one state and your cell phone pings a tower in an adjoining state, we are working to make sure that that 911 call is properly routed to the PSAP to which you are—that is closest to you, that effectively can handle your issue. In addition to that, in terms of things like wireless and emergency alerts and the like, we are moving to more granularity so that you can get the information that is necessary for you in an emergency in a way that you can't currently. And so a variety of different things we are doing on that front. But the key is to make sure that we can accurately help our 911 call center takers figure out where you are more quickly.

Mr. STEWART. Okay. Thank you, Chairman. So then I'm going to ask, you know, just simply would it be our expectation—would it be fair to expect that when we implement this three-digit National Suicide Prevention Hotline number that we would have geolocation attached to that, and we would know where that person was actually located?

Chairman PAI. That is certainly a goal that we share. And so we look forward to working with you to see if that goal can be incorporated too.

Mr. STEWART. Okay. So it sounds like it may be—may be a hope. It's a goal, but it's not necessarily a conclusion yet; is that true?

Chairman PAI. There are some issues of technical feasibility that we would like to work through and——

Mr. STEWART. Okay.

Chairman PAI [continuing]. Work through with you if that's possible.

Mr. STEWART. Well, we look forward to working with you on that because, as you have expressed already, it would be important to do so. And let me just not necessarily ask a question but just maybe make a point in the few seconds I have remaining. You have worked with us. And we appreciate your prioritizing the low-power TV translators with some additional funding that we gave you last year.

I come from a very mountainous region. I actually have more transmitters in my district than any other place in the country and not a small number, hundreds and hundreds of transmitters in Utah. And these are rural areas. And, frankly, most of them rely on local television for their news and information and weather and other things. So I guess my question to you just very briefly is, is there sufficient funding, do you think, for us to assist the lower power translator stations as they go through this transition.

Chairman PAI. I do believe there is, Congressman. I want to thank you, the entire Congress, for providing that funding because there was a gap in the original funding stream that would have left a lot of your folks out in the cold, essentially. So we are moving aggressively to use that funding to benefit some of those low-power translator and FM radio stations that otherwise wouldn't have been protected. And I have met with a variety of Utah broadcasters. And we have developed decisions in order to make sure that they are kept whole.

Mr. STEWART. And you think we are okay on that funding then?

Chairman PAI. I do. But if that changes, we will make sure we contact you.

Mr. STEWART. Please do. Let us know. We want to assist in that. And, Mr. Amodei, thank you, sir. And, Chairman, thank you.

Mr. QUIGLEY. Thank you. I think fortuitous that I follow you in this regard because it's important to win the race to 5G, but it's just as important as an economic issue. It's crucial to our national security. But as members of the intelligence committee, the news about potential vulnerabilities from Chinese equipment is extremely concerning. So it's important to win, but it's more important to win the right way by making sure our networks are secure and resilient.

First, Commissioner Rosenworcel, you've mentioned that the FCC should update its policies to reflect new cybersecurity challenges. Do you think the FCC is doing enough to address these security issues, and what else should we be doing?

Ms. ROSENWORCEL. Thank you for the question. Cybersecurity has never been more important. We are looking at a future with billions of devices with the internet of things that can trace and track us wherever we go. We have got to make sure FCC policies are wholly up-to-date. We face challenges with equipment supply chain. We face challenges with spectrum security, and we are going to have to figure out how to update our policies. But if I had to identify three things I would like us to do most, the first is I'd like us to reinstate the Communication Security Interoperability and Reliability Council and make it focus on 5G security. I think we have challenges with supply chain dynamics, and we have to figure out how to use our resources to fix that.

In addition, the Department of Homeland Security has an inter-agency advisory committee on the security of next-generation networks. The FCC is not present at the table in that discussion. I think that's an oversight. And as the nation's regulator that oversees communications networks, we should fix it.

And finally, the FCC's equipment authorization process reviews millions and millions of devices every year. We should figure out how to standardize a certification in that process that ensures that all sorts of equipment going forward that require software updates will get them regularly because that will increase all of our security.

Mr. QUIGLEY. Thank you. Mr. Chairman. A year ago the FCC proposed to ban the use of universal service fund subsidies to purchase equipment from certain companies for national security reasons. Addressing those potential vulnerabilities in our communication supply chain is essential to ensuring the 5G networks are not turned into a weapon against the American people.

Can you explain where that proposal is at this time?

Chairman PAI. Thank you for the question, Mr. Chairman. We have made that proposal. We have developed a record. We are working with the National Telecommunications and Information Association, a component of the Commerce Department, as you know, to finalize what that proposal will look like in terms of the agencies responsible for determining which entities might present a security threat in terms of our ICT networks.

And so we hope to move forward quickly. But we share the sense of priority that you attach to this issue, and I hear about it every day, and I discuss it with some of my counterparts around the world whenever I have a chance.

Mr. QUIGLEY. And let's dig into that. You have been working with other agencies to press the case with our allies, and as you just described, talking to our allies. Can you talk a little bit more about how that is working, the reaction you are getting?

Chairman PAI. In terms of the interagency cooperation, it is extremely strong. We have worked very well with our State Department, for example, Department of Homeland Security, Cybersecurity and Infrastructure Security Agency, and others to make sure

that we are all on the same page. And we are, about the need to recognize the importance of security in our own ICT networks.

Going abroad as well, I have had many discussions with other countries. And while I am not at liberty to discuss exactly what is said in those meetings, what I can tell you is that our counterparts in other countries do recognize the importance of preserving the security of their own networks and having a framework to evaluate the risk profile of equipment and services that is incorporated into 5G networks.

Unlike 4G networks, one of the things that is unique about 5G is, number one, that in terms of the technical standards that are being set, security is being incorporated at the get-go, as opposed to 4G, when it was more of an afterthought.

And secondly, they recognize that to the extent that you lock yourself in, so to speak, with respect to a particular infrastructure, there may be longer-term risks that have to be addressed. And so I think those conversations are going very well, and ultimately we stand united on this issue about the need to preserve the security of these networks here and abroad.

Mr. QUIGLEY. Thank you. Mr. Bishop.

Mr. BISHOP. Thank you very much, and let me welcome both of our witnesses today. Let me address this first to Ms. Rosenworcel, then to Chairman Pai. You can both comment on this.

As you are likely aware, T-Mobile and Sprint announced a potential merger on April 29, 2018, which is currently undergoing a review process at the Justice Department and the FCC. The day after the merger was announced, nine T-Mobile executives checked into the Trump Hotel located in the Government-owned Old Post Office Building here in D.C. And since then, nearly \$200,000 has gone from the coffers of this international telecommunications company to an organization run by and benefitting the President and his family.

Reports indicate that T-Mobile's CEO took pains to make his presence known, that he milled around in the lobby of the building taking pictures in a conspicuously branded outfit, met with multiple persons associated with the Trump campaign, and deleted several old tweets criticizing the Trump Hotel from 2015.

Especially in light of the President's personal intervention into the previous merger proceedings, I am very concerned about the conflict of interest or even simply the appearance of a conflict of interest that such a business relationship creates.

Is this the way that our country should be conducting its anti-trust policy? Would you please respond to that, both of you, yes or no and then would you comment on it?

Ms. ROSENWORCEL. Without getting to the merits of the underlying transaction, which is presently before us, I will say that that does not look good. And it leaves me concerned that this is the way that mergers are taking place in this country today.

Mr. QUIGLEY. Mr. Pai.

Chairman PAI. Congressman, my decision on this transaction, as with any transaction that is presented to the Federal Communications Commission, will be driven by two things and two things only: the facts and the law, nothing more, nothing less.

Mr. BISHOP. Okay. Prison phone calls. In recent years the FCC has opposed and backed away from implementing rate caps in intrastate prison calls, which is essential for the rehab of inmates by allowing them to feel connected to their communities and their communities.

Can you explain to me why the FCC refuses to mitigate the predatory practices of companies that are charging excessive rates to inmates?

Chairman PAI. Thank you for the question, Congressman.

Mr. BISHOP. It is my understanding that the FCC did have a rule in place that had some regulation on that.

Chairman PAI. That is correct, Congressman. Unfortunately—

Mr. BISHOP. And I would direct it to Ms. Rosenworcel first and then to you.

Ms. ROSENWORCEL. There are 2.7 million children in this country who have a parent in prison. Regular contact with family and kin is not just good for them, it helps all of us because it reduces recidivism. But most prisoners and their families pay as much for a single call as everyone in this room pays for a monthly unlimited plan.

That is not right. We need to fix it. And the FCC over the last several years has made several efforts to do so, with intrastate rates, interstate rates, ancillary fees, site commissions. Our work has been remanded to us, and it is distressing that the agency refuses to continue to work on this problem because rates just keep going up, and it is unfair, and it is not right.

Mr. BISHOP. Now, Chairman Pai.

Chairman PAI. Congressman, my position on this issue is pretty simple. We need to do everything within our authority to address this problem. I was the first to point out many years ago, almost 5 years ago—6 years ago, rather—that there was a solution in terms of rate caps for interstate fees as well as ancillary fees that would have survived judicial review.

Unfortunately, the previous FCC disregarded my recommendation and the results—

Mr. BISHOP. Did you say interstate or intrastate?

Chairman PAI. Interstate. Under the law, as the D.C. Circuit unfortunately held, as you pointed out, we do not have authority over intrastate fees. That is part of the reason why I have consistently said let's attack the problem to the extent that the D.C. Circuit has said we could.

Moreover and number two, I would bring your attention to the fact that recently, as a result of the FCC staff's very careful review of a potential transaction between two of the major players in the Inmate Calling Services field, a net recommendation—they made a recommendation to me, and I agreed with that recommendation, to disapprove that transaction specifically because it would present competitive concerns in terms of potential price increases.

So this is an issue that we are very sensitive to. And those parties recently dismissed their application to merge. So this is an indication of the fact that we look forward to working with you on this problem to solving the statutory gaps identified by the D.C. Circuit and to doing the other things necessary to address an issue that we agree has gone on for far too long.

Mr. BISHOP. Rebuttal?

Ms. ROSENWORCEL. I appreciated the Chairman acknowledged that in an effort to combine two of the largest prison pay phone providers, the agency decided to say no. He is right about that.

But what I do not believe he is correct about is that we lack any authority going forward. We can do work on site commissions, on ancillary fees. We can continue to look to structure incentives for intrastate rates. We can do better than just allow the existing system to continue because it is charging prisoners and their families absolutely usurious rates.

It is not fair, and it is not right, and we should be looking for every way we can to fix this problem.

Mr. BISHOP. Thank you. My time is expired.

Mr. QUIGLEY. Mrs. Kirkpatrick.

Mrs. KIRKPATRICK. Thank you, Mr. Chairman. And thank you, witnesses, for being here today, and thank you, Commissioner Rosenworcel, for the opportunity to talk with you yesterday.

We need quality coverage data to ensure that we are spending Federal funds for broadband wisely. But companies have financial incentives that could influence the data provided. What can the Commission do now to improve the quality of data collection? Would you support the use of other data or measurements to help validate and improve the information the commission collects?

Ms. ROSENWORCEL. Thank you for the question. We need to have better broadband maps. I do not care where you live in this country, we should know if you have service or if you do not have service because if we do not know that fact, we will take scarce Federal dollars and we may not necessarily direct them to the right places.

But right now with the FCC's map, I mean, listen. There was a Cabinet official who just last month, testifying before the House, called them "fake news." That is a loaded term, but there is truth in this. Our maps do not honestly reflect where service is and is not.

So we are going to have to stop acting like we can do this all in Washington. We need to start figuring out how crowdsourcing can be part of this, how the FCC's field offices can do spot checks, how we can work with universities, how we can work with postal authorities, anyone who traverses rural areas, to help us identify where service is and is not.

Because if we know that with precision, we can start targeting our funds with precision and fixing this problem.

Mrs. KIRKPATRICK. I want to ask a question about the proposed USF cap, again for Commissioner Rosenworcel. Do you think the FCC can make sufficient progress on addressing broadband access if it caps the overall USF budget?

Ms. ROSENWORCEL. The answer is no. We should be doing three things. First, we should be figuring out where service is and is not in this country. Second, we should come to Congress with the price of serving all of those areas that do not presently have broadband and wireless service. And third, we have to develop a plan. We are doing this backwards if we are capping ourselves before we even start the process.

Mrs. KIRKPATRICK. I agree with you. Thank you very much.

Commissioner Pai, I have a question for you. You have said that addressing the digital divide is one of the most important priorities

for the Commission under your leadership. How is this proposal consistent with that statement?

Chairman PAI. Thank you for the question, Congresswoman. Each one of the four component programs within the Universal Service Fund currently has a cap or a budget. And so it is reasonable then to think about the issue of whether there should be a cap for the overall Universal Service Fund.

The proposal on the table involves a cap that is significantly above the current disbursements through the Universal Service Fund, and in addition, this is an issue that was very important to one of my colleagues. And so we wanted to tee up the idea: Should we have this conversation about what the overall cap should be?

That is in part a way to ensure that there is public confidence that every single dollar spent through the Universal Service Fund is going to be spent wisely. This is a measure of fiscal responsibility that people can know when they are paying into the fund.

There is a cop on the beat, the FCC, to make sure those funds go to closing the digital divide to places that I have visited that are on the wrong side, like Navajo Nation. If you drive from Phoenix to Flagstaff, you will find many spots where you cannot get that coverage. We want to change that.

Mrs. KIRKPATRICK. A follow-up question on that. Under your proposal, how will the Commission determine what programs will not receive additional funding if the cap is breached?

Chairman PAI. That is one of the issues that is teed up in the notice of proposed rulemaking. And I can assure you that we will not act on that proposal without soliciting public comment on it.

Mrs. KIRKPATRICK. When do you expect that rulemaking to be finished?

Chairman PAI. Well, the notice of proposed rulemaking has not yet been approved, so I cannot forecast how long that record would take to develop.

Mrs. KIRKPATRICK. So we are years away from having that information in place?

Chairman PAI. I don't know about years. But what I can say is the NPRM has not yet been approved, and so we cannot forecast what the record would be.

Mrs. KIRKPATRICK. Commissioner Rosenworcel, do you want to comment on that?

Ms. ROSENWORCEL. Yes. I think one of the problems here is that Congress developed several programs for universal services, programs to support service in rural areas, programs to support telemedicine, programs to support kids in schools getting internet, and programs to support low-income households.

And with a cap like this, we are going to make telemedicine providers fight with kids in schools for funding. I do not think that is right.

Mrs. KIRKPATRICK. Thank you very much. My time is about to expire. I yield back.

Mr. QUIGLEY. Mr. Graves.

Mr. GRAVES. Thank you, Mr. Chairman. Good to see each of you. Just a couple quick questions.

First, on 5G, there is a lot of talk about that. I know you have addressed it. Maybe you have addressed a timeline, how you see



that developing out. I think you have addressed some of the threats.

What more can we be doing to assist? I understand you have a rulemaking process in place about procurement and other things. But what are some other things we have not asked about that we should be looking into?

Chairman Pai, I will start with you, and maybe you can just bring us up to speed. I think we want to make sure we are providing the necessary resources to keep up with this.

Chairman PAI. Thank you for the question, Congressman, and I appreciate your longstanding interest, in these issues. I think one of the things that would be helpful would be to have additional congressional support for essentially repurposing spectrum that is not currently used for commercial purposes and either allocating it for commercial purposes or at least allowing it to be shared with the commercial sector.

One of the difficulties we have had has been trying to find out bands that are potentially useful for 5G, low band, mid band, and high band, and then working with other industry stakeholders in other public sector agencies to repurpose it.

The second thing, although it is not the first thing that people think about when they think about 5G, is infrastructure, about getting those small cells up at scale, about getting the fiber in the ground that is necessary for us to be able to carry that 5G traffic back into the core of the network.

And here it would be terrific if Congress could speak with a unified voice about the need to streamline the process for regulatory approval. When we are competing against countries like China, which has a national priority on 5G infrastructure deployment, it is difficult for private sector entities here today. We have to jump through Federal, State, local, and over 500 federally recognized tribes in order to get these 5G—

Mr. GRAVES. So the resources are there?

Chairman PAI. Right.

Mr. GRAVES. Infrastructure, in order to get it in place, just needs some regulatory easing.

Chairman PAI. Absolutely. And if I could make one quick pitch on fiber, in terms of fiber deployment, one of the things that would be very helpful is filling the gap that currently exists in the FCC's authority. We have authority over the poles that are owned by utilities. We do not have jurisdiction over the poles that are owned by railroads or by municipal governments.

And that is one of the biggest cost elements to building out a fiber network, especially if you are a smaller competitive provider. That gap would be traffic to see filled.

Mr. GRAVES. Great. Thank you.

Mr. QUIGLEY. Thank you. Would you like to respond as well, please?

Ms. ROSENWORCEL. Sure.

Mr. QUIGLEY. Thank you.

Ms. ROSENWORCEL. It may surprise you, but I think my colleague actually did a really good job laying out those things, so I agree.

Mr. GRAVES. As have you in each response, too.

Ms. ROSENWORCEL. But I—

Mr. GRAVES. You have——

Ms. ROSENWORCEL. But I want to recommend one other thing. I think Congress should require that we have a spectrum calendar so we identify to companies, manufacturers, bidders, when we are going to make airwaves available to market. Right now, we have a blitz of spectrum bands that are under consideration.

We've got 2.5, 3.5, 3.7 to 4.2, 5.9, 4.9, 6. I mean, I can just keep on going on. It's like, 10 to 30 of them that are under active consideration. We should put them on a calendar, because the entire marketplace, the entire ecosystem would be more organized, and I think it would result in services getting to consumers faster.

Mr. GRAVES. So, is there a timeline—a goal timeline, or is that what you're suggesting——

Ms. ROSENWORCEL. I am——

Mr. GRAVES [continuing]. Should be developed out? Okay.

Ms. ROSENWORCEL [continuing]. Suggesting it should be required of this agency.

Mr. GRAVES. So, there's no goal of 2021, 2022, or 2023 when it's——

Ms. ROSENWORCEL. I believe there are goals, but I think when Congress writes a law and we have to respond to it, we tend to actually abide by those obligations.

Mr. GRAVES. Okay, so you need a little motivation it sounds like. One last quick question. The New York Times today, you might've seen it, was talking about the pay to track issue that's developed. You know, cyber and privacy are something that we've worked on a lot, I've worked on a lot, and as has the Chairman here, but this indicates that there's a delay in response from the FCC, and as a result of that, that tracking is occurring by individuals who will pay for cellular data, or geopositioning. Help us understand why there's a delay of a year or so or more. What are the challenges with this? Chairman Pai.

Chairman PAI. I appreciate it, Congressman. I mean, the allegation of delay is flatly false. When we got word of this issue last year, I immediately instructed our staff to initiate an investigation. They have done that.

I am hamstrung by the fact that I do not comment publicly on enforcement investigations, other than to say that the FCC's career staff is actively working on this issue within the relevant statute of limitations, and that's simply all I can say.

I understand that it's an issue that has generated a lot of public interest, but I can tell you that our staff is working very hard on this issue, and I have to leave it at that.

Ms. ROSENWORCEL. I'm not totally satisfied with that. I think people need to know more. Everyone in this room has a wireless phone in their palm, or their pocket, or their purse, wherever they go.

And it is disturbing to learn that wireless companies were selling that data to third-parties who in turn would sell it to bail bondsmen and any other shady middlemen who could just purchase for a few hundred dollars your location within a few hundred meters.

I've asked the agency's enforcement bureau to explain to me just what we're doing. I've asked for letters of inquiry. They have refused to share with me information. This is an issue of national

and personal security, and I think that the agency has to do more than just offer this quiet response.

Mr. GRAVES. So, you mentioned cell phone, pockets, hands, is it possible for an individual to turn off their privacy settings at any given time and their cell phone not be detected where they are?

Ms. ROSENWORCEL. No.

Mr. GRAVES. Is that something that the FCC should address, or is that possible?

Ms. ROSENWORCEL. The reality of owning a cell phone that's on is that as you walk around, it is regularly pinging a tower nearby in order to ensure that you have continuous service.

Now, the FCC's customer proprietary network information rules are associated with that, and there are limits on what can be used if there's information gleaned from your location when you make a call, but we've got to update things for the internet of things, because we got to—by the end of the decade, 50 billion wireless devices all around us that are all going to be conveying geolocation information. We're behind things. We need to start developing a plan, and we should be public about it.

Mr. GRAVES. So, it's being abused by certain individuals, or companies?

Ms. ROSENWORCEL. The opportunities for abuse are substantial. We need to start figuring out how to develop better cyber hygiene, and cyber security geolocation practices for every device, and for everyone.

Mr. GRAVES. Thank you. Thank you, Mr. Chair.

Mr. QUIGLEY. Thank you, sir.

Mr. Crist.

Mr. CRIST. Thank you, Mr. Chairman. Thank you, Chairman Pai, and Commissioner Rosenworcel for being here today. We appreciate your attendance. Commissioner Rosenworcel, as I know you know, night and day, Americans are being inundated by spam calls.

It's more than an annoyance, it's an invasion of privacy, and it's being used to deceive and take advantage of unsuspecting victims. In fact, experts predict that this year alone, nearly half, half of all calls, will be spam. What is the FCC doing about this?

Ms. ROSENWORCEL. Thank you for the question. As I said in my opening statement, what's going on with robocalls is insane. At the start of this administration, there were two billion a month. It's now up to more than five billion a month. If you think it's getting worse, it is.

And while the FCC has tried to approach this with a few fixes and some bad actor fines, the Wall Street Journal last week said that we've collected less than \$7,000 from bad actors and robocalls. We need to step up our game and make some changes. We need call authentication technologies that are required.

I've written every major carrier and ask that they make free tools available to every consumer to block robocalls. I hope my colleagues will join me in that quest.

And in addition, I think that it is necessary for us to reorganize the agency. As John Oliver recently said, 60 percent of FCC complaints are about robocalls. We should just have a division to help address those problems, and go after this with vigor. I feel like the

agency should be organized around the problems that consumers call in and tell us about.

Mr. CRIST. What can Congress do to help you?

Ms. ROSENWORCEL. Congress, I believe the agency has adequate authority to require call authentication technologies tomorrow, but we've had an open rule making since 2017 on this subject, so were you to require it by a firm date, that would be helpful. I know you've done some work to try to suggest that we should have contests to come up with better robocalling technologies. I know the Federal Trade Commission had some a few years ago, and they produced positive results.

I think you should compel us to reorganize our activity at the agency to have a division that is dedicated to fighting robocalls. We don't have that today, and we need it.

Mr. CRIST. Did you say in response to my first question that the FCC only ushered in \$7,000 of fines?

Ms. ROSENWORCEL. A little less than \$7,000 according to the Wall Street Journal. We have assessed over 200 million since the start of this administration, but I do not believe we've actually collected on any of that.

Mr. CRIST. What's wrong? What's—why isn't that being collected?

Ms. ROSENWORCEL. To be clear, the Department of Justice has these fines referred to them, and it's not that anyone sitting at this table or my colleague included don't want to see those individuals fined, but if we proceed with this approach at this pace we are not going to solve the problem. We need to be far more aggressive, because what we're doing today is not good enough. The problem is growing rather than getting better.

Mr. CRIST. So, we have laws on the books. We have over \$200 million of fines you have sent to the DoJ, and it's not being pursued?

Ms. ROSENWORCEL. It's not. It's very hard to collect against these bad actors. The bottom line is this theory of how to solve the problem is not working.

Mr. CRIST. Right.

Ms. ROSENWORCEL. We need to be more aggressive and develop others.

Mr. CRIST. Well, thank you. Chairman Pai, I know that the FCC has a lot on its plate between the roll out of 5G, addressing rural broadband, as well as spectrum auction. That is why my bill directs the FCC to lead other agencies in fighting the scourge of spam calls. Would you find it useful to have the input of agencies like the Federal Trade Commission, Department of Justice, DHS, FBI, to name a few, in ending this plague?

Chairman PAI. Congressman, thank you for the question. I think that your bill, which I did have a chance to review, would set a useful marker in terms of establishing inter-agency coordination.

This is one of the issues that we hear about all the time, that the Federal Trade Commission's do not call list has not been effective, and other agencies might have equities here. To get us all on the same page would be very useful, and my understanding is that legislation that was passed just today in the Senate would incorporate some of the core concepts in your bill. So hopefully, this is

not an abstract conversation, but something that could become a practical reality, and relatively soon.

Mr. CRIST. Great. Thank you, Chairman. And then finally, Commissioner Rosenworcel, it's come to my attention that the FCC received a deluge of comments on the net neutrality repeal. 22 million or so, is that correct?

Ms. ROSENWORCEL. That's correct. The problem is that work from the state attorneys general have identified that many of them were fraudulent. As many as nine-and-a-half million involved stolen identities.

In other words, they took the name and address of someone, and just wrote to us with their false opinions. These things were filed in our public document. This is identity theft. We need to be taking it seriously, because there's fraud that supported this outcome, and that's a problem, and I regret that the agency has just turned a blind eye to this identity theft, but I am relieved to know from press reports that the FBI is now looking into this, because this is the channel for public comment. This is how Americans tell Washington what they think of policies we're pursuing, and the FCC's net neutrality docket indicated that that channel is flooded with fraud.

Mr. CRIST. Thank you both very much. I appreciate it. Thank you, Mr. Chairman.

Mr. CARTWRIGHT. Thank you, Mr. Chairman, and I'd like to pick up on the last discussion from my colleague from Florida. Is there any reason to think that stolen identity comments and rulemaking are limited to the FCC rule making?

Ms. ROSENWORCEL. No, there's not. The Wall Street Journal in a substantial investigative piece about a year and a half ago identified similar problems before the Department of Labor, the CFPB, as well as the Securities and Exchange Commission, and there has been some evidence in the press of problems before the Federal Energy Regulatory Commission. The Administrative Procedure Act is from 1946.

Mr. CARTWRIGHT. Sure.

Ms. ROSENWORCEL. It's aging.

Mr. CARTWRIGHT. Yeah.

Ms. ROSENWORCEL. It's getting creaky, and in the digital age, we're going to have to figure out how to make sure that this channel for public comment in Washington is bolstered, and more secure, and more open to what people think so that we don't see this kind of identity theft and fraud going forward.

Mr. CARTWRIGHT. Well, that's what I'm talking about. You know, we're talking about HR1 going after—cleaning up American democracy, but so many—so many of the rules and regulations that we operate under here in America were formulated under the APA, the Administrative Procedures Act, and they depend for public comment on these—nowadays on the internet for that. So, that's a huge topic that we really need to wrap our arms around.

I wanted to ask you, Commissioner Rosenworcel, about broadband internet for rural places. I represent a couple of wonderful counties in Pennsylvania, Wayne County and Pike County, and they're gorgeous places, and places you want to spend a lot of time with your family at, but they don't have broadband internet any-

where, and you know, you think about what that means. It means there are, you know, limited opportunities that people have to communicate with the outside world compared to every other place that has those things.

It means limited opportunity for children to learn about the world through the internet, but maybe worst of all, it really hampers the ability of areas like this to attract outside businesses coming in, because outside businesses, who can choose any place in the world to locate, probably aren't going to want to locate someplace where the families of the workers don't want to live there because they can't go online, unless it's, like, with one bar on their cell phone, which is what they get in Wayne County. 48 of the 67 counties in Pennsylvania are considered rural. There are 800,000 Pennsylvanians lacking access to high speed internet, and two-thirds of them are in rural areas. I appreciate your comments, Commissioner Rosenworcel about the need for better mapping, and I couldn't agree more.

You know, people in Wayne and Pike Counties have told me it's a priority of theirs to get broadband internet access, but this points to the problem. Laying lines over vast amounts of territory, lots of land, with relatively few people—that's what rural territory is—it's just not a profitable proposition for private sector internet service providers.

Last year, Congress made what some have called a "down payment," quote unquote, on investing in rural infrastructure, broadband infrastructure by creating the \$600 million reconnect program to be administered by the USDA Rural Utility Service, and an additional \$550 million was added in the fiscal year 2019 omnibus. With all the work on broadband networks currently underway pursuant to FCC's universal service programs, how do we ensure that these additional infrastructure—broadband infrastructure resources are coordinated with other programs to prevent duplication of effort, Commissioner Rosenworcel?

Ms. ROSENWORCEL. Well, thank you for the question. You're absolutely right. The only way that we are going to get our bang for the buck is if we coordinate all of these federal programs. You know, it's a strange fact, but the Department of Agriculture, which received those funds, is up the street from the FCC, and yet I fear that we don't regularly have conversations about what they're doing, and what we're doing, and if we want to maximize our scarce dollars, we need to do more of that.

Mr. CARTWRIGHT. Now when it comes to helping fund broadband networks, how do we ensure that investments made leveraging federal resources won't be outdated and can actually deliver on the promises being made and the dollars being awarded?

Ms. ROSENWORCEL. Something that we're going to have to be mindful of. I can't speak specifically to the Department of Agricultural Rural Utilities Services' choices, but certainly the FCC makes choices about its Universal Service Fund, and for instance, right now mandates that those funds for broadband are generally used for 25-megabit service. The idea is not to fund service that is too slow and backward looking, but to try to fund services that are forward-looking.

Mr. CARTWRIGHT. Well, I think you to both of you for appearing today, and I yield back.

Mr. QUIGLEY. Mr. Graves.

Mr. GRAVES. Mr. Chairman, just maybe if you can just give us an update. I know this committee appropriated a billion dollars over two years to help with the T.V. Broadcaster Relocation Fund. Can you give us an update? Are we on track, on schedule? And things going as you expected?

Chairman PAI. I appreciate the question, Congressman. We are on track so far. We completed phase one successfully. My recollection is that 193 stations transitioned during what was called phase one. We're now in the midst of phase two, which is scheduled to close soon, and we'll have already had 115 stations that have transitioned. In addition to that, we have taken the authority that you gave us and we have started establishing a framework for identifying how non-protected stations, low power T.V., translator and FM radio stations can get reimbursement through the additional money that you allocated for this purpose. So in addition to that, you also allocated money for consumer education, so we set up a call center dedicated to this purpose. We put out alerts in English and Spanish. We've additionally created some web content that people can access on our website if they have questions about rescanning and the like. So this is one of our top priorities. I said from my earliest days as commissioner we wanted to make sure this transition was a smooth one, and thanks in part to the resources you've given us, I can report to you that as of today, that transition is, in fact, going well.

Mr. GRAVES. That's good. I appreciate the entire commission's work on that. I know that's something the entire commission is very supportive of. From a reimbursable cost perspective, do you have a process in place to make sure that the proper expenses are being reimbursed? Can you help us understand that, how that works?

Chairman PAI. We do. We don't want it to simply be a case of anyone can submit paperwork and we immediately send out a check without looking at it. There are certain categories of costs, some of which are reimbursable, some of which are not. At the end of the day we want to make sure that we're able to report to you that we did not spend a single dollar in this process on something that more properly should have been the province of the broadcaster itself. But that core promise of the incentive auction that we would transition broadcasters and hold them harmless, they wouldn't have to pay out of their own pocket for a relocation that was out of their control, that continues to be the case.

Mr. GRAVES. Great, thank you. Ms. Rosenworcel, how do you feel about the program? Going well? Anything else we can be doing?

Ms. ROSENWORCEL. You know, I agree with the chairman. I think it's proceeding thoughtfully. It's a big task.

Mr. GRAVES. It is.

Ms. ROSENWORCEL. And we are still in early days so I think it is incumbent on the agency that if we identify problems going forward, we come to you and try to identify how to fix them.

Mr. GRAVES. Thank you. And I just want to thank the commission. I know you have a lot of difficult tasks in front of you, and

I know you do the best you can to work together to find solutions, and this was one in which I think everybody worked together to help guide us with the proper steps to take. And even for us, authorizers and appropriators working together to get to the final product and end was very productive, so thanks again for joining us today, for your good work, and I look forward to visiting with you again in the future. Thank you, Mr. Chairman.

Mr. QUIGLEY. Mr. Bishop.

Mr. BISHOP. Thank you. The issues under FCC's jurisdiction, from spectrum sharing to auction implementation to consumer protection are becoming more and more complex each and every year, but it appears as if the Administration is requesting less funding, particularly than we provided in 2019. Commissioner Rosenworcel, do you support the funding level for the commission? If not, where do you believe the commission needs additional resources?

Ms. ROSENWORCEL. Thank you for the question, Congressman. I believe considering that the FCC fully pays for itself through fees, this funding level is too low. We have the lowest level of employees in decades at a time when our services that we oversee are more important in every aspect of civic and commercial life. If we want to lead the world in 5G service, run multiple spectrum auctions, manage the scourge of robocalls and deal with the growing threat of cybersecurity issues, we're going to need more resources to do that well. And I think that this budget falls short.

Mr. BISHOP. Do you need more fees or you need Congress to appropriate more funds?

Ms. ROSENWORCEL. I think we need more employees to carry out those important tasks.

Mr. BISHOP. So we need to fund that. Chairman Pai, do you believe that the requested funding provides adequate resources for the commission to continue its ongoing and its planned work? We have concerns about the state of the commission's information technology, particular the systems that support auctions and licensing. Or does the level of requested resources allow you to upgrade all of your critical systems?

Chairman PAI. Thank you for the question, Congressman. This level that we have submitted on behalf of Administration, \$335 million itself, represents a \$13 million-dollar bump from when I first got into office, and so we do recognize the additional resources Congress has given.

Mr. BISHOP. The question is, is it enough?

Chairman PAI. So in that regard, to the extent that Congress seeks to allocate additional resources, I can assure you that we will use them wisely, in part to upgrade those legacy IT systems.

Mr. BISHOP. Do you want more?

Chairman PAI. That's one of the things we'd be happy to work with you on, Congressman, this number is of course—

Mr. BISHOP. I'm asking you, do you want us to appropriate more than you ask for?

Chairman PAI. Congressman, should you see fit to give us the \$339 million that you gave us in the previous years—

Mr. QUIGLEY. We can do this all day, gentlemen. [Laughter.]

Chairman PAI. But I do want to, in all seriousness, I do want to assure that whatever number you pick, we will use wisely.



Mr. BISHOP. No, no, I want you to tell me do you need more money?

Chairman PAI. We would not complain with the level of funding—

Mr. BISHOP. I didn't ask you whether you would complain, just tell me do you need more resources to do the job that you're asked to do, that you're required to do?

Chairman PAI. Congressman, I believe—

Mr. BISHOP. Effectively.

Chairman PAI [continuing]. We went with the \$339 million that we submitted to OMB. Again, we could discharge additional responsibilities we've identified.

Mr. BISHOP. Thank you, Mr. Chairman. A key part of the FCC's analysis with regard to net neutrality was the claim that net neutrality harms investment, yet the evidence supporting that is not clear. And I asked the executives who said that net neutrality did not affect their business decisions. Commissioner Rosenworcel, during the rulemaking process, the chairman stated that he would only change his mind on net neutrality if presented with economic analysis that shows credibly that as infrastructure investment that has increased dramatically. In your opinion, is that position consistent with FCC's rulemaking requirements, or is that, in your opinion, good policy?

Ms. ROSENWORCEL. I think that the record reflects that capital expenditures have decreased since the FCC's 2017 net neutrality rules went in place at the major providers. But I would also argue that this is a subject that needs peer review. It's not something where we should simply accept data that's from the carriers themselves. We need to think thoughtfully about long-term infrastructure in this country and not just broadband providers, but the great digital ecosystem. I think the record reflects that net neutrality rules were no damper on investment, but I will respect the idea that we have to continue to watch this issue.

Mr. BISHOP. Chairman Pai, the FCC's order dedicated 18 paragraphs discussing the impact of ISPs and only two to content and service providers. Why did you find that sufficient given the enormous size of impact on an economy? This committee recently approved the creation of the new Office of Economics and Analytics. Will this allow the FCC to conduct independent economic analysis in cases where economic record is ambiguous like with net neutrality?

Chairman PAI. Congressman, that's precisely the reason why we established this office is to centralize that function of economists and data analysts and others who previously had been sprinkled throughout the agency, without any workflow coordination necessarily. They were sometimes left out of the equation altogether. So we wanted to create a central office where they have a seat at the policy-making table to tell us this is what the costs and benefits are, these are the gaps in the data sets that we've got, these are things we're seeing in terms of geographic information mapping and the like. And that way we can make better decision-making at the front end as opposed to the way it's been done historically.

Mr. BISHOP. Ms. Rosenworcel.

Mr. QUIGLEY. Well, we'll see if where timing is, sir, when we get done with this segment. Mr. Amodei.

Mr. AMODEI. Thank you, Mr. Chairman. So as I look around probably as the oldest guy in the room, I'm not going to be talking 5G and 4 triple-S, double-reverse Johnson and all that other sort of stuff, so if anybody thinks I'm trying to impersonate a tech person on communications you are mistaken.

With that said, first of all, I want to thank you both because in the stuff that we've worked out on the Spectrum Repack and all that other sort of stuff for T.V. stuff through your chairmanship and the previous chairmanship, your staff has been very responsive. We want to talk to you about it, what's going on my neck of the woods, that sort of stuff, and so I think regardless of where you think we ought to be or what, the agency has been phenomenally cooperative and a standout in my experience in eight years here. You didn't always tell me what I like, but you always responded and told the truth and did it in a timely manner and worked well. So I want to say thank you.

Then the next thing I want to tell you is this: There are parts in northern Nevada, and if those people in Wayne County want to see rural, let me just tell you this, I'll show you rural and we don't even have trees there it's so rural. Obviously he's doing some security stuff over there on his device right now so we won't bother that because that's very important. But having said that, there are few spots where when you talk about driving from Phoenix to Flagstaff in Arizona, it's like I don't want you to do anything to change some of those spots in Nevada because people go there because there is no coverage, okay?

The final thing is this: I know we're talking about the coming, you know, 5G and all that stuff and that's where most of the future is and that, but in talking with broadcasters in my neck of the woods, some of that old technology is kind of the doomsday infrastructure, if you will. We spend a lot, as we should, to say we want these networks to be as bulletproof as possible and blah, blah, blah and failsafe and all that, but at the end of the day, there's that old, you know, I'm not going to say rabbit ears stuff because I know most people in here don't remember that, but having said that, it's like I would like to follow back up with your staff and say, so what are doing for the doomsday infrastructure. Because it seems to me that this is such a lucrative target that there's always going to be people out there trying to defeat you, because online is such a rich place for wonderful things, but also for evil, and so you're going to deal with that and I don't envy you a it, but could you just briefly, it's like is there any thought going on in all this stuff that's going on there to go, hey, wait a minute, if that goes down in that region because of whatever, we can still switch over to those folks that we took care of when we were repacking spectrum and stuff like that, to where if we have to, it's like tune your radio to blah, blah, or turn on to the emergency broadcast network old-style. Anybody looking at that?

Chairman PAI. Certainly we are, Congressman, we share that concern. For example, one of the things I do regularly is get briefed in our classified facility about some of the risks we're seeing to critical infrastructure and elsewhere, and I'm sure you get these brief-

ings, too. It's a danger given how open our society traditionally is and how reliant we are on some of those kinds of infrastructure. So the other thing we do is work regularly with federal partners. I personally worked, for example, with the head of the Cybersecurity and Infrastructure Security Agency over at DHS. We're coordinating now with the Federal Energy Regulatory Commission to make sure we're on the same page in terms of the energy grid. And this is a cross-cutting effort because all of these industries, from energy to healthcare, you name it, rely on technology at the end of the day. So we've got a seat at that table, I can assure you.

Mr. AMODEI. Well, if might just briefly, and then Madam Commissioner, you can—but it's like, listen, especially when you add the rural element into it, when push comes to shove sometimes it's the only thing is that old technology sitting on the mountaintop that gives you something. So that's why it's something that's kind of floating around in our thought process.

Ms. ROSENWORCEL. You know when we have fires in northern California and floods in Nebraska and Hurricane Sandy, we do have to remember that most people turn to their broadcasters to learn what's going on. And when the power goes out, your phones—they're hard to charge—we've got to be mindful that a radio with batteries, which feels awfully old school, may be one of the most important things we all have around—

Mr. AMODEI. They're comfortable to some of us.

Ms. ROSENWORCEL. All right, I'll take old school. But I think we have to remind ourselves in this digital world that there are some analog technologies that can continue to help keep us safe, and we've got to make sure that our systems protect them.

Mr. AMODEI. Thank you both. Thank you, Mr. Chairman.

Mr. QUIGLEY. Mr. Amodei mentions rabbit ears. For those who don't remember, they were actually on top of your T.V. set. when you had to walk over and turn the channel. And they were kind of a small antennae that you would move around, and the problem with it is that once you touched them you became part of the antennae, you immediately got new reception. So being the youngest in the family they would make me just sort of hold it so they can watch a decent T.V. show.

Mr. QUIGLEY. I don't know how to follow with that, Mr. Cartwright, but it's up to you. [Laughter.]

Mr. CARTWRIGHT. On behalf of the committee, may I think the Chairman for revealing what life in antiquity was like. [Laughter.]

Mr. QUIGLEY. Rural Indiana.

Mr. CARTWRIGHT. Chairman Pai, you heard Commissioner Rosenworcel and I talking about mapping, and I wanted to give you a chance to weigh in. The shortcomings of current broadband mapping data are obvious; they're widely publicized and acknowledged. The Rural Utilities Service employs a review process to help verify which areas are unserved, and ensure that, as she said, scarce resources limited loan and grant dollars will go to where the need is greatest. The FCC has employed a similar process for certain USF mechanisms in the past, but not always.

Chairman, do you agree that a challenge/evidentiary process is a good way to improve the accuracy of maps before funding decisions are made?

Chairman PAI. I couldn't agree more, Congressman, and that's why last year, two years ago rather, I set up, and my colleagues agreed, with a challenge process that involved not just competitive providers but opening up to others, farm bureaus, for example, legislators and others who might want to challenge those maps. And in addition to that, we started an investigation into one or more of the carriers that we thought submitted inaccurate maps because we wanted to make sure there were submitting accurate data to us at the end of the day. And that's on the mobility side.

On the fixed broadband side, I share your frustration, coming from a rural part of the country myself where it's hard to get coverage. One of the problems I encountered when I first got in office two years ago is the FCC's process for getting information from broadband providers was created in 2000. Now I mean just think about how long ago that was, 17 years—19 years is an eon in this area, and so we started to proceeding to upgrade that Form 477, as it's called. We've been meeting with stakeholders, we've been encouraging private sector actors to start mapping initiatives of their own, but the bottom line is we want to get better data in because that ensures, and we would be able to report to you, that every dollar going out in the universal service fund, is, in fact, closing that digital divide in Pike County or Parsons, Kansas, wherever it is.

Mr. CARTWRIGHT. How much right now are you relying on service, you know, private sector service providers for giving you the information about where the areas are that are unserved?

Chairman PAI. That has traditionally been the process that they submit this Form 477—

Mr. CARTWRIGHT. One hundred percent?

Mr. PAI. A fair amount, yes, except for the challenge process with respect to Mobility Fund, II.

Mr. CARTWRIGHT. So what else can be done to improve broadband coverage maps?

Chairman PAI. I think making sure that mapping process is robust—Congress obviously allocated resources to the Commerce Department now in part to address this issue—continuing to work with non-traditional stakeholders, as I might call them, encouraging farmers and others to participate in that process either through their farm bureaus or on their own. I mean there are so many things that we're doing right now to upgrade the granularity and meaningfulness of that data we're getting in.

Mr. CARTWRIGHT. I'm glad you used that word "granularity". I am curious to learn more about the recent announcement that the FCC and internet service providers will work to develop are more granular broadband data and mapping approach. Tell us more about that.

Chairman PAI. Yes, thank you for the question, Congressman. We have encouraged some of the trade associations working on this issue to develop mapping initiatives, and some of them are starting to do that. I recently spoke at an event where one of those trade associations representing essentially phone companies announced an initiative to get that mapping initiative underway. Other providers and trade associations are doing that as well. But this issue is so important in terms of granularity. Last week, for example, I found myself on the Muller Ranch, which is in a rural part of Yel-

low County, California. They're not far from Sacramento, one of the biggest cities. But Frank Muller, who's the owner of the ranch said if you look at—

Ms. ROSENWORCEL. Different Muller.

Chairman PAI. Oh, so sorry. Yes, Frank, just if I did not—

Ms. ROSENWORCEL. You had us all very confused. [Laughter.]

Chairman PAI. I thought I said Frank, but in case I didn't—But one of the things he showed me was essentially this metal rod that he's been using that his father might have used, his grandfather might have used, to measure soil moisture, and he said essentially he'd just take out a chunk of soil and feel it to feel how moist it is. Then he showed me this very advanced tool and he said all I have to do is stick this thing in there and it monitors soil moisture, and Ph, and nitrogen and all the rest of it, but I can't use it because it relies on 4G LTE.

And if you look at a map you would think, oh, he's in Sacramento, he's a big city guy; but just a few miles away from Sacramento he's essentially in another geographic zone. And so we wanted to change that to make it more granular so we understand the Muller Ranches that are out there and target our funding to people like him and to places like his so that they can get on the grid.

Mr. CARTWRIGHT. And working with the trade associations as you mentioned, it sounded like you're encouraging them to do that, is that correct?

Chairman PAI. Absolutely. This is an all-hands on deck effort. We want all of them to be foremost thinking about how to give the FCC the—

Mr. CARTWRIGHT. Not to interrupt but I'm almost out of time, you're encouraging them but you're not requiring them, is that it?

Chairman PAI. Well, we do require them to participate in our Form 477 process, in the mobility fund mapping data collection initiative that we've got. Those are mandatory efforts. But we also want to encourage them to think about developing tools as well because ultimately it's beneficial not just to us but to consumers to understand where broadband is and where it isn't.

Mr. CARTWRIGHT. Thank you, Mr. Chairman, I yield back.

Mr. QUIGLEY. Thank you, Mr. Cartwright. Chairman and Commissioner, I'll say this, I think the ranking member will join me. We may agree, we may disagree; you two may agree and disagree, but I will say you two are very well prepared and forthcoming and we appreciate your participation and your service, and this meeting is adjourned.

[Questions and answers submitted for the record follow:]

**Financial Services and General Government Subcommittee**

**Federal Communications Commission Budget Hearing with Chairman Pai and  
Commissioner Rosenworcel**

**Questions for the Record Submitted by Chairman Quigley**

***Repack***

**Question:** Chairman Pai, to accommodate its 2016 broadcast incentive auction, the FCC recently completed the first of ten phases to repack nearly 1,000 full power broadcast tv stations across the country. These are stations that received no benefit from the auction and wish to continue to serve their viewers. Can you provide an update on how that first phase went, including the number of station moves that were successfully completed, as well as any delays? What were the causes of any delays?

**Response:** The repack transition process is off to a strong start. As of April 12, 2019, the repack has completed two of the 10 phases that make up the post-auction Transition Scheduling Plan. Approximately one-quarter of the affected television stations (249 stations of the total 987) completed their transition by the end of the second phase. By contrast, according to our original schedule, only 203 stations were supposed to have transitioned by the end of the second phase. We are currently ahead of schedule primarily because the Commission granted permission to a number of stations to move to their new channels before their required phase completion date. Additionally, some stations were granted more time to transition for good cause and in circumstances in which there was no impact on other stations. There were a variety of reasons for these changes, such as the need to coordinate resources with stations assigned to earlier phases or to provide additional time to complete construction.

**Question:** Chairman Pai / Commissioner Rosenworcel, based on the FCC's experience in the first phase of the transition, do you have concern that additional stations will not be able to complete moves prior to their assigned phase deadlines?

**Response:** I am optimistic that the transition will stay on target, but we must remain vigilant. The first two phases of the transition have gone well. And going forward, we have a monitoring process in place to help identify and resolve any problems for individual stations so that the overall transition deadline is not impacted. For example, specific Media Bureau staff are assigned to serve as Regional Coordinators to be the first point of contact for stations. These coordinators work with the Incentive Auction Task Force and other Bureau staff to continually monitor the status of the transition by evaluating stations' quarterly progress reports and the draw down on the reimbursement fund. Similarly, our staff is in contact with the industry professionals in the resource chain, including tower companies and equipment manufacturers, to help identify and manage issues as they arise.

**Question:** Chairman Pai, we have heard concerns about both the lack of availability of tower crews and equipment that may contribute to further delays. Do you share these concerns?

**Response:** The availability of tower crews and equipment is essential to meeting the established deadlines. Commission staff are in close contact with tower companies and equipment manufacturers to monitor for any issues in the resource chain for transition projects. I have also personally asked both the relevant trade associations and individual members in the tower and

broadcast industries to keep the Commission fully and timely informed on issues they are seeing or anticipate seeing in the marketplace.

**Question:** Chairman Pai / Commissioner Rosenworcel, viewers across the country rely on access to broadcast television not only for entertainment, but as a lifeline in times of emergency. If a broadcast station through no fault of its own cannot transition to its new frequency prior to its assigned phase deadline, do you believe it should be forced off the air? If not, how will the FCC continue to address these issues?

**Response:** The Transition Scheduling Plan has built-in flexibility that allows for adjustments on a case-by-case basis while maintaining the overall transition schedule. This framework gives stations several ways to remain on the air by using extensions and special temporary authority, among other tools, even if time runs short and they must vacate their pre-auction channel prior to completing construction on their new channel. So far, the Commission has successfully worked with stations to make sure that they are not forced off the air through no fault of their own.

### *Suicide Hotline Improvement Act*

Congress passed the National Suicide Hotline Improvement Act (P.L. 115-233) last year, which tasks the Federal Communications Commission with studying the feasibility of transitioning the 1-800 number to a single-use N11 code. Furthermore, it asks the FCC to consider recommendations surrounding improved infrastructure and operations (3)(a)(2)(B)(ii)(II). Given that the LGBTQ population is at a heightened risk for suicide, I am requesting a status update on the following:

**Question:** What is FCC doing to address the concerns raised by over 100 commenters to its open docket to consider the need for specialization of services for LGBTQ populations in relation to implementation of the Hotline Improvement Act?

**Response:** The Department of Health and Human Services' Substance Abuse and Mental Health Services Administration (SAMHSA), the Department of Veterans Affairs (VA), and the North American Numbering Council (NANC) recently submitted reports to the Commission concerning the feasibility of designating a simple, easy-to-remember three-digit code for a national suicide prevention and mental health crisis hotline system. The Commission staff is reviewing these reports as well as comments filed by interested parties in the docket. These comments include a broad range of submissions by interested parties such as the Trevor Project, which offers a suite of crisis intervention and suicide prevention programs for LGBTQ young people under the age of 25. My office has also met with representatives of the Trevor Project and listened to their concerns about the needs of LGBTQ youth and the resources available for this at-risk population.

**Question:** Has FCC considered the mandatory training of counselors for identifying and responding to people within high-risk groups, or the diversion of calls to organizations with particular expertise in serving these communities?

**Answer:** The FCC will consider all of the issues presented by interested parties before issuing its report. If the Commission ultimately recommends that a particular N11 dialing code or other covered dialing code should be used for a nationwide suicide prevention and mental health crisis hotline system, calls to that number would likely be routed to crisis centers overseen by government and public health organizations. Those organizations would likely determine the

types of training counselors receive and whether calls are diverted to organizations with particular expertise.

**Question:** When does FCC anticipate making final determinations? Will there be further opportunity for public comment?

**Answer:** The FCC will submit its report to Congress by the statutory deadline of August 14, 2019. Consistent with Congress' directive, the report will recommend whether a particular N11 dialing code or other covered dialing code should be used for a nationwide suicide prevention and mental health crisis system. Before implementing any such recommendation, the Commission would seek public input through a notice and comment proceeding. Interested parties would be invited to fully participate in that proceeding.

### *Reassigned Number Database*

**Question:** Chairman Pai - Following up on the Commission's final rule on the reassigned number database to help reduce robocalls, it would be helpful to know your timeline. When do you plan to issue the Request for Proposals to implement the database? Do you have a timeline to get it up and running?

**Answer:** The Commission will move as quickly as we can to get the reassigned number database up and running to ensure that consumers will be protected from these unwanted calls as quickly as possible.

As for a specific timeline, that is dependent upon the process outlined in our December 2018 order establishing the database. That document is available at:

<https://www.fcc.gov/document/fcc-creates-reassigned-numbers-database-combat-unwanted-robocalls>. The Commission directed the North American Numbering Council (NANC) to provide the Commission recommendations about certain technical aspects of database establishment, operation, and funding, within six months of the Order's release, which will be in the next quarter. Then, the Wireline Competition Bureau and Consumer and Governmental Affairs Bureau will seek comment on those recommendations, which will, among other things, include the user interface specifications and data format for voice service providers to report permanent disconnects to the database.

Based on the NANC's input and the comments received about NANC's recommendations, the Commission will proceed with a competitive bidding process to find an independent, third-party administrator. To be efficient, the agency is considering consolidating its North American Numbering Plan Administrator and Pooling Administrator requirements with its new reassigned numbers database requirements under a single contract. Earlier this month, the Commission issued a Request for Information to gather market research on this consolidation. That document is available at: <https://www.fbo.gov/spg/FCC/FCCOMD/FCCCPC/FCCRFI-2019-NANPA-PARNDAListing.html>.



**Financial Services and General Government Subcommittee**

**Federal Communications Commission Budget Hearing with Chairman Pai and  
Commissioner Rosenworcel**

**Questions for the Record Submitted by Congressman Stewart**

It is no secret that many members of this Congress and other third-parties have serious concerns about the Commission's broadband mapping data. This problem is of particular concern for this committee because, if the Commission's broadband maps are unreliable, the billions of dollars in loans and grants you allocate for rural broadband expansion may not be properly targeted. Your funding allocation process may overlook areas with no broadband access that are marked as covered on your map, and 2) waste taxpayer dollars by overbuilding in other areas.

**Question:** Do you share the concerns about the accuracy of the FCC's broadband mapping data? If so, what are you doing to fix it?

**Response:** I do share those concerns about the mapping methodology established by the prior Administration. Closing the digital divide is my top priority. Broadband must be available to all Americans, regardless of where they live. Updated and accurate broadband data is essential to accomplishing this goal. We must understand where broadband is available and where it is not to target our efforts and limited funding to those areas most in need.

Accordingly, in August 2017, the Commission initiated a further proceeding to take a focused look at the Commission's Form 477, which collects information about broadband deployment to end-user locations across the U.S. In that proceeding, we have teed up ideas for collecting more granular and standardized data to increase its usefulness to the Commission, Congress, the industry, and the public. As the staff reviews the record, they also continue to work to improve the accuracy of the data submitted to the FCC through internal analysis and filer engagement, issue reports, update existing maps, and release new maps with additional information about fixed and wireless broadband services.

***Form 477***

The FCC Form 477 broadband data collection process, marks an areas as having broadband access if the provider serves or could serve that area.

**Question:** Are you considering revising Form 477 to focus the data solely on areas that are served and remove the "could serve" question so as not to inflate the numbers?

**Answer:** Yes. As noted above, we have an open Further Notice of Proposed Rulemaking (FNPRM) related to this matter.

**Question:** Will you incorporate your subscription data as well as third-party data sources into your decision-making until you can improve the accuracy of your broadband access data?

**Response:** Historically, the Commission has not made filer-specific broadband subscription data collected on the Form 477 routinely available to the public due to competitive concerns. We are able, however, to compare subscribership and availability data to cross-check and validate the service providers' deployment data. Although subscription data is very important to helping the Commission understand how many Americans are using broadband networks and what kinds of

services they are adopting, subscription data is of limited use in broadband deployment decision making. Subscription data is not a good substitute for broadband deployment data.

For one, broadband deployment data helps the Commission target funding to parts of America that are not touched by broadband networks. It is imperative that we know all places that providers' broadband services are available, and not just those where they have subscribers. This problem is also aggravated by the fact that broadband subscription data often lags deployment data; it takes time for a service provider to sign up customers for a newly deployed network and then report those customers. Another problem with using subscription data for this purpose is that it is less granular than Form 477 deployment data. While broadband deployment is currently reported at the census block level, fixed broadband subscription data is reported at the census tract level, and mobile broadband subscription data is reported at the state level.

Little high-quality third-party deployment data is available, and that data has its own limitations, including constraints on publication and use. However, we continue to look for opportunities to use data from such sources to inform and enhance the data we gather in the Form 477 collection.

**Financial Services and General Government Subcommittee**

**Federal Communications Commission Budget Hearing with Chairman Pai and  
Commissioner Rosenworcel**

**Questions for the Record Submitted by Congressman Mark Amodei**

Chairman Pai and Commissioner Rosenworcel: As you know, a key to winning the race to 5G is to speed the adoption of LTE Advanced and 5G NR technologies in U.S. mid-band spectrum. A large and diverse group of companies had hoped that commercialization of the 3.5 GHz Citizens Broadband Radio Service (CBRS) band would be concluded by the end of 2018.

**Question:** Can you please explain the delay and lay out the timeline for realizing this exciting public-private partnership?

**Response:** I too am frustrated that progress has not been more swift on moving forward with commercialization of the 3.5 GHz band. Unfortunately, this was not surprising. As I wrote when the Commission first adopted rules for the band *four years ago*, in 2015, “we are moving forward with an experiment to see if we can make this spectrum more productive. Will it work? Have we struck a balance that will allow a variety of innovative uses to flourish? We will see. This Order leaves many important details and complex questions to be resolved, including whether technologies will develop that can manage the complicated and dynamic interference scenarios that will result from our approach. It therefore remains to be seen whether we can turn today’s spectrum theory into a working reality.”

Since becoming Chairman, I have made it a priority to resolve those important details and complex questions left by the prior Administration. *For one*, the Commission had to rewrite the rules for priority access licenses, which would have made it very difficult to deploy 5G services if left untouched. *For another*, the Commission has been pushing the Department of Commerce to finally wrap up its review of the Environmental Sensing Capabilities (ESC) and Spectrum Access Systems (SAS) necessary for us to proceed with commercialization. And these efforts have now borne fruit: Just this week, the Commission was able to approve three ESC operators, and we expect to approve SASs this summer. In short, we have studiously working to ensure that this experiment is a success—all to the benefit of the American consumer.

**Financial Services and General Government Subcommittee**

**Federal Communications Commission Budget Hearing with Chairman Pai and  
Commissioner Rosenworcel**

**Questions for the Record Submitted by Congressman Sanford Bishop**

**Question:** The FCC has a history of ensuring that carriers do not mislead customers. One carrier recently started updating phones to indicate that they are connected to a “5GE” network, despite the underlying technology being an evolution of 4G LTE rather than true millimeter-wave 5G technology. Further, speed tests have found that this “5GE” service is not appreciably faster, and sometimes slower, than other carrier’s 4G networks. However, true 5G service is an order of magnitude faster than 4G.

Do you believe the FCC should examine deceptive marketing such as this?

**Response:** Allegations regarding deceptive marketing practices fall under the jurisdiction of the Federal Trade Commission. Section 5 of the FTC Act expressly “empower[s] and direct[s] the Commission” to prevent companies “from using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce.” 15 U.S.C. § 45(a)(2).

**Question:** I am very troubled by reports that FOIA requests made to the FCC surrounding the public comment process for Net Neutrality repeal were deliberately ignored.

Insight into the behavior of our public officials is essential to trust in government, and it boggles my mind that information related to a public comment process—where individuals have explicitly authorized and requested that their testimony be made public—would be kept secret under an exception normally reserved for the most sensitive of communications.

Given the credible accounts of fraudulent submissions we’ve heard, it is important that all relevant information be available for view.

What can we do to encourage the FCC’s compliance with these important disclosure laws?

**Response:** The FCC routinely receives and complies with FOIA requests and takes extraordinary measures to ensure that the public has access to information concerning our processes and proceedings. Indeed, a judge appointed to the U.S. District Court of the District of Columbia by President Obama recently found that the Commission complied with FOIA in handling requests for the server logs involved in the *Restoring Internet Freedom* proceeding.

**Financial Services and General Government Subcommittee**

**Federal Communications Commission Budget Hearing with Chairman Pai and  
Commissioner Rosenworcel**

**Questions for the Record Submitted by Congressman Crist**

***Commercial Space Launches***

As you are aware, the number of commercial space launches has increased dramatically over the past several years. Each one of these launches requires approvals from the FCC to use certain frequencies necessary to communicate with the rocket. Unfortunately, this process was designed during an era with few commercial space launches and is not structured to support the high cadence of commercial launch seen from the United States today. It requires the FCC to issue Special Temporary Authority for each and every launch. In fact, the FCC must run through this process multiple times for each launch. This was reasonable when there were only a few commercial missions per year, but last year the United States led the world in commercial space launch and is set to do so again this year.

**Question:** The FCC has had a proceeding pending since 2013 that would begin to streamline this process. Can the FCC complete this proceeding and help the U.S. continue to lead the way in commercial space?

I understand that the current process requires emails to be sent manually to multiple agencies. Does your budget provide sufficient funding to automate this process?

**Response:** I agree that we must lead the way in commercial space. The frequencies that are used to support commercial space launches are allocated exclusively to the federal government. Such launches are supported under grants of Special Temporary Authority. The rulemaking you reference only deals with frequency allocations, not the licensing process to support launches. While the Commission has authorized several commercial space launches over the past years, we will continue to look for ways to improve our process.

***Reassigned Number Database***

**Question:** As you know, the issue of robocalls is a complicated one, with many companies getting sued for calling people because they don't have the correct phone number for their customer. One of the ways that the Commission is trying to prevent these types of unwanted calls is by developing a "reassigned number database." As you may know every year about 35 million phone numbers are disconnected and then subsequently made available to new consumers. Hard to believe but there isn't currently a way for a company to know that its customer has changed numbers. Back in November the FCC released its order to create a database of these reassigned numbers (<https://docs.fcc.gov/public/attachments/DOC-355213A1.pdf>) so companies can check to verify the numbers they are calling. Just last week the FCC released the final rule for this order.

Following up on the Commission's final rule released last week on the reassigned number database to help reduce robocalls it would be helpful to know your timeline. When do you plan to issue the Request for Proposals to implement the database? Do you have a timeline to get it up and running?

**Answer:** The Commission will move as quickly as we can to get the reassigned number database up and running to ensure that consumers will be protected from these unwanted calls as quickly as possible.

As for a specific timeline, that is dependent upon the process outlined in our December 2018 order establishing the database. That document is available at:

<https://www.fcc.gov/document/fcc-creates-reassigned-numbers-database-combat-unwanted-robocalls>. The Commission directed the North American Numbering Council (NANC) to

provide the Commission recommendations about certain technical aspects of database establishment, operation, and funding, within six months of the Order's release, which will be in the next quarter. Then, the Wireline Competition Bureau and Consumer and Governmental Affairs Bureau will seek comment on those recommendations, which will, among other things, include the user interface specifications and data format for voice service providers to report permanent disconnects to the database.

Based on the NANC's input and the comments received about NANC's recommendations, the Commission will proceed with a competitive bidding process to find an independent, third-party administrator. To be efficient, the agency is considering consolidating its North American Numbering Plan Administrator and Pooling Administrator requirements with its new reassigned numbers database requirements under a single contract. Earlier this month, the Commission issued a Request for Information to gather market research on this consolidation. That document is available at: <https://www.fbo.gov/spg/FCC/FCCOMD/FCCCPC/FCCRFI-2019-NANPA-PARNDA/listing.html>.

**Financial Services and General Government Subcommittee**

**Federal Communications Commission Budget Hearing with Chairman Pai and  
Commissioner Rosenworcel**

**Questions for the Record Submitted by Congressman Graves**

***Internet Protocol (IP) Captioned Telephone Service***

**Question:** The FCC's IP CTS program is an ADA service for consumers who are hard of hearing. I have been contacted by consumers and advocates in the hearing loss community with questions about FCC's proposed changes to this program.

Proposals exist currently to reform the program, adjust rates, and authorize alternative technologies, including automated speech recognition (ASR).

What does the FCC plan to do to ensure ASR can perform as least as well as existing services today, or deliver functionally equivalent service before certifying any ASR provider?

**Response:** As you may know, all but one IP CTS provider already relies on automated speech recognition technology (ASR) to offer service. Indeed, Commission rules have never prohibited the incorporation of ASR technology in recognition that every community deserves the opportunity to access the best possible service.

Last year, the Commission recognized that some had interpreted our rules to prohibit a more efficient, more private, and more effective form of IP CTS—the use of ASR without the inclusion of a communications assistant intermediary. We found that providers could offer near simultaneous communication, enhanced call privacy, the seamless continuation of communications when exigent circumstances (such as severe weather events) threaten call center operations, and substantially lower operating costs without a mandate to place a middleman in every call. And indeed, ASR appears to be approaching—if not exceeding—the levels of accuracy achieved by CA-assisted IP CTS. Accordingly, we eliminated this unnecessary regulatory barrier to innovation, affirmed that any provider offering ASR without a communications assistant must still comply with the mandatory minimum standards of our rules, and must “relay all conversation verbatim.” Importantly, we recognized that ASR-provided IP CTS will remain a nascent form of service for a period of time and did not mandate ASR as the sole means of offering IP CTS.

**Question:** How will you ensure that consumers continue to have access to this critical ADA service?

**Response:** One key objective to achieve this goal is to reduce waste in the TRS Fund so that we could ensure the continued viability of IP CTS for people with hearing loss who need it. Accordingly, last June, we adopted interim IP CTS compensation rates that will save the TRS Fund at least \$399 million over two years, adopted rules to limit unnecessary IP CTS use, and approved, but did not require, the use of speech-to-text automation without the assistance of a CA to generate IP CTS captions, thereby taking advantage of technological advances to modernize IP CTS while achieving greater efficiencies. We based our decision on specific data points—IP CTS carriers currently provide 80% of the total minutes compensated by the Interstate TRS Fund—at a cost of nearly \$1 billion. As IP CTS usage continues to grow and the

contribution base supporting the TRS Fund shrinks, potential waste or inefficiencies in this program pose an ever-increasing threat to the sustainability of IP CTS and all forms of TRS.

**Question:** What has the FCC done to ensure that the full impacts of proposed rate changes are taken into account?

**Response:** The average per-minute expenses for providing IP CTS dropped from approximately \$2.06 in 2011 to \$1.23 in 2017. Yet the rate model the Commission was using (based on an averaging of state compensation rates for non-Internet forms of CTS) increased from approximately \$1.76 to \$1.95 per-minute for the same period. Pursuant to the efficiency mandate of section 225 of the Act and consistent with our prior determinations that TRS rates generally should “correlate to actual reasonable costs,” it was necessary to realign the IP CTS compensation rate to correlate to actual reasonable costs for this service. That’s why we adopted interim IP CTS compensation rates for the next two years to move these rates closer to actual average cost of providing the service. The Commission adopted compensation rates of \$1.75 per minute for the July 2018 - June 2019 period and \$1.58 per minute for the July 2019 - June 2020 period as a path toward cost-based rates. We have sought comment and additional data and are considering how to set compensation rates in the future. In the meantime, we have directed the TRS Fund administrator to require IP CTS providers to provide a more detailed breakdown and explanation of the costs incurred. This additional transparency will help us ensure that the costs reported by providers are reasonable. The input from stakeholders and the additional data from providers will ensure that the Commission takes into account the full impacts of the proposed rate changes.

#### *Educational Broadband Service*

**Question:** The Educational Broadband Service licensing and leasing regime has provided opportunities for fixed wireless systems and broadband access in many rural areas where schools, colleges and small rural operators have built these systems. The FCC halted new educational applications for these licenses in 1995. The FCC has recently proposed filing windows to allow Educational Institutions and Tribal Nations to apply for new licenses, making remaining licenses and any licenses with competing applications available via auction.

When does the agency intend on completing this rulemaking?

**Answer:** FCC staff is actively working on the proceeding and I hope to circulate an item for the Commission’s consideration in the near future.

#### *Children’s Television Act Modernization*

**Question:** The FCC, implements and enforces the Children’s Television Act of 1990. Almost 30 years after Congress passed that law, programming is consumed in ways the law did not contemplate and does not regulate.

FCC rules have not adapted to these changes over time, with the FCC’s children’s television rules last being revised 13 years ago.

Currently the FCC does not regulate children’s programming or advertising on the internet, creating a regulatory imbalance.

I understand the FCC is currently in the process of reviewing and modernizing those rules to account for these new developments.



Chairman Pai, when do you expect the FCC to modernize children's television advertising rules to level the playing field and preserve the safe environment Congress envisioned for our children?

**Response:** In July 2018, the Commission issued a Notice of Proposed Rulemaking, spearheaded by Commissioner O'Reilly, to update our children's television programming rules. These rules were first established in the 1990s, and the video marketplace (including children's consumption of video programming) has changed dramatically since then. For that reason, the Commission specifically sought comment on proposed revisions to our Core Programming rules and processing guidelines. It also sought public input on modifying existing reporting requirements regarding compliance with the children's television commercial limits. Although this proceeding has taken longer to conclude than I would have anticipated, I hope that the full Commission will be able to consider a final order in this proceeding in the near-term.

### ***Wireless Rural Broadband***

**Question:** Recently in Georgia, a pilot project was launched that uses vacant TV spectrum to deliver broadband to remote areas where fiber networks remain unavailable. My understanding is that there are a number of regulatory barriers preventing widespread deployment of these technologies.

I understand you recently finalized two orders related to this issue, and that a Further Notice of Proposed Rulemaking (FNPRM) would address issues like the connection of school buses and precision agricultural technologies.

Does the Commission plan to issue a FNPRM to clear up outstanding regulatory barriers and if so when?

**Response:** We contemplate considering this and other possible rule modifications in a proceeding later this year, keeping in mind the need to ensure TV broadcasting and related services are protected against harmful interference.

**Responses of Commissioner Jessica Rosenworcel**  
**House Appropriations Subcommittee on Financial Services and General Government**  
**April 3, 2019**

**Questions for the Record Submitted by Chairman Quigley**

*Repack*

**Question:** Chairman Pai, to accommodate its 2016 broadcast incentive auction, the FCC recently completed the first of ten phases to repack nearly 1,000 full power broadcast tv stations across the country. These are stations that received no benefit from the auction and wish to continue to serve their viewers. Can you provide an update on how that first phase went, including the number of station moves that were successfully completed, as well as any delays? What were the causes of any delays?

**Question:** Chairman Pai / Commissioner Rosenworcel, based on the FCC's experience in the first phase of the transition, do you have concern that additional stations will not be able to complete moves prior to their assigned phase deadlines?

Based on experience with Phase 1 and Phase 2 relocation, I am confident that stations will be able to complete their moves prior to their assigned deadlines. The FCC is receiving regular feedback from broadcasters about the repacking process on the ground and in the field. If, however, the agency concludes that broadcasters will not be able to meet existing deadlines due to unexpected delays, including lack of available tower crews or special weather challenges, the FCC will work carefully with stations to identify solutions that help keep the process on track.

**Question:** Chairman Pai, we have heard concerns about both the lack of availability of tower crews and equipment that may contribute to further delays. Do you share these concerns?

**Question:** Chairman Pai / Commissioner Rosenworcel, viewers across the country rely on access to broadcast television not only for entertainment, but as a lifeline in times of emergency. If a broadcast station through no fault of its own cannot transition to its new frequency prior to its assigned phase deadline, do you believe it should be forced off the air? If not, how will the FCC continue to address these issues?

When emergencies occur, especially weather disasters, we turn to broadcasters for news and information. They play an important role in both local and national emergency response. That is why the FCC will need to be flexible and provide as many options as possible to help ensure that the broadcast television station transition is smooth. To avoid having stations go off the air, the FCC needs to use the full range of tools it has at its disposal, from supporting interim antennas to granting phase changes when stations need to adjust the timing of their transition. I am hopeful that if the agency does so, no station will be in jeopardy of unexpectedly going off the air.

*Suicide Hotline Improvement Act*

**Congress passed the National Suicide Hotline Improvement Act (P.L. 115-233) last year, which tasks the Federal Communications Commission with studying the feasibility of transitioning the 1-800 number to a single-use N11 code. Furthermore, it asks the FCC to consider recommendations surrounding improved infrastructure and operations (3)(a)(2)(B)(ii)(II). Given that the LGBTQ population is at a heightened risk for suicide, I am requesting a status update on the following:**

**Question: What is FCC doing to address the concerns raised by over 100 commenters to its open docket to consider the need for specialization of services for LGBTQ populations in relation to implementation of the Hotline Improvement Act?**

The public comment system is vitally important because it is how citizens make their voices heard in Washington. In this proceeding, as in all others, the FCC will need to review carefully the comments it has received. As you note, a significant number of comments have been filed in this docket asking the agency to consider the need for specialized services for LGBTQ populations as part of its report pursuant to the National Suicide Hotline Improvement Act. I believe the FCC needs to fully address these comments regarding services for the LGBTQ community in its upcoming report, which under law must be completed by August 14, 2019.

**Question: Has FCC considered the mandatory training of counselors for identifying and responding to people within high-risk groups, or the diversion of calls to organizations with particular expertise in serving these communities?**

The FCC has not yet completed its report pursuant to the National Suicide Hotline Improvement Act. However, I believe this topic should be addressed in the report.

**Question: When does FCC anticipate making final determinations? Will there be further opportunity for public comment?**

Under the National Suicide Hotline Improvement Act, the FCC is required to produce a report by August 14, 2019 addressing the feasibility of designating a 3-digit dialing code to be used for a national suicide prevention and mental health crisis hotline. To this end, on November 8, 2018, the agency issued a Public Notice seeking stakeholder input on the issues raised by this law. While formal comments were due on December 10, 2018, the agency is still accepting ex parte comment filings from interested parties. My office also remains open to meeting requests to discuss this issue or any other regarding the report.

*Reassigned Number Database*

**Question: Chairman Pai - Following up on the Commission's final rule on the reassigned number database to help reduce robocalls, it would be helpful to know your timeline. When do you plan to issue the Request for Proposals to implement the database? Do you have a timeline to get it up and running?**

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**Proposal exist currently to reform the program, adjust rates, and authorize alternative technologies, including automated speech recognition (ASR).**

**Question: What does the FCC plan to do to ensure ASR can perform as least as well as existing services today, or deliver functionally equivalent service before certifying any ASR provider?**

I believe it makes sense to include automatic speech recognition in our framework under the Americans with Disabilities Act. With advances in technology, it may now be possible for automated systems to substitute for traditional Internet Protocol Captioned Telephone Service (IP CTS), which requires human intervention via communications assistants. Moreover, it may provide an experience for users that is comparable to older forms of IP CTS that deliver functional equivalency, as required under the law. Unfortunately, however, the FCC rulemaking on this subject from June 7, 2018, authorized automatic speech recognition without clearly articulating the service quality standards that hard-of-hearing users should expect. I thought this approach was backwards. As a result, I concurred in the decision. Going forward I want to see the agency acknowledge that with functional equivalency as our mandate, we should be providing more detailed direction for how it can be achieved.

**Question: How will you ensure that consumers continue to have access to this critical ADA service?**

The FCC needs to closely monitor the IP CTS market and make adjustments to agency policies, as necessary, to ensure that consumers receive functionally equivalent services consistent with the Americans with Disabilities Act.

**Question: What has the FCC done to ensure that the full impacts of proposed rate changes are taken into account?**

The FCC has a pending rulemaking on this subject. As it weighs the merits of changes to its policies, I believe the agency needs to consider the impact on consumers.

*Educational Broadband Service*

**The Educational Broadband Service licensing and leasing regime has provided opportunities for fixed wireless systems and broadband access in many rural areas where schools, colleges and small rural operators have built these systems. The FCC halted new educational applications for these licenses in 1995. The FCC has recently proposed filing**

**windows to allow Educational Institutions and Tribal Nations to apply for new licenses, making remaining licenses and any licenses with competing applications available via auction.**

**Question: When does the agency intend on completing this rulemaking?**

Decisions regarding the completion of this rulemaking lie with the Chairman of the agency. However, I support moving with urgency to ensure more efficient and effective use of the Educational Broadband Service spectrum—both for educational and commercial uses.

The Educational Broadband Service constitutes the single largest band of contiguous mid-band spectrum below 3 GHz and is prime spectrum for next-generation mobile services known as 5G. Significant portions of this band currently lie unused across the United States, including in rural areas. One year ago, the FCC adopted a rulemaking seeking comment on modernizing the band for both educational and commercial uses. Since then, the United States has fallen further and further behind its global peers when it comes to making available mid-band spectrum for commercial use for 5G. This is a problem—if we want to serve everywhere in this country with next-generation mobile, we are going to need a healthy mix of airwaves that provide both coverage and capacity. This proceeding is ripe for action—and I support exploring creative solutions that honor the history of the Educational Broadband Service and also ensure it has an effective future.

#### *Children's Television Act Modernization*

**The FCC, implements and enforces the Children's Television Act of 1990. Almost 30 years after Congress passed that law, programming is consumed in ways the law did not contemplate and does not regulate.**

**FCC rules have not adapted to these changes over time, with the FCC's children's television rules last being revised 13 years ago.**

**Currently the FCC does not regulate children's programming or advertising on the internet, creating a regulatory imbalance.**

**I understand the FCC is currently in the process of reviewing and modernizing those rules to account for these new developments.**

**Question: Chairman Pai, when do you expect the FCC to modernize children's television advertising rules to level the playing field and preserve the safe environment Congress envisioned for our children?**

#### *Wireless Rural Broadband*

**Recently in Georgia, a pilot project was launched that uses vacant TV spectrum to deliver broadband to remote areas where fiber networks remain unavailable. My understanding is**

that there are a number of regulatory barriers preventing widespread deployment of these technologies.

I understand you recently finalized two orders related to this issue, and that a Further Notice of Proposed Rulemaking (FNPRM) would address issues like the connection of school buses and precision agricultural technologies.

**Question:** Does the Commission plan to issue a FNPRM to clear up outstanding regulatory barriers and if so when?

While white spaces innovation began here in the United States, in recent years the use of this technology has advanced faster in other countries. At present, there are 20 television white spaces projects worldwide that are serving 185,000 users. However, in the United States, deployment of this technology has stalled. As you suggest, this is due, in part, to outstanding regulatory issues.

Decisions regarding when and how these issues are addressed lie with the Chairman of the FCC. Last month the FCC adopted an order that took steps to improve the accuracy and reliability of white space databases. But I believe that much more work needs to be done to address remaining regulatory barriers. To this end, I believe the FCC should resolve outstanding petitions for reconsideration involving white spaces activity. In addition, the agency should explore further rule changes to facilitate connectivity. If we do so thoughtfully, I believe we can expand opportunities for this technology and increase the likelihood that white spaces can support broadband service in communities across the country, including rural areas.

#### **Questions for the Record Submitted by Congressman Stewart**

##### *Broadband Maps*

**It is no secret that many members of this Congress and other third-parties have serious concerns about the Commission's broadband mapping data. This problem is of particular concern for this committee because, if the Commission's broadband maps are unreliable, the billions of dollars in loans and grants you allocate for rural broadband expansion may not be properly targeted. Your funding allocation process may overlook areas with no broadband access that are marked as covered on your map, and 2) waste taxpayer dollars by overbuilding in other areas.**

**Question:** Do you share the concerns about the accuracy of the FCC's broadband mapping data? If so, what are you doing to fix it?

Yes. I believe the FCC's broadband mapping data is seriously flawed. I have testified about these problems before Congress. I have issued dissenting statements in response to FCC decisions involving mapping. I have given speeches discussing the serious limitations of the FCC's existing process for collecting broadband deployment data.

My efforts, however, have not been limited to criticism. I have suggested a variety of ways the agency can improve its systems of data collection and increase the accuracy of its mapping efforts.

First, the agency should use the resources at its disposal in the dozen FCC field offices across the country. At a minimum, engineers in these offices could perform spot checks of data submitted through the traditional Form 477 process, identifying problems and confirming deployment.

Second, the Universal Service Administrative Company, which distributes universal service funding from the FCC, has committed to testing how the funds they parcel out are used by the carriers that receive them to extend service in rural areas. Instead of performing tests after the fact, this organization should be put to work to run tests now. By doing so, we can better understand where deployment has and has not occurred and as a result, where the FCC should focus its policy efforts.

Third, the FCC has a speed test application that is available for use on mobile devices. It has been downloaded more than 200,000 times. This application provides information about speed and location that the agency should incorporate into its data-gathering efforts, including its Form 477 process.

Fourth, the FCC should embrace crowdsourcing. No matter who you are or where you live, you probably have a story to tell—about how service stops short of your street, about how speeds are not what are commercially reported, or about how you’re still waiting for deployment that was promised long ago. It’s time to use the wisdom of the crowd to get our maps right. I know from experience that people across the country want to help and participate because over a year ago I set up an e-mail in-box at [broadbandfail@fcc.gov](mailto:broadbandfail@fcc.gov) to collect data informally. Hundreds of people wrote in to offer ideas, complain, and have their say. What I took from this experience is that the best broadband map is not going to be built by one authority in Washington, but instead is going to be built by all of us. Consequently, I believe it is time for the FCC to explore crowdsourcing and other ways to improve its data so that people across the country can trust our maps and our efforts to deploy limited resources to help extend the reach of broadband services to every community across the country.

#### *Form 477*

**The FCC Form 477 broadband data collection process, marks an area as having broadband access if the provider serves or could serve that area.**

**Question: Are you considering revising Form 477 to focus the data solely on areas that are served and remove the “could serve” question so as not to inflate the numbers?**

The FCC has an outstanding rulemaking from 2017 that seeks comment on ways it should update its Form 477 data-gathering efforts. I believe the FCC should complete this rulemaking and in doing so explore how to improve the “could serve” question. I share your concern that this inquiry may inflate the deployment data.

**Question:** Will you incorporate your subscription data as well as third-party data sources into your decision-making until you can improve the accuracy of your broadband access data?

As the FCC considers ways to improve its data collection and mapping efforts, I believe it is important for the agency to take into account adoption data. It also will be important for the agency to verify its data with other data sources, including via crowdsourcing. Finally, the FCC should commit to publishing machine-readable files so that interested parties can leverage FCC broadband data to develop their own research, analysis, and mapping efforts.

**Questions for the Record Submitted by Congressman Amodei**

*Authorization of use of 3.5GHz CBRS bands*

**Chairman Pai and Commissioner Rosenworcel:** As you know, a key to winning the race to 5G is to speed the adoption of LTE Advanced and 5G NR technologies in U.S. mid-band spectrum. A large and diverse group of companies had hoped that commercialization of the 3.5 GHz Citizens Broadband Radio Service (CBRS) band would be concluded by the end of 2018

**Question:** Can you please explain the delay and lay out the timeline for realizing this exciting public-private partnership?

I am concerned about recent FCC decisions that have led to a delay in the auction and commercialization of the 3.5 GHz band.

Over three years ago the FCC recognized that our traditional spectrum auctions needed an update—and that the 3.5 GHz band was the perfect place to test a new framework. Instead of relying on the traditional binary choice between licensed and unlicensed, the agency adopted an unprecedented three-tiered model for spectrum sharing and management. It included a mix of service rules designed to lower barriers to entry, cultivate new sources of investment and competition, and create new opportunities to reach rural and hard-to-serve areas of the country.

This had all the hallmarks of a wild success. As a result of its early efforts, the FCC saw interest in the 3.5 GHz band auction from far and wide. In addition to familiar carriers, we had interest from entities that support industrial operations and wanted to use this spectrum for intelligent manufacturing, power generation and distribution, and healthcare. Our record supported its use for advanced inspection and sensor technologies, including aerial drones, terrestrial crawlers, and robotics. The American Petroleum Institute expressed interest in its use for updating drilling operations. The Port of Los Angeles wanted to explore its use for sharing shipping data. Rural interests saw a unique opportunity to bring more service and more competition to remote areas of the country that are too often left behind.

This was exciting. It was ready to go. Millions of dollars had been invested, more than 200 experimental authorizations had been granted, and protocols regarding operations, interoperability, security, and device testing were underway.



However, instead of seizing this opportunity, the agency decided to retreat. Over my objection, in 2017 my colleagues decided to rethink the 3.5 GHz band framework from top to bottom and began another rulemaking to reconsider license terms. This was followed by an order in 2018. Unfortunately, this most recent order rethought some of the most creative elements in the original 3.5 GHz band framework, including changing the size and duration of licenses. Even more unfortunately, there is still work to be done to bring these airwaves to market. No auction has been scheduled, no auction rules have been developed, and no database provider has received final approval from this agency to start commercial operations.

This is unfortunate. The 3.5 GHz band is a critical part of the future of 5G. All of our recent spectrum auctions have involved millimeter wave bands that lack the coverage associated with mid-band spectrum like the 3.5 GHz band. As a result, I believe the agency now needs to do everything in its power to accelerate the auction of the 3.5 GHz band so it takes place this year.

#### **Questions for the Record Submitted by Congressman Bishop**

##### *Fake 5G*

**The FCC has a history of ensuring that carriers do not mislead customers. One carrier recently started updating phones to indicate that they are connected to a “5GE” network, despite the underlying technology being an evolution of 4G LTE rather than true millimeter-wave 5G technology. Further, speed tests have found that this “5GE” service is not appreciably faster, and sometimes slower, than other carriers’ 4G networks. However, true 5G service is an order of magnitude faster than 4G.**

**Question: Do you believe the FCC should examine deceptive marketing such as this?**

I believe consumers should have accurate information about their phone service so they can make informed choices about their purchases and their use. The FCC’s Consumer and Governmental Affairs Bureau has started to receive informal complaints from consumers about the use of “5GE.” It is important that these complaints be processed quickly pursuant to our informal complaint procedures. In addition, the FCC should ensure that all 5G marketing complies with the agency’s transparency rules in 47 C.F.R. Section 8.1, which requires any person providing broadband internet access service to publicly disclose accurate information regarding network management practices, performance characteristics, and commercial terms.

##### *FOIA Requests*

**I am very troubled by reports that FOIA requests made to the FCC surrounding the public comment process for Net Neutrality repeal were deliberately ignored.**

**Insight into the behavior of our public officials is essential to trust in government, and it boggles my mind that information related to a public comment process—where individuals have explicitly authorized and requested that their testimony be made public—would be kept secret under an exception normally reserved for the most sensitive of communications.**

**Given the credible accounts of fraudulent submissions we've heard, it is important that all relevant information be available for view.**

**Question: What can we do to encourage the FCC's compliance with these important disclosure laws?**

I agree this is a problem. When the FCC made the misguided decision to roll back its net neutrality rules, it did so based on a public record littered with issues. While millions of Americans sought to inform the FCC process by filing comments and sharing their true opinions about internet openness, millions of other filings in the net neutrality docket appear to be the product of fraud. As many as nine and a half million people had their identities stolen and used to file fake comments, which is a crime under both federal and state laws.

However, when the Office of the New York Attorney General sought the FCC's help to investigate this situation, it was rebuffed. When investigative journalists from the New York Times and BuzzFeed News sought access to the FCC's records, they too were turned away. I criticized the agency's leadership for its failure to work with our state counterparts in New York. I also dissented from the decision that denied these investigative journalists access to records that they were entitled access to under the law. Unfortunately, if you stand back and survey this behavior it seems that the FCC is trying to prevent anyone from looking too closely at the mess it has made of net neutrality. This is not right.

More recently, the agency entered into a settlement in which it paid \$43,000 to yet another journalist who sought access to the agency's net neutrality records through a separate Freedom of Information Act request.

Something here is rotten—and it's time for the FCC to come clean. But that FCC has been unwilling to do so by itself. As a result, I believe Congress should step in and compel it to do so.

#### **Questions for the Record Submitted by Congressman Crist**

##### *Commercial Space Launches*

**As you are aware, the number of commercial space launches has increased dramatically over the past several years. Each one of these launches requires approvals from the FCC to use certain frequencies necessary to communicate with the rocket. Unfortunately, this process was designed during an era with few commercial space launches and is not structured to support the high cadence of commercial launch seen from the United States today. It requires the FCC to issue Special Temporary Authority for each and every launch. In fact, the FCC must run through this process multiple times for each launch. This was reasonable when there were only a few commercial missions per year, but last year the United States led the world in commercial space launch and is set to do so again this year.**

**Question:** The FCC had a proceeding pending since 2013 that would begin to streamline this process. Can the FCC complete this proceeding and help the U.S. continue to lead the way in commercial Space?

Decisions regarding the completion of this rulemaking lie with the Chairman of the agency. However, I supported the 2013 Notice of Proposed Rulemaking and Notice of Inquiry which started a proceeding to address the spectrum needs of the commercial space launch industry, and I continue to support efforts to ensure sufficient spectrum resources for commercial space launch operations.

**Question:** I understand that the current process requires emails to be sent manually to multiple agencies. Does your budget provide sufficient funding to automate this process?

I do not believe that our current budget proposal envisions using funds to automate this process, and the decision to do so would lie with the Chairman of the agency.

#### *Reassigned Number Database*

As you know, the issue of robocalls is a complicated one, with many companies getting sued for calling people because they don't have the correct phone number for their customer. One of the ways that the Commission is trying to prevent these types of unwanted calls is by developing a "reassigned number database." As you may know every year about 35 million phone numbers are disconnected and then subsequently made available to new consumers. Hard to believe but there isn't currently a way for a company to know that its customer has changed numbers. Back in November the FCC released its order to create a database of these reassigned numbers (<https://docs.fcc.gov/public/attachments/DOC-355213A1.pdf>) so companies can check to verify the numbers they are calling.

Just last week the FCC released the final rule for this order.

**Question:** Following up on the Commission's final rule released last week on the reassigned number database to help reduce robocalls it would be helpful to know your timeline. When do you plan to issue the Request for Proposals to implement the database? Do you have a timeline to get it up and running?

At the start of 2017, there were approximately 2 billion robocalls nationwide each month. That number now exceeds 5 billion each month. That is why in December 2018 I supported the FCC's decision to create a reassigned numbers database. It promises to cut down on one discrete segment of unwanted calls—those made to reassigned numbers. But in my statement attached to the FCC's decision, I observed that there is no deadline for the database's implementation, no date by which we can ensure its operation, and no time by which we can ensure consumers relief. I believe the FCC should do better. The agency should publish a specific timeline with targets for each milestone in the implementation of the database. I encourage Congress to press the agency to do so in order to keep this effort on track.



TUESDAY, APRIL 9, 2019.

**DEPARTMENT OF THE TREASURY BUDGET REQUEST  
FOR FISCAL YEAR 2020**

**WITNESS**

**HON. STEVEN MNUCHIN, SECRETARY, U.S. DEPARTMENT OF TREASURY**

Mr. QUIGLEY. Good morning, everyone.

This morning we welcome Secretary of the Treasury, Steven Mnuchin, to testify on the Department's fiscal year 2020 budget request.

Mr. Secretary, thank you for being here today.

The fiscal year 2020 budget for the Department of the Treasury is \$12.7 billion, which is \$62 million below the fiscal year 2019 enacted level.

In addition, the budget proposes \$362 million in BCA cap adjustment funding for IRS program integrity activities.

As in prior years, the request again proposes cuts to IRS that will reduce the resources available to support taxpayers and weaken the agency's ability to protect the integrity of our tax system.

The request again proposes to eliminate funding for discretionary grant programs within the Community Development Financial Institutions Fund, and goes a step further by proposing to rescind \$25 million in CDFI funding that Congress restored in the fiscal year 2019 bill.

And it again slashes funding for the Special Inspector General for TARP by 24 percent, despite the continued obligation of billions of dollars for TARP programs that will continue into 2023.

While there are many areas of concern in the Administration's request, I do want to call attention to one bright spot.

I am pleased to see the budget includes increases for both the Office of Terrorism and Financial Intelligence and the Financial Crimes Enforcement Network.

I look forward to hearing from you today on how the Department plans to use these funds, in addition to the significant increases that Congress appropriated in fiscal year 2018 and fiscal year 2019, to enhance efforts to combat terrorist financing and money laundering and to enforce economic and trade sanctions.

Lastly, I must take this opportunity to comment on the Department's plan to divert up to \$601 million from the Treasury Forfeiture Fund to pay for the construction of physical barriers along the southern border.

I understand \$242 million has already been transferred to the Department of Homeland Security. This is \$242 million that could have been used to augment IRS Criminal Investigations; \$242 million that could have been used to support Homeland Security In-

vestigations into financial crimes, money laundering, human trafficking, and intellectual property theft; \$242 million that could have been spent on tools to help Coast Guard teams search for illegal drugs onboard vessels at sea.

The decision to redirect these funds towards border fencing recklessly undermines the ability of Treasury and Homeland Security to address known threats and instead uses it for a symbolic campaign promise.

Before I turn to our witness for his statement, I would like to recognize Mr. Graves for his opening remarks.

Thank you, Mr. Graves.

Mr. GRAVES. Thank you, Chairman Quigley.

Welcome back, Secretary. It is good to have you back with us.

The last time you were with our subcommittee, Congress had just passed the Tax Cuts and Jobs Act. 15 months later, GDP continues to grow. The unemployment rate is at the lowest rate it has been in over 50 years. The economy has added more than 5 million jobs since the President took office and your team has been put to work.

Eighty percent of individuals are now paying lower taxes this year. Businesses have lower regulatory and compliance costs, and it is easier for families and business owners to file their taxes, thanks to your leadership and the administration. We appreciate all you have done to get us to this point.

I do want to commend you along with Treasury and the IRS staff who have worked so hard to implement tax reform for this filing season. I know it has been a tremendous amount of work for everybody. And Congress did not make it much easier for you when we had just a little bit of a lapse of funding for 30-plus days. I know that made it a little bit more challenging.

But so far it seems tax filing season is proceeding without any notable problems, and if there are some, maybe you can highlight them for us today.

But regarding the administration's budget proposal, I appreciate that you are making some important investments in the military and border security, while making tough choices to reduce spending. That is across the board when we have seen this budget proposal.

The debt nearly doubled under the previous administration. We sometimes forget how that occurred and when it occurred, but it did. It is a debt that has been inherited by this administration, and I appreciate what you have been doing as well as the entire team with the Trump administration working within the budget limitations that Congress has placed on you.

Now, I understand the request for the Treasury Department includes important investments in sanctions enforcement, national security reviews for foreign investments, cybersecurity, and IT infrastructure at the IRS, all very important investments, and thank you for you focus on that.

And I look forward to working with Chairman Quigley in the days ahead as we formulate a budget that we know your department will have the sufficient resources necessary to carry out your mission.

And, Mr. Chairman, I will be happy to yield back at this time, but thanks again for holding this hearing today.

Mr. QUIGLEY. Thank you, Mr. Graves.

Secretary, I thank you so much for being here today. Without objection, your full written testimony will be entered into the record.

With that in mind, we would ask you to please summarize your opening statement in 5 minutes.

Secretary MNUCHIN. Thank you. It is a pleasure to be here with you today.

Chairman Quigley, Ranking Member Graves, and members of the subcommittee, I am pleased to join you today to discuss the President's fiscal year 2020 budget and the priorities for the Treasury Department.

I am proud to report that President Trump's program of tax cuts, regulatory relief, and improved trade deals is resulting in the strongest economic growth since 2005 and the best job markets in generations.

I would like to highlight some key issues for you today. I would note that Opportunity Zones are a key component of the Tax Cut and Jobs Act. They will help more Americans benefit from our strong economy. Opportunity Zones offer capital gains tax relief for investments in businesses in distressed communities. We are seeing a great deal of enthusiasm for this policy across the country.

The administration is making trade a top priority. I urge all members of Congress to support the passage of the U.S.-Mexico-Canada Agreement. It will create the highest standards ever negotiated to protect intellectual property rights, provide strong support for small and medium-size businesses, encourage manufacturing, open markets for American agricultural products.

We are also making progress in negotiating with China to rebalance our economic relationship and unfair trade practices, open their economy to American companies, and protect our critical technology.

Turning to the President's 2020 budget for the Treasury Department, it reflects our key goals of maintaining strong economic growth as well as protecting America's national security and technology infrastructure.

We are requesting \$35 million to continue implementing FIRRMA Modernization Act. This legislation, which passed overwhelmingly with bipartisan support, modernizes the Committee on Foreign Investment in the United States, known as CFIUS, review process.

FIRRMA enhances CFIUS' ability to analyze transactions for national security while preserving our commitment to an open investment environment.

The budget provides for increased funding for TFI and for the Financial Crimes Enforcement Network, FinCEN. These funds will be used to continue to protect the financial systems' abuse by rogue regimes and actors, including terrorists, transnational organized crime, proliferators of weapons of mass destruction, and other threats to our country.

The funding includes critical investment in information technology and mission support capabilities.

It also supports the Terrorist Financing Targeting Center and implementation of the Countering America Adversaries Act known as CAATSA.

It also further expands FinCEN's ability to combat cybercrime and prevent the illicit exploitation of emerging payment systems, including cryptocurrency.

I would like to highlight two other initiatives which are modernizing the IRS and the proposed integrity cap adjustment. Our 2020 request for \$290 million for the Business Systems Modernization Account is the first installment that go towards upgrading IRS systems and operation.

This plan will reduce long-term costs of maintaining these systems and dramatically improved taxpayer service.

We are also requesting a program integrity cap to allow the IRS to efficiently collect taxes, enforce our tax code, prevent fraud, including by modeling compliance risks, and prevent identity theft.

We anticipate that a \$15 billion investment over 10 years would generate over \$45 billion in additional revenue.

Finally, I would note the budget includes additional support for the Office of Critical Infrastructure, which is the protection and compliance policy to help Treasury identify and reduce emerging threats and vulnerability to our financial systems.

I look forward to answering your questions, and thank you very much. It is a pleasure to be here with you.

[The information follows:]



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**Statement of Secretary Steven T. Mnuchin  
Department of the Treasury  
Before the Appropriations Subcommittee on  
Financial Services & General Government  
U.S. House of Representatives  
April 9, 2019**

Chairman Quigley, Ranking Member Graves, and members of the Subcommittee, I am pleased to join you today to discuss the President's Fiscal Year (FY) 2020 Budget and the priorities of the Treasury Department.

I am proud to report that President Trump's program of tax cuts, regulatory relief, and improved trade deals is resulting in the strongest economic growth since 2005 and the best job market in generations. From Q4 of 2017 to Q4 of 2018, real GDP increased by 3 percent. Earnings also rose by over 3 percent for the first time in a decade. Unemployment is historically low, and more Americans are participating in the workforce with renewed optimism for the future.

The World Economic Forum's most recent competitiveness report named the United States the most competitive economy in the world for the first time in 10 years. Thanks in part to the Tax Cuts and Jobs Act (TCJA), companies are investing hundreds of billions of dollars in new and expanded U.S. business operations, resulting in more career opportunities for hardworking Americans. Families are also saving thousands on their yearly tax bills because the TCJA cut rates across the board, doubled the standard deduction, and enhanced the child tax credit.

I would note that Opportunity Zones are a key component of the TCJA, and they will help more Americans benefit from our strong economy. Opportunity Zones offer capital gains tax relief for investments in businesses in distressed communities. We are seeing a great deal of enthusiasm for this policy all across the country because it will lead to revitalization and restore the promise of prosperity to more workers and families.

The Administration is making trade a top priority. I urge all members of Congress to support the passage of the US-Mexico-Canada Agreement (USMCA). It will create the highest standards ever negotiated to protect the intellectual property rights of entrepreneurs, provide strong support for small and mid-sized businesses, encourage manufacturing, and open markets for American agricultural products. We are also making progress negotiating with China to rebalance our economic relationship, end unfair trade practices, open their economy to American companies, and protect our critical technology.

Turning to the President's FY 2020 budget for the Treasury Department, it reflects our key goals of maintaining strong economic growth as well as protecting America's

## Embargoed until Delivery

national security and technological infrastructure. We are requesting \$35 million to continue implementing the Foreign Investment Risk Review Modernization Act (FIRRMA). This legislation, which passed with overwhelming bipartisan support, modernizes the Committee on Foreign Investment in the United States (CFIUS) review process. FIRRMA enhances CFIUS's ability to analyze transactions for national security risks, while preserving our commitment to an open investment environment.

The budget further provides for increased funding for Treasury's Office of Terrorism and Financial Intelligence (TFI) and the Financial Crimes Enforcement Network (FinCEN). These funds will be used to continue protecting the financial system from abuse by rogue regimes and actors, including terrorists, transnational organized crime, proliferators of weapons of mass destruction, and other threats to our country. The funding includes critical investments in information technology and mission-support capabilities. It also supports the Terrorist Financing Targeting Center in Riyadh, Saudi Arabia, and implementation of the Countering America's Adversaries Through Sanctions Act, known as CAATSA. It also further expands FinCEN's ability to combat cybercrime and prevent the illicit exploitation of emerging payment systems, including cryptocurrency.

Two other key initiatives I would like to highlight are our multi-year plan for modernizing the IRS and the proposed integrity cap adjustment. Our FY 2020 request for \$290 million for the Business Systems Modernization Account is the first installment that will go towards upgrading IRS systems and operations. This plan will reduce long-term costs of maintaining these systems and dramatically improve the taxpayer experience. We are also requesting a program integrity cap adjustment to allow the IRS to efficiently collect taxes, enforce our tax code, and prevent fraud, including by modeling compliance risks and preventing identity theft. We anticipate that a \$15 billion investment over 10 years will generate \$47 billion in additional revenue, resulting in \$32 billion in net savings for taxpayers.

Finally, I would note that the budget includes additional support for the Office of Critical Infrastructure Protection and Compliance Policy to help Treasury identify and reduce emerging threats and vulnerabilities to our financial system.

I look forward to taking your questions and discussing our plan for putting our country on a more secure fiscal path, fostering strong economic growth, and creating more jobs for the American people.

Thank you very much.

Mr. QUIGLEY. Thank you, sir. We appreciate that.

So yesterday I was asked what questions I would ask you today. It just seemed humorous to me at the time, suggesting it was not going to be about how your NCAA brackets had done, but how did they go?

Secretary MNUCHIN. I am a bigger fan of professional basketball.

Mr. QUIGLEY. I have got it.

Secretary MNUCHIN. So I am not an expert at NCAA.

Mr. QUIGLEY. All right. So that the press does not think I totally misled them, let me get to the point. Last week we are well aware that the chairman of Ways and Means under 6103 of the Tax Code requested the President's tax returns.

And we can get into the issue of what that answer should be, but at first I think it is more important that we talk about who should make that decision and, with respect, whether or not you, Mr. Secretary, should be involved in that decision.

We are aware of a longstanding delegation order that the Secretary does not get involved in taxpayer specific matters, and that the IRS Commissioner has that responsibility. Quote, "the Commissioner of Internal Revenue shall be responsible for the administration and enforcement of the internal revenue laws."

In addition, this is not a delegation that is easily revocable. Federal law provides that if you decide not to delegate such a power, that decision, that determination shall not take effect until 30 days after you, Mr. Secretary, notify the tax writing and other specified committees.

So it raises the question as to whether a decision to decide this by yourself is appropriate and legal. So let me begin with that and get your reaction as to whether or not you should be the one making that sort of decision, sir.

Secretary MNUCHIN. Well, first let me comment that I do look forward to talking about our budget.

Mr. QUIGLEY. We are going to get there, sir.

Secretary MNUCHIN. I am not surprised on this question. So better we get this out and—

Mr. QUIGLEY. I wanted to surprise you with that first question, but it did not work.

Secretary MNUCHIN. You did surprise me on the first question.

Let me just comment that, first of all, I wanted to acknowledge that we did receive the request, and as I have said in the past, when we received the request it would be reviewed by our Legal Department, and it is our intent to follow the law, and that is in the process of being reviewed.

Now, in regard to your specific question—

Mr. QUIGLEY. Well, let me just interject. I apologize. What part of a review, whether or not your office should be the one that makes the ultimate decision?

Are they reviewing whether or not you should make that decision, as well, sir?

Secretary MNUCHIN. It would be premature for me to comment specifically what they are reviewing on or what they are not reviewing on, but I would highlight, okay, I think as you know, the law calls for a request to me. As you have said, there is a tradition of delegating certain responsibilities.

I would just comment that it is my responsibility to supervise the Commissioner, but again, I think it would be premature at this point to make any specific comments other than, as I have been consistent before in saying it is being reviewed by the Legal Departments, and we look forward to responding to the letter.

Mr. QUIGLEY. Well, in case they are curious, we can reference Treasury Order 150-10 and Section 6103, which talks about the disclosure to committees of Congress on these points, and we go back. That was April 22nd, 1982. The previous order dates back to St. Patrick's Day 1955.

So it would seem that the matter of who makes decisions is pretty clear. My concern is that we are going to get past that point, and the decision as to whether to pass these on will have already been made.

But let me ask you in the meantime. The White House Chief of Staff made his thoughts on this pretty clear. Have you spoken to the White House Chief of Staff or the President about this decision?

Secretary MNUCHIN. I have not spoken to the White House Chief of Staff or the President about this decision.

Mr. QUIGLEY. Has anyone from the White House talked to you about this decision?

Secretary MNUCHIN. To me personally or to other people within my Department?

Mr. QUIGLEY. Well, you personally first and to other people second.

Secretary MNUCHIN. I have not had any conversations with anybody in the White House about this issue personally.

Mr. QUIGLEY. Any communication.

Secretary MNUCHIN. I personally have not had any communication with anybody in the White House, although I want to be specific that relates to me and not everybody at Treasury.

Mr. QUIGLEY. Okay. So to your knowledge, has anybody in the administration communicated with anybody in your office about this decision?

Secretary MNUCHIN. Our Legal Department has had conversations prior to receiving the letter with the White House General Counsel.

Mr. QUIGLEY. And did they brief you as to the contents of that communication?

Secretary MNUCHIN. They have not briefed me to the contents of that communication. I believe that was purely informational.

Mr. QUIGLEY. You believe what was purely informational?

Secretary MNUCHIN. I believe that the communication between our Legal Department and the White House General Counsel was informational, that we obviously had read in the press that we were expecting this.

Mr. QUIGLEY. So they communicated just to say, "Expect this," or did they talk about their views in any way, shape, or form as to how you should respond?

Secretary MNUCHIN. Again, Mr. Chairman, I want to be clear. I personally was not involved in those conversations. Again, I want to be very clear and not be misleading. I acknowledge that there

were conversations. I am not briefed on the full extent of those conversations.

And I would also just comment those have been prior to us receiving the notice.

Mr. QUIGLEY. Yes, because they saw the handwriting on the wall. We are going to—

Secretary MNUCHIN. I think, as you know, it was widely advertised in the press beforehand.

Mr. QUIGLEY. Sure.

Secretary MNUCHIN. So this was not exactly a state secret that we thought we would be getting it.

Mr. QUIGLEY. I think this committee would like to know if in those communications the White House expressed their desire to you or anybody else at Treasury what their views or how you should act on this matter.

So if you could pass that on, sir, we would greatly appreciate it.

I will pass on to Mr. Graves now.

Mr. GRAVES. All right, Mr. Chairman.

Mr. Mnuchin, Secretary, it is interesting how these committee meetings at Appropriations have turned into investigative hearings, putting different individuals from the administration on trial it seems at times.

And so, Mr. Chairman, it is, I think, fair for the Secretary to respond that they are going to fully comply with the law when I think we all know this is a political stunt by the new majority that just could not wait to get a gavel and to scour through all of the rules of the Ways and Means Committee into how they might use their political power and influence to retaliate against a political opponent that they just disagree with. That they do not like.

They did not like the outcome of the Mueller report. So now we have got to issue a subpoena and request that the Attorney General break the law and reveal classified information and other things. It is remarkable to watch this occur.

So, Mr. Secretary, I appreciate your good work, what you have done, as I said in my opening statement, all that you have done to assist the economy to make sure that there are plenty of jobs being created, 5 million new jobs since the administration took place.

The GDP is growing strong. Unemployment is at a 50-plus year rate of the lowest ever in the 50-plus years.

And yet what do we want to talk about? Tax returns. Why? I am sure the President has filed the financial disclosures as required by law, and I do not see any questions about that. But for some reason the new majority just wants to peek in, peek in a little bit further because they are just determined to prove something that they think might exist somewhere, and each time they get turned down and it is proven false.

In fact, there was no collusion. There is no obstruction. But that is not enough, and here we go again with something else. It might not ever end.

But halfway through this administration, you all are doing a fantastic job. I will go to something more pertinent to the day, and that is tomorrow we understand that in the House Financial Services Committee there is going to be the Chairman and CEO, Jamie

Diamond, who is going to testify, and he is hopefully going to speak a little bit about cybersecurity. That is one of your priorities, and I am grateful for that.

But the Chairman and CEO said that the threat of cybersecurity may very well be the biggest threat to the U.S. financial system, and that they spend about \$600 million every year just to ward off cybersecurity attacks.

You have made a request in your budget for a \$7.7 million increase to strengthen the financial sector's cybersecurity infrastructure. You are taking that threat seriously, and we appreciate that.

Just give us a little bit of a glimpse. Is the financial sector sufficiently prepared in your mind to manage large-scale business disruptions, data disclosures, and other cyber events?

Talk about that for a second.

Secretary MNUCHIN. Sure. Well, thank you very much.

I mean, let me just comment that cyber issues specifically relate to the financial infrastructure, which is a responsibility of the Treasury Department, working with DHS.

It is something that we take very, very seriously, and this requires an ongoing investment. This is not just a one-time investment. This will focus on a continuing investment.

I am actually hosting a meeting tomorrow afternoon of those CEOs at the Treasury Department, specifically with our cybersecurity experts. I will be having representatives of both DHS and the intelligence community there with me, as well as a session with the regulators.

So this is one of the highest priorities for the department, and this is something we will continue to work with the private sector. The private sector has the primary responsibility, but this is an area where we need to improve the effectiveness of the U.S. government working with the private sector to prevent what could be both state actions and non-state actions, attacks to our infrastructure.

Mr. GRAVES. The additional \$7.7 million that you are requesting, share with us a little bit about how you expect to use that, how that might help with that goal.

Secretary MNUCHIN. That is to staff-up our internal department to do this. I think, to be honest with you, this is a rather modest request, given the size and the significant risk, and this may be something that we will come back in the future and ask for more money just as we appreciate we have asked for more money for TFI. I think that has been very effectively used. We appreciate it.

This is a modest investment and something we may come back to you because it is one of the most important areas.

Mr. GRAVES. Right. Thank you, Secretary. Thanks for being here and joining us today.

Secretary MNUCHIN. Thank you.

Mr. GRAVES. Thank you, Mr. Chairman.

Mr. QUIGLEY. Mrs. Kirkpatrick.

[No response.]

Mr. QUIGLEY. Mrs. Torres.

Mrs. TORRES. Secretary Mnuchin, I understand that a total of \$9.6 billion has been provided for the Hardest Hit Fund since its creation. How much of that funding is left?

Secretary MNUCHIN. I am not aware of that specific number, but I can get back to you on that.

Mrs. TORRES. In the past two years, what are the main purposes for which the funds have been used?

Secretary MNUCHIN. The Hardest Hit Funds, I believe, as you know, was money that was—

Mrs. TORRES. I know what it is. Just answer my question please.

Secretary MNUCHIN. Can you repeat your question?

Mrs. TORRES. In the past two years, what are the main purposes for which those funds have been used?

Secretary MNUCHIN. They have been allocated to different States for various different purposes, as the funds are specified. It is not an arbitrary situation.

Mrs. TORRES. Exactly what were they being used for? You do not know, but can you follow up with my office and let me know?

Secretary MNUCHIN. Absolutely.

Mrs. TORRES. Thank you.

Secretary MNUCHIN. It is for various mortgage related issues in different parts in the States, but we are happy to give you a more detailed update.

Mrs. TORRES. I appreciate that.

With the President's decision to spend up to \$601 million on the border wall out of TFF, can you tell me what other law enforcement activities will not be supported in fiscal year 2019?

Secretary MNUCHIN. I do not know the answer to that. The request for the funding was a request that came from DHS for law enforcement purposes. DHS has prioritized the different things. I cannot tell you. It is not within my domain.

Mrs. TORRES. Okay. So law enforcement purposes, only a priority at the border, but not in our communities?

Secretary MNUCHIN. Again, law enforcement purposes are not within the Treasury's domain as it relates to these issues. We transferred the funds, and DHS has prioritized them.

Mrs. TORRES. In prior years, Treasury has sought to maintain a minimum of \$100 to \$150 million in the TFF for operating expenses for the subsequent fiscal year. Treasury's latest reporting to the subcommittee projects that there will only be \$71 million remaining in the TFF at the end of fiscal year 2019.

Are you concerned that the project balances will be insufficient to fund essential operations for fiscal year 2019?

Secretary MNUCHIN. I am not. That was somewhat of an arbitrary number.

I am sorry. I thought I answered. I said I am not concerned. The \$100 million was somewhat of an arbitrary number.

Mrs. TORRES. Is that enough, \$71 million, that number that you have that is projected to be left? Is that enough to fund current activity?

Secretary MNUCHIN. I believe it could, but we will look at that in the context of our overall funding.

Mrs. TORRES. Okay. Moving on to CDFI, in California's 35th District, which I represent, there are 252 loans and investments that were made using resources supplied by CDFI funding, totaling nearly \$37 million. This means more for small, family-owned businesses.

In crafting the fiscal year 2020 budget, you had a fantastic opportunity to change the fact that there are cuts to this program, but you did not. You are proposing a 94 percent decrease.

Can you tell me why?

Secretary MNUCHIN. Sure. Well, let me just acknowledge that I do believe that the CDFI program does make significant contributions to certain communities, and I have seen this first hand both in my role at Treasury and my prior experience.

This was just a difficult decision of allocating money between different priorities within the Treasury, and we look forward to working with you and the committee as you ultimately decide how we spend the money.

Mrs. TORRES. I just want to clarify. Certain communities are the communities that I represent, which are made up of the working poor. These are people that are working two or three jobs, that do not have a checking account that can match yours or anyone else in this room probably.

So these programs are critical, and I hope that we can find a way to make it work so that these programs do not have to suffer a 94 percent cut.

Secretary MNUCHIN. I appreciate that, and as I said, I have acknowledged I have seen first-hand the benefit of many of these programs. So we look forward to working with you and the rest of the committee.

Mrs. TORRES. I only have 5 minutes, and I do not have time for niceties. So I apologize for just getting on.

Mr. QUIGLEY. Thank you.

Mr. Stewart.

Mr. STEWART. Thank you, Mr. Chairman.

Mr. Secretary, thank you for being here. We appreciate the time you take and look at the oversight by Congress as a fundamental constitutional prerogative. It is something that is important, and these hearings are an important part of that.

I do have a few questions I would like to bore down on. Before I do, I cannot not address the elephant in the room, and that is the conversation already. I have expressed my view and concerns about this, and that is to push for tax returns, which I just think is political nonsense.

I think most Americans can see it for what it is, and that is it is just politically motivated intrusion into basic fairness and basic privacy.

And if that is not true, then I would ask did the chairman of the Ways and Means release his tax returns. Have other members and chairmen and chairwomen of other committees released their tax returns?

Did the Clinton Foundation or former Secretary release their tax returns? Why is not every member of Congress and every Senator required to release their tax returns?

And the answer is that because we have an expectation of right, and a right of privacy, and you are right. The chairman of the Ways and Means has in a confined way the authority to request these, but it has got to be for a legitimate legislative purpose.



And I would challenge anyone when asking for these tax returns to define what that legislative purpose is. What are they investigating?

And I think it is exactly what the ranking member said. This is nothing more than they disagree with an individual on their policies and their programs and their politics, and they want to punish that person. And this is the only way they can do it.

They have been trying for 2 years, and it has failed and failed and failed, and so they will say, "Well, let's try tax returns. Maybe there is something there. We have no evidence that there is anything nefarious. We have no evidence that there is any wrongdoing, but maybe we will find something."

And if you are going to have that be your standard, then have that be your standard for every member of Congress or for any other American citizen.

And I think most Americans reject that. The only way this works is if the American people trust the IRS and trust that this information will be held private, and if it is not, if that is violated, then people will quit complying.

And as we rely on voluntary compliance, by and large, for our tax policy and those programs being implemented, that will dissolve underneath us if people lose that basic sense of fairness.

And that is the only thing this will do, is dissolve that basic sense of fairness that people are treated the same regardless of what position they may have or regardless of their politics.

So once again, what is the legislative purpose of requesting these tax returns?

What are you investigating?

What crime or misdeed are you alleging here?

And if you do not have the answer to that question, then you have no right to pursue this.

We sent you a letter, and I know you have received hundreds, I suppose, letters. I do not expect you to recall this off the top of your head, but I would like you to answer back if you could and maybe follow up with us.

I have supported sanctions against Russia in almost every fashion. I think they are a very important tool for us to punish them and to change their behavior regarding America's interest.

The Countering America's Adversaries Through Sanctions Act was one I supported. It includes sanctions on financial services, energy and defense. We have vigorously sanctioned in those areas.

It also authorizes sanctions in metals and mining, and we have not done any of that at all.

Mr. Secretary, we sent you a letter last fall requesting that you look at sanctioning Russian potash. Now, this is important to me because the only potash producer in the entire country is in my district.

And I was wondering if you could give us an update on a response to that letter and what your views are regarding our concerns in that letter.

Secretary MNUCHIN. Sure. Well, first of all, let me just say I actually do make a point of trying to read all of the letters that come in, and I cannot always recall all of them. So that is why my staff appropriately just gave me copies of this.

But let me just first acknowledge sanctions are a very important tool. We have used them, I believe, very effectively against Russia. We will continue to use them against Russia for bad behavior, to try to change behavior.

I want to be careful in a public setting that we do not comment on future sanctions, but I can assure you that my office will follow up. You requested something we are taking very seriously, and without implying we are going to do something or not do something because I do not want to publicize it, I can assure you we are taking your request very seriously.

Mr. STEWART. Okay. My time has expired, but I would add this. Thank you for taking it seriously. We sent this letter nearly six months ago. Whether you agree or disagree, I do think that you owe us a response on this.

So we would look forward to your formal response to this request.

And, Chairman, thank you, and I yield back.

Secretary MNUCHIN. I think we actually did respond to it. So I apologize if there has been some confusion on that, on March 11th, but we will get you another copy.

Mr. QUIGLEY. Thank you, Mr. Secretary.

I am sure that President Obama is relieved that the Republicans did not use their oversight authority and committee structure to analyze and dissect any part of his administration. So I am sure he is relieved that that never happened. [Laughter.]

Mr. QUIGLEY. Mr. Cartwright.

Mr. CARTWRIGHT. Thank you, Mr. Chairman.

And thank you, Secretary Mnuchin, for joining us again this year. Just down the hall we have Attorney General William Barr. Did you guys take the same cab over?

Secretary MNUCHIN. We did not, but as I referenced before, I am sure his is even more interesting than ours is this morning.

Mr. CARTWRIGHT. Do not sell yourself short, Secretary.

And if you do happen to bump into the Commerce Secretary, we are still waiting for him to show up. We are waiting by the telephone. We would still love to hear his testimony this year.

I wanted to ask you about the Community Development Financial Institution Fund, and you are aware of what that is, right?

The administration has proposed essentially eliminating that fund by reducing funding from \$250 million in fiscal year 2019 down to \$14 million for the year going forward.

That is a 94 percent decrease, and by my way of thinking, it represents pretty much a complete abandonment of that program by the administration.

In previous years the administration has justified these kinds of drastic cuts by stating that the CDFI industry, quote, has matured, unquote, and that, quote, "these institutions should have access to private capital needed to build capacity, extend credit and provide financial services to communities they serve," unquote.

The question for you is I would like to know the basis for your conclusion regarding the relative maturity of the CDFI industry.

Has there been a report or a study done by your agency that assesses the likelihood of private investors filling that gap left by defunding CDFI?

Secretary MNUCHIN. Mr. Cartwright, Mrs. Torres just asked me a similar question on this. So, again, I apologize. You did not hear, but let me reiterate what I said, which is, first of all, I do want to acknowledge that I do think the CDFI funds provide many benefits to many communities; that our decision here was based upon making difficult decisions on funding various different programs across the Treasury Department.

And we look forward to working with you and the rest of the committee on specific allocations.

Mr. CARTWRIGHT. I did miss your answer before. Did she ask you whether you had done a report or study to analyze whether there is a likelihood private investors fill the gap left behind de-funding CDFI?

Secretary MNUCHIN. I did, and I apologize. I did not answer that specifically for you. I do not believe we have done a report, although I will check.

But as I have said, I want to acknowledge that we look forward to working with the committee on this funding.

Mr. CARTWRIGHT. And I want to encourage you to commission such a study or report so that we are basing our decisions on, you know, facts and evidence.

Secretary MNUCHIN. I think that is a good idea, and I will encourage the staff to review this and do additional research on it either internally or externally.

Mr. CARTWRIGHT. Perfect. The National Association of Federally Insured Credit Unions issued a statement opposing that elimination of CDFI funding. Did you see that?

Secretary MNUCHIN. I have not seen it specifically, but I am not surprised.

Mr. CARTWRIGHT. Not surprised.

Secretary MNUCHIN. In my previous life, I was a banker, and I am familiar with, again, as I have said, I have seen specifically in certain communities where these have helped. So we look forward to working with you on this.

Mr. CARTWRIGHT. Glad to know you have been paying attention.

They said this. "Without the CDFI fund grant program, many CDFI credit unions would not have been able to offer new products and loans that provide financial stability for members and their families," unquote.

And this statement seems to contradict your position that the CDFI industry has fully matured. What do you know about the CDFI industry that the NAFCU apparently does not know?

Do you believe that you are in a better position to judge the maturity of the CDFI industry than CDFI credit unions themselves?

I suppose the answer to that is all wrapped up in the study that I hope you are going to commission.

Secretary MNUCHIN. Yes. And let me just acknowledge whether the industry has matured or the industry has not matured, like many other programs, even if it has matured, there could still be benefits of certain things.

Again, this was a difficult decision on funding across various different programs, and we look forward to working with you and perhaps given the popularity of this program within certain areas of

Congress, we will reconsider it if it is funded in how we propose it in next year's budget.

Mr. CARTWRIGHT. Okay. So operating without studies or analyses, you are working assumptions, and my question is: how many other aspects to the Treasury's proposed budget are also based only on assumptions?

And how much credence should we be putting in this administration's budget based on assumptions and not facts in evidence?

Secretary MNUCHIN. I would be happy to discuss any of the specifics with you on any of the requests. Obviously with an entire department, there are certain things I am personally very involved with.

If you want to talk about IRS modernization, that is something I am very interested in, the TFI funding. There are many things I can comment on the specifics of and how we have reached the decision.

But obviously, not every single line item itself.

Mr. CARTWRIGHT. Well, thank you, Mr. Secretary, and my time is up.

I yield back, Mr. Chairman.

Mr. QUIGLEY. Thank you.

The gentleman from Ohio, Mr. Joyce.

Mr. JOYCE. Thank you, Mr. Chairman.

And thank you very much, Secretary Mnuchin, for taking the time to be with us this morning.

Last year I was not a member of this subcommittee, but during a subcommittee hearing on the budget, I had discussed an issue which the next day you came out and talked out. I really wish we would have flipped it by a day. It probably would have been very helpful, but it is regarding the issue of access to banking for the cannabis industry.

And you described that conflict as untenable. Just last year you stated that reviewing the existing guidance, referring to the 2014 policy memo meant to provide direction for banks on how to service cannabis businesses.

If I can quote you for a moment, "We do want to find the solution to make sure that the businesses that have large access to cash have a way to get them into a depository institution for it to be safe."

I could not agree with you more, sir. In my 25 years as a prosecutor, I think it is a horrible situation that is sitting out there, and we need to get that.

But I have taken to introduce some legislation to clarify the existing discrepancy between State and Federal cannabis laws. While I am not asking you for an official position on my bill, I would like to hear your thoughts on how this body can be more helpful when it comes to banking access for legitimate cannabis businesses.

And I would really like to work with you because I believe you are right on this, and the current situation is untenable.

So who on your senior staff could we work with to try to find some solutions for both of us?

Secretary MNUCHIN. I would be pleased to follow up with you directly and bring a team up.

Again, without having a policy view on the conflict of Federal law versus State law, for many areas that fall under the Treasury Department, this creates a significant conflict, everything from the IRS, which wants to collect taxes and has to build specific cash rooms to hold cash, to me working with the banking regulators where there are conflicts.

So I would encourage this as something that we are not taking a policy position on the conflict of Federal versus State, but this is something that does create a conflict in our ability to administer many areas.

Mr. JOYCE. Certainly if you went and spent \$20,000 cash on a car, you would kick off a SARS, and if you come in to pay your taxes with \$100,000 in cash, please come on in. You know, we will gladly accept it.

That to me does not make any sense and needs to be something we need to work to cure, and I look forward to working with you on that.

But Treasury has issued guidance clarifying that certain tax-exempt bonds maintain tax-exempt status when refinanced, but has not yet issued such guidance for the Tribal Economic Development Bonds. Tribes are beginning the process of refinancing their bonds now, and in the absence of such guidance will face significant and unanticipated costs increases.

Does Treasury still intend to issue such guidance?

And if so, will you please do so and expedite its completion?

Secretary MNUCHIN. We are in the process of issuing, as you can imagine, an enormous amount of guidance as it relates to the Tax Act. So I am not aware of this specific, but I assure you I will check with the staff, and we will follow up with you to see where that is.

Mr. JOYCE. We have many hearings on today, and I am ranking member in Interior where these Indian issues will come up, tribal issues will come up more often. So that is why I have an interest in making sure that we can fix those.

Secretary MNUCHIN. I completely understand. Thank you.

Mr. JOYCE. And you know, another one was that the Treasury Tribal Advisory Committee was authorized in 2014 to advise the Secretary in all tax matters related to Indian Country. Appointees to the committee have been chosen by Congress and Treasury, and the charter is written. Unfortunately, Treasury has never convened a meeting of this committee.

Is it your intent to convene a meeting of this committee?

And if so, when?

Secretary MNUCHIN. I was not aware that we had not done that. So I appreciate you bringing it to my attention. I have no idea why. It sounds like we should convene that. So we will follow up with that.

Thank you for bringing it to my attention.

Mr. JOYCE. Thank you for following up.

And lastly, the Opportunity Zone Program creates tax incentives for investment in designated census tracts which are economically challenged. Many of these Opportunity Zones include lands held in trust by the Federal Government for tribes.

But because Treasury's draft regulations require funds to be used to purchase and improve property in designated zones, they inadvertently exclude these lands held in trust, and also inadvertently exclude tribal governments from being eligible.

Will you look into this matter? And if the exclusion was, in fact, inadvertent, could you do what you can to ensure that the final regulations include tribal governments and lands held for these tribes in trust?

Secretary MNUCHIN. Yes. That issue I am somewhat more aware of, and let me just comment. In general, I think the Opportunity Zones are a very important program, and this is something that I hope that people can work across party lines as we continue to implement this.

There are some technical issues, as you have said. This is a highly technical issue that we are trying to figure out how we solve. We do not yet have resolution to.

Mr. JOYCE. I certainly appreciate your time in being here today, and in behalf of my other members who might have gotten up and left, there seems to be only four of us on every committee, and as you know, there are other hearings that are taking place today. So they have left to hit ten other hearings.

I will be leaving, and it has nothing to do disrespect for you, sir. It is just the fact that I have other hearings we have to attend as well.

I yield back.

Mr. QUIGLEY. Thank you, sir.

The gentleman should be commended for his clear, consistent, ongoing concern for the issue related to cannabis banking and related issues that go with it.

Mr. Secretary, I want to touch on before we go where we started this, but you are correct in discussing the issues of FY 20. Let me let you take some time to address an area of concern that has come to our attention, and that is the reports and the quote is "mass exodus" of staff due to internal disagreements and lack of direction.

Can you address the concerns within Treasury of loss of staff?

Secretary MNUCHIN. I do not believe we have. So if there are specific questions you have, but we have not lost staff due to issues or anything else. So despite what may or may not be written in the press, it is just not factually correct.

Mr. QUIGLEY. I just want to get your answer, sir, on the record.

But toward that end, fiscal year 2020 proposes to cut funding for the Treasury Inspector General for Tax Administration by \$4.25 million and to hold the Treasury Inspector General at flat funding, despite the extraordinary growth in funding for other Department offices, including a \$41.4 million increase for Department salaries and expenses and a \$7.7 million increase for the Office of Terrorism and Financial Intelligence.

So there are parts of the agency that are growing, except for those that oversee and do inspections of how you are doing. Can you justify at this point in time cutting the watchdog parts of the agency that are otherwise growing?

Secretary MNUCHIN. All right. Again, we would be happy to follow up with your staff on the specifics of any of this.

So I think when you drill down into the numbers, you cannot just look at the headline number. You have to look at, in the case of the departmental office, as I said, its specific increases in areas like CFIUS and others that are for national security.

As it relates to the Inspector Generals, I fully support the role of the Inspector Generals in the Department both in taxes and other areas, and again, we would be happy to go through the specifics of how these were built and the recommendations.

Mr. QUIGLEY. But your initial reaction to the fact that at least one of those Inspector General offices is going to be cut and the other one will get flat funding, I cannot imagine anyone believes that their agency is of a mind that it cannot be inspected and should not have a hardy inspection of those issues that they are working on.

Secretary MNUCHIN. Well, the significant reduction, the only significant IG reduction is the area of TARP, and the reason for that is that program is discontinued. So——

Mr. QUIGLEY. It still has programs that are going to be operating, funding through for some period of time though, right?

Secretary MNUCHIN. And, again, we are happy to go through the specifics, but those ongoing programs are overseen by other people, okay, outside of the Treasury Department and have very specific reporting requirements.

So, again, we are happy to sit down with your staff and go through any of the specifics.

I want to acknowledge we think that the IG's role, particularly I would comment in the area of tax administration, is very important.

Mr. QUIGLEY. Sure. Well, and TIGTA is cut, but obviously the IRS is growing, and hopefully growing a significant amount to be able to continue its job.

But thank you.

Mr. Joyce.

Mr. JOYCE. I would certainly defer if Mrs. Torres has a question at this time.

Mr. QUIGLEY. Mrs. Torres.

Mrs. TORRES. Thank you.

And thank you for bringing up the issue of cannabis. When there is so much cash around, it creates a lot of problems, and when I look at crime around facilities that sell cannabis, it is a big issue in our committees, and I hope that you will take some time to look into that.

I want to go back to the issue of forfeiture funds. I just want to get clarification that the funds required to operate the TFF, the amount that you gave us, \$71 million, is adequate, is an adequate amount to leave in the fund that we should consider.

Secretary MNUCHIN. I believe it is, but since you have asked me the question twice, what I would say is let me go back and just confirm that with my internal group because you obviously have raised some concerns about this, and we will follow up with your staff to make sure that we are 100 percent comfortable on that and can update you on why we feel that is the case.

Mrs. TORRES. I appreciate that, and I apologize. I usually like to send my questions in advance so our guests are prepared to answer my concerns.

Secretary MNUCHIN. It would have been helpful if the chairman had sent me the question about the NCAA in advance.

Mrs. TORRES. So I want to talk about the Northern Triangle countries, Guatemala, El Salvador, and Honduras. Obviously, you know, we have a humanitarian crisis at the border with hundreds of people coming north, a very difficult situation there not only with crime, but very, very corrupt governments.

It is unfortunate that we have provided very little political support for CSIG, which is, you know, the UN investigative body, commission, that is there to help provide support to the Attorney General, and in Honduras as MACCIH.

Last Wednesday, April 3rd, the Department of State provided Congress with a list of corrupt officials from the Northern Triangle countries, which was required by my amendment in fiscal year 2019 in DAA. As I have already said publicly, I was very disappointed with that list. I was very disappointed to see many officials that we know are dealing in narcotics and very much involved in narco trafficking were not on that list.

So, Mr. Secretary, given the very short list that we have, do you see any reason why those individuals on such a list, which was created by the Department of State, should not be sanctioned under the Magnitsky Act?

Secretary MNUCHIN. In general, let me just comment. I work very closely with Secretary Pompeo and the State Department on many issues and the sanctions. I am not familiar with this list per se.

I will follow up with the Secretary both to understand the list and review, if it is appropriate, for sanctions. It does sound like it is something we should look at and take into consideration.

As I said, we have used these obviously in many other areas. I am more familiar with them in the case of Mexico and Venezuela, of drug trafficking and other issues, but I will follow up on that.

Mrs. TORRES. Again, if you want to deal with the issues that we have at our southern border, you know, we cannot be negligent and not pay attention to the very corrupt governments in the Northern Triangle.

The reason why these people are fleeing is because there is no justice. There is no access to justice, and their governments are stealing funding that should be available to create programs for education.

I hate to continue to devastate other budgets that are critically needed in our community, like the forfeiture funding, to build the wall when the answer is right in front of us, and that is dealing with the corrupt people. They should not have a visa, and they should not have access to our financial institutions here in the U.S., not when we know and we are very clear that they are dealing and they are known narco traffickers.

Secretary MNUCHIN. Well, let me again agree with you completely that Treasury and this administration in no way wants to look the other way when we are aware of corruption in foreign governments, and these sanctions work, and we will follow up with



your office to make sure that corrupt officials do not have access to our financial system.

Thank you.

Mrs. TORRES. I appreciate it.

My time is up, and I yield back.

Mr. QUIGLEY. Thank you.

Mr. Joyce.

Mr. JOYCE. Thank you, Mr. Chairman.

I am at a point, Secretary Mnuchin, can you explain what you are doing to help Federal, State and local law enforcement develop the intelligence to understand how drug organizations and laundering their drug proceeds or how they are laundering their drug proceeds?

And what are you doing with the Government of China to stop the flow of fentanyl into this country?

Because obviously we have a tremendous amount of overdose deaths that exceed car accidents and everything else now.

Secretary MNUCHIN. Sure. Let me answer your second question first because that is something that I am very, very familiar with. I participated in the meeting between President Trump and President Xi where President Trump specifically asked President Xi to change the classification of fentanyl so that it would be illegal in China.

That is something that President Xi said was very difficult to do, but because the request came from President Trump, that was a commitment he made on the spot. I understand that a lot of that is in the works and has changed.

And that is a specific area where we appreciate China working with us on that because I think, you know, fentanyl is a very significant issue in this country and a big concern of President Trump's.

As it relates to your first question, our specific role at Treasury is obviously where we have any specific intelligence in enforcing the sanctions as it relates to money laundering.

We also work very closely through FinCEN with all of the banks on money laundering. As it relates to specific State and local areas, that is obviously something that we do on an interagency basis. We are not always the primary lead on, but I assure you money laundering is one of our top priorities that we focus on.

Mr. JOYCE. Thank you for the work that you are doing there.

Secondly, I know that when we were in the majority that we took great pleasure in cutting the amount of money that was going to the IRS every year, and I know that you have taken it under your wing and the budget request proposes investments to implement your integrated modernization business plan, to modernize IRS systems, which I applaud, and taxpayer services in two three-year phases beginning in 2019.

How would this modernization plan improve the long-term operations of the IRS and the service provided to taxpayers and businesses alike?

Secretary MNUCHIN. Well, thank you for raising that issue because I would say if there is one of the most important things that I think this committee can do is to give us the funding to invest in modernization at the IRS.

The IRS has underfunded their technology for years and years. This is not a Republican or a Democrat issue. This has crossed multiple administrations. It is somewhat embarrassing that we are operating at the size and scale we are. The IRS is under attack all the time for cyber issues, and that we are on dated technology.

I think, as you know, we had a problem last year, not this year, on Tax Day because of this dated technology, and I would also say that taxpayers deserve to have capabilities of online customer service that are consistent with other big financial institutions.

Taxpayers are paying the government significant amounts of their hard-earned money, and they should be able to have access to information. They should be able to communicate.

In this day and age, calling up and asking to speak to a person on the phone is not necessarily the most efficient thing to do.

And let me just comment. This has to be multi-year funding. So for this to be effective, we need multi-year funding. This cannot be turned on and off. This is going to take 5 or 6 years to implement.

Mr. JOYCE. Is it an investment also in the data services, the infrastructure there?

I know the one thing I have seen: is it pretty dated, the equipment that you are forced to use down there? Back to the old main-frame days?

Secretary MNUCHIN. It is a combination of hardware, software, business processes. It impacts every single area. It impacts our enforcement. It impacts our customer service.

Over time, by the IRS taking in all this data, we should be able to do more of our enforcement electronically using technology, and taxpayers deserve to have a better experience, which we need this investment in technology to do.

Mr. JOYCE. Thank you, sir.

Mr. Chairman, I yield back.

Mr. QUIGLEY. Thank you.

And, sir, I cannot agree more. We absolutely need to on a bipartisan basis help modernize the IRS, and I hope we are all in agreement that we need to make sure they have the resources to enforce those efforts as well and that those dollars are not taken away every year or reduced every year in the process to help fund the other parts of the agency.

Mr. Crist.

Mr. CRIST. Thank you, Mr. Chairman.

And thank you, Secretary, for being with us today.

Mr. Secretary, I want to talk about cash. You oversee a lot of important agencies, sir, designed to keep Americans safe and keep the financial system secure. And there is a vast regulatory system built on that, monitoring everything from bank accounts to wire transfers, from terrorist financing, real estate fraud, insider trading, even Russian sanctions, as it were.

When money touches the U.S. financial system, it is almost like it comes into the light. I like that. I am from Florida, and we appreciate transparency, as I am sure you do. We like to say that sunlight is, in fact, the best disinfectant.

I am grateful to all of the folks at Treasury who are utilizing financial regulations to find the bad guys, throw them in jail, keep

the American people safe. They have a lot of tools, and they know how to use them and use them well.

But this is a question about cash. Would you briefly explain to me from a law enforcement perspective what happens when markets exist in cash only?

Secretary MNUCHIN. Well, first of all, thank you for your acknowledgement of the many areas.

Cash, obviously particularly as it relates to the U.S. financial system, we need to be able to track cash when it comes in and out of the banking system so that cash transactions are not used for illicit purposes.

I would also say a big focus of ours has also been crypto assets for similar reasons, that cryptocurrencies can be used like cash for illicit activities.

So cash is something that is very important to monitor. On the other hand, I do just want to acknowledge despite the world that we live in which is going more and more digital, the worldwide demand for U.S. cash is significant, and being the reserve currency of the world, we have to be careful in being able to properly enforce and monitor these cash transactions with that.

Mr. CRIST. Yes, sir. It seems like from a financial crime standpoint money laundering, tax evasion, even armed robbery, cash only is not right. It seems like as policy makers, you and I would want to steer commerce out of the all cash space and into regulated space. Would you agree with that, by and large?

Secretary MNUCHIN. Again, I want to be careful because, yes, as a general matter, cash transactions create a more complicated regulatory environment.

On the other hand, as I said, I want to be very careful that we do not regulate that you cannot use cash.

Mr. CRIST. Fair enough. My home State recently legalized medical marijuana, overwhelmingly, and the industry has responded, Mr. Secretary. By 2020, the regulated license and tax cannabis market in my State alone could come close to \$1 billion.

But because of a discrepancy in Federal and State law and a failure of Congress to act and a failure of regulators to be proactive, this regulated licensed, voter approved billion dollar industry is going to be all cash.

I note a 5.86 percent increase requested for Financial Crimes Enforcement Network, or FenCEN. I assume this increase is because you all want to catch more bad guys and make families more safe.

So why then is Treasury not doing everything at its disposal to create a workable, reasonable, confidence-inspiring way to make it safe for these companies to bring their revenues into the sunlight?

Secretary MNUCHIN. Mr. Crist, we have had a few other comments on this earlier. So, again, let me just say I hope this is something this committee can on a bipartisan basis work with since there are people on both sides of the aisle that share these concerns.

I will just say I do not believe this is a failure of the regulators. I want to defend the regulators on this issue. The problem is, okay, there is a conflict between the Federal law and the State law.

And I am not making a policy comment on what the right outcome is, but I, too, share your concern, whether it is my super-

vision of the IRS where I have already said we have to build cash rooms to take in cash, which creates all different types of security issues.

There is not a Treasury solution to this. There is not a regulator solution to this. If this is something that, you know, Congress wants to look at on a bipartisan basis, I would encourage you to do this.

This is something where there is a conflict between Federal and State that we and the regulators have no way of dealing with.

Mr. CRIST. Thank you.

Your encouragement is appreciated, Mr. Secretary. Thank you so much.

Mr. Chairman, I yield.

Mr. QUIGLEY. Thank you.

I am going to close by commending you as I did in the beginning and questioning you as I did in the beginning.

Again, I want to thank you for the notion of including increases for both the Office of Terrorism and Financial Intelligence and the Financial Crimes Enforcement Network. We want to work with you to make sure we use those precious resources appropriately.

Mr. Crist talked about transparency. He was quoting the people of Florida, but it was actually Justice Brandeis who said sunshine is the best of disinfectants.

Respectfully, sir, I would disagree with you in the notion that your office should be reviewing this decision, the request coming from the chairman of Ways and Means, at all.

But in the final analysis, I think you need to appreciate the fact, and I am asking you if you do, what Mr. Crist brought up. There is a reason that Presidents release their tax returns, right? There is a reason these regulations were put in place and the ability to do this, and it is certainly not anything novel, as has been suggested recently.

Richard Nixon, Gerald Ford, Nelson Rockefeller all had congressional hearings relating to their tax returns. There is something you trade off when you do what the President of the United States does, and it is generally the notion that the public has a right to know and make the decision on their own whether a law maker is making a decision based on their own interest or on someone else's.

So would you acknowledge there is a reason these Presidents released their returns and that this call for transparency matters at this time in our Nation's history?

Secretary MNUCHIN. Well, I believe that these Presidents released those returns on a voluntary basis. I am not aware of that there is any law that required them to.

I am aware——

Mr. QUIGLEY. But would you acknowledge that there is a reason they did it, that they are not doing it——

Secretary MNUCHIN. I do not——

Mr. QUIGLEY [continuing]. To show people how to fill out a tax return if you are the President.

Secretary MNUCHIN. Again, they made individual decisions. I would just also like to say there is a requirement for Presidents to have financial disclosure. I believe that this President has complied with that, as other people, and the general public, when they elect-

ed President Trump, made the decision to elect him without his tax returns being released.

Now, since we opened with this, okay, I guess I just cannot help——

Mr. QUIGLEY. We can do better with an answer.

Secretary MNUCHIN [continuing]. I just cannot help but say since you made the comment on President Obama and being looked at, I am——

Mr. QUIGLEY. A little bit.

Secretary MNUCHIN [continuing]. I am sure there are many prominent Democrats who are relieved that when Kevin Brady was the chairman of the committee that he did not request specific returns.

But anyway, it was a pleasure to be here——

Mr. QUIGLEY. Because it was released.

Secretary MNUCHIN [continuing]. With you today.

Mr. QUIGLEY. And President Obama released visitor records. President Obama was more transparent than the last ten Presidents.

Secretary MNUCHIN. I was not referring to Presidents. I was referring to other members of Congress, prominent Democratic people who may support people, ordinary taxpayers.

But in any event, it is a pleasure to be here with you today to address the funding, and we look forward to working with you on many of these bipartisan issues.

Mr. QUIGLEY. And this is a technical question. Will you submit DHS' request for funding for the record?

Secretary MNUCHIN. I assume we would be more than happy to do that. Just make sure I check on that, but I do not see any reason why that would not be the case.

Mr. QUIGLEY. Very good. Thank you.

This meeting is adjourned.

[Questions and answers submitted for the record follow:]

**Financial Services and General Government Subcommittee****Hearing Department of Treasury Budget****Questions for the Record Submitted by Congresswoman Torres****Hardest Hit Fund**

I understand that a total of \$9.6 billion has been provided for the Hardest Hit Fund since its creation.

**Question:** How much of that funding is left?

**Question:** In the past two years, what are the main purposes for which the funds have been used?

In 2010, The Hardest Hit Fund (HHF) provided \$7.6 billion to 18 states and the District of Columbia to assist struggling homeowners through locally tailored programs administered by each respective housing finance agency (HFA) in order to help prevent avoidable foreclosures and stabilize housing markets. These areas were designated “hardest hit” because they experienced steep home price declines and/or severe unemployment in the economic downturn. On February 19, 2016, Treasury announced the extension of HHF through December 31, 2020, and an additional \$2 billion to allocate to the programs, for a total allocation of \$9.6 billion.

As of February 28, 2019, HFAs have drawn approximately \$9.2 billion of their programs funds from Treasury to prevent avoidable foreclosures and stabilize neighborhoods. This information is available in the March Monthly Report to Congress available [here](#). To date, HHF programs have provided assistance to over 400,000 homeowners and demolished and greened over 35,500 properties. For more information on HHF and how the HFAs have utilized funds via the implementation of 89 programs, please see the Q4 2018 Hardest Hit Fund Quarterly Performance Summary (available at [www.treasury.gov/hhf](http://www.treasury.gov/hhf)). To view each HFA’s fact sheet, website and other information, please click [here](#).

**Treasury Forfeiture Fund**

President Trump has decided to spend up to \$601 million on the border wall out of the TFF. In prior years, Treasury has sought to maintain a minimum of \$100 to \$150 million in the TFF for operating expenses for the subsequent fiscal year. Treasury’s latest reporting to the subcommittee projects there will only be \$71 million remaining in the TFF at the end of FY19.

**Question:** Can you tell me what other law enforcement activities will not be supported in FY19?

**Question:** Are you concerned that the projected balances will be insufficient to fund essential operations of the TFF in FY20?

The TFF is adequately funded and the most recent estimated carryover for Fiscal Year 2020 is over \$100 million. Treasury historically prefers to carry over approximately \$100 million to \$150 million to start each new fiscal year. The monthly reports, including the one that reflected an estimated \$71 million carry over for fiscal year 2020, reflected our balances and anticipated expenses as of the date of that monthly report, which was several months ago. The balances of the TFF are fluid and fluctuate as revenue comes in and expenses are paid. The program is managed by an office (TEOAF) with 25 years of experience of working with the partner agencies to reasonably project base revenue and anticipated expenses based on the cases the agencies are working that may result in forfeiture.





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