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NOMINATION OF DEREK T. KAN

HEARING

BEFORE THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE ONE HUNDRED SIXTEENTH CONGRESS

SECOND SESSION

NOMINATION OF HON. DEREK T. KAN TO BE DEPUTY DIRECTOR,
OFFICE OF MANAGEMENT AND BUDGET

JUNE 30, 2020

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NOMINATION OF HON. DEREK T. KAN

TUESDAY, JUNE 30, 2020

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 2:30 p.m., via video conference. Hon. Ron Johnson, Chairman of the Committee, presiding.

Present: Senators Johnson, Portman, Lankford, Scott, Hawley, Peters, Carper, Hassan, Sinema, and Rosen.

OPENING STATEMENT OF CHAIRMAN JOHNSON¹

Chairman JOHNSON. The hearing will come to order. Today we are considering the nomination of Mr. Derek Kan to be the Deputy Director of the Office of Management and Budget (OMB). I want to first thank Mr. Kan for your current service to this nation and your willingness to step up to the plate and take on this role as a confirmed deputy director.

The role of the Deputy Director of the Office of Management and Budget varies with each Administration. In general, the Deputy Director supports and advises the OMB Director in the development, management, and administration of the President's budget and oversees the execution of the President's management agenda across the executive branch. In addition, the Deputy Director oversees the entire agency, including the Deputy Director of Management, as well as eight OMB support offices.

I have to admit, I am not sure I would want to necessarily work in OMB, and you can talk to Senator Portman on that. Even though I am a bean counter, it is such an enormous responsibility and there is so much information that you have to deal with. But I certainly appreciate those of you who do.

So again, I want to thank the nominee and I will turn to over to Senator Peters.

OPENING STATEMENT OF SENATOR PETERS²

Senator PETERS. Thank you, Mr. Chairman, and thank you Mr. Kan for being here today and for your willingness to serve in this very important and very challenging role.

Today we are considering Mr. Kan's nomination to serve as the Deputy Director of the Office of Management and Budget, which shapes budget and policy decisions across the Federal Government.

¹ The prepared statement of Senator Johnson appears in the Appendix on page 27.

² The prepared statement of Senator Peters appear in the Appendix on page 28.

For the past several months OMB has been a central part of the administration's response to our ongoing public health and economic crisis.

Mr. Kan, you have held a senior role at OMB for the past year, including serving as OMB's representative on the White House Coronavirus Task Force. The role of the Task Force, and of OMB in particular, is to ensure coordination across departments and agencies that are involved in the response to this pandemic.

Unfortunately, since the onset of the coronavirus pandemic, a lack of effective coordination and a cohesive strategy has actually hindered our response efforts and has contributed to the tragic loss of over 120,000 American lives.

Containing and ultimately defeating this pandemic will continue to be an enormous challenge going forward. We should not have to contend with the added challenge of inconsistent and conflicting messages from within the Administration. It should not be a challenge for the American people to be able to get straightforward answers about the government's response, and States should not have to grapple with the additional challenge of uncertainty and confusion over how Federal resources are being allocated. Congress and the Administration must work together if we are going to learn from past missteps and effectively address this pandemic moving forward.

Mr. Kan, from your time at the Department of Transportation (DOT) I know you to be a talented and thoughtful leader who can work collaboratively with Congress and others to find common ground. I know we share the goals of containing this deadly virus and of safely reopening our economy. But to do so, we also need a shared understanding of the facts on the ground and the progress made so far.

I hear regularly from small business owners, hospitals, and vulnerable communities in Michigan who are struggling but are unable to access relief programs we designed specifically to help them. We need clear information about how resources are being allocated. We need data to understand whether relief is reaching those who are most in need and fix programs that are simply not working.

I am pleased that OMB has begun taking steps to cooperate with the Government Accountability Office's (GAO) oversight of the coronavirus response, and I appreciate OMB's work with Congress on previous coronavirus relief legislation. But we have a lot more to do, and I hope that if you are confirmed you will be a champion for transparency and oversight both within OMB and throughout this Administration.

So thank you again, Mr. Kan, and I look forward to your testimony here today.

Chairman JOHNSON. Thanks, Senator Peters. It is the tradition of this Committee to swear in witnesses, so, Mr. Kan, if you would please raise your right hand. Do you swear that the testimony that you will give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. KAN. I do.

Chairman JOHNSON. Thank you.

Derek Kan is the Executive Associate Director of the Office of Management and Budget. Mr. Kan started his career in public service as a program examiner at OMB, and subsequently spent over 4 years as a policy advisor in the U.S. Senate Republican Policy Committee and the Senate Office of the Majority Leader. Mr. Kan later held numerous positions in the private sector, most recently as general manager at Lyft, before returning to public service.

He was twice confirmed by the Senate under the Obama and Trump administrations, in 2015, as a member of the Amtrak board of directors, and again in 2017, as the Under Secretary for Transportation Policy at the Department of Transportation.

Mr. Kan received a bachelor of arts degree from the University of Southern California, a master's of science in economic history from the London School of Economics, and master's of business administration from Stanford Business School. Mr. Kan.

**TESTIMONY OF THE HONORABLE DEREK T. KAN TO BE
DEPUTY DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET**

Mr. KAN. Thank you, Chairman Johnson, thank you, Ranking Member Peters.

In the interest of time I will keep my statement brief by reading the first and last few paragraphs of my prepared remarks and submit the rest for the record.¹

Chairman Johnson, Ranking Member Peters, and distinguished Members of this Committee, I am honored by the opportunity to come before you as President Trump's nominee for the Deputy Director of the Office of Management and Budget. I am also thankful for Director Vought's support of my nomination.

I am grateful for my wife, Connie, and our three kids, Jordan, Evan, and Avery. They have all made significant sacrifices in uprooting their lives to move out to DC 3 years ago to allow me to serve this great nation and this Administration.

I am also thankful for my parents, Scott and Julie, who have worked so hard to give me plentiful opportunities throughout my life. They immigrated here from Taiwan over 40 years ago, with nothing in their pocket, to pursue the American dream. My mother, who never graduated from college, taught me the value of hard work and persistence. My father, an engineer, taught me the value of rigorous analysis and that it is OK to laugh. Together, they taught me to have a deep respect for authority, a love for this incredible country, and an unwavering faith in God. I hope to make them proud in my service.

It is with a deep sense of humility and gratitude that I come before you for this nomination. Having worked closely with the Homeland Security and Governmental Affairs Committee (HSGAC) when I was a young staffer, I am grateful for the important work that this Committee does in promoting good government operations and great transparency and accountability. Having been a civil servant at OMB, a Senate staffer working with OMB, and a policy official at DOT working to implement the guidance of OMB, I would be grateful for this opportunity to serve as the deputy to im-

¹ The prepared statement of Mr. Kan appears in the Appendix on page 30.

prove the management of our agencies and the finances of our Nation.

You have my commitment that if I am confirmed I will work collaboratively with each and every one of you to address the needs of our Nation. Thank you for the opportunity to come before you and I would be pleased to answer any questions you may have.

Chairman JOHNSON. Thank you, Mr. Kan. There are three questions the Committee asks of every nominee for the record, and I will ask those to you now.

Is there anything you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

Mr. KAN. No, there are not.

Chairman JOHNSON. Do you know of anything, personal or otherwise, that would in any way prevent you from solely and honorably discharging the responsibilities of the office to which you have been nominated?

Mr. KAN. No.

Chairman JOHNSON. Do you agree, without reservation, to comply with any request or summons to appear and testify before any duly constituted committee of Congress if you are confirmed?

Mr. KAN. I agree.

Chairman JOHNSON. Thank you.

Let me just quick start off the questioning. Senator Peters made a number of statements that I think you may want to respond to. From my standpoint, I have been here almost 10 years, worked with the Obama Administration and now the Trump administration, I personally think Coronavirus disease (COVID-19) is probably the most consequential event in my lifetime, and I think since World War II, probably, the most consequential event affecting people's lives, our Federal budget, so many things that are very difficult to comprehend and really grapple with.

From my standpoint, I think the Administration has been incredibly available, accessible, and I would say quite transparent. I personally am involved weekly a number of calls every week, whether it is the Department of Health and Human Services (HHS) or whether it is the Federal Emergency Management Agency (FEMA), where officials are briefing us, then taking an hour with that briefing as well as answering questions.

I think the point I want to make is this is an overwhelming problem we are dealing with. There is nothing easy about this. I guess I would just kind of like to give you an opportunity to kind of respond to what OMB's role has been in this, what you have had to deal with, and how you have tried to discharge your responsibilities in such an enormous task.

Mr. KAN. Right. Thank you, Chairman Johnson, and thank you for the question. This has been an incredibly complex situation where everything from the information that we are getting was continually evolving. If we roll back the clock to January, we were getting very spotty, inconsistent information out of China.

And so in this fog of war, in this fog of a situation, we have tried to do the best we could with the information we had. Early on in January, we were told that the virus was under control. The day after the World Health Organization (WHO) declared a global pan-

demic, we shut down our borders with China. And since the end of January until today, we have had tens of thousands of faithful civil servants working nonstop around the clock.

In terms of effective coordination, the Administration has multiple calls every week with Governors around the country, and it is difficult. Governors will often times come and state, "We have an enormous need." As we sit and look at the need, it is clear that some of the need is maybe exaggerated. Maybe it is not as accurate as it actually is. So we have been working collaboratively with State officials, local officials, with public health officials around the country, and also around the world, to combat this.

At the end of the day, the last time something like this happened was over a century ago. There is nobody alive who was around during the last pandemic. And in my mind, we have gone from zero testing to now 27 million tests. We have gone from ventilators that were in sort of the high single digit thousands to now enough ventilators that we have that we can help other countries.

So on every dimension we have responded as rapidly as we could. Resources have never been a problem. We passed 3, 4 bills that have been some of the biggest bills in American history. And so all of us together have a shared responsibility and a shared commitment to bringing safety back to this country.

And from my perspective, it seems like every government official all across the country has been laboring nonstop trying to respond to this once-in-a-lifetime pandemic.

Chairman JOHNSON. Yes, it is pretty easy to Monday morning quarterback. There is no doubt about that. In a previous hearing with FEMA Administrator Pete Gaynor, we saw some information on the supply versus demand ratio, and demand was outstripping supply in some of these basic personal protective equipment (PPE) items by two or three times. That is difficult to grapple with.

Again, I do not blame Governors trying to restock their supply. Maybe they are not in a hot spot. Everybody wants as much material as possible, but somebody has to make the tough decisions and that has kind of landed to the Federal Government.

Office of Management and Budget, let's focus a little bit on budget and spending. The other thing that OMB and this Administration has had to grapple with was \$2.9 trillion—that is \$2,900 billion dollars of spending that was cobbled together here in Congress over the course of just a few weeks. I think we all realized we had to do something massive and we had to do something fast. We also knew it would be far from perfect.

The fact of the matter is, I cannot quite get the exact information on how much has been spent. I think the most recent number, of the \$2.9 trillion, about \$1.3. Agencies are going through this, what has been spent, what has been obligated. Do you have any sense of that? Do you have some updated information you are willing to share here today?

Mr. KAN. We do, and our staffs, I believe, are working together on this. Roughly it is about 60 percent, I believe, is the last report I saw, has been obligated. A significant portion of that has not yet been obligated. We are working on the Economic Support Fund, which is Treasury working with Fed. I believe it is about \$500 bil-

lion. That has not yet been obligated because that is held in reserve as the Fed stands up these facilities.

So if you back that out, we have obligated about 60 to 70 percent. And if you take a step back, the bill was the biggest bill in American history. We are 13 or 14 weeks since passage of that bill, and we have obligated an unseemly amount of money to every corner of the country, as quickly as we could. As we do this, we are trying to be faithful stewards of the taxpayer resources. We are trying to make sure that reporting and internal controls are set up. But some of these programs were new programs, and it is difficult to stand up new programs in the middle of a crisis. We are building a plane as we are midair.

And so 70 percent of the money has gone out. Chairman Johnson, I know that this has been a significant interest of yours, and actually I want to thank you for being a leader on this topic and making sure that we are continually tracking these obligations closely.

Chairman JOHNSON. OK. Spending is different from obligating, so is it relatively true we have spent about \$1.3, and then so we have obligated another \$600 billion, let's say? Is that about—

Mr. KAN. That is roughly correct. I can pull up the numbers after and sit down with your staff. But spending occurs after—when you say spending I think that relates more to outlays than obligations. Obligations are a commitment to spend, and then the outlay is the spending.

Chairman JOHNSON. OK. No, I would appreciate that, following up with my staff.

The final point I want to make is Senator Rick Scott led a letter to the States, trying to get information from the States in terms of how they have spent the \$150 billion that we have already allocated out to them. I am not sure. I know we got one response. Hopefully we will get 50 of those. I would imagine when we get that you would probably be interested in seeing a little bit of that information as well.

But again, thank you for your efforts, and, I appreciate your willingness to serve in this capacity.

Senator Peters.

Senator PETERS. Thank you, Mr. Chairman. Mr. Kan, let me start with a question that I ask all nominees. If confirmed, will you commit to fully and promptly responding to oversight requests from this Committee, including from the Ranking Member and every other minority Member on this Committee?

Mr. KAN. Yes.

Senator PETERS. This Committee also, I am proud to say, worked in a bipartisan way to give the GAO a central role in conducting oversight of the pandemic response, and I am certainly pleased now to hear that OMB is meeting with the GAO staff and is responding to their requests. But my question to you, Mr. Kan, yes or no, will you make a public commitment here today that if confirmed you will ensure that OMB continues to fully and promptly cooperate with all GAO requests pertaining to the coronavirus response, and otherwise?

Mr. KAN. Yes. In fact, during the American Recovery and Reinvestment Act (ARRA) of 2009, the 2009 stimulus ARRA package,

I was working for Senator McConnell, and worked closely with GAO to ensure oversight for the distribution of our funds. And so a number of the GAO leadership that is there now, I worked in hand in glove with to ensure all spending and all information that members of the Senate were tracking was closely tracked by GAO. So I have first-hand experience of the good work GAO does, and you have my commitment to continue that collaboration.

Senator PETERS. That is great. Great to hear.

Our top health officials agree that widely available testing is an absolutely critical component in our fight against the coronavirus pandemic, and the need for testing is greatest as we certainly work to reopen our economy, and do it in a safe fashion.

As a member of the White House Coronavirus Task Force, can you assure me and Members of this Committee that the Administration is working to increase testing?

Mr. KAN. Yes. Absolutely. In fact, 3 or 4 months ago there was a decision at the task force to ensure every State leader, every Governor and every State public health official knew exactly every testing facility in their State. And so we gave this information to each of the Governors to say, as Governors were trying to figure out where in their States were there different machines, we made sure that every Governor had the full list of testing capacity so that they could surge capacity.

And it was surprising, a number of Governors were unaware of the amount of testing capacity they had in the States. And so it seemed like early on there was a lack of information sharing, particularly at the State and local level, of testing capacity, and one of our first steps was to make sure that that barrier was broken.

Senator PETERS. Mr. Kan, you and I spoke recently about the importance of reliable data to our ongoing response. And while we know that coronavirus has a disproportionate impact on minority communities, we simply do not have the data needed to fully understand the actual scope of these disparities. Demographic data on testing is one area, unfortunately, that is sorely lacking.

Now I know earlier this month the Centers for Disease Control (CDC) announced new guidance on race and ethnicity data for testing, with reporting requirements that are expected to go into effect on August 1.

My first question is why did it take so long for the Administration to start collecting this data?

Mr. KAN. Thank you, Senator, for the question. CDC is responsible, and oftentimes with a lot of this information there are trade-offs. If you request too much information at a testing site, it is difficult to get folks to fill out forms. Lines get longer. And so there are oftentimes tradeoffs with the amount of information to collect.

I do not think that there was any desire, we were responding to a crisis and initially trying to just scale testing. As it went on we realized we needed more information to help form more informed views.

And so at this point in time we have a lot of that data, for about 80 percent of cases. CDC is collecting this and CDC is also using a new surveillance system called COVID-NET to track their race and ethnicity data.

Senator PETERS. So when will we have a full picture? What is your timeline of when we will have a full picture of the disparities?

Mr. KAN. I think we already are beginning to have that now. I think we have an 80 percent solution. And so we have a pretty decent perspective of what parts of the Nation are most hit, both in terms of racial and ethnic minorities but also in terms of geography, also in terms of what States. So we are reaching a point at which we have a pretty high degree of confidence of where major gaps are.

Senator PETERS. So you still have incomplete data. You are working to close that gap. In the absence of complete data, how is the Administration ensuring that coronavirus testing is getting to those minority communities most at need?

Mr. KAN. Sure. One of the early actions we took is we leveraged heavily the federally qualified health centers (FQHCs). We provided them with almost \$600 million to the 1,400 FQHCs. Most FQHCs are located in underserved communities, and we ensured that FQHCs were providing testing to their local communities. We also are scaling community-based testing sites. These are the sites that popped up in parking lots across the country. And then about 70 percent of these sites are located in areas where there is high social vulnerability.

Also, with respect to Michigan, we have been on the phone with major cities and major local public health leaders all around the country. Detroit has a tremendous public health leader, and we the administration has been on with them constantly, ensuring that they have the resources needed to respond in your State. And that is a situation that we see across the country. As specific States develop hotspots, we have been working with State and local leaders, really glove in hand, to make sure they have the resources needed to combat this.

Senator PETERS. Since the onset of the pandemic, I worked in a bipartisan manner to get this Administration to increase the FEMA cost share to 100 percent for emergency assistance. Last month, Acting Director Vought told me that OMB is still in the process of reviewing this proposed adjustment.

So a question to you, Mr. Kan, is the Administration willing to make this adjustment or will Congress have to mandate it?

Mr. KAN. I think that is still in a policy process. I do not think I have any new information to share with you today.

There are major tradeoffs here. We want to help cities and States but we also want to make sure that there is some amount of share of interest and aligned interest here.

Senator PETERS. You say it is still in process. You realize this has been going on for months now, and it has been going on for an incredibly long time. It is time to make a decision one way or the other.

Mr. KAN. Understood, sir. We have given States about \$500 billion from the Coronavirus Aid, Relief, and Economic Security (CARES) Act, and believe a significant portion of that can be used for cost-share purposes. And so we are closely monitoring this to ensure that States have enough resources for cost share. If that no longer becomes the case, that is useful information as we consider and we continue to monitor this particular question.

Senator PETERS. I am out of time right now, but, you know, the CARES Act was specifically appropriated for a variety of other uses, so it is really not an alternative to have the 100 percent cost share to help our States.

Thank you for the response. Thank you, Mr. Chairman.

Chairman JOHNSON. Thank you, Senator Peters. Just for everybody else's knowledge, the order will be Senator Portman, Carper, Lankford, Hassan, and Rosen. Senator Portman.

OPENING STATEMENT OF SENATOR PORTMAN

Senator PORTMAN. First let me say that I am delighted, Derek, that you are willing to continue in public service, and as you know, when you came out of private sector this last time I thanked you for your willingness to serve, knowing it was going to be an exciting experience. I had no idea that we would be going through what we have, in terms of just these historic challenges, particularly the global pandemic.

But your background and your record are needed right now, badly, so I am supportive. Probably the most important part about your background to this Committee is the fact that you once were a HSGAC staffer, so you know what we go through. But you have been in the private sector, you have been successful there, you have been in the public sector and been successful there. You actually were a Presidential management fellow at OMB, which you did not mention earlier. You have also worked for a biotech startup, which I think is actually helpful right now with what is going on with regard to the COVID-19 challenges.

I am appreciative that you are willing to step up, and based on your answers today to the questions that have been posed obviously you have a good sense of what the deputy role is. You are effectively doing it, and that is important too. We do not have time to bring people up to speed right now. It is a marathon being run at a sprinter's pace. I appreciate your willingness to serve, and I am going to be supportive.

What I will tell you is, this Committee always wants more and better information, and as the chair of Permanent Subcommittee on Investigations (PSI), as you know, we struggle with this constantly. And so I would like your commitment today, as you have given already to Senator Peters, that you will be there to be responsive to our requests and help us to be able to do our important oversight job.

Mr. KAN. Absolutely, Senator Portman. You have my word.

Senator PORTMAN. There are a number of projects I have talked to you about in the context of our conversation on this nomination, and one is the Safeguarding American Innovation Act. I see Senator Hassan is on and others who are sponsors of this legislation.

But it basically says we have to stop China from taking our innovation, our research, and in some cases our intellectual property that they then patent. It has been going on for 20 years. The only way to do it effectively, we thought, was to give OMB a significant role here, because there are so many agencies and departments involved, including National Institute of Health (NIH), including the National Science Foundation (NSF), including the Department of Energy (DOE), and others.

We established this Federal Research Security Council at the Office of Management and Budget to include representatives from all these Federal science agencies, of course, but also the Intelligence Committee. The notion is that we would take what has already been started at the Office of Science and Technology, which is in the White House, and really supercharge it with the authorities of the Office of Management and Budget.

The job would be to coordinate all the grantmaking agencies to share information for the first time about grantees, look at the risks, the national security risks of some research, modernize the Federal grantmaking process, and develop a uniform grant application.

By the way, the agencies are looking for this. They are actually supportive of it, knowing that we have a huge challenge. NIH just, as an example, fired, effectively, 54 scientists—54—90 percent of whom, by the way, had ties to China. This just happened in the last couple of weeks. And we see case after case of these arrests being made, and what has happened has really been sort of—very helpful to China and very harmful to us, in terms of our economy and our military.

I appreciate you already having reviewed this legislation first. Do you support the legislation, and second, should the legislation become law do you commit to supporting the establishment of the Federal Research Security Council quickly?

Mr. KAN. Absolutely. Senator Portman, thank you for flagging this very important issue. I have taken a close look at the proposed legislation. One of the great sections of the proposed legislation that you and Senator Hassan introduced is Section 11, on Federal grant application fraud. It gives us the tools we need to really prosecute the issue you have surfaced, that developing research and development (R&D) and then exporting it to countries that may not be friendly is a major problem. We currently do not have some of the tools to prosecute that. However, the legislation you have proposed really provides us with some of those tools to pursue those and shut off some of those liabilities.

Senator PORTMAN. Thank you. I should say that Senator Carper, at the permanent subcommittee, was my partner in the investigation, and also is the co-author of the legislation, and it is a bipartisan bill. And it really is a nonpartisan issue, and one where we are going to need your help to be able to ensure that we are better organized in our own Federal Government.

There is a lot of finger-pointing at China, some of it very deserved. But really, to me, our first job is to get our own house in order, and it is amazing how naive we have been and how we have been so lax to permit this to be able to happen.

On Federal infrastructure we are talking about a COVID-19 bill that might have some significant funding for infrastructure. I think there are actually some great opportunities there, including filling in the State coffers, because they have less gas tax and yet a lot of shovel-ready, merit-based projects that we could help on. There is some talk about the need for more infrastructure spending in other areas, like fiber optic cable for broadband, particularly expansion in rural areas.

The problem we have with a lot of this stuff is permitting, and the Federal permitting process has gotten out of hand over the years. We still rank something like 26th in the world, in terms of our ability to green-light a project, and so infrastructure dollars globally do not tend to come to the United States.

What has really helped is this infrastructure permitting council. The OMB is responsible for housing this council. It includes all the different departments and agencies that have to do with permitting. We finally have a good executive director there. We finally have an executive director that has actually been appointed. The acting director did the best that she could, but finally we have somebody there permanently. And we are making some progress.

Do you commit to supporting the Permitting Council's work as deputy at OMB because that will be one of your responsibilities? And do you have any suggestions on how we can bring more transparency, accountability and efficiency to the permitting process going forward?

Mr. KAN. Absolutely, and thank you for your leadership on this. A lot of the permitting advances we have made are largely because of Fixing America's Surface Transportation Act (FAST-41), in which you were a key player in that. At DOT, the permitting dashboard and the management of the permitting dashboard was a responsibility of mine, and so I managed the team that managed the permitting dashboard.

I think one of the important aspects of the Federal Permitting Improvement Steering Council (FPISC) is making sure that we incorporate all of the types of permittings that exist. We do not have full coverage. I think one of the types of projects that we should also consider are projects that are not simply mining transportation infrastructure projects but are there other projects out there in which we should broaden the scope of FPISC in order to ensure that if you have a permit for a specific task we can use that permit for other projects as well.

I look forward to working with you. This is such an important issue, and frankly, a fairly cost-efficient way to accelerate infrastructure in this country.

Senator PORTMAN. Yes. Thank you. My time is up. I would just say you are right about FPISC. We do have legislation to expand it to other areas because it has worked. It saved over \$1 billion. Think about that. It saved over \$1 billion, otherwise wasted money, much of it taxpayer funding, and it has not short-circuited the process. In other words, we still have the National Environmental Policy Act (NEPA) reviews and so on. It has been bipartisan—Senator McCaskill and I were the original authors—but it is one where we need to get rid of the sunset, keep it in place, and make sure it expands to more and more projects. Because it really works to save money, and if we are going to put more Federal money against infrastructure, we have to be sure that dollar can be stretched as far as possible by having sensible permitting.

Thank you, Mr. Chairman, and good luck, Derek.

Mr. KAN. Thank you.

Chairman JOHNSON. Thank you, Senator Portman. Senator Carper.

OPENING STATEMENT OF SENATOR CARPER

Senator CARPER. Thank you, Mr. Chairman, and Derek, good to see you. Thanks for your willingness to take on these responsibilities.

Just a personal question, if I could start off. You have had a wide range of jobs. You have been able to walk away from all of those, I think, with your reputation in hand.

Very briefly, what is the secret to your success?

Mr. KAN. Being honest and above reproach. Being a collaborative person and really seeking to preserve my character has been a part of how I have not tarnished myself yet.

Senator CARPER. Good. Thank you.

Senator Portman talked to you a little bit about streamlining, and I would just remind us all, I sit on the Environmental Public Works (EPW) Committee, senior Democrat, the ranking Republican—ranking Democrat.

Mr. KAN. [Laughs.]

Senator CARPER. Barrasso would not like that if—

Mr. KAN. No.

Senator CARPER. The last couple of service transportation bills, I think we have adopted over 60 streamlining provisions, and the last time I checked about half of them have not been implemented. I am all for looking for ways to streamline, but hope we also remember to look at the ones we have already put in place and make sure that we are implementing it where it makes sense.

I would like to ask just a real quick question. It does not have to be a yes or no, but it could. I was having a conversation with some people who were nominated to be on the Tennessee Valley Authority (TVA), which is a big provider of electricity that part of America. And we were talking about climate change. One of the questions that was asked of the nominees to serve on the board there was do they believe that climate change is real? Do they believe that we, as people, have a good deal to do with it? And is there some sense of urgency to actually address it?

I would just ask the same quick question, without a lot of discussion. Do you think climate change is real?

Mr. KAN. Yes, I believe that climate change is real.

Senator CARPER. And do you think that we, as human beings, have a fair amount to do with climate change?

Mr. KAN. I believe we have some amount. I believe the scientists say the specific amount is debatable. But I believe that humans have some impact on climate change.

Senator CARPER. All right. The scientists that I talked to say it is more than debatable. It is overwhelming.

My wife was down in Antarctica with some of her friends back in January, on an island off of Antarctica, realizing January temperature is about 70 degrees. There was a town up in the Arctic Circle last week where the temperature reached 100 degrees. Our colleagues from Louisiana were talking the other day about the sea level rise down there in that part of the Gulf Coast, they lose about a football field of land to the ocean every day.

So something is happening here. I think what it is is pretty clear.

I have another question. I have been wondering here for weeks, now months. How could the world's wealthiest nation, that has less

than 5 percent of the world's population, end up with more than a quarter of the world's deaths from COVID-19? How did that happen?

Mr. KAN. I would refer you to CDC, because they are the experts. However, we have one of the best public health infrastructure systems so we can count these things better. It is premature to say we do not have as many deaths as China, but part of that is because the data and the information coming out of China, the veracity of it is left open to question?

Senator CARPER. Let me interrupt you if I can. The people of China have about 1.6 billion people. They are reporting less than 10,000 deaths. Even if they are underreporting it by a factor of 10, they still have fewer deaths than we do, which is pretty amazing.

Let me go on to the next question. Improper payments, GAO tracks this, and I know this is of great interest to OMB. But talk to us a little bit about a sense of urgency to deal with improper payments. I think we are looking at numbers over \$100 billion now.

Mr. KAN. Absolutely. Thank you for your leadership on this, Senator. I mean, \$150 billion is an insane amount. If it were its own agency it would be the third-largest Federal agency, behind the Department of Defense (DOD) and HHS. So we see about \$150 billion a year in improper payments.

The solution is a complicated one and really needs to work with Congress on it. It is how much do we want to share the database from social security with other programs. At the end of the day that is the biggest issue. At OMB we are using every administrative tool we can to control improper payments and to minimize improper payments, by identifying the programs that have the highest risk of improper payments. In fact, it is such a big problem that it reduces the confidence in government. The CARES Act is something like \$1.6 billion was already sent out to the wrong individuals. That is a report that I just saw, I think, last week.

Senator CARPER. GAO reported last week, I talked to Gene Dodaro, who you know is the Comptroller General—

Mr. KAN. Yes.

Senator CARPER [continuing]. One of the people who received the \$1,200 check was his mother, who died in 2018, and literally printed on the check was the word "deceased." GAO reported to us last week that \$1.4 billion worth of \$1,200 checks went out to people, and the checks all said "deceased," and they still sent them out.

Senator John Kennedy and I, and a number of our colleagues in the Homeland Security Committee co-sponsored legislation to actually do what GAO has proposed to do for 7 years, and that is to make sure that more agencies, including Treasury, would have access to the master death file that the Social Security Administration (SSA) modifies and keeps up to date.

Let me ask you, if I could, one last question. Again, more of a personal question. When General Mattis stepped down as Secretary of Defense, he resigned and he sent a letter to the President basically saying, "Mr. President, because you have the right to a Secretary of Defense whose views are better aligned with yours on these and other subjects, I believe it is right for me to step down from my position." You do not see a lot of letters like that. I

thought that was a courageous thing for him to do, and I think he ended up with his stature being enhanced.

Has the President ever indicated to you that he wanted you to do something that you think is wrong and maybe against the best interest of our country? And if so, would you just mention what that involved? If the President ever asked you to do something that you did think was wrong and against the best interest of our country, how would you react?

Mr. KAN. Yes. The President—I am not going to get into sort of a back-and-forth conversation, but I would not do anything wrong. I think integrity is an important quality, that we have an obligation to protect our own integrity and the integrity of the institutions we lead. So I would not do anything that was inappropriate, and I [inaudible].

Senator CARPER. I think my core values, as I learned from my colleagues on this Committee are, No. 1, do what is right; No. 2, treat other people the way you want to be treated; No. 3, surround yourself with the best people you can find; and No. 4, when you know you are right and you are sure you are right, do not give up. I think that maybe describes pretty well your values too.

Mr. KAN. Thank you, Senator.

Senator CARPER. You bet. Good luck.

Chairman JOHNSON. Senator Lankford.

OPENING STATEMENT OF SENATOR LANKFORD

Senator LANKFORD. Thank you, Mr. Chairman. Mr. Kan, thank you. Thanks for what you are doing and the engagement, things that you have already done in being able to serve the Nation. I appreciate that very much.

Let me talk you through a couple of things on this. As we go through all the COVID response, there is a lot of regulatory review in the process. Obviously, we have put a hold on a lot of regulations. I would like to delve a little bit deeper into some of the regulations that we have already put a hold on.

What is the process for restarting those, as far as communicating those to people that, hey, there was a pause on this for a season but now we have to restart it? So what is that communication going to be like again, to people? And then also, what is the process for reviewing all of those regs, and going through the process to say, if we paused it for a year then we need to do a retrospective review and to be able to find out if we need to restart it at all?

Mr. KAN. Great. Thank you, Senator Lankford, for your interest in this. I know you have been a champion for regulatory reform and deregulation, so I very much appreciate your leadership and partnership on this.

On June 1, Acting Director Vought sent out a memo to all agencies, asking them to review which specific regulations they hoped to waive or repeal to spur economic recovery. OMB is tracking that and submissions have recently begun to come back, and we are putting together a whole list of regulations that we are seeking to waive or repeal.

Today we have taken over 700 actions, and a vast number of those, plus the telehealth rule, is an example of if we were able to relax that in the middle of a crisis it does not make sense to con-

tinue it. And this piece, to some of the questions earlier, that relaxing this rule would help provide better health care to underserved populations such as minority populations.

So we are receiving these rules and these lists back from agencies. We are aggregating them and hope to work with them in the coming weeks to identify what specific rules that should be waived or repealed.

Senator LANKFORD. So what would be the process to actually go through to be able to waive or repeal those?

Mr. KAN. We are working with agencies. We will sit down with the Cabinet office and the Department Secretaries at each of these agencies to ensure that there is alignment between what an agency is proposing and what different components at the White House agree with that. I think that once those are reconciled—and I think a lot of them are fairly overlapping, then we would probably have an agency start announcing them. The specific rollout we have not yet put down on paper, but we will need to identify how we communicate this to the general public. And we will definitely keep you informed, Senator, given your significant interest in this issue.

Senator LANKFORD. Thank you. I appreciate that. The restart of regulations, where you have some that were paused for a season during this health crisis, but they make sense, they should be there, but we need to be able to re-engage those. How will that communication happen, because there are lots of companies, hospitals, others that said, “We know this is on pause,” that information getting out to people again? We do not want to put anyone at risk by unintentionally violating something they thought was on pause but now is active again. How is that going to work?

Mr. KAN. In general, those communications are often led by agencies. As they relax rules and receive comment for any general rule there is a long list of stakeholders that have expressed a strong interest. So agencies will likely take a lead with their respective public liaison offices to work with their impacted stakeholders, to inform them.

I think that is probably the beginning of it. However, given the complexity of how many rules we have, we will probably need to continue to identify how we make sure to communicate to all impacted stakeholders, even those that have not submitted comments.

Senator LANKFORD. That is helpful. I would like to have some working relationship with you on a couple of things. One is on the issue of Federal hiring, and I know this is on the personnel side of things, but this has been a challenge for a while. The Federal workforce is getting older. We have our own struggles with hiring folks that are younger, folks that are coming out of university level, whatever it may be. We have difficulty in direct hires. It seems like every agency wants direct hire but instead we have 100-plus different hiring authorities that are out there, many of them to try to get around direct hire. We have all kinds of issues with Senior Executive Service (SES), and they basically hire someone to be able to write their paragraph and all of their information for them, then they turn that in as their own.

But there are just a lot of issues across all the hiring process. I would like to be able to sit down and to be able to work with Senator Sinema and myself to be able to sit down with you and who-

ever you want to be able to pull together, and say how do we solve some of these things together?

Mr. KAN. Absolutely. I would welcome that opportunity. Federal hiring is a massive challenge with a lot of frictions and bottlenecks, and we need to figure out how we can do this more expediently.

Senator LANKFORD. That would be helpful. We just did a hearing through this Committee on the Commission Report and several recommendations that they made. Of course, those recommendations were swallowed up because it came out right in the middle of COVID-19, in April. But I would like to be able to go through some of those. They have spent quite a bit of time making recommendations. We have other ideas that have come in from agencies and from the chief human capital officers (CHCO). So I would like to be able to get some of that together, and I would appreciate that.

You and I have spoken before. I would like to be able to find some way where we can get some transparency into the process with the U.S. Army Corps of Engineers (USACE) and OMB and all of the States, because all of us work with the Army Corps of Engineers on projects. They put high priority onto those. Those go into OMB. That ends up being a black box for what happens next, and then out comes the actual priorities that occur. Sometimes they are lined with the Corps of Engineers priorities and sometimes they do not.

I know there are limited dollars. We know that extremely well. But trying to be able to work through to get greater transparency in that process. I would like to be able to work with you and your team in the days ahead. Are you open to that?

Mr. KAN. Absolutely.

Senator LANKFORD. That would be terrific. I would love to be able to have the help on that and to be able to get through that well.

So I appreciate very much your engagement, to be able to walk through some of these things. I know you have had a lot of questions already about COVID-19 process, and I look forward to getting the chance to be able to serve, and let's get some things done.

So thank you, Mr. Chairman. I yield back.

Chairman JOHNSON. I saw Senator Hassan. Are you there, Maggie?

OPENING STATEMENT OF SENATOR HASSAN

Senator HASSAN. I am. Thank you. Thank you, Mr. Chair and Ranking Member Peters, and thank you, Mr. Kan, for your willingness to serve in this position and for your appearance in front of the Committee today.

I know this is not the Committee that has enormous jurisdiction over all the various part of the COVID-19 response, but because there has been a back-and-forth I do just want to offer a couple of observations, fresh from data over the last couple of days and Dr. Fauci's testimony before our Health, Education, Labor, and Pensions (HELP) Committee this morning.

Dr. Fauci testified that we may be on a trajectory of 100,000 new cases of COVID-19 a day in the near future. Meanwhile, yesterday, Johns Hopkins University produced a chart,¹ or at least *The New York Times* produced it, and it shows this. I am holding up a piece

of paper. I will ask for unanimous consent (UC) to get it into the record of this hearing.

You cannot see it over video, but what it shows is that the United States currently has new confirmed cases of over—about 700 new confirmed cases per million residents per day right now. Europe has about 100. Canada has a little bit less than 100. Japan has almost 0. The United States of America has 4 percent of the world's population. We account for 25 percent of the cases and about 20 percent of the deaths.

So while I understand how hard everybody in the Administration is working to combat this, it is not doing the job we need to do, and we need to have a national strategy, coordinated from the top, that includes the full invocation of the Defense Production Act, so we can get PPEs out where they are needed, and we can have the level of testing we need to reopen safely.

So I will ask for unanimous consent to put into the record a Johns Hopkins University chart that was published in The New York Times yesterday, June 29, 2020.

Chairman JOHNSON. Without objection.

Senator HASSAN. Thank you. Now, Mr. Kan, you and I have discussed, and I recently wrote to 10 agencies about their outdated information technology (IT) systems that urgently need to be updated to be secure, reduce maintenance costs, and better serve the American people. The emergence of the COVID-19 pandemic further emphasized the need for IT modernization on the Federal, State, and local levels. If confirmed, how will you prioritize IT modernization across the government?

Mr. KAN. Thank you, Senator Hassan, for this important topic, and I know you have been a leader in this. I looked into the matter after we chatted and looked at things like GAO reports. It is incredible the types of legacy systems we have. We have some systems that are over 50 years old, that are run by common business-oriented language (COBOL), that run on mainframes that use floppy disks. And these are not IT systems that are on the side. These are actually core IT systems at Social Security, Treasury, and Department of Education.

I think there are two important ways that OMB plays a role in addressing this and helping modernize IT systems. One is on the budget side and one is on the management side. On the budget side, there is a complex issue with respect to budgeting and scoring for capital projects. You see this with leasing, and OMB has worked hard to try to create technology modernization fund and using IT working capital funds to allow agencies to make that multi-year commitment. So that is on the budget side.

On the management side, we have the Office of the Federal Chief Information Officer (CIO) here. It is up to the CIO to issue guidance to really pull together best practices with how to modernize IT systems.

Those might be the two ways [inaudible]. The second is pulling together best practices through the CIO.

¹ The chart referenced by Senator Hassan appears in the Appendix on page 112.

Senator HASSAN. How will you work with Congress to fund these modernization projects more strategically? Part of the multi-year budgeting process? Is that your main point here?

Mr. KAN. Yes. The multi-year budgeting process—I think there are two issues. One is the baseline of it, so what are the rules that we are going to use, and two is do we receive the appropriate appropriations. So we requested \$90 billion, and is that enough to not only maintain existing but modernize?

So those will likely be the two areas. One is changing the budget scoring rules, and two, making sure we have sufficient appropriations to modernize legacy systems.

Senator HASSAN. OK. Thank you.

Now, on a different topic, during our conversation last week you expressed that it is your goal, if confirmed, to present quality data and information to policymakers. However, it is not enough that policymakers have quality data and information. Policymakers need to use that quality data and information to inform their decisions and justify their actions.

What affirmative steps will you take to ensure that agencies are using the best data available to them to develop policies and implement congressional directives?

Mr. KAN. Great. Thank you for this question, and I really appreciate our conversation and our shared interest in having data-driven policy.

There are really two ways. We have a number of tools and authorities already provided from Congress, the Evidence Act and Data Act, that decisions from agencies need to be based upon data, that policy decisions, also recommendations, need to be based on data.

So one, I would ensure that budget proposals and legislative proposals are tied to something very specific that we are able to measure and define. Too often we propose bills, and new programs are stood up without any clear sense of what is the policy objective we are trying to improve upon. So one is leveraging the evidence and data.

The second, which we started in this Administration, is the posting of congressional justifications (CJ) online. And so CJ, which is one of the best place agencies have to display how they think about their budget and their justifications for their budget requests need to have more data underlying their specific requests. And so that would be the second way, in the spirit of transparency, for agencies to disclose and publicly post within a week or two of the budget rollout why they are increasing or decreasing levels of specific programs or the specific data they are looking at to drive these decisions.

Senator HASSAN. I appreciate that very much. Finally, last week the GAO released a report on the Federal response to the coronavirus pandemic. In that report, GAO expressed its disappointment that OMB guidance has delayed the release of information how the government spent \$2.6 trillion on relief obligations and expenditures.

Here is the quote: “It is unfortunate that the public will have waited more than 4 months since the enactment of the CARES Act

for access to comprehensive obligation and expenditure information about the programs funded through these relief laws.”

In your current role at OMB, as well as if you are confirmed, how will you work to ensure that this information is not further withheld from Congress and the American people?

Mr. KAN. Thank you for the question, and I think this is a topic that Chairman Johnson has really been highlighting for all of us, and it is a report on the information that we will continually share with Congress. I think the first few months post-enactment we were standing up these programs. We are now getting a better hold on the bill’s view of this information and we intend to share it with GAO as well as each and every one of you.

Senator HASSAN. Thank you, and I see that I am over time, so I thank the Chair’s indulgence. I thank you, Mr. Kan, for your willingness to serve, and I yield back.

Chairman JOHNSON. Senator Rosen.

OPENING STATEMENT OF SENATOR ROSEN

Senator ROSEN. Thank you, Mr. Chairman, Ranking Member Peters, and, of course, Mr. Kan, for your willingness to serve, and I know you have had service on this Committee so that is great as well.

I would like to speak a little bit about nuclear testing. According to recent reports, the Administration discussed, as recently as May 15, pursuing explosive nuclear weapons testing for the first time in nearly three decades. Nevada is no stranger to nuclear testing, and we do not want to return to a time when we shook the ground and we had the risk of radiation exposure. That was a fact of life for those in Nevada and the States that surrounded us.

The Nevada National Security Site, which is the only facility—I want to repeat, the only facility—in the Nation equipped to accommodate underground nuclear testing is a crucial part of our national security infrastructure. The site conducts non-explosive, sub-critical experiments, and it does ensure the integrity of our nuclear arsenal. But any actions that could place Nevada’s health and safety at risk should be off the table.

Nonetheless, despite the fact that there is general consensus but there is no technical need to conduct explosive testing, this Administration is considering resuming this testing anyway. Mr. Kan, can you assure us, in your capacity, as Deputy Director of the Office of Management and Budget, as long as you are there, and as long as there is no technical need, you would oppose requesting funding to resume explosive nuclear weapons testing, which would threaten the health and the safety of my constituents?

Mr. KAN. Thank you, Senator Rosen. I know that Nevada and nuclear has oftentimes been a long history. I am frankly not familiar with the specific matter of testing nuclear weapons. I will certainly look into it. However, we will follow the mandates of Congress and comply with the law. If there is a prohibition against it, we absolutely will comply with that prohibition.

Senator ROSEN. Let me just interrupt you quickly. So given that the resumption of explosive nuclear weapons testing would directly compromise the health and safety of Nevadans, will you commit to

my office to hear the concerns of Nevadans before making a budget request for funding explosive testing?

Mr. KAN. Absolutely, and I look forward to sitting down with you to hear more from you or your constituents on this important matter.

Senator ROSEN. Thank you. I want to again talk a little bit about Nevada, because the President tweeted about Nevada just a few weeks ago. He sent out a tweet, and I am going to quote this, that the State of Nevada, quote, “thinks that they can send out illegal vote-by-mail ballots.” And if they do, and I am going to quote again, “I,” meaning the President, “think that I can hold up funds to the State,” obviously meaning the State of Nevada.

I already discussed this subject with Mr. Vought a few weeks ago during his confirmation hearing, because he was tagged on the tweet. But given the role to which you have been nominated, I want to ask you as well whether you will commit, if confirmed, to doing everything in your power as Deputy Director to ensure that the law is followed and that OMB is not used as a tool to hash out political disagreements.

Mr. KAN. Absolutely. Thank you, Senator, for the question, and we will follow the law. And as Mr. Vought said, we have not done anything to withhold fundings, as you asked him.

Senator ROSEN. So you would commit to, if pledged, to ensure that funding is not withheld from States like Nevada just because the President might not like our particular policy?

Mr. KAN. Yes, Senator.

Senator ROSEN. Thank you. I appreciate that.

I am going to move on a little bit to build on what Senator Hassan said about basic rulemaking and science and data. In your written responses to this Committee’s questionnaire you wrote that your top priority is advancing the President’s agenda.

I am concerned that that decisionmaking in this Administration does often seem to be influenced by politics rather than science or even legal principles. I have co-sponsored and I support Senator Schatz’s Scientific Integrity Act, which makes clear that Federal policy should be based on independent science and evidence, free from appropriate political interference or bias due to ideology or conflicts of interest.

All of our Federal agencies, particularly in this pandemic, they must use the best science that we have available to protect our public health and our environment. So again, Mr. Kan, will you ensure that the Administration’s budgeting process is focused on accurate analysis of facts and data?

Mr. KAN. Yes.

Senator ROSEN. Thank you. I appreciate that.

I am just going to move to my last question which is about environmental deregulation. Earlier this month President Trump signed an Executive Order (EO) waiving requirements for environmental reviews of certain construction projects. In doing so, the President cited emergency powers purportedly granted under the Endangered Species Act (ESA), the Clean Water Act (CWA), and the National Environmental Policy Act.

The emergency powers under these environmental statutes are only for the purpose of fast-tracking projects to address environ-

mental concerns. On its face, it appears that the President is taking advantage of the COVID-19 pandemic to weaken environmental protections.

In the questionnaire, you were asked for your perspective on whether the current economic emergency justifies weakening enforcement of environmental laws. You referred to your responses in an earlier question in which you wrote that the Administration can only take such action that is consistent with the protection of public health and safety.

So during your time at OMB, what actions has the Administration taken to ensure that waiving environmental protections in response to economic emergency is consistent with protecting the public and the environment?

Mr. KAN. Thank you for the question, Senator Rosen. We ensure that all rules we issue are aligned with specific statutes. And if you look at our record for a number of environmental rules, we particularly address any regs that may have adverse effect to the environment. For instance, the Environmental Protection Agency (EPA) groundwater rule we cleared within 8 days. And so we rapidly address—

Senator ROSEN. May I ask one brief question about that? Did you consider any disproportionate environmental impacts on communities of color or less-advantaged communities?

Mr. KAN. I am not aware. I do not know either way. I can look into that and get back with you.

Senator ROSEN. I would like to see how some of that was determined, if we could please.

Mr. KAN. Absolutely. Thank you.

Senator ROSEN. Thank you. I think I am out of time, Mr. Chairman. I appreciate you answering the questions today. Thank you.

Chairman JOHNSON. Thank you, Senator Rosen. Senator Hawley.

OPENING STATEMENT OF SENATOR HAWLEY

Senator HAWLEY. Thank you, Mr. Chairman. Thank you, Mr. Kan, for being here, and congratulations on your nomination. I would like to ask you a few questions, if I could, that I also proposed—or posed, rather, to Acting Director Vought, who appeared before the Committee earlier this month, having to do with the coronavirus pandemic and some of the deregulatory measures that the Administration has taken in order to meet the challenges of that pandemic, including the economic downturn.

Can you give me a sense, is OMB currently considering any new actions to help business, and particularly small business, who are hurting during the pandemic? Are there any new relief measure or other flexibilities from a regulatory standpoint that are in the pipeline, that you could share with us?

Mr. KAN. Absolutely, sir. In May, the President issued Executive Order 13924 that asked agencies to waive and repeal rules that can spur recovery. A number of these rules adversely impact small businesses. And so we are going through this process now of identifying what those specific rules are and how do we waive or repeal rules that would accelerate recovery.

Senator HAWLEY. Very good. Let me ask you about two other Executive Orders that OMB helped produce, I think it was last Octo-

ber, designed to rein in some of the administrative overreach and improve the process for agency guidance, to make that process more accountable, to make it more transparent. It has been 6 months now since these have gone into effect. Again, I asked Acting Director Vought these same questions. Do you have any sense if those orders are working as intended? Can you give us a status report?

Mr. KAN. Sure. I absolutely can. From an anecdotal perspective, as we talk to agencies, they are much less willing to post something on a blog or on their website that will have the power of guidance that does not go through a rulemaking notice and comment period. And so as we talk to agency heads and deputy secretaries, it seems like the world of dark guidance, or shadow guidance, what it is oftentimes called, that has dramatically decreased in the past few years.

Senator HAWLEY. Very good. Let's talk a little bit about the economic situation we find ourselves in, challenging economic environment following, and because of, the coronavirus pandemic and the various measures adopted to fight it. We find ourselves facing pretty serious unemployment, very serious unemployment, actually, and negative economic growth.

So in this current environment, tell us a little bit, as you think over the next 6 months, what do you think are the greatest risks that you see to economic recovery?

Mr. KAN. I think the greatest risk continues to be uncertainty for employees, uncertainty for employers, uncertainty for customers. And so how do we de-risk that uncertainty? I think as folks begin to talk about a potential Phase 4, legal liability is a massive risk that needs to be addressed. I think you are seeing both ends of Pennsylvania starting to talk about this issue, that there needs to be some common-sense middle ground for us to at least mitigate legal liability as we start reopening our States.

Senator HAWLEY. I wanted to come back to your point about Phase 4 in a second. Just on the economic front again, is there anything else now at OMB, that you are monitoring from a recovery standpoint that you think Congress should be aware of, that we should be clued into?

Mr. KAN. I think this goes back to something Chairman Johnson talks about, the outlay rate of Phase 3. So one question, before we pass any bill, if we still have money left over from the previous bill then it raises the question why are we appropriating or spending more money before the last tranche of money has not even left the Treasury yet?

I think one area we are monitoring is the outlay rates of existing programs, the impact on the economic well-being throughout the country. Before we pass a new bill, we should first assess how Phase 3 and Phase 3.5 performed.

Senator HAWLEY. And just on that point, when it comes to any existing funds, for instance, that may be left over, not appropriate or—well, they have been appropriated, I suppose, but not actually claimed, not used, not spent, from the various iterations of Phase 3, do you have any counsel on how you would like to see those funds put to use, as we start to think about continuing to spur recovery, particularly for workers, here in the coming months?

Mr. KAN. I do not at this time. I do not have anything—I do not want to get ahead of a policy process here. But if we have unobligated funds we should think about, before we obligate and appropriate new funds, let's think about what we are going to do with the unobligated funds from 3 months ago.

Senator HAWLEY. Very good. You are, I am sure, aware of the bill that I have introduced with Senator Gardner, that would focus on getting workers rehired and helping businesses to rehire the workers that have been laid off, or to hire new workers who have lost their jobs but cannot go back to their old job, for whatever reason, but are ready and willing to work at a new firm, and giving business the power to do that, and giving workers the security. I continue to believe that getting workers back on the job, giving them their job security back, getting them back to work is the best way to power forward this economy into full-fledged recovery, and I look forward to working with you on that.

Let me ask you just one last point, on the process of the budget. You have seen the budget process from both ends now of Pennsylvania Avenue. You have seen it on the Hill. You have seen it at OMB in the White House. Given your extensive work on the budget in both of these capacities, do you have any suggestions or ideas for budget process reform that you think that Congress could profitably take up?

Mr. KAN. Absolutely. It comes down to sort of three dimensions. One is baseline, so what are the rules we use to score the budget, two, what are the specific processes that flow through it, so how does reconciliation work, and then third is rules and tools, and what budget. What budget enforcement tools we have. I actually think the Budget Committee has a very good bipartisan bill that the Budget Committee has already introduced that addresses some of these things. But I think it begins with baselining, process for reform, rules and tools. And at the end of the day it comes down to unified will of Congress. It is very difficult.

When I was a staffer we would always tell members you cannot bind a future Congress. But if you look at the last two or three major budget reform, starting with Gramm-Rudman-Hollings all the way to Murray-Ryan, it started with a commitment that reached across the aisle to say hold on, we are spending a lot of money, let's get our house in order and let's exercise some discipline. And you saw Murray-Ryan, while some folks may say those levels were too high or too low, folks said let's try to commit to these levels. As we begin a potential Phase 4—who knows if there is a Phase 4?—it may be useful to think through what is a strong fiscal rule that we can reach across the aisle and commit to at least for the next 5 or 10 years.

Senator HAWLEY. Very good. Thank you very much. Thank you, Mr. Chairman.

Mr. KAN. Thank you, Senator.

Chairman JOHNSON. Senator Scott, Rick?

OPENING STATEMENT OF SENATOR SCOTT

Senator SCOTT. Can you hear me?

Chairman JOHNSON. Yes, we can.

Senator SCOTT. OK. Thanks for being here. I enjoyed seeing you on TV again.

A recent GAO report found that over 1 million coronavirus stimulus payments, totaling nearly \$1.4 billion, were sent to dead people. None of us would think that that was a good use of taxpayer money. The GAO has recommended that Congress provide the Treasury with access to the Social Security Administration's full set of death records in an attempt to reduce this waste. Do you think that makes sense, or is there something else we could do? Because we know we sent out checks, you talked at the hearing earlier, the government sent out like \$150-plus billion a year in checks to the wrong people, and it seems like the craziest thing ever.

So what do you think we ought to be doing?

Mr. KAN. Senator, I agree. I think, obviously, the death file is a very smart step in the right direction. I think it does open up a bunch of privacy questions, but I think those can be mitigated.

My sense is there are really things. One of the bills that is working its way through Congress, and through the Senate, actually, today, could be one solution. I think the second is more powers to conduct a review. What tools can the Executive branch use to stop and review payments to ensure they are going to the right person? It is oftentimes difficult, especially when you are putting out thousands, if not hundreds of thousands of payments, to stop, hit pause, and conduct a review. That may be one power to provide the Executive Branch on specific mandatory programs to conduct a review, to ensure we sample the program, we review it, and ensure that checks are going to the right people.

Senator SCOTT. That makes sense. So, one thing, I finished about a year and a half ago as Governor of Florida for years, and one thing I was able to do, but I think it was a lot easier because I had the line item veto, but I was able to take—there were 4,000 lines in the budget so every year I was able to go through every line, and I told people, what are we going to—I asked everybody, we are not going to spend the money unless we have a written plan of what we are going to get for it.

So if it was to help autistic children, then did you do it, right? And then if you said you were going to do something, if you did not do it, when the next budget came around—because, of course, we did it once a year, like up here—I vetoed the money, which I had that. And then nobody was going to override it because I could say, look, I asked. They said they were going to do this and they did not do it, so how can you fight that, right?

Do we have anything like that that we can do here? Because I see the same thing. You allocate dollars but we have no idea whether we ever get anything for it.

Mr. KAN. Absolutely. Thank you for the question. And this goes to budget process reform. *Clinton v. New York*, the Supreme Court spoke about the powers of line item veto and essentially said we are not able—the Executive Branch cannot use line item veto.

However, in subsequent years, the Senate, Senate Republicans, came up with a proposal called an expedited rescission package,

which is essentially a line item veto. If we could identify specific programs, send it out for a quick up or down vote, that could be one way to cure some of the Supreme Court concerns, but also create a budget process that provides line item veto.

It is interesting. Almost every Governor, from both parties, serving in the Senate, will always say, "Why don't you guys have line item veto? There are a ton of things here that just don't make any sense." We wish we had it.

So we share your interest. I think it is a fantastic recommendation, and I would love to work with you on how we can identify something that is like a line item veto for budget process reform.

Senator SCOTT. Yes. I have not been able to figure out—I know what we need to do. We have to say this is the goal of this, and if you did not get it, the funding has to stop. But, it seems like the only way you could get it done is through the Executive Branch, of getting that done. And then if they do not have the authority then, I mean, it does not work.

All right. Thank you for your commitment to watching how dollars are going to be spent and getting better government and making sure government, the dollars we do spend go for the right—actually gets something done. So thank you very much. And I want to thank Chairman Johnson for his commitment to transparency and commitment to making sure we try to get a return. Chairman Johnson is a business guy and he had to do the same thing I did. If you did not get a return, eventually your shareholders or your bankers are not going to be able to give you any more money.

Chairman JOHNSON. Thank you, Senator Scott. I am not seeing any other Senators who want to ask questions. Is that correct?

In that case, again, I want to thank you, Mr. Kan, in terms of what you have already done for this nation and your future service in this position. I am a big supporter of yours and obviously your confirmation.

The nominee has made financial disclosures and provided their responses to biographical and prehearing questions submitted by the Committee. Without objection, this information will be made part of the hearing record,¹ with the exception of the financial data, which is on file and available for public inspection in the Committee offices.

The hearing record will remain open until 5 p.m. tomorrow, July 1, for the submission of statements and questions for the record.

This hearing is adjourned.

Mr. KAN. Thank you, Chairman. [Whereupon, at 3:44 p.m., the hearing was adjourned.]

¹ The information of Mr. Kan appears in the Appendix on page 31.

A P P E N D I X

**Opening Statement of Chairman Ron Johnson
Nomination Hearing to Consider Derek Kan to be
Deputy Director, Office of Management and Budget
June 30, 2020**

As prepared for delivery:

Today, the Committee will consider the nomination of Derek Kan to be Deputy Director of the Office of Management and Budget, or OMB.

Deputy Director, Office of Management and Budget

The role of the Deputy Director of OMB varies with each administration. In general, the Deputy Director supports and advises the OMB Director in the development, management, and administration of the President's budget and oversees the execution of the President's management agendas across the executive branch. In addition, the Deputy Director oversees the entire agency, including the Deputy Director of Management, as well as eight OMB support offices.

Derek Kan

Mr. Kan is the Executive Associate Director of OMB primarily working on budget matters, and he also serves on the President's Task Force for Coronavirus Response. Mr. Kan started his career in public service as a Program Examiner at OMB and subsequently transitioned to Capitol Hill where he spent over four years as a Policy Advisor in the U.S. Senate Republican Policy Committee and the Senate Office of the Majority Leader. Mr. Kan later held numerous positions in the private sector, most recently as General Manager of Lyft, before returning to public service. Mr. Kan was twice confirmed by the Senate under both the Obama and Trump Administrations: in 2015 as a Member of the Amtrak Board of Directors, and again in 2017 as the Under Secretary for Transportation Policy at the Department of Transportation.

Mr. Kan received a Bachelor of Arts degree from the University of Southern California, a Master's of Science in Economic History from the London School of Economics, and a Master's of Business Administration from Stanford Business School.

**U.S. Senate Committee on Homeland Security and Governmental Affairs
Nomination of Hon. Derek Kan to be Deputy Director, OMB**

**OPENING STATEMENT OF RANKING MEMBER GARY C. PETERS
June 30, 2020
AS PREPARED FOR DELIVERY**

Thank you, Chairman Johnson, and thank you Mr. Kan for being here today and for your willingness to serve in this important and challenging role.

Today we are considering Mr. Kan's nomination to serve as the Deputy Director of the Office of Management and Budget, or "OMB," which shapes budget and policy decisions across the federal government.

For the past several months OMB has been a central part of the Administration's response to the ongoing public health and economic crisis.

Mr. Kan, you have held a senior role at OMB for the past year, including serving as OMB's representative on the White House Coronavirus Task Force. The role of the Task Force, and of OMB in particular, is to ensure coordination across departments and agencies involved in the response to the pandemic.

Unfortunately, since the onset of the Coronavirus pandemic, a lack of effective coordination and a cohesive strategy has hindered response efforts and contributed to tragic loss of over 120,000 American lives.

Containing, and ultimately defeating, this pandemic will be an enormous challenge.

We should not have to contend with the added challenge of inconsistent and conflicting messages from within the Administration. It should not be a challenge for the American people to get straightforward answers about the government's response. States should not have to grapple with the additional challenge of uncertainty and confusion over how federal resources are being allocated.

Congress and the Administration must work together if we are going to learn from past missteps and effectively address the pandemic moving forward.

Mr. Kan, from your time at the Department of Transportation, I know you to be a talented and thoughtful leader who can work collaboratively with Congress and others to find common ground.

I know we share the goals of containing this deadly virus and safely reopening our economy. To do so, we also need a shared understanding of the facts on the ground and the progress made so far.

I hear regularly from small business owners, hospitals, and vulnerable communities in Michigan who are struggling but are unable to access relief programs we designed specifically to help them.

We need clear information about how resources are being allocated. We need data to understand whether relief is reaching those most in need – and to fix programs that are not working. I am pleased that OMB has begun taking steps to cooperate with the Government Accountability Office’s oversight of the Coronavirus response, and I appreciate OMB’s work with Congress on previous Coronavirus relief legislation.

But we have a lot more work to do.

I hope that if you are confirmed, you will be a champion for transparency and oversight both within OMB and throughout the Administration.

Thank you again, and I look forward to your testimony.

**Prepared Statement of Derek Kan
Committee on Homeland Security and Governmental Affairs
June 30, 2020**

Chairman Johnson, Ranking Member Peters, and distinguished members of the committee, I am honored by the opportunity to come before you as President Trump's nominee for the Deputy Director of the Office of Management and Budget. I am also thankful for Acting Director Vought's support of my nomination.

I am grateful for my wife and our three kids. They have made significant sacrifices in uprooting their lives to move out to DC three years ago so that I may serve in this Administration.

I am also thankful for my parents, Scott and Julie, who have worked so hard to give me plentiful opportunities throughout my life. They immigrated here from Taiwan over forty years ago to pursue the American dream. My mother, who never graduated from college, taught me the value of hard work and persistence. My father, an engineer, taught me the value of rigorous analysis and that it's okay to be silly. Together, they taught me to have a deep respect for authority, a love for this country, and unwavering faith. I hope to make them proud.

I began my career at the Office of Management and Budget as a civil servant in the Presidential Management Fellowship program working on Veterans Affairs Programs. OMB is comprised of the most talented civil servants in the Federal government. After starting my career at OMB, I moved over to the Senate where I made recommendations on budget and appropriations legislation and helped navigate budget issues across the Senate floor. It was a privilege to work in the Senate and it is with a deep sense of humility and gratitude that I come before you today for this nomination.

Since leaving the Senate, I worked in the private sector to learn how to manage and improve organizations, grow businesses, and help others. A few years ago, I came back to serve as Under Secretary for Policy at the Department of Transportation. I believe I faithfully served the nation in that capacity by improving safety, rebuilding our nation's infrastructure, and introducing the latest technology into the work of DOT.

Having been a civil servant at OMB, a Senate staffer working with OMB, and as a policy official who worked to implement the guidance of OMB, I would be grateful for this opportunity to serve as the Deputy to improve the management of our agencies and the finances of our nation. You have my commitment that, if I am confirmed, I will work collaboratively with each and every one of you to address the needs of our nation.

Thank you for the opportunity to come before you and I would be pleased to answer any questions you may have.

HSGAC BIOGRAPHICAL QUESTIONS FOR EXECUTIVE NOMINEES

1. Basic Biographical Information

Please provide the following information.

<i>Position to Which You Have Been Nominated</i>	
<u>Name of Position</u>	<u>Date of Nomination</u>
Deputy Director Office of Management and Budget	June 2, 2020

<i>Current Legal Name</i>			
<u>First Name</u>	<u>Middle Name</u>	<u>Last Name</u>	<u>Suffix</u>
Derek	Tai-Ching	Kan	

<i>Addresses</i>					
<u>Residential Address</u> (do not include street address)			<u>Office Address</u> (include street address)		
			Street: 725 17 th Street NW		
City: Arlington	State: VA	Zip: 22207	City: Washington	State: DC	Zip: 20503

<i>Other Names Used</i>						
<u>First Name</u>	<u>Middle Name</u>	<u>Last Name</u>	<u>Suffix</u>	Check if Maiden Name	<u>Name Used From</u> (Month/Year) (Check box if estimate)	<u>Name Used To</u> (Month/Year) (Check box if estimate)
					Est ☐	Est ☐
					Est ☐	Est ☐

<i>Birth Year and Place</i>	
Year of Birth (Do not include month and day.)	Place of Birth
1978	Los Angeles, CA

<i>Marital Status</i>					
Check All That Describe Your Current Situation:					
Never Married	Married	Separated	Annulled	Divorced	Widowed
☐	☒	☐	☐	☐	☐

<i>Spouse's Name</i> (current spouse only)			
<u>Spouse's First Name</u>	<u>Spouse's Middle Name</u>	<u>Spouse's Last Name</u>	<u>Spouse's Suffix</u>
Connie	Hannah	Kan	

<i>Spouse's Other Names Used</i> (current spouse only)						
<u>First Name</u>	<u>Middle Name</u>	<u>Last Name</u>	<u>Suffix</u>	Check if Maiden Name	<u>Name Used From</u> (Month/Year) (Check box if estimate)	<u>Name Used To</u> (Month/Year) (Check box if estimate)
Connie	Hannah	Chang		XX	8/18/78 Est ☐	3/2005 Est ☐
					Est ☐	Est ☐

<i>Children's Names (if over 18)</i>			
First Name	Middle Name	Last Name	Suffix

2. Education

List all post-secondary schools attended.

<u>Name of School</u>	<u>Type of School</u> (vocational/technical/trade school, college/university/military college, correspondence/distance/extension/online school)	<u>Date Began School</u> (month/year) (check box if estimate)	<u>Date Ended School</u> (month/year) (check box if estimate) (check "present" box if still in school)	<u>Degree</u>	<u>Date Awarded</u>
USC	Undergrad University	8/96 Est ☐	6/99 Est ☐ Present ☐	B.S.	
LSE	Graduate Diploma	Est ☐	2001 Est ☐ Present ☐		
LSE	M.Sc. Economic History	Est ☐	2004 Est ☐ Present ☐	M.Sc	
Stanford Graduate School of Business	Graduate School	Est ☐	2012 Est ☐ Present ☐	MBA	

3. Employment

(A) List all of your employment activities, including unemployment and self-employment. If the employment activity was military duty, list separate employment activity periods to show each change of military duty station. Do not list employment before your 18th birthday unless to provide a minimum of two years of employment history.

<u>Type of Employment</u> (Active Military Duty Station, National Guard/Reserve, USPHS Commissioned Corps, Other Federal employment, State Government (Non-Federal Employment), Self-employment, Unemployment, Federal Contractor, Non-Government Employment (excluding self-employment), Other	<u>Name of Your Employer/Assigned Duty Station</u>	<u>Most Recent Position Title/Rank</u>	<u>Location</u> (City and State only)	<u>Date Employment Began</u> (month/year) (check box if estimate)	<u>Date Employment Ended</u> (month/year) (check box if estimate) (check "present" box if still employed)
Other Federal Employment	Office of Management and Budget	Program Examiner	Washington, DC	2004 Est ☐	2006 Est ☐
Other Federal Employment	U.S. Senate Republican Policy Committee	Policy Advisor	Washington, DC	2006 Est ☐	2007 Est ☐
Other Federal Employment	U.S. Senate Office of the Republican Leader	Policy Advisor	Washington, DC	2008 Est ☐	2010 Est ☐
Non-Government Employment	Bain & Company	Consultant	Los Angeles, CA	2012 Est ☐	2014 Est ☐
Non-Government Employment	Genapsys Inc	Director of Strategy	Redwood City, CA	2014 Est ☐	2015 Est ☐
Non-Government Employment	Story and Heart	Advisor		2015 Est ☐	2016 Est ☐
Non-Government Employment	Consultant	GLG Research		2016 Est ☐	2017 Est ☐
Other Federal Employment	Board Member	Amtrak	Washington, DC	2015, 2017 Est ☐	2017, 2019 Est ☐
Non-Government Employment	General Manager	Lyft	Los Angeles, CA	2015 Est ☐	2017 Est ☐
Other Federal Employment	U.S. Department of Transportation	Under Secretary for Policy	Washington, DC	2017 Est ☐	2019 Est ☐
Other Federal Employment	Office of Management and Budget	Executive Associate Director	Washington, DC	2019 Est ☐	Present Est ☐

(B) List any advisory, consultative, honorary or other part-time service or positions with federal, state, or local governments, not listed elsewhere.

<u>Name of Government Entity</u>	<u>Name of Position</u>	<u>Date Service Began</u> (month/year) (check box if estimate)	<u>Date Service Ended</u> (month/year) (check box if estimate) (check "present" box if still serving)
Environmental Defense Action Fund	Board Member	2013 ☐ Est	2014 ☐ Est ☐ Present
Amtrak	Board Member	2015, 2017 ☐ Est	2017, 2019 ☐ Est ☐ Present
Los Angeles County Auto Show	Advisory Board Member	2016 ☐ Est	2017 ☐ Est ☐ Present

4. Potential Conflict of Interest

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

None. In connection with the nomination process, I have consulted with the Office of Government Ethics and the Office of Management and Budget Ethics Official to identify potential conflicts of interest. None have been identified.

(B) Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration or execution of law or public policy, other than while in a federal government capacity.

As a Congressional staffer, I influenced the legislative process by advising Senators, drafting amendments, and negotiating legislation.

5. Honors and Awards

List all scholarships, fellowships, honorary degrees, civilian service citations, military medals, academic or professional honors, honorary society memberships and any other special recognition for outstanding service or achievement.

Arjay Miller Scholar, Stanford Graduate School of Business, June 2012
Harvey Fellowship, September 2011

6. Memberships

List all memberships that you have held in professional, social, business, fraternal, scholarly, civic, or charitable organizations in the last 10 years.

Member, Young President's Organization (2017-Present)
 Advisory Board Member, Los Angeles County Auto Show (2016-17)
 Member, Pacific Council on International Policy (2010-16)
 Board Member, Environmental Defense Action Fund (2013-14)
 Board Member, Great Commission Community Church (2007-10)

Unless relevant to your nomination, you do NOT need to include memberships in charitable organizations available to the public as a result of a tax deductible donation of \$1,000 or less, Parent-Teacher Associations or other organizations connected to schools attended by your children, athletic clubs or teams, automobile support organizations (such as AAA), discounts clubs (such as Groupon or Sam's Club), or affinity memberships/consumer clubs (such as frequent flyer memberships).

<u>Name of Organization</u>	<u>Dates of Your Membership</u> (You may approximate.)	<u>Position(s) Held</u>

7. Political Activity

(A) Have you ever been a candidate for or been elected or appointed to a political office?

No

<u>Name of Office</u>	<u>Elected/Appointed/ Candidate Only</u>	<u>Year(s) Election Held or Appointment Made</u>	<u>Term of Service (if applicable)</u>

(B) List any offices held in or services rendered to a political party or election committee during the last ten years that you have not listed elsewhere.

<u>Name of Party/Election Committee</u>	<u>Office/Services Rendered</u>	<u>Responsibilities</u>	<u>Dates of Service</u>

(C) Itemize all individual political contributions of \$200 or more that you have made in the past five years to any individual, campaign organization, political party, political action committee, or similar entity. Please list each individual contribution and not the total amount contributed to the person or entity during the year.

<u>Name of Recipient</u>	<u>Amount</u>	<u>Year of Contribution</u>

8. Publications and Speeches

(A) List the titles, publishers and dates of books, articles, reports or other published materials that you have written, including articles published on the Internet. Please provide the Committee with copies of all listed publications. In lieu of hard copies, electronic copies can be provided via e-mail or other digital format.

<u>Title</u>	<u>Publisher</u>	<u>Date(s) of Publication</u>
TARP Without Strings	American Enterprise Institute	

(B) List any formal speeches you have delivered during the last five years and provide the Committee with copies of those speeches relevant to the position for which you have been nominated. Include any testimony to Congress or any other legislative or administrative body. These items can be provided electronically via e-mail or other digital format.

<u>Title/Topic</u>	<u>Place/Audience</u>	<u>Date(s) of Speech</u>
National Assoc. of Manufacturers, Infrastructure discussion		November 30, 2017
AV Data Roundtable		December 7, 2017
Transportation Research Board annual conference (innovation panel, safety data panel)		January 8, 2018
Consumer Electronics Show: Incorporating Drones and Self-Driving Vehicles into Communities		January 11, 2018
Washington Auto Show, National Leadership in Automotive Innovation Lunch, Topic is DOT's Outlook on Innovation		January 24, 2018

IAC Luncheon, US International Aviation Policy		March 2, 2018
FAA UAS Symposium (Baltimore, MD), Moving Forward Together		March 7, 2018
SXSW Small UAV Coalition Panel (Austin, TX), Future of US Commercial Drone Industry		March 10, 2018
European Union Opening Reception for 2018 SXSW Cities Summit (Austin, TX)		March 11, 2018
American Society of Civil Engineers (ASCE) Legislative Fly-In, Remarks on the Administration's Infrastructure Plan		March 14, 2018
American Council of Engineering Companies, Talk on Lessons Learned		March 15, 2018
Brookings Institute, Discussing the President's New Infrastructure Initiative		March 16, 2018
AEI Infrastructure		March 22, 2018
Millennium Challenge Corporation, National Asian American Pacific Islander Heritage Event		May 9, 2018
Bloomberg Next Infrastructure, Framework for Digital Infrastructure		May 16, 2018
VOLPE Speaker Series, Transportation in the Age of AI & Predictive Analytics		June 4, 2018
6th International Transportation and Economic Development Conference, Relationships between Multimodal Transportation & Economic Development		June 6, 2018
DHL Public Policy Forum, Infrastructure Investments and Future Trends, Darien Flowers attending		June 12, 2018
Safety Data Forum		June 14, 2018

Transportation, Artificial Intelligence, and Predictive Analytics; Transportation in the Age of Artificial Intelligence and Predictive Analytics		June 21, 2018
Solving for Safety: Visualization Challenge Speech; Competition on Advancing Innovative Ways to Analyze Crash Data		June 25, 2018
Road to Zero Coalition Strategic Data Initiative meeting		June 28, 2018
Millennium Challenge Corporation, AAPI "Unite Our Vision by Working Together"		July 23, 2018
Governor's Highway Safety Association Annual Meeting		August 29, 2018
2018 InterDrone Conference Las Vegas, Topic: DOT's groundbreaking work on the UAS Integration Pilot Program		September 6, 2018
2018 Annual IAC Pogue Award Dinner, honoring recently retired DOT career officials		September 12, 2018
Auto-ISAC Cybersecurity Summit Detroit		September 25, 2018
The Ripon Society, Topic: The Future of Private Funding in Infrastructure Investment		September 27, 2018
Autonomous Vehicle 3.0 Guidance rollout		October 4, 2018
Transportation in the Age of Artificial Intelligence and Predictive Analytics		October 12, 2018
Google's Innovation and Responsibility with Cloud AI panel		October 23, 2018
GTC DC Annual Conference		
U.S. Department of Transportation's Safety		November 15, 2018

Data Initiative Request for Information		
Asian American Commerce Group Economic Summit Columbus, Ohio		November 29, 2018
American Legislative Exchange Council		December 4, 2018
Bloomberg NEF, Executive Interview: How U.S. Policy Aids, and Hinders, EV Deployment		February 5, 2019
Association of American Railroads PMAC Event, Topic: The Administration's Approach to Infrastructure		February 14, 2019
CERAWeek 2019 Houston, The Future of Mobility		March 12, 2019
APWA Big Cities and Big Counties Forum		March 14, 2019
3rd Annual Capital Region Executive Leadership Mission, EEOB, Hosted by Con. Doris Matsui (Tentative)		March 18, 2019
APTA Legislative Conference, Topic: STR Themes and Future of Mobility		March 18, 2019
The Year Ahead in Transportation - Update from the U.S Department of Transportation		March 26, 2019
3rd Annual Cement & Concrete Fly-In, Topic: Administration's Infrastructure Plans		April 9, 2019
Safety Data Forum		April 9, 2019
Traffic Safety and the 5.9 GHz Band Speech		June 3, 2019
China Civil Aviation Development Forum		May 1, 2019

(C) List all speeches and testimony you have delivered in the past ten years, except for those the text of which you are providing to the Committee.

<u>Title</u>	<u>Place/Audience</u>	<u>Date(s) of Speech</u>

9. Criminal History

Since (and including) your 18th birthday, has any of the following happened?

- Have you been issued a summons, citation, or ticket to appear in court in a criminal proceeding against you? (Exclude citations involving traffic infractions where the fine was less than \$300 and did not include alcohol or drugs.) No
- Have you been arrested by any police officer, sheriff, marshal or any other type of law enforcement official?
No
- Have you been charged, convicted, or sentenced of a crime in any court?
No
- Have you been or are you currently on probation or parole?
No
- Are you currently on trial or awaiting a trial on criminal charges?
No
- To your knowledge, have you ever been the subject or target of a federal, state or local criminal investigation?
No

If the answer to any of the questions above is yes, please answer the questions below for each criminal event (citation, arrest, investigation, etc.). If the event was an investigation, where the question below asks for information about the offense, please offer information about the offense under investigation (if known).

- A) Date of offense:
 - a. Is this an estimate (Yes/No):
- B) Description of the specific nature of the offense:
- C) Did the offense involve any of the following?
 - 1) Domestic violence or a crime of violence (such as battery or assault) against your child, dependent, cohabitant, spouse, former spouse, or someone with whom you share a child in common: **Yes / No**
 - 2) Firearms or explosives: **Yes / No**
 - 3) Alcohol or drugs: **Yes / No**
- D) Location where the offense occurred (city, county, state, zip code, country):
- E) Were you arrested, summoned, cited or did you receive a ticket to appear as a result of this offense by any police officer, sheriff, marshal or any other type of law enforcement official: **Yes / No**
 - 1) Name of the law enforcement agency that arrested/cited/summoned you:
 - 2) Location of the law enforcement agency (city, county, state, zip code, country):

- F) As a result of this offense were you charged, convicted, currently awaiting trial, and/or ordered to appear in court in a criminal proceeding against you: **Yes / No**
- 1) If yes, provide the name of the court and the location of the court (city, county, state, zip code, country):
 - 2) If yes, provide all the charges brought against you for this offense, and the outcome of each charged offense (such as found guilty, found not-guilty, charge dropped or "nolle pros," etc). If you were found guilty of or pleaded guilty to a lesser offense, list separately both the original charge and the lesser offense:
 - 3) If no, provide explanation:
- G) Were you sentenced as a result of this offense: **Yes / No**
- H) Provide a description of the sentence:
- I) Were you sentenced to imprisonment for a term exceeding one year: **Yes / No**
- J) Were you incarcerated as a result of that sentence for not less than one year: **Yes / No**
- K) If the conviction resulted in imprisonment, provide the dates that you actually were incarcerated:
- L) If conviction resulted in probation or parole, provide the dates of probation or parole:
- M) Are you currently on trial, awaiting a trial, or awaiting sentencing on criminal charges for this offense: **Yes / No**
- N) Provide explanation:

10. Civil Litigation and Administrative or Legislative Proceedings

(A) Since (and including) your 18th birthday, have you been a party to any public record civil court action or administrative or legislative proceeding of any kind that resulted in (1) a finding of wrongdoing against you, or (2) a settlement agreement for you, or some other person or entity, to make a payment to settle allegations against you, or for you to take, or refrain from taking, some action. Do NOT include small claims proceedings.

No

<u>Date Claim/Suit Was Filed or Legislative Proceedings Began</u>	<u>Court Name</u>	<u>Name(s) of Principal Parties Involved in Action/Proceeding</u>	<u>Nature of Action/Proceeding</u>	<u>Results of Action/Proceeding</u>

(B) In addition to those listed above, have you or any business of which you were an officer, director or owner ever been involved as a party of interest in any administrative agency proceeding or civil litigation? Please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity.

No

<u>Date Claim/Suit Was Filed</u>	<u>Court Name</u>	<u>Name(s) of Principal Parties Involved in Action/Proceeding</u>	<u>Nature of Action/Proceeding</u>	<u>Results of Action/Proceeding</u>

(C) For responses to the previous question, please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity.

11. Breach of Professional Ethics

(A) Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or been the subject of a complaint to, any court, administrative agency, professional association, disciplinary committee, or other professional group? Exclude cases and proceedings already listed.

No

<u>Name of Agency/Association/ Committee/Group</u>	<u>Date Citation/Disciplinary Action/Complaint Issued/Initiated</u>	<u>Describe Citation/Disciplinary Action/Complaint</u>	<u>Results of Disciplinary Action/Complaint</u>

(B) Have you ever been fired from a job, quit a job after being told you would be fired, left a job by mutual agreement following charges or allegations of misconduct, left a job by mutual agreement following notice of unsatisfactory performance, or received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as violation of a security policy?

No

12. Tax Compliance

(This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

(A) Have your tax returns been the subject of an audit in the past 10 years by Federal, State or local authorities, which resulted in a tax lien, levy or other collection enforcement action? If so, what resulted from the audit?

No

<u>Agency to Which Debt Is/Was Owed</u>	<u>Identify/Describe the Type of Property Involved (if any)</u>	<u>Amount of the Tax Debt</u>	<u>Current Status of Tax Debt</u>	<u>Date of Lien, Levy, or other Collection Enforcement Action</u>

Please provide a description of any action(s) you have taken to satisfy this debt (such as withholdings, frequency and amount of payments, etc.). If you have not taken any action(s), provide an explanation.

(B) Are your tax returns currently the subject of any audit by a federal, state or local agency?

No

<u>Name of Auditing Agency</u>	<u>Type of Tax and Tax Year/Period Audited</u>	<u>Date You Were Notified of Audit</u>

(C) In addition to those listed above, has the Internal Revenue Service or state tax agency ever audited your Federal tax return? If so, what resulted from the audit?

No

(D) Have any tax liens, either federal, State, or local been filed against you or against any real property or personal property which you own either individually, jointly, or in partnership? If so, please give the particulars, including the date(s) and nature and amount of the lien. State the resolution of the matter.

No

(E) Have you filed federal, state, and local tax returns (if applicable) for each of the past 10 years?

No

<u>Type of Tax and Tax Year/Period Unfiled</u>	<u>Explanation for Failure to File</u>

(F) Have your taxes always been paid on time including taxes paid on behalf of any employees? If not, please explain.

Yes

(G) Were all of your taxes-Federal, State, and local current (filed and paid) as of the date of your nomination?

Yes

(H) Please provide for the Committee signed copies of your Federal and state income tax returns for the past 3 years. These documents will be made available only to Senators and staff persons designated by the Chairman and Ranking Minority Member. They will not be made available for public inspection.

13. Lobbying

In the past ten years, have you registered as a lobbyist? If so, please indicate the state, federal, or local bodies with which you have registered (e.g., House, Senate, California Secretary of State).

No

14. Outside Positions

XX See OGE Form 278. (If, for your nomination, you have completed an OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report, you may check the box here to complete this section and then proceed to the next section.)

For the preceding ten calendar years and the current calendar year, report any positions held, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

<u>Name of Organization</u>	<u>Address of Organization</u>	<u>Type of Organization</u> (corporation, firm, partnership, other business enterprise, other non-profit organization, educational institution)	<u>Position Held</u>	<u>Position Held From</u> (month/year)	<u>Position Held To</u> (month/year)

15. Agreements or Arrangements

XX See OGE Form 278. (If, for your nomination, you have completed an OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report, you may check the box here to complete this section and then proceed to the next section.)

As of the date of filing your OGE Form 278, report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment.

Provide information regarding any agreements or arrangements you have concerning (1) future employment; (2) a leave of absence during your period of Government service; (3) continuation of payments by a former employer other than the United States Government; and (4) continuing participation in an employee welfare or benefit plan maintained by a former employer other than United States Government retirement benefits.

<u>Status and Terms of Any Agreement or Arrangement</u>	<u>Parties</u>	<u>Date</u> (month/year)

16. Additional Financial Data

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

- (A) Please provide personal financial information that identifies and states the value of all assets of \$10,000 or more and liabilities of \$10,000 or more that are not already listed on the SF 278 Financial Disclosure form or elsewhere in the questionnaire. If the aggregate of your consumer debts exceeds \$10,000, please include the total as a liability. Please include additional information, as necessary, to assist the Committee in determining your financial solvency. The Committee reserves the right to request additional information if a solvency determination cannot be made definitively from the information provided.

All info is included in my SF 278 Financial Disclosure form.

- (B) List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, executory contracts and other future benefits which you expect to derive from current or previous business relationships, professional services and firm memberships, employers, clients and customers. If dates or amounts are estimated, please so state. Please only include those items not listed on the SF 278 Financial Disclosure form or elsewhere in this questionnaire.

All info is included in my SF 278 Financial Disclosure form.

(C) Provide a description of any power of attorney which you hold for or on behalf of any other person.

I hold Power of Attorney for my wife and children.

(D) List sources and amounts of all gifts exceeding \$500 in value received by you, your spouse, and your dependents during each of the last three years. Gifts received from members of your immediate family need not be listed.

None

17. Assets

XX See OGE Form 278. (If, for your nomination, you have completed an OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report, you may check the box here to complete this section and then proceed to the next section.)

For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding \$1,000 on a date you choose within 31 days of filing your OGE 278.

Assets include, but are not limited to, stocks, bonds, pension interests and annuities, futures contracts, mutual funds, IRA assets, tax shelters, beneficial interests in trusts, personal savings or other bank accounts, real estate, commercial crops, livestock, accounts or other funds receivable, and collectible items held for resale or investment. **Exceptions:** Exclude your personal residence (unless rented out) and any personal liability owed to you, your spouse or dependent child by a spouse or dependent child, or by a parent, brother, sister or child of you, your spouse, or dependent child. Exclude any retirement benefits (including the Thrift Savings Plan) from Federal Government employment and any social security benefits. Exclude also any deposits aggregating \$5,000 or less in personal savings accounts in a single financial institution.

Please indicate the dollar range for the value of the asset below. If the asset/income is solely that of the filer's spouse or dependent children and the value is \$1,000,000 or above, please select \$1,000,000 or above. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Asset	Excluded Investment Fund?	Excluded Trust?	Qualified Trust?	Type of Income (Dividends, Rent and Royalties, Interest, Capital Gains, Other Income) If "Other Income," specify type and actual amount.	Value of the Asset												
					\$1,001-\$15,000	\$15,001-\$50,000	\$50,001-\$100,000	\$100,001-\$250,000	\$250,001-\$500,000	\$500,001-\$1,000,000	Or Above \$1,000,000	\$1,000,000-\$5,000,000	\$5,000,001-\$25,000,000	\$25,000,001-\$50,000,000	\$50,000,001-\$25,000,000,000	Over \$25,000,000,000	

18. Liabilities

XX See OGE Form 278. (If, for your nomination, you have completed an OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report, you may check the box here to complete this section and then proceed to the next section.)

For the preceding calendar year and the current calendar year up to a date you choose that is within 31 days of the date of filing, report liabilities over \$10,000 owed to any one creditor at any time during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period.

Exclude:

1. a personal liability owed to a spouse or dependent child, or to a parent, brother, sister, or child of you, your spouse or dependent child;
2. a mortgage or home equity loan secured by real property which is the personal residence (or a second residence not used for producing income) of you or your spouse;
3. a loan secured by a personal motor vehicle, household furniture, or appliances, where the loan does not exceed the purchase price of the item;
4. a revolving charge account where the outstanding liability did not exceed \$10,000 as of the close of the reporting period; and
5. any liability of your spouse or dependent child which represents the sole financial interest or responsibility of the spouse or child, and about which you have no knowledge, and which is not derived from your income, assets, or activities, and concerning which you neither derive nor expect to derive any financial or economic benefit.

You are required to report any liability of any nonpublic company, investment pool, or other entity, in which you, your spouse or dependent child have an interest, unless (1) the liability is incidental to the primary trade or business of the entity as indicated by you on Schedule A, or (2) the entity is an excepted investment fund. An excepted investment fund is a mutual fund, common trust fund of a bank, pension or deferred compensation plan, or any other investment fund, which is widely held; publicly traded (or available) or widely diversified; and under circumstances where you neither exercise control over nor have the ability to exercise control over the financial interests held by the fund. A fund is widely diversified when it holds no more than 5% of the

value of its portfolio in the securities of any one issuer (other than the U.S. Government) and no more than 20% in any particular economic or geographic sector.

Creditor's name	Creditor's Address	Type of Liability	Date Incurred	Interest Rate	Term (if applicable)	Value of the Liability
					\$1,001- \$15,000-	
					\$15,001- \$50,000	
					\$50,001- \$100,000	
					\$100,001- \$250,000	
					\$250,001- \$500,000	
					\$500,001- \$750,000	
					\$750,001- \$1,000,000	
					\$1,000,000 Or Above	
					\$1,000,000- \$5,000,000	
					\$5,000,001- \$25,000,000	
					\$25,000,001- \$50,000,000	
					\$50,000,001- Over	

19. Income

XX See OGE Form 278. (If, for your nomination, you have completed an OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report, you may check the box here to complete this section and then proceed to the next section.)

(A) For the preceding calendar year and the current calendar year up to a date you choose that is within 31 days of the date of filing, for yourself, report the source and actual amount of earned income exceeding \$200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than \$1,000 (except report the actual amount of any honoraria over \$200 of your spouse).

<u>Source of Income</u>	<u>Actual amount of income</u>	<u>Date</u> (Month, Day, Year) (ONLY PROVIDE FOR HONORARIA)

(B) Report sources of more than \$5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than \$5,000. You need not report the U.S. Government as a source.

Source of Compensation	Brief Description of Duties

SIGNATURE AND DATE

I hereby state that I have read the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

Deborah K

This 4th day of June, 2020

REDACTED

UNITED STATES OFFICE OF
GOVERNMENT ETHICS

June 5, 2020

The Honorable Ron Johnson
Chairman
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Derek Kan, who has been nominated by President Trump for the position of Deputy Director, Office of Management and Budget.

We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

DAVID APOL

Digitally signed by DAVID
APOL
Date: 2020.06.05 15:36:03
+04'00'

David J. Apol
General Counsel

Enclosures

REDACTED

May 20, 2020

Laurie Adams
Alternate Designated Agency Ethics Official
Office of Management and Budget
725 17th Street, NW
Washington, D.C. 20503

Dear Ms. Adams:

The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Deputy Director of the Office of Management and Budget.

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

I will retain my position as a trustee of my revocable family trust. I will not receive any fees for the services that I provide as a trustee during my appointment to the position of trustee. I will not participate personally and substantially in any particular matter that, to my knowledge, has a direct and predictable effect on the financial interests of the revocable family trust, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).

I am currently in the process of joining the Board of Leaders of the Marshall School of Business at the University of Southern California. Upon confirmation, I will withdraw from consideration for, or resign from, this uncompensated position with the Board of Leaders of the Marshall School of Business at the University of Southern California.

If I have a managed account or otherwise use the services of an investment professional during my appointment, I will ensure that the account manager or investment professional obtains my prior approval on a case-by-case basis for the purchase of any assets other than cash, cash equivalents, investment funds that qualify for the exemption at 5 C.F.R. § 2640.201(a), obligations of the United States, or municipal bonds.

I understand that, as an appointee, I must continue to abide by the Ethics Pledge (Exec. Order No. 13770) that I previously signed and that I will be bound by the requirements and restrictions therein in addition to the commitments I have made in this ethics agreement.

I will receive a live ethics briefing from a member of the ethics office during the first week of my service in the position of Deputy Director in order to complete the initial ethics briefing required under 5 C.F.R. § 2638.305. Within 90 days of my confirmation, I will document my compliance with this ethics agreement by notifying you in writing when I have completed the steps described in this ethics agreement.

I have been advised that this ethics agreement will be posted publicly, consistent with 5 U.S.C. § 552, on the website of the U.S. Office of Government Ethics with ethics agreements of other Presidential nominees who file public financial disclosure reports.

Sincerely,

A handwritten signature in blue ink, appearing to read "Derek Kan". The signature is fluid and cursive, with the first name "Derek" and last name "Kan" clearly distinguishable.

Derek Kan

May 17, 2017

Judith S. Kaleta
Designated Agency Ethics Official
U.S. Department of Transportation
1200 New Jersey Ave. SE
Washington, DC 20590

Dear Ms. Kaleta:

I am committed to the highest standards of ethical conduct for government officials. The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Under Secretary of Transportation for Policy at the U.S. Department of Transportation.

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

Upon confirmation, I will resign from my position with Lyft Inc. (Lyft). If Lyft decides to pay me a severance, I will not accept the severance payment and will forfeit it, unless I receive the severance payment before I assume the duties of the position of Under Secretary of Transportation for Policy. If I receive the severance payment, I will not participate personally and substantially in any particular matter involving specific parties in which I know Lyft is a party or represents a party for a period of two years from the date on which I receive the severance payment, unless I first receive a written waiver pursuant to 5 C.F.R. § 2635.503(c). If I do not receive the severance payment, I will not participate personally and substantially in any particular matter involving specific parties in which I know Lyft is a party or represents a party for a period of one year from the date of my resignation, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

I do not have stock or stock options in Lyft. I hold vested and unvested restricted stock units in Lyft. Pursuant to the company's compensation plan, I may retain my vested restricted stock units upon separation from the company. Lyft has agreed to lift the restrictions on my restricted stock units so that I can sell them to a third party or otherwise divest them. I will divest of these vested restricted stock units within 90 days of my confirmation and will consult with you in advance of the transaction. All unvested restricted stock units will be forfeited upon

separation. I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the financial interests of Lyft until I have divested my restricted stock units, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).

I understand that I may be eligible to request a Certificate of Divestiture for qualifying assets and that a Certificate of Divestiture is effective only if obtained prior to divestiture. Regardless of whether I receive a Certificate of Divestiture, I will ensure that all divestitures discussed in this agreement occur within the agreed upon timeframes and that all proceeds are invested in non-conflicting assets.

Upon confirmation, I will resign from my position with Amtrak. For a period of one year after my resignation, I will have a “covered relationship” under 5 C.F.R. § 2635.502 with Amtrak. Pursuant to 5 C.F.R. § 2635.502(d), I will seek written authorization to participate in particular matters involving specific parties in which Amtrak is a party or represents a party. I also will seek a waiver of the provisions of paragraph 6 of the Ethics Pledge under Executive Order 13770 with regard to Amtrak.

I resigned from my positions with GLG Research in April 2017 and with the Los Angeles County Auto Show in March 2017. For a period of one year after my resignation from each of these entities, I will not participate personally and substantially in any particular matter involving specific parties in which I know that entity is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

I resigned from my position with Story and Heart in May 2016. I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the financial interests of Story and Heart, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).

If I rely on a *de minimis* exemption under 5 C.F.R. § 2640.202 with regard to any of my financial interests in securities, I will monitor the value of those interests. If the aggregate value of interests affected by a particular matter increases and exceeds the *de minimis* threshold, I will not participate personally and substantially in the particular matter that to my knowledge has a direct and predictable effect on the interests, unless I first obtain a written waiver pursuant to 18 U.S.C. § 208(b)(1).

If I rely on a *de minimis* exemption under 5 C.F.R. § 2640.201(b) with regard to any of my financial interests in sector mutual funds, I will monitor the value of those interests. If the aggregate value of my interests in sector mutual funds that concentrate in any one sector exceeds \$50,000, I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the financial interests of any holdings of the funds that are in the specific sector in which the funds concentrate, unless I first obtain a written waiver pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).

If I have a managed account or otherwise use the services of an investment professional during my appointment, I will ensure that the account manager or investment professional obtains my prior approval on a case-by-case basis for the purchase of any assets other than cash, cash equivalents, investment funds that qualify for the exemption at 5 C.F.R. § 2640.201(a), or obligations of the United States.

I will meet in person with you on the first day of my service in the position of Under Secretary of Transportation for Policy in order to complete the initial ethics briefing required under 5 C.F.R. § 2638.305. If circumstances do not permit a first-day meeting, I will meet with you during the first week of my service. Within 90 days of my confirmation, I will also document my compliance with this ethics agreement by notifying you in writing when I have completed the steps described in this ethics agreement.

I understand that as an appointee I will be required to sign the Ethics Pledge (Exec. Order no. 13770) and that I will be bound by the requirements and restrictions therein in addition to the commitments I have made in this ethics agreement.

I have been advised that this ethics agreement will be posted publicly, consistent with 5 U.S.C. § 552, on the website of the U.S. Office of Government Ethics with ethics agreements of other Presidential nominees who file public financial disclosure reports.

Sincerely,



Derek T. Kan

**U.S. Senate Committee on Homeland Security and Governmental Affairs
Pre-hearing Questionnaire
For the Nomination of Derek Kan to be
Deputy Director, Office of Management and Budget**

I. Nomination Process and Conflicts of Interest

1. Did the President or the Director of the Office of Management and Budget (OMB) give you specific reasons why you were nominated to be the next Deputy Director of OMB, and if so, what were they?

No.
2. Were any conditions, expressed or implied, attached to your nomination? If so, please explain.

No.
3. Have you made any commitments with respect to the policies and principles you will attempt to implement as Deputy Director? If so, what are they, and to whom were the commitments made?

No.
4. Are you aware of any business relationship, dealing, or financial transaction that could result in a possible conflict of interest for you or the appearance of a conflict of interest? If so, please explain what procedures you will use to recuse yourself or otherwise address the conflict. And if you will recuse yourself, explain how you will ensure your responsibilities are not affected by your recusal.

No.

II. Background of the Nominee

5. What specific background, experience, and attributes qualify you to be Deputy Director?

I have spent much of my career working on budget and appropriations issues. I started my career out as a Program Examiner at OMB working on veterans' issues, including budget formulation and execution. I then worked in the Senate as a staffer at the Republican Policy Committee and the Majority Leader's Office working on budget and appropriation matters. In this capacity, I managed budget resolutions, reconciliation bills, and appropriation bills across the Senate floor. More recently, I was the Under Secretary for Policy for the Department of Transportation, where I managed an organization of nearly 2,000 FTEs that managed large grant programs and transportation research. Finally, I have an MBA which provided me the tools to

understand how to manage large, complex organizations as well as allocating resources efficiently.

6. Please describe:

a. Your leadership and management style.

My leadership style can be best described as democratic and pacesetting with a strong focus on coaching and development. That is, I seek input from all stakeholders and identify aligned interests. Collaboration is a key value for me. Pacesetting is another important dimension of my leadership style where I set a high standard for performance and expect my direct reports to work toward that standard. Finally, I am results focused and data driven.

b. Your experience managing personnel.

I have managed large and small teams for over fifteen years in both direct and indirect leadership roles. At DOT, I directly managed four offices that included three Assistant Secretaries and indirectly managed ten of the transportation modes at DOT. My focus on managing personnel is rooted in coaching and personal and professional development. That is, I encourage individuals who work for me to “be yourself” and “make it happen.”

c. What is the largest number of people that have worked under you?

~2000 at DOT in the offices of Policy, International Aviation, and Research.

7. Please describe your experience working on matters relating to the federal budget or to other matters within the purview of the OMB Deputy Director.

I have substantial experience working on matters related to the Federal budget. Starting in 2004, I developed the Budget for the Department of Veterans Affairs, specifically focused on their IT program and vocational rehabilitation program. I also worked on a Budget Concepts issue related to the scoring of user fees (e.g., offsetting-receipts or user fees). In this capacity, I participated on a committee to review OMB Circular A-11. Subsequently, I worked in the Senate where I drafted amendments for budget resolutions and appropriations bills, legislative summaries, and a budget reform proposal. Also while in the Senate, I worked across the aisle to negotiate appropriations bills and help manage them across the Senate floor. My experience ranges from strategic advice on how to pass bills as well as technical budget aspects such as enforcement of budget points of order and the application of the Byrd Rule. In 2008 and 2009, I worked with the Senate Budget Committee, the respective Leader’s Offices, and the Senate Parliamentarian on the application of the Byrd Rule to reconciliation bills before the Senate. More recently, I worked on budget implementation as Under Secretary of Policy at DOT. Finally, my private sector

experience equips me to understand how the private sector formulates budgets and manages performance.

III. Role of the Deputy Director of OMB

8. What do you consider to be the mission of OMB, and what would you consider to be your role and responsibilities if confirmed as the Deputy Director? Have you and OMB Acting Director Russell Vought discussed what your role would be? If so, please describe how you view your role in light of those discussions.

The mission of OMB is to serve the President by providing quality information and analysis to properly assess policy options and then to execute those policy decisions government-wide. My role would be to support and advise the Director.

9. In many agencies, the Deputy is charged with internal management of the agency. Do you expect to take on this role at OMB? If so, what do you see as the major internal management challenges there, and how would you plan to address them?

Yes.

I expect the greatest internal challenge to be coordination across OMB as the agency is comprised of highly-talented technical experts in a range of areas (e.g., management, procurement, budget formulation, regulations). I plan to address these by clearly defining the roles and responsibilities of each office and continually optimizing processes to ensure better coordination.

10. What do you anticipate will be your greatest challenges as OMB Deputy Director, and what will be your top priorities? What do you hope to accomplish during your tenure?

I expect my greatest challenge will be managing the wide range of issues that come through OMB. My top priority will be advancing the President's agenda. I hope to improve program administration, eliminate wasteful spending, improve communication with Congress, and modernize budget concepts.

11. How do you view the role of Deputy Director in relation to the role of the Deputy Director of Management as well as OMB's three main offices: the Office of Information and Regulatory Affairs, the Office of Federal Procurement Policy, and the Office of Federal Financial Management?

The Deputy Director exercises general oversight over the entire agency, including the Deputy Director of Management. Other roles are well defined, with the Deputy Director for Management acting as the primary deputy for all management issues, with oversight of statutory offices, including the Office of Federal Procurement Policy and the Office of Federal Financial Management. I anticipate those roles and responsibilities remaining as they are.

12. If confirmed as Deputy Director, do you anticipate having a role in overseeing or assisting OMB with facilitating cooperation or coordination between agencies in areas such as information technology, financial management, procurement, performance, reducing waste, increasing governmental efficiency, and human resources? If so, what in your background has helped prepare you for this role?

Yes. All organizations have unique strengths, weaknesses, biases, and a unique DNA. Agencies can learn from one another. As General Manager at a private company, I had to identify the core competencies of each organization across the company and how to best deploy that competency. Similarly, at DOT, my office reviewed grant and project applications which included a performance section for various infrastructure projects.

IV. Policy Questions

COVID-19 Oversight

13. What do you see as OMB's role in helping agencies balance expediency and the need to mitigate fraud, waste, abuse, and improper payments (e.g., resources that could include ongoing technical assistance, weekly conference calls, FAQs or other mechanisms to facilitate intragovernmental cooperation) related to the CARES Act?

OMB has, and will continue to work closely with agencies as they execute the funding and ensure they are aware of the increased risk of improper payments, fraud, and mitigation strategies that may be able to be leveraged. OMB is working with the agencies to identify the areas of increased risk that resulted from the COVID-19 related legislation to include increased risk from newly established programs and new authorities granted.

14. Section 15011 of the CARES Act requires OMB to coordinate with agencies and the Pandemic Response Accountability Committee to facilitate reporting by recipients of "large covered funds" (over \$150,000) as well as aggregate reporting on awards under \$50,000. Please describe OMB's plans and timelines for accomplishing this.

The Administration has prioritized accurately tracking and reporting CARES Act funding. OMB Memorandum M-20-21 lays out OMB's plans and timelines for accomplishing the requirements in section 15011, leveraging existing data where possible and maximizing transparency to the public while minimizing burden for the recipients of these funds on the front lines of the pandemic response. Recording and tracking of funds for awards under the new relief legislation is essential to providing relief to citizens and businesses, facilitating oversight, and creating accountability for results.

- a. To what extent do you think the information agencies report to OMB on "large covered funds" be publicly available and in what form and manner does OMB plan to report this information?

See above.

- b. When do you believe OMB should plan to start reporting this information?
See above
- c. What processes should be planned or in place for OMB/Treasury to reasonably estimate obligations and/or expenditures of “large covered funds” if they are not timely reported by the agencies?
See above.

15. What, if any, guidance should OMB plan to issue regarding internal controls related to COVID-19-related funding and programs?

- a. Should OMB plan to issue additional guidance on agency’s internal controls over payment integrity for COVID-19-related funding?

Not at this time. A-123 implements GAO’s Standards for Internal Control in the Federal Government, and GAO’s Framework for Managing Fraud Risks in Federal Programs. Agencies are balancing costs, risks, and program performance to ensure this life-savings funding was distributed as quickly and accurately as possible. OMB recognizes that the increased scope and scale of the stimulus combined with the need to distribute the funds quickly, and often with new criteria and authorities, significantly increases the risks for improper payments. Accordingly, OMB has been and will continue to highlight risk factors for agency consideration as they evaluate and improve their internal control over COVID-19-related funding.

- b. Should OMB plan to require agencies to estimate and report on improper payments related to COVID-19-related funding?

OMB has been and will continue to work closely with agencies as they execute the funding and ensure they are aware of the increased risk of improper payments and fraud and mitigation strategies that may be able to be leveraged. Accordingly, agencies will be required to assess their programs in accordance with the Payment Integrity Information Act of 2019, and OMB implementation guidance to determine whether they are susceptible to significant improper payments.

16. On April 10, 2020, OMB issued M-20-21 implementation guidance to agencies defining the Disaster Emergency Fund Code (DEFC) values for COVID-19-related funding. How should agencies identify and report on COVID-19-related funding processed prior to the date of the guidance?

OMB Memorandum M-18-08, Guidance on Disaster and Emergency Funding Tracking (February 2, 2018), requires agencies to track spending of amounts designated in appropriations Acts as emergency or for disaster relief pursuant to section 251 of the

Balanced Budget and Emergency Deficit Control Act of 1985, as amended, (BBEDCA) or from accounts that received such amounts via non-expenditure transfer.

Standard practice dictates that upon signing of an emergency and/or disaster supplemental, OMB provides agencies a unique DEFC. As such, upon signing of the COVID-19 related relief bills (PL 116-123, PL 116-127 and PL 116-136), OMB provided agencies to use a unique DEFC for those supplementals with emergency funding before the memorandum was issued.

17. M-20-21 states that “agencies should work with their OMB representative to identify situations where a DEFC value cannot be used to track spending provided in the CARES Act.” How should OMB report spending that is not tracked using a DEFC value and which agencies, if any, have contacted OMB in this regard?

OMB is in the process of identifying these types of situations.

Budget

18. Do you support biennial budgeting? Please explain.

- a. Do you foresee any obstacles for OMB in implementing biennial budgeting if it chose to do so in the future? How could those obstacles be overcome?

Yes, I support improving the budget process and biennial budgeting is one idea that has merit that could lead to more oversight in the second year. In fact, when I worked in the Senate, I included biennial budgeting on a budget process reform bill I drafted with the Senate Budget Committee. There are some obstacles generally, such as some accounts have massive changes year-over-year depending on the nature of the account. It may be slightly more difficult to budget two years in advance for certain programs.

19. If confirmed, what preparatory steps will you take to minimize risks surrounding debt-ceiling negotiations and ensure the federal government does not threaten default?

One of the challenges involved with debt-ceiling negotiations is that the raising of the debt ceiling often provides little to no time to consider actual reforms or policies to avoid a debt limit increase. One option is to create a point of order that would be triggered for any bill that increases deficits and debt. While this would also be subject to a 60-vote threshold needed for cloture, it could draw attention to deficits and debt.

20. The Committee has worked to pass legislation to end government shutdowns. What are your views on the End Government Shutdowns Act?

Government shutdowns are disruptive to government operations. I support legislation that would end government shutdowns and look forward to working with Congress on this.

Regulatory Affairs

21. Please describe how you view the mission of OMB with respect to coordinating and reviewing agency regulatory activity? Do you believe OMB and OIRA have adequate resources and structure to meet that mission? Please explain.

OIRA serves the crucial and central role in coordinating regulatory activity and ensuring that agencies take seriously their duty to consider the costs, as well as the benefits of proposed regulations. OIRA is the driver of a unified regulatory agenda to ensure that agencies are forecasting where they intend to take regulatory action. The President's most recent Budget proposes an increase for OMB in part to provide for additional OIRA staff.

22. Of the practices listed in Executive Order 12866, both Republicans and Democrats agree that more emphasis should be placed on reviewing existing regulations to ensure they are achieving their regulatory objective.

- a. Do you support future administrations also undertaking a retrospective review process? If so, what role do you believe OMB should play in this process?

A number of regulatory reforms undertaken consistent with Executive Order 13771 are the result of a retrospective review that discovered unanticipated costs, inefficiencies, or opportunities for improvement. I would support future administrations engaging in such forms of retrospective review, with OMB bringing its considerable expertise in regulatory affairs and cost-benefit analysis to bear in such efforts.

- b. As OMB Deputy Director, how would you ensure that retrospective reviews become an integral part of agencies' culture, and embedded as a regular part of the rulemaking process?

I would continue to direct that retrospective reviews be a priority for OIRA and its work with agencies.

- c. In your view, have previous retrospective reviews of existing policies been successful? Please explain why or why not.

Under E.O. 13771, agencies have undertaken a thoughtful assessment of the realized costs and benefits of a number of their regulations. More work remains to be done, however, in ensuring uniform pursuit of regulatory reform, including through retrospective analysis, at agencies across the government, and in

making retrospective analysis a routine agency practice. E.O. 13563 attempted the latter, with moderate success.

23. OMB is required by law to annually submit to Congress an “accounting statement” reflecting an estimate of total federal regulatory benefits and costs of the most recent fiscal year, as well as estimates of expected benefits and costs for future years. What steps will you take to ensure this report is completed and submitted to Congress in a timely fashion and also reflects complete and consistent estimates from each contributing agency?

OIRA has instituted a workflow plan to achieve timeliness in the submission of these reports and that includes submission of complete and accurate information from contributing agencies. If confirmed, I would continue to support this effort.

24. Are there any major reform proposals of the regulatory process for proposing, adopting, and reviewing federal regulations that you would like to see enacted by Congress or fulfilled through executive action or OMB guidance?

The Administration has no specific recommendations for legislative reform of the regulatory process at this time. I strongly support transparency and accountability, as well as application of cost-benefit principles, in the regulatory process. Those are the policy objectives underlying the President's recent executive orders on transparency guidance and enforcement which are also enshrined in some of the legislative reform proposals that Congress has considered in recent years, such as the GOOD Act.

25. What are your thoughts on including economic, pricing, or other models used during the OMB evaluation of a proposed rule as part of the public rulemaking record?

Regarding information quality, agencies that author regulations should make as much of their data and models available to the public as is consistent with law and confidentiality and privacy protections. I support that objective.

Management

26. What are the most important steps that OMB can take to enable the federal government to perform its essential functions more efficiently and for less cost? Please explain any system or standard you intend to use to measure success or identify problems.

One useful tool (and common in the private sector) to improve cost efficiency is benchmarking similar functions across industry. One approach could be to regularly benchmark costs of products and services. One way to measure success is to evaluate government spending relative to industry benchmarks.

27. What is your opinion of the current status of government performance management, as implemented under the Government Performance Review Modernization Act, and how to you believe it can be improved? Please explain.

One challenge with government performance management is the specific goal of a program is often difficult to precisely identify and often difficult to accurately measure. Improving Government performance is critical and one approach is to expand the collection and use of high quality data. The GPRA Modernization Act established processes by which agencies set clear goals, conduct regular internal management reviews, and report publicly through Performance.gov and agency Annual Performance Plans and Reports. I will work to leverage these management processes to fulfill the shared goal between the Executive Branch and the Congress of improving performance across government.

28. How can OMB work to ensure that the federal government is more effective and supportive of economic growth?

OMB plays a central role in crafting the President's budget and coordinating the inclusion of proposals that would lead to economic growth. In addition, OIRA plays a central role in coordinating the President's regulatory agenda. The Administration has recently taken action to address the public health epidemic, ensuring a rapid economic recovery and enabling Americans to return to work as soon as it is safe to do so. Actions include strengthening the public health response, delaying tax payments, reducing the regulatory burden for small businesses, and signing into law four economic response bills.

29. How do you view OMB's role in addressing agency high-risk or duplicative programs highlighted in GAO's biennial "High Risk List" and annual "Duplication" report?

- a. Of the areas identified as "high risk," which do you find to be most concerning and why?

Many areas on the high risk list are concerning, including modernizing the financial regulatory system, DOD financial management, and ensuring cybersecurity of the nation. These areas are of concern because they speak to economic or national security issues and have been identified risks for decades.

- b. Are there any specific recommendations from GAO's High Risk report that you plan to pursue if confirmed?

Contract management and financial management are areas I plan to pursue.

30. Protecting whistleblower confidentiality is of the utmost importance to this Committee:

- a. How do you plan to implement policies within the agency to encourage employees to bring constructive suggestions forward without the fear of reprisal?

OMB leadership takes any whistleblower complaints with seriousness and earnestness. We absolutely protect confidentiality. I will continue to meet with

the head of our Human Resources to ensure we continue to encourage employees to have constructive dialogue

- b. If confirmed, what avenues will be available to employees to report waste, fraud, or abuse within OMB?

I will make identifying waste, fraud, and abuse a priority not only for OMB but across government through OMB guidance documents. For instance, in the development of the President's budget, I will seek to prioritize fraud, waste, and abuse as an area of savings.

- c. Do you commit without reservation to work to ensure that any whistleblower within OMB does not face retaliation?

Yes.

- d. Do you commit without reservation to take all appropriate action if notified about potential whistleblower retaliation?

Yes.

31. Federal inspectors general (IGs) face unique obstacles as they do their work, including budget challenges and disputes with agency heads over access to information. How do you view OMB's relationship to the statutory IGs, and if confirmed what efforts would you make to engage with this community and support their work?

The Administration relies on the IG community to provide accountability and oversight into federal programs, agency compliance with applicable statutes and regulations including OMB guidance, and identifying areas to maximize efficiency and address duplication. The Administration recognizes fully that IG are a crucial line of defense in efforts to manage the risk of fraud, waste and abuse in federal programs.

32. If confirmed, will you commit to fully and promptly cooperate with requests made by GAO?

Yes, consistent with the constitutional principles of deliberative process and separation of powers.

33. How can OMB efforts to improve government be integrated with the budget process and with the work of congressional authorizing and appropriating committees?

OMB proposals are frequently the basis for many Congressional initiatives. Even if Congress refuses to vote for an exact replica of the President's Budget, often many of the proposals and spending levels are assumed in the Congressional budget resolutions and annual appropriations bills. Authorizers can also use these efforts to inform their oversight activities and vice versa.

34. The Digital Accountability and Transparency Act of 2014 (DATA), Public Law 113-101 (2014), was a priority for the Committee during the 113th Congress. To provide greater transparency and accountability to the public for federal spending undertaken in response to COVID-19, OMB's implementation guidance, M-20-21, requires agencies who receive COVID-19 relief funds utilize the data reporting framework established under the DATA Act. In your view, what additional steps should OMB take in order to ensure the accuracy of expanded data reporting requirements under this guidance?

OMB issued Memorandum M-20-21 to meet the CARES Act reporting requirements which leverages existing reporting requirements for financial and recipient data, as displayed on USASpending.gov. This approach was also informed in part by the importance and priority of this Committee and, the successful on-going execution of the DATA Act, as noted by GAO and IGs in their November 2019 statutorily required reports on DATA Act quality noting significant improvements in the data displayed on USASpending.gov. The quality of the information published on USASpending.gov relies on agencies having effective Internal Controls Over Reporting (ICOR) for the input and validation of the data they submit. M-20-21 directs that "Agencies must continue to use standard best practices that include the internal controls necessary for prudently planning for, awarding, and managing contracts, grants, loans, and other forms of assistance." In addition, "in order to meet the reporting objectives of the CARES Act, agencies should continue to leverage the existing requirements in M-18-16 for Data Quality Plans until they expend their funds related to the COVID-19 response."

35. The Committee has worked to pass the Taxpayers Right to Know Act for several years now. What is your opinion of the Taxpayers Right to Know Act?

I support the Taxpayers Right-to-Know Act and the information it requires OMB to collect. New responsibilities require tradeoffs and OMB is being asked to shoulder a number of new responsibilities. That said, OMB has communicated these tradeoffs to Congress, and I would want to continue assessing what responsibilities would be displaced as we consider this legislation.

36. What do you believe OMB's role should be in improving financial management in the federal government?

As a Program Examiner, I sought to improve financial management at the Department of Veterans Affairs. In fact, one of OMB's primary roles is to set Financial Management policy. OMB implements the President's Management Agenda while supporting cross agency transformation, and improves government accountability and transparency by setting the strategic vision and government-wide priorities for Federal Financial Management. OMB guides continuous improvements in execution across agencies, consistent with the law, to maximize value for the American people.

37. Until 2018, the Department of Defense (DoD) had been unable to complete and pass a financial audit as required by the Government Management Reform Act of 1994. In its first ever financial audit issued in FY 2018, auditors made over 2,400 findings and

recommendations. In DoD's FY 2019 financial audit, more than 1,800 of those findings and recommendations remain open, in addition to 1,300 new findings and recommendations. If confirmed, what steps, if any, will you take to address DoD's longstanding financial management challenges?

If confirmed, I would encourage OMB staff to continue to provide technical assistance to support DOD as they address their voluminous audit findings and seek to complete audits for all of their component entities. This assistance involves reviewing and assisting DOD apply the financial accounting standards issued by the Federal Accounting Standards Advisory Board and the guidance in OMB Circular A-136. In addition, I would continue to meet with DOD senior leadership on a regular basis to get updates on progress and to ensure that DOD has the support and resources necessary to continue making audit progress.

Acquisition and Federal Property Management

38. How do you view OMB's role in providing guidance to agencies on strategic sourcing?

OMB has a key role in ensuring that agencies implement effective acquisition practices, and in March 2019, issued guidance institutionalizing category management (CM) to better leverage the government's vast buying power. By applying leading category management practices under OMB guidance, the federal government has been able to save taxpayers over \$27 billion since 2017 and eliminate 31,000 duplicate contracts, all while continuing to exceed annual small business contracting goals.

39. What role do you believe OMB should play in determining the size of the federal government's property portfolio?

OMB's should provide policy and guidance to agencies that require them to work toward optimizing their portfolios to achieve the mission and manage costs through capital planning. In November of 2019, OMB issued OMB Memorandum M-20-03 Implementation of Agency-wide Real Property Capital Planning, which required all agencies to implement agency-wide capital planning and to complete and submit an annual capital plan to the Federal Real Property Council (FRPC) for its review beginning in 2020. The full implementation of M-20-03 and review by the FRPC will help to optimize the portfolio over time and reduce costs by identifying real property investments needed for mission support functions and identifying all unneeded property for disposal.

40. The Federal Property Management Reform Act became law in 2016. Do you believe that the law has been successfully implemented and what additional steps do you think are necessary to improve the government's management of its property portfolio?

In compliance with the Federal Property Management Reform Act, OMB and GSA have met all the requirements under this legislation, and consider their implementation work successful. OMB and GSA are working with the Federal Real Property Council to

identify administrative and legislative reforms needed to further improve the management of the government-wide real property portfolio.

Cybersecurity and Information Technology

41. Congress has recently passed several laws aimed at increasing cybersecurity at federal agencies, including the Federal Information Security Modernization Act of 2014 and the Federal Cybersecurity Enhancement Act of 2015. OMB, too, has demonstrated an increased level of attention to the networks, systems, and data at civilian agencies.

- a. What is your assessment of OMB's role in defending against cyberattacks, like the 2015 cyber breach suffered at the Office of Personnel Management?

Per the Federal Information Security Modernization Act (FISMA), OMB had three key roles with respect to cybersecurity. The first is to develop and oversee the implementation of government-wide cybersecurity policies. The second is to require agencies to identify and provide protections for federal information and systems commensurate with the risk of harm from a potential compromise. The third is to oversee agency's compliance with government-wide laws, policies, directives, standards, and guidance around cybersecurity. OMB tracks agency performance through the President's Management Agenda Cross Agency Performance Goals, regular FISMA metrics submissions, and Inspector General annual FISMA audits.

- b. If confirmed, how will OMB work with the Department of Homeland Security to further enhance cybersecurity at federal agencies?

Over the past three years OMB, through the Federal Chief Information Security Officer, has built a strong partnership with the Department of Homeland Security to enhance cybersecurity at federal agencies. OMB will continue to work closely with the Cybersecurity and Infrastructure Security Agency (CISA) on the issuance of OMB cyber security Policies and the DHS issuance of Binding Operational Directives or Emergency Directives. We will also work together on agency engagements to both prevent, and respond to cybersecurity incidents.

- c. Do you support GAO's recommendation to OMB to coordinate with the Secretary of Homeland Security to establish guidance or facilitate through other means sharing of successful approaches across federal agencies to manage competing priorities between cybersecurity and functionality, implement consistent cybersecurity risk management policies across federal agencies, incorporate cyber risks into enterprise risk management at federal agencies, and establish agencies' risk management practices? Please explain.

OMB, in coordination with CISA, utilizes existing mechanisms to provide oversight and facilitate sharing across agencies for the purpose of cyber risk

management. These mechanisms include interagency forums such as the Federal CISO Council, Cross-Agency Priority goals for cybersecurity as featured in the President's Management Agenda (PMA), and the FISMA reporting process, which OMB updated per EO 13800 to provide a risk assessment and help agencies identify targeted areas for improvement. We will continue to work across the interagency to mature cybersecurity risk management practices while driving integration with existing mechanisms and reducing overall reporting burden.

42. The Federal Information Technology Acquisition Reform Act (FITARA), empowered and made accountable agency Chief Information Officers (CIOs) for all major technology purchases and maintenance at agencies. While progress has been made, some CIOs remain walled off from the program side of the agency mission. What is your view of the role of the CIO in federal agencies?

I believe the CIO should have the necessary authority to meet its responsibilities under FITARA. This includes serving as the lead advisor for all annual and multi-year planning, programming, budgeting, and execution decisions, as well as in all management, governance, and oversight processes related to IT. The Administration has supported this view with the release of the Executive Order on Enhancing the Effectiveness of Agency Chief Information Officer. OMB's team in the Office of the Federal CIO (OFCIO) engages regularly with agency leadership to help address disconnects between agency CIOs and program offices.

43. The federal government collects and maintains significant volumes of Personal Identifiable Information (PII). What do you believe OMB's role should be regarding ensuring federal agencies are fully protecting the privacy of this information?

OMB's privacy role, in accordance with its statutory responsibilities, is and should be to provide agencies with privacy policy guidance and oversight. OMB has taken steps to strengthen and institutionalize the federal government's privacy capacity, such as through the establishment of the Privacy Branch within OIRA and the interagency Federal Privacy Council.

44. The U.S. Digital Service is described as "a startup at the White House that pairs the country's top technology talent with the best public servants, to improve the reliability of the country's most important digital services." Similarly, the General Services Administration also has a group called 18F described as a "team of innovators, recruited from the private sector" to "partner with agencies to deliver high quality in-house digital services." What is your view of the role of these two programs in recruiting private sector technology talent to the federal workforce?

Both offices have a strong reputation within the Executive Branch. I have worked closely with the U.S. Digital Service regarding a COVID data effort. Their agility and

ability to quickly diagnose a problem is redoubtable and has been important in improving the nation's health data systems.

Improper Payments and Government Transparency

45. In fiscal year (FY) 2018, GAO's government-wide estimate of improper payments was \$151.7 billion, attributable to 88 programs across 19 agencies. In FY 2019, improper payments rose to \$174.8 billion. If confirmed, how do you anticipate OMB ensuring agencies are in compliance with improper payments law and following OMB guidance in this area?

I believe that the agency PIIA compliance reports are a critical tool that can help the agencies identify areas for improvement, specifically by reducing improper payments. OMB works closely with agencies to ensure implementation of all laws and statutes, and successful implementation of PIIA. If confirmed, I plan to continue this close working relationship. OMB works closely with OIGs throughout the year to discuss the PIIA compliance reports and also to discuss other observations that the IGs had for their particular agency. I believe that to ensure greater compliance with the laws and regulations that were put in place to lower improper payments, agencies will need to embrace greater reliance on information sharing and financial and accounting safeguards. This would help reduce the impact of the root causes behind improper payments.

46. What role, if any, should OMB play in ensuring agency collaboration and greater sharing of data helpful for curbing waste and fraud? If confirmed how do you plan to carry out this role?

I believe that OMB plays a key role in facilitating agency collaboration and guiding agencies to implement data-sharing, in compliance with laws, regulations, and policies. If confirmed, I will strive to prioritize the work of the Getting Payments Right CAP goal which is focused on preventing improper payments before they occur. This is accomplished by sharing data more broadly to prevent fraud and improper payments, and to help the Federal Government serve the public in a more efficient, accountable, and harmonized manner.

47. Currently, information on recipients of federal grants, contracts, and loans is required to be posted online for public review, pursuant to the Transparency Act. Do you support making subcontracts and sub grants transparent in this same manner?

OMB guidance, consistent with the Federal Funding and Accountability Act, requires information on subcontracts and sub-grants to be made publicly available on USAspending.gov. This information is reported directly from the source, namely the prime contractors or financial assistance recipients making these sub-awards. This practice has been in place since the implementation of the Federal Funding Accountability and Transparency Act and OMB remains committed to ensuring this information is made publicly available. The Administration supports transparency over federal spending. It is a priority of the administration to continue updating the display

and data on USASpending.gov. OMB will use leverage learned from the current Pandemic to identify reporting challenges, and gaps, and work with the oversight community and agencies on a plan.

48. Do you agree with the importance of publicly disclosing the federal government's performance goals and the results achieved?

Yes, I do. My understanding is that work has been done to improve the reporting through Performance.gov, leading to a significant increase in Performance.gov page views over the past year. I would like to see this effort continue.

V. Relations with Congress

49. Do you agree without reservation to comply with any request or summons to appear and testify before any duly constituted committee of Congress if you are confirmed?

Yes, working with OMB's Office of General Counsel, I will work to ensure OMB provides Congress with information responsive to its requests.

50. Do you agree without reservation to make any subordinate official or employee available to appear and testify before, or provide information to, any duly constituted committee of Congress if you are confirmed?

Yes, working with OMB's Office of General Counsel, I will work to ensure OMB provides Congress with information responsive to its requests.

51. Do you agree without reservation to comply fully, completely, and promptly to any request for documents, communications, or any other agency material or information from any duly constituted committee of the Congress if you are confirmed?

Yes, working with OMB's Office of General Counsel, I will work to ensure OMB provides Congress with information responsive to its requests.

VI. Assistance

52. Are these answers your own? Have you consulted with OMB, or any other interested parties? If so, please indicate which entities.

Yes. I have received input from OMB staff to inform my responses.

**Minority Supplemental Pre-hearing Questionnaire
For the Nomination of Derek Kan to be
Deputy Director, Office of Management and Budget**

I. Nomination Process and Conflicts of Interest

1. Has the President or his staff asked you to sign a confidentiality or non-disclosure agreement?

No.
2. Has the President or his staff asked you to pledge loyalty to the President, Administration, or any other government official?

No.
3. Please describe the process used to identify potential conflicts and evaluate the need for recusal with respect to your employment at OMB to date.

I work with our Alternate Designated Agency Ethics Official and she has provided me with ethics training.
4. Please identify any matters from which you have been recused since beginning your employment at OMB, and describe the terms of your recusal.

No.
5. Please describe the extent to which you have communicated with otherwise interacted with any former employer or client in your capacity as Executive Associate Director of OMB.

I have spoken to DOT extensively in my official capacity on a wide range of matters ranging from budget issues to infrastructure issues. I cannot describe the details of those conversations because they were a part of internal policy deliberations. I have also spoken frequently to a number of Senators and their staff on matters ranging from budget and appropriations issues to COVID-related matters to regulatory issues. I have spoken to friends of mine from previous employers such as Bain and Lyft, in a personal capacity.
6. Please provide a copies of any ethics waiver or agreement that you have signed in connection with your employment at the Department of Labor (DOL) or OIRA.

I did not work at DOL or OIRA. I am attaching my ethics agreement from DOT.

II. Background of the Nominee

7. Why do you want to serve as the Director of the Office of Management and Budget (OMB)?

I have long held a profound respect for the institution of OMB. When I graduated from the London School of Economics, it was my top choice of agencies to join due to the tremendous talent and dedication of the workforce. The number one priority of OMB is to provide quality information. I wish to serve as Deputy Director because I believe there is no better agency to provide quality information and analysis in the development of policies and budget and the implementation of the President's agenda.

8. What would you consider your greatest successes as a leader?

My successes as a leader relate primarily to building teams as well as identifying and filling organizational gaps. At DOT, the Office of the Undersecretary for Policy was primarily focused on grants. I identified the roles and responsibilities related to policy development and implementation that were needed and built a new policy analysis function. Working closely with relevant Congressional committees, we secured funding and support to create a new policy analysis shop in my office. At Lyft, I opened up new fields offices and structured teams by defining various roles and responsibilities as well as instituting new processes.

9. What would you consider your greatest failure as a leader? What lessons did you take away from that experience?

My greatest failures relate primarily to failing to develop those around me. In one of my previous roles, I was unable to build a relationship of trust and collaboration with other offices. It led to needless churn, multiple silos, and ultimately a lot of wasted time. One of the lessons I took away was to carefully diagnose why a relationship is not optimal and value team members that work to build relationships and a collaborative spirit.

10. Please give examples of times in your career when you disagreed with your superiors and aggressively advocated your position. Were you ever successful?

Yes, multiple times in the public and private sector. In the private sector, I disagreed at times on a business strategy or allocation of capital. I laid out the pros and cons of a particular decision and my own recommendation. Similarly, in the public sector, I often disagreed regarding a position on a policy, amendment, or approach. I have been successful at times and not in others.

11. Do you seek out dissenting views and encourage constructive critical dialogue with subordinates? Please provide examples of times in your career when you have done so.

Absolutely. Listening closely to people who disagree with me and understanding their perspective through empathetic listening is one of my highest priorities. Examples of this include situations from both the private and public sector. In the private sector, when I would disagree strongly with a colleague I would make a significant effort to understand their argument and position. One specific example was, while working in Congress, I worked hard to understand the implementation of TARP and design of ARRA as proposed by the Obama Administration.

12. Please list and describe examples of when you made politically difficult choices that you thought were in the best interest of the country or your organization.

One recent politically difficult decision that I advised on was the closing of travel from China and then later from Europe related to COVID. Another politically difficult choice was the passage of earmark reform in 2007. Both of these were politically difficult with significant opposition that I believed were in the best interest of the country.

13. Please describe how you build credibility and trust among staff as a leader.

I create a culture of open dialogue and a non-judgmental culture. I actively solicit feedback and diverse perspectives and make every effort to ensure dissenting views (no matter how unpopular) are encouraged and affirmed. I also pull individuals aside that undermine this culture and try to coach them to show the value of hearing and understanding dissenting views.

14. During your career, has your conduct as a federal employee ever been subject to an investigation or audit by the Office of Special Counsel, Department of Justice, agency Equal Opportunity office or investigator, agency Inspector General, or any other federal investigative entity? If so, please describe the nature of the allegations/conduct and the outcome(s) of the investigation(s) or audit(s).

No

15. For each position/title you have held at the Department of Transportation (DOT) or OMB since 2017, please provide the following:

I. Under Secretary of Transportation for Policy

- a. ***Position title:*** Under Secretary of Transportation for Policy
- b. ***Start and end dates:*** 11/21/17 – 6/24/19
- c. ***Type of appointment:*** Presidential Appointment with Senate Confirmation
- d. ***Position Summary:*** The Under Secretary of Transportation for Policy provides leadership in the development of policy for the Department, supervises the policy activities of Assistant Secretaries with primary responsibility for aviation, international and other transportation policy development and carries out other powers and duties prescribed by the Secretary. The Under Secretary oversees the

Assistant Secretary for Transportation Policy, the Assistant Secretary for Aviation and International Affairs, the Assistant Secretary for Research and Technology, and the Build America Bureau.

- e. *Number of direct reports:* 15
- f. *The title/position of your direct supervisor(s):* U.S. Secretary of Transportation
- g. *Reason for leaving or changing position/title:* Accepted position with Office of Management and Budget, Executive Office of the President

II. Senior Advisor to the Secretary

- a. *Position title:* Senior Advisor to the Secretary
- b. *Start and end dates:* 06/05/17 – 11/20/17
- c. *Type of appointment:* Limited Term Senior Executive Service Appointment (Political/Pending Senate Confirmation)
- d. *Position Summary:* Served as a Senior Advisor to the Secretary of Transportation on sensitive issues and critical matters pertaining to the aviation, international, infrastructure financing, and general transportation policies, priorities, and program direction of the Department.
- e. *Number of direct reports:* 0
- f. *The title/position of your direct supervisor(s):* U.S. Secretary of Transportation
- g. *Reason for leaving or changing position/title:* Appointed to the Under Secretary of Transportation for Policy position

III. Role of the Deputy Director of OMB

16. What do you consider to be your greatest accomplishment as Executive Associate Director of OMB?

Improving coordination across offices and agencies for the formulation of the FY21 President's Budget.

17. What has been your greatest challenge or setback as Executive Associate Director of OMB?

The greatest challenge has been responding to COVID-19. The size and scope of the pandemic requires an unprecedented response and high-level of coordination.

18. You are currently serving as Executive Associate Director of OMB. Please describe how you expect your role and responsibilities to change if confirmed as Deputy Director of OMB.

My role is mostly focused on the budget side working closely with the Program Associate Directors and to a lesser degree on the regulatory review components. I expect my role will slightly change to have a more active role on the management offices and the regulatory review components.

19. Are there duties you anticipate taking on if confirmed that you are currently unable to carry out because of limitations imposed by statute, regulation, or OMB policy? If so, please describe those duties and the applicable limitations.

No.

20. Please provide a copy of any formal delegation of authority or similar document(s) issued by the President or OMB, in connection with your official responsibilities while employed by OMB.

I did not receive any such delegation.

IV. Policy Questions

COVID-19 Oversight

21. Please describe the current status, mission, and priorities of the White House Coronavirus Taskforce.

The White House Coronavirus Task Force is focused on coordinating a whole of government response to the pandemic. The priorities are focused on understanding the current situation on the ground, coordinating activities with state governments, accelerating vaccine development, refilling the strategic stockpile, and strengthening data quality at the local county- and state-level.

22. Please specifically describe your roles and responsibilities in relation to the White House Coronavirus Task Force.

My role is to support agencies and ensure coordination from a resources perspective. Also, my role is to support the data effort by, in part, ensuring states are rapidly improving their data systems and standards.

23. Which individuals or groups have you reached out to in relation to the work of the White House Coronavirus Task Force?

Leadership of various agencies, Members of Congress and their staff, state and local officials, and specific subject matter experts.

24. Please describe your understanding of the policies and procedures currently in place to address potential conflicts of interest among members of the White House Coronavirus

Task Force or similar entities. In your view, are the current policies and procedures adequate?

My Alternate Designated Agency Ethics Official advised me on policies and procedures, including the need to recuse myself from particular matters that may affect my financial interests. Yes.

25. Please identify any specific policies, guidance, or directives that OMB has provided to federal agencies to address the disproportionate effect that Coronavirus has had on communities of color.

This Administration has worked directly with thousands of leaders/stakeholders in the African American, Hispanic, and tribal communities to mitigate the effects of COVID-19 on these populations. CDC continues to collaborate with hospitals, academic institutions and state, local, territorial, and tribal public health partners to gather and report more racial/ethnic data. HHS has awarded \$583 million to 1,385 FQHCs which are located in medically underserved communities and are often the main source of affordable and accessible healthcare in those communities. HHS's Office of Minority Health is facilitating the coordination of a strategic network of national, state, territorial, tribal, and local organizations to deliver important COVID-19-related information to racial and ethnic minority, rural and socially disadvantaged communities hardest hit by the pandemic, and to support linkages to COVID-19 testing, vaccination, other healthcare services and social services in communities highly impacted by or at greater risk for COVID-19.

26. What has been your role with respect to implementation of the financial assistance made available through the CARES Act?

OMB is working with Federal agencies to rapidly stand up new programs and assist agencies in distributing funding.

27. Please describe your role with respect to reviewing draft agency materials (related to any aspect of the Coronavirus pandemic) sent to OMB for clearance.

I am part of the interagency review process, which includes reviewing and/or being copied on agency materials in review.

28. In your view, is OMB in compliance with the statutory requirements of Sec. 15011 of the CARES Act if it does not require recipients of large amounts of federal financial assistance to report "estimated number of jobs created or retained by the project or activity"?

OMB is collecting large amounts of information using already-established reporting mechanisms, to ensure compliance with the reporting requirements of the CARES Act. This is in collaboration with efforts to minimize unnecessary burdens to recipients who urgently need financial aid.

29. Are you aware of any existing reporting requirements that collect the “estimated number of jobs created or retained by the project or activity” for recipients of federal financial assistance?

OMB expects this information will be collected at the agency level for a set of programs administering covered funds, where the reporting requirement is applicable.

30. Please describe how you have worked with the Pandemic Response Accountability Committee (PRAC), GAO, and the Special Inspector General for Pandemic Recovery, to conduct oversight of the federal government’s response to the Coronavirus pandemic to date.
- a. If confirmed, do you expect your role to change? If so, please describe how you plan to interact with these entities as they conduct oversight over the Coronavirus response efforts.

I have not played any role on PRAC or SIG for Pandemic Recovery. If confirmed, I expect to play a more active role and meet with these organizations.

- b. How will you facilitate federal agency compliance with the PRAC

OMB may issue guidance to agencies on how to comply with PRAC and may convene meetings with agency leadership to discuss how best to comply with PRAC.

31. Do you commit, both in your current role and if confirmed, to fully cooperate with any audits, reviews, investigations, and other actions taken by the PRAC?

OMB has a long-standing protocol of working with the Inspector General community to provide the information they need to do their work.

32. Do you commit, both in your current role and if confirmed, to being fully responsive to any request from PRAC or its members in the course of an audit, review, or investigation, in a timely manner?

OMB has a long-standing protocol of working the Inspector General to provide the information they need to do their work.

33. Please describe your role, if any, in reviewing draft CDC guidelines on reopening the economy.

I reviewed the guidelines and also assisted in the preparation of their publication by coordinating review from relevant agencies and offices.

34. Do you believe that Congress will need to take additional action to support continuing efforts to combat the public health threat and economic impact of the Coronavirus pandemic? Please explain why or why not.

We are closely monitoring the public health and economic situation, including funding, and will work with Congress to provide additional support, if needed.

35. Do you support the re-opening of health care enrollment for the Affordable Care Act due to the Coronavirus pandemic?

The Administration is committed to ensuring that Americans are protected against financial obstacles that might prevent them from getting the treatment they need for COVID-19. The Administration worked rapidly to make initial distributions from the \$100 billion appropriated in the CARES Act to support healthcare-related expenses or lost revenue attributable to coronavirus and to ensure uninsured Americans can get the testing and treatment they need without receiving a surprise bill from a provider. As a condition of receiving general funds, providers must agree not to seek collection of out-of-pocket payments from a presumptive or actual COVID-19 patient that are greater than what the patient would have otherwise been required to pay if the care had been provided by an in-network provider. In terms of the Federal Exchange, there are existing special enrollment periods for people who have lost their jobs and coverage due to COVID-19 or other reasons.

As you know, many Americans rely on their employer sponsored health insurance, and we would welcome ideas on how to allow them to maintain their preferred coverage. The Administration has also taken recent action to extend certain time frames affecting a participant's right to group health plan coverage, including allowing for extended enrollment deadlines and duration of coverage under COBRA after employment ends.

36. Is there anything that, in your opinion, the Administration could have done better in responding to the Coronavirus pandemic? If so, please describe.

I am proud of the way the Administration rapidly responded, including unprecedented actions such as closing travel between countries and scaling up necessary resources. The Administration ensured that everyone who needed a ventilator had one and not a single fatality in the nation was due to a lack of ventilators. With any fast moving crisis, information-sharing and coordination could have been improved.

37. When the nation and economy begin to recover following the Coronavirus pandemic, how should OMB plan to address the impacts on communities of color, low-income communities, and other frontline communities, understanding that the process for these communities will likely take longer?

The Administration is considering a variety of policies to address the impact of COVID on all communities, including communities of color, low-income communities, and other frontline communities. This includes ensuring such communities have access to testing and sufficient information, as currently is the case on the CDC website on this matter.

a. Have you participated in any conversations on this topic?

Yes.

Budget

38. Please describe your role in the budget process.

Coordinating review and activities across agencies and offices.

39. What policies do you believe would best help constrain the growing long-term deficit and growing national debt?

Reducing federal spending and pro-growth economic policies are key to constraining deficits and debt. Such proposals have been included in each of the President's Budgets.

40. Please describe whether you believe there should be alterations to Social Security and Medicare.

The President has made clear we will protect Social Security and Medicare beneficiaries, and there are no spending cuts proposed to either program in any of the Administration's budgets. The President's budgets have proposed reforms that would, for instance, reduce the costs of prescription drugs in Medicare, lower Part D premiums, and rationalize the way we pay for care through site-neutral payments.

41. Please describe your views on federal support for scientific research.

The Administration supports Federal research and development to keep America prosperous, resilient, healthy, and safe. We seek to build on strong private sector research and development investment by prioritizing Federal investments in areas that industry is not likely to support in comparison to later-stage applied research and development that the private sector is better equipped to pursue.

42. Please describe your views on the federal government's role in funding domestic research agencies and international public health programs.

I managed DOT's research programs and the goal was to focus and prioritize core research and to not replace private sector research. Regarding international public health programs, OMB has proposed providing funds to organizations that serve

important U.S. interests and that can be held accountable. To the maximum extent possible, we have supported agencies to fund international health activities through implementing partners who have proven track records and can be held closely accountable.

43. Do you consider the reports, analysis and data produced by the Congressional Budget Office to be reliable? If not, why not?

Yes, the CBO provides important and useful information. OMB works closely with CBO on scorekeeping matters. OMB may disagree with some CBO models particularly as it relates to the dynamic effects of spending and taxes.

44. Do you believe that federal agencies should be required to report Antideficiency Act violations identified by GAO to Congress even if the administration does not agree that the spending violated the law? Please explain.

Agencies are required to report ADA violations. Agencies are free to report instances where GAO believes there has been an ADA violation even if the Agency disagrees. The Executive branch, however, is not bound by GAO's legal opinions.

45. Please explain OMB's role in recommending, approving, or implementing holds or "freezes" on foreign security aid or assistance. What policies or procedures does OMB follow when determining whether to hold congressionally appropriated security funds?

OMB should regularly review programs to ensure spending is consistent with the law and intended purposes of a program.

46. Does OMB plan to submit a mid-session review of the federal budget with updated projections on economic trends such as unemployment, inflation, growth, and a federal deficit projection? If not, why not?

Yes. OMB will release a Mid-Session Review (MSR) this year and meet all the statutory requirements. When it comes to Federal spending and receipts, MSR will detail what has happened to date. It will not reflect new economic assumptions due to an unprecedented level of economic uncertainty. Any assumptions would be immediately out of date by the time the MSR came out. In addition, developing economic assumptions would pull the agency's focus away from the COVID-19 response.

47. Do you commit, both in your current role and if confirmed, not to propose recessions late in the fiscal year that would in effect impound funds until they expire?

We have no plans to propose a rescissions package at this time.

48. Has OMB taken any steps to identify whether the Administration may lawfully withhold funding from states that provide absentee ballots or absentee ballot applications to voters? If so, please describe those steps and any conclusions reached by OMB.
No, we have not looked into this issue.

49. Has OMB taken any steps to identify any specific federal funding that could potentially be withheld from states that provide absentee ballots or absentee ballot applications to voters? If so, please describe those steps and any conclusions reached by OMB.

No, we have not looked into this issue.

50. Is OMB or the Administration considering or planning to take any action to withhold federal funds to any state?

OMB frequently reviews spending programs to ensure taxpayer funds are correctly spent.

51. Is OMB planning to conduct a legal analysis of its authorities to withhold federal funding to states for taking actions that do not violate any existing law?

OMB considers every legally tool available to implement the President's agenda, consistent with the law.

Regulatory Affairs

52. What is your opinion of the rulemaking process? Are there changes to the process that you would recommend?

The APA has served the nation well as a foundational structure for the rulemaking process. The principles embedded within the notice and comment process and opportunities for judicial review have served to prevent arbitrary government and to provide the public with due process. The Administration has offered views on legislative proposals and offered technical assistance.

53. Are there any major reform proposals for proposing, adopting, and reviewing rulemakings that you would like to see enacted by Congress or fulfilled through executive action or OMB guidance?

Please see Majority Question 24.

54. Please describe your role in the interagency review process during your time at OMB. If confirmed, would this change in any way?

I have participated in some interagency discussions on specific rules. More generally, I have worked to ensure that agencies with relevant expertise and missions

are able to participate in the interagency process for particular regulatory actions. If confirmed, I would continue to support and promote that process.

55. Do you believe that federal agencies should select the least-costly regulatory option when developing rules? Please explain.

Agencies should often select the least-costly regulatory option when developing regulatory actions. However, certain reasons, including but not limited to statutory mandates, warrant an agency issuing a regulation that incorporates an approach other than the least-costly.

56. OMB Circular A-4 explicitly states that agencies “should look beyond the direct benefits and direct costs of [their] rulemaking and consider any important ancillary benefits and countervailing risks.” Do you agree or disagree with this policy? Please explain.

Generally, an agency should consider the ancillary costs and benefits of a rulemaking, as well as countervailing risks, unless prohibited by statute. The weight to assign to those ancillary costs and benefits and countervailing risks depends on the statute.

57. In your view, what is the appropriate role for OMB in reviewing guidance and regulations promulgated by independent agencies?

OMB’s review of agency guidance and regulations, other than with regard to the Paperwork Reduction Act and the Congressional Review Act, is determined by executive order and such a determination would be made by the President.

58. While E.O. 13891 does not expressly require agencies to publicly identify all guidance documents that have been rescinded since its implementation, do you think OMB should require agencies to do so?

Transparency is critically important to the regulatory process, including in the context of guidance. If confirmed, I commit to studying this issue.

59. Please explain your views on whether it is appropriate for federal agencies to continue issuing non-essential proposed and final rulemakings during the COVID-19 pandemic while the administration is simultaneously taking steps authorizing agencies to rescind, waive, or exempt public health, safety, and environmental protections and due to the “economic emergency.”¹

It is both appropriate and vital for agencies to continue taking regulatory action to fight COVID-19 and the economic situation it has created, while also continuing to move forward with other important regulatory actions for the benefit of the American people.

¹ <https://www.whitehouse.gov/presidential-actions/executive-order-regulatory-relief-support-economic-recovery/>

60. What considerations did the Administration give to potential harms to public health, safety, and the environment prior to issuing its May 19 Executive Order on Regulatory Relief to Support Economic Recovery?

The Administration took great care that the public health, safety, and environment continue to be protected by regulatory actions taken under this Order. See E.O. 13924 section 1.

- a. Is the Administration concerned that rolling back safeguards during a pandemic could lead to worse public health outcomes?

Per E.O. 13924 section 1, agencies are to take only such action under this E.O. as is consistent with the protection of the public health.

- b. Did the administration consider the disproportionate impact on communities of color, low-income communities, and other frontline communities such as healthcare workers and first responders prior to issuing this EO?

Per E.O. 13924 section 1, agencies are to take only such action under this E.O. as is consistent with the protection of the public health and safety, including the health and safety of communities of color, low-income communities, and other frontline communities.

- c. How does this EO apply to independent agencies?

The E.O. defines “agency” as the term is defined in 44 USC 3502, which includes “any independent regulatory agency,” with named exceptions.

61. Do you believe that any temporary regulatory actions or waivers related to the pandemic that the administration seeks to make permanent be done only in accordance with the notice and comment rulemaking procedures prescribed by the Administrative Procedures Act?

Not necessarily. Any regulatory action making such regulations or waivers permanent must be undertaken in accordance with law. Certain agency organic statutes create various exemptions to the Administrative Procedure Act, and the Act itself contains various exemptions that may be available for certain actions.

62. Will you commit to ensuring that all information filed by agencies in response to M-20-25 are made publicly available?

If confirmed, I commit to studying this issue.

63. Please describe your perspective on whether the current “economic emergency” justifies weakening the enforcement of environmental reviews under the National Environmental Policy Act or the Endangered Species Act.

Please see answer to Minority Question 60.

64. Have you or anyone else at OMB or OIRA issued any guidance or provided any other instruction, written or verbal, to agencies to focus on completing the Administration's highest priority rulemakings over the course of 2020.

OMB has not issued any such memorandum.

65. Please provide the Committee a list of rulemakings or other regulatory actions that you reviewed or provided feedback on during your tenure at OMB.

I assisted in the supervision and coordination of all regulatory actions reviewed within OMB.

66. Are all guidance documents reviewed by OMB under Executive Order 12866 and Executive Order 13891 listed on reginfo.gov?

I am unable to verify whether all guidance documents ever reviewed under these EOs are currently listed on reginfo.gov, especially in light of the fact that OMB has reviewed guidance documents under EO 12866 for decades.

Management & Federal Workforce

67. What is your role in advising on or supporting the implementation of GAO's open priority recommendations for OMB?

I have not played a role in this matter.

68. In April, GAO sent OMB a list of their priority recommendations and status. To date, OMB has implemented six priority recommendations. There are 35 open priority recommendations remaining, including one that recommends OMB develop a strategy to ensure agencies' internal control plans provide sufficient information. Federal law places this responsibility with OMB. Please describe why OMB disagreed with GAO's recommendation and whether it should revisit this recommendation.

I did not play a role in this matter but will look into it.

69. Please describe your view of OMB's role in the federal research enterprise.

OMB's mission is to assist the President in meeting his policy, budget, management and regulatory objectives. For example, OMB has worked across the government to ensure that research in the industries of the future – artificial intelligence, quantum information sciences, biotechnology, 5G, and advanced manufacturing – are appropriately prioritized within the President's Budget.

70. Section 3604 of the CARES Act grants OMB authority to issue waivers regarding the requirement in the Families First Coronavirus Response Act to provide employees with COVID-related emergency paid family and sick leave.
- a. What was the purpose of giving OMB this authority?
It appears that Congress provided this authority to allow Federal agencies to request that OMB waive the full leave requirements, for good cause, with respect to certain categories of Federal employees.
 - b. Do agencies have to request a waiver? If so, please describe the process involved in requesting a waiver.
Yes, agencies must request a waiver. Agencies are to submit a formal exclusion request to the Acting Director of OMB, through the relevant OMB resource management office.
 - c. Has OMB granted any such waivers to federal agencies? If so, please list which agencies have received waivers and why.
Yes. A waiver was issued to the Department of Commerce (DOC), covering a very narrow segment of the DOC workforce. The population addressed in the waiver consisted primarily of temporary Decennial Census employees, for which the leave benefit could potentially eclipse the overall employment period of those employees. The Census Bureau agreed to provide a similar COVID-19 sick leave program for that specific group of employees. A waiver for Division C leave only (extended family leave) was issued to the U.S. Department of Agriculture for a discrete population of seasonal, temporary, intermittent employees, for which the leave benefit could potentially eclipse the overall employment period of those employees.
 - d. Does OMB anticipate granting any such waivers in the future? Please describe the specific reasons why OMB might grant waivers in the future and, if possible, list the agencies under consideration for getting a waiver.
OMB would review future agency requests on a case by case basis. OMB intends to use the authority sparingly.
 - e. Does OMB publicly report, or plan to report, any exclusions made under this provision?
OMB intends to use this waiver authority sparingly. OMB is not required to report on the authority.
 - f. What specific criteria is OMB using to determine “good cause” for issuing exclusions?

OMB intends to use this new authority sparingly. A vast majority of Federal employees are eligible for some form of emergency paid sick or family leave provided in the new law. OMB does not expect to issue Government-wide exemptions for categories of Federal employees. Rather, OMB will consider a narrowly tailored request from an agency to exclude specific categories of employees from coverage in the very rare circumstance that providing all of the required FFCRA paid leave would seriously jeopardize the agency's ability to complete mission-critical work during the COVID-19 emergency.

- g. How quickly does OMB make, or plan to make, the determination to issue an exclusion?

Each request will be assessed on a case-by-case basis, there is not a specific decision timeline. While we intend to work through any request expeditiously, the complexity of each request may impact the timeline of a decision.

- h. Which agencies have requested exclusions? Please describe the stated rationale for any such requests.

The DOC and USDA have requested exclusions in cases where providing the leave benefit could potentially eclipse the overall employment period for those employees, and jeopardizing mission-critical work. DOC's request pertained to a narrowly defined group of temporary employees from the Census Bureau. USDA's request pertained to a discrete population of seasonal, temporary, intermittent employees. The Veteran's Administration initially requested an exclusion, but later withdrew the request.

71. OMB released M-20-23, Aligning Federal Agency Operations with the National Guidelines for Opening Up America Again, on April 20, 2020. This guidance provides specific criteria for beginning Phase 1 of reopening operations, but it defers to "state and regional leaders" in the transition to phases 2 and 3.

- a. Does OMB plan to publish any additional guidance on reopening federal agencies?

At this time, OMB does not have specific plans to publish additional guidance on reopening Federal agencies. We have been working closely with guidance-issuing and central-management agencies (such as the Office of Personnel Management, the Centers for Disease Control and Prevention, the Department of Homeland Security, and the General Services Administration) to ensure all Federal agencies have the information needed to reopen safely. We will continue to assess whether additional OMB guidance is necessary.

- b. Is OMB monitoring the decisions to reopen agencies? Does OMB consult with agencies in their decisions to reopen?

OMB is tracking agency reopening decisions. OMB is available to agencies for consultation as reopening decisions are made, and many are doing so. Given the wide-ranging environments in which agencies operate, their task is to apply broad guidance to specific circumstances.

- c. What mechanisms are in place to ensure that agencies follow the criteria for beginning Phase 1? Are there any consequences for agencies opening prematurely?

Agencies are not responsible for making a determination of the Phase of the specific locales in which they have workplaces. That determination is generally expected to be made by State and local government decision makers. Agencies are asked to make operating determinations that take into consideration regional, state, and local conditions. OMB is providing information to agencies on local, regional and state conditions, as well as reopening decisions made by local, state and regional authorities.

- d. Does OMB have any standards for agencies to move forward with phases 2 and 3?

The White House and OMB/OPM have issued guidance to agencies concerning the conditions to be considered by an agency when deciding to move from one phase to another, specifically monitoring recommendations of local and state government. An agency's decisions to align operations to phase 2 and phase 3 will also depend on a variety of operational factors unique to each agency.

- e. When do you anticipate the federal workforce will fully return to regular operations?

The return to normalized operations will proceed according to the factors laid out in White House and OMB/OPM guidance. In other words, local conditions related to COVID-19 will determine the pace at which agencies are able to normalize operations, and when the end state is achieved. We are encouraging agencies to plan for a phased transition back to "normal," but we do not expect the end state to be achieved simultaneously, all at once for the entire federal Government. Aside from the COVID-19 conditions on the ground in each location, the timing of the transition for each agency will vary depending on the nature of the work, the demographics of the workforce, and other factors.

72. What precautions is the Administration taking to ensure the safety of the federal workforce in returning to regular duty stations?

- a. Does OMB have any standards for agency cleanliness and/or protective equipment for employees?

OMB has asked Agencies to follow relevant guidance for workplace cleaning/conditions and use of personal protective equipment from the Centers for Disease Control and Prevention, the General Services Administration, the Department of Labor, and other guidance-issuing agencies. Agencies are expected to act as responsible employers, just as their counterparts in the private sector are.

73. Are federal agencies obligated to bargain with employee unions before and during the reopening process on worker safety and cleaning procedures?
- a. Has OMB issued or is OMB planning to issue any guidance on the agencies' communication with federal employees and their unions throughout this process?

OMB encourages agencies to keep open lines of communication with their workforce during this situation. With around 2000 collective bargaining units across the Federal workforce, agencies' labor relations agreements will vary. OMB does not intend to issue specific guidance on this topic, but advises agencies to act in accordance with existing collective bargaining agreements (CBAs) insofar as those agreements concern aspects of this process.

74. Under what circumstances is it appropriate for an agency head to overrule local or state guidelines for social distancing in order to bring employees back to work? Are there any circumstances where it is not appropriate?

Agencies have been instructed to take state and local guidance into consideration when making operating decisions, which would include social distancing guidelines. Administration guidance issued by the White House, OMB, OPM and other agencies also addresses social distancing in the workplace. Given the wide-ranging nature of Federal agency workplaces and occupations – as well as the potential variances in guidance that may be issued by State and local authorities – it is impossible to determine or predict whether or when a specific State or local guidance may come into conflict with a federal agency's mandate to accomplish a mission-critical task.

75. M-20-23 directs OPM to “maintain a public site that provides a compilation of [operational statuses] across all Federal agencies.” Has this website been developed? Who is tasked with updating the site?

OMB is working with OPM and GSA to implement this directive. To the extent possible, we intend to leverage existing resources in order to reduce burden on agencies and reduce confusion to the public.

Cybersecurity and Information Technology

76. NIST's cybersecurity standards have become essential to help protect government and private sector entities. Delays in promulgating these standards can have a direct impact on

the security of federal and non-federal systems. Reports have suggested that OMB has been a bottleneck for the release of these standards in the past. What will you do to ensure that these essential cybersecurity standards are prioritized for review and release in a timeframe appropriate to respond quickly to evolving cybersecurity threats?

I agree that timely issuance of NIST standards is important, and if confirmed, I would direct OIRA to work with other relevant OMB components to prioritize any such reviews to ensure that the reviews recognize this need for timely issuance.

77. The Department of Homeland Security's (DHS) Cybersecurity and Infrastructure Agency (CISA) needs to be able to quickly respond and interact with private-sector stakeholders on emerging cybersecurity threats. In your view, should CISA be exempt from the Paperwork Reduction Act's (PRA) transparency requirements? If not, what can OMB and DHS do to expedite the current PRA approval process with respect to CISA?

I believe an expedited process may be warranted for aspects of CISA operations; if confirmed, I would consider what manner of expedition may be appropriate.

Environment

78. Please specifically describe any involvement you have had in reviewing regulatory actions or agency assessments about PFAS.

I have had no significant involvement in reviewing regulatory actions or agency assessments about PFAS.

79. Have you been involved in any interagency working group regarding PFAS? If so, please describe the nature of your involvement.

No.

80. Do you commit, both in your current role and if confirmed, to support the phasing out of the Department of Defense's use of fluorinated fire-fighting foam?

Yes.

81. Are you aware of the status of ATSDR's draft toxicological profile for perfluoroalkyl substances? Please explain.

No, I am not aware of the status of any review.

82. What specific steps will you take in your current role and if confirmed, to ensure transparency over OMB's review of any assessment, regulation, or other agency action regarding PFAS?

I will ensure compliance with E.O. 12866 to ensure transparent review of significant regulatory actions.

83. Do you commit, both in your current role and if confirmed, to support expeditious OMB review of any assessment, regulation, or other agency action regarding PFAS?

I commit to ensuring that reviews are conducted expeditiously, consistent with compliance with relevant law and executive orders, as well as good regulatory principles.

84. On March 22, 2019, OMB received a letter requesting information on an interagency dispute over groundwater cleanup guidelines for PFAS chemicals. This Committee has not received a response to that letter. Do you commit that OMB will provide a full response to that letter?

The guidance in question was released per normal interagency review and coordination. Our understanding in communication with the letter's lead signer and Committee Chairman was that the issue in question was considered resolved and issuance of the guidance constituted resolution of the letter's request.

85. Do you believe that climate change is real?

Yes.

86. Do you believe that humans contribute to the causes of climate change?

Yes.

87. Do you believe that the impacts of climate change are worse for vulnerable populations, such as children, the elderly, and the poor, or communities of color, or low-income communities?

I have not closely studied this matter but believe adverse impacts of any issue often hurt vulnerable populations harder.

88. Do you believe that your views on climate change are relevant to the role you have been nominated for? Please explain.

No.

89. Do you believe that climate change and its impacts, such as extreme weather events, have a negative impact on the federal budget?

Increased extreme weather events would almost certainly have a negative impact on the budget. At DOT, an increasing number of grant applications emphasized resiliency as a key driver for the need of modernizing infrastructure.

90. What steps is OMB taking to quantify the costs of climate change on the federal government and how is OMB making decisions to avoid significant future costs to taxpayers as a result of climate change

OMB conducts a broad examination of Federal fiscal risks during the budget process. This allows us to account for the significant uncertainty in climate projections and in distinguishing impacts associated with climate change from other drivers, which is often not possible. This broad approach better addresses the uncertainty of the fiscal exposure of climate change on individual Federal programs where insufficient information is available.

91. What steps, if any, has OMB taken to prepare for future impacts of flooding on federal property in order to reduce the government's fiscal vulnerability? What has been your role in this process?

OMB Circular A-11 instructs all agencies to factor cost-effective resilience requirements into their construction and renovation projects by meeting the requirements of EO 13834, Efficient Federal Operations. Additionally, agencies are required to comply with EO 11988 and FEMA-issued flood plain guidance when siting Federally owned and leased facilities.

92. Do you commit, both in your current role and if confirmed, that OMB will ensure that references to climate change are not removed from any regulatory or other agency action?

I cannot prejudge removal of any specific language from all actions. As a general matter, if climate change is relevant to a regulatory or agency action, I see no need for it to be removed.

93. If confirmed, do you commit to supporting full funding of the Great Lakes Restoration Initiative and other priority programs and projects in the Great Lakes watershed in future proposed budgets?

Future Budget proposals, including those related to restoration and other efforts in the Great Lakes watershed, will include sufficient funds to maintain priority efforts and ensure Federal responsibilities are fully funded.

94. Please describe your role in the Administration's decision to propose a decrease in the EPA's FY2021 budget.

I assisted in the coordination and review of EPA's FY21 budget.

- a. In your view, should EPA receive less funding, which would limit its ability to monitor, evaluate, and remediate environmental hazards?

The 2021 Budget takes an efficient, effective approach to prioritize EPA's key responsibilities under the Nation's environmental statutes. Through cooperation with States, tribes, local governments, businesses, and the public, EPA will continue to help provide safe drinking water, support attainment of national air quality standards, clean up the Nation's most complex hazardous waste sites, ensure the safety of chemicals in the marketplace, and conduct cutting-edge environmental research.

US Postal Service

95. During your tenure at OMB, what involvement have you had in evaluating or recommending proposals to reform the Postal Service?

I did not have any significant involvement in the reform of the Postal Service and the Task Force report was published in 2018, prior to me joining OMB.

96. What is your understanding of the proper roles of OMB and the Treasury Department with respect to the financial condition and operations of the Postal Service?

OMB plays a central role in coordinating formulation of government-wide policy with respect to the Postal Service. Treasury is a major creditor for the Postal Service and has a significant financial interest in the efficiency and effectiveness of its operations.

V. Accountability

Whistleblower Rights

97. Please describe your experience handling whistleblower complaints during your tenure at the Department of Transportation and at OMB.

I have not received any whistleblower complaints at DOT or OMB within my organization.

98. Current law establishes whistleblower protections for those who identify waste, fraud, and abuse in federal programs.

- a. In your view, why are whistleblowers important to the federal government?

Given the size and scope of the Federal government, whistleblowers are important to identify waste, fraud, and abuse. It is impractical for audits or reviews from headquarters to catch all examples of wasteful and fraudulent activity; thus whistleblowers provide a useful perspective.

- b. Please describe the steps you have taken to assess what whistleblower protections were in place at DOT and OMB following you joining each agency.

As a member of the senior leadership of DOT, we sent out reminders to DOT employees about whistleblower protections. At DOT, I relied upon the Office of Inspector General and also the General Counsel's office to review and improve whistleblower protections. During the formulation of the budget at DOT, I reviewed the resources the Inspector General had including the ability to review whistleblower complaints. Similarly, at Amtrak, we discussed whistleblower protections.

- c. What steps have you taken at DOT or OMB to improve upon whistleblower protections?

Under my leadership, I had regular meetings with staff and encouraged open and honest feedback on issues they may have. At DOT, I relied upon the Office of Inspector General and also the General Counsel's office to review and improve whistleblower protections.

- d. Please describe what steps you have taken at DOT and OMB to ensure that whistleblowers did not face retaliation and that their claims were thoroughly investigated.

At DOT, I relied upon the Office of Inspector General and also the General Counsel's office to review and improve whistleblower protections.

- e. If confirmed, what steps will you take to improve upon whistleblower protections at OMB, ensure whistleblowers do not face retaliation, and that their claims are thoroughly investigated?

I commit to review OMB policies around whistleblower protections and ensure their claims are investigated.

99. If confirmed, what steps will you take to ensure officials in your agency do not retaliate against federal employees, officials and contractor employees who communicate with representatives from this Committee, the GAO, IGs, the Office of Special Counsel, and any other statutorily protected channels for disclosure?

I will ensure that agencies do not take retaliatory action and ensure that personnel actions are based upon performance.

Role of Inspectors General

100. In your view, why are Inspectors General important to the federal government?

IGs play an important role in combating waste, fraud, and abuse within their respect agencies. OIGs often conduct and publish audits that improve financial management and internal control systems.

101. Please describe any steps you have taken at DOT or OMB to incorporate the findings and recommendations of IGs into the work of the agency.

At DOT, my office was very responsive to IG findings, including modifying grant review processes to incorporate some of their recommendations. I take the role of OIG seriously and would quickly review issues brought to my attention. Also, I would ensure my staff was available to meet with OIG.

102. Under what circumstances, if any, is it appropriate for OMB to refuse to provide a complete response to a request from an Inspector General for information, documents, or testimony? Please provide copies of any formal policies or guidance used by OMB in responding to such requests.

OMB has a long-standing protocol of working with the Inspector General community to provide the information they need to do their work.

103. If confirmed, do you commit to complying with any request made by an Office of Inspector General (OIG) for information, documents, testimony, or other materials related to an OIG investigation, audit, or review?

See answer to #102.

104. On April 25, 2019, the EPA Inspector General sent a letter to OMB Director Mick Mulvaney stating that OMB had not been responsive to four specific questions it asked related to a request for an EPA IG investigation Senators Carper and Udall made.^[1]

- a. Please provide the Committee with a complete response, with any requested documents, to each question the EPA IG asked OMB on April 25, 2019.

I was not at OMB as this time, but it is my understanding that OMB provided the EPA IG with sufficient information for its review.

- b. Please provide a list of each instance, since January 21, 2017, in which OMB refused to provide a complete response to any Inspector General or Government Accountability Office request for information. For each such instance, please include the date of the request, the identity of the requestor, the topic of the request, and a specific explanation for why the requested information was not provided.

^[1] That letter and the four questions that were asked can be accessed at https://www.epw.senate.gov/public/?_cache/files/2/6/266a361d-4812-4cf6-b0c9-67ed4ace3a4d/998C6AF5626F5126F045C423F5C538AA.epa-acting-ig-to-director-mulvaney-04-25-19-002-.pdf

OMB works with OIGs and the GAO, in a manner similar to previous administrations, to provide them the information responsive to their requests, consistent with the constitutional principles of deliberative process and separation of powers.

Role of the Government Accountability Office (GAO)

105. Under what circumstances, if any, is it appropriate for OMB to refuse to provide a complete response to a request from GAO for information, documents, or testimony? Please provide copies of any formal policies or guidance used by OMB in responding to such requests.

As a former Senate staffer, I worked closely with the GAO and would frequently commission them to assist with a study and also use their reports to inform policy recommendations. OMB has consistently provided information to GAO. OMB has not refused to cooperate with GAO's requests.

106. Please provide a list of each instance during your tenure at OMB that OMB refused to provide a complete response to any Inspector General or GAO request for information. For each instance, please include the date of the request, the identity of the requestor, the topic of the request, and a specific explanation for why the requested information was not provided.

OMB has consistently cooperated with and provided information to GAO and OIGs. For specific details about requests, I refer you to OMB's Office of General Counsel.

107. If confirmed, will you agree to work with representatives from this Committee and the GAO to promptly implement recommendations for improving OMB's operations and effectiveness?

Yes.

108. Do you commit, if confirmed, to meet with GAO on a regular basis and to make OMB staff available for regular meetings with GAO?

Yes, OMB will continue to provide information to GAO, consistent with the constitutional principles of deliberative process and separation of powers.

109. Do you commit, if confirmed, to provide GAO any information and documents they request in a timely manner?

Yes, OMB will continue to provide information to GAO consistent with the constitutional principles of deliberative process and separation of powers.

VI. Relations with Congress and the Public

110. Please describe your involvement, if any, during your tenure at OMB in reviewing or responding to congressional oversight requests.

I relied upon the General Counsel and Legislative Affairs Office for Congressional Oversight requests. On some occasions, I would follow-up to ensure a request was met in a timely manner (e.g., obligations data).

111. If confirmed, how will you make certain that you will respond in a timely manner to Member requests for information?

I will ensure my staff monitors and tracks these requests and ensure that they are responded to in a timely manner.

112. If confirmed, do you agree without reservation to reply to any reasonable request for information from the Ranking Member of any duly constituted committee of the Congress?

Yes, working with OMB's Office of General Counsel, I will work to ensure OMB provides Congress information responsive to its requests.

113. If confirmed, do you commit to take all reasonable steps to ensure that you and your agency comply with deadlines established for requested information?

Yes.

114. If confirmed, do you commit to protect subordinate officials or employees from reprisal or retaliation for any testimony, briefings or communications with members of Congress?

Yes.

115. If confirmed, will you ensure that your staff will fully and promptly provide information and access to appropriate documents and officials in response to requests made by the Government Accountability Office (GAO) and the Congressional Research Service?

Yes, consistent with the constitutional principles of deliberative process and separation of powers.

116. If confirmed, will you agree to work with representatives from this Committee and the GAO to promptly implement recommendations for improving your office's operations and effectiveness?

Yes. If confirmed, I will study their recommendations to improve OMB.

117. If confirmed, will you direct your staff to fully and promptly respond to Freedom of Information Act requests submitted by the American people?

Yes.

118. If confirmed, will you ensure that political appointees are not inappropriately involved in the review and release of Freedom of Information Act requests?

Yes.

VII. Assistance

119. Are these answers completely your own? If not, who has provided you with assistance?

Yes. I have received input and suggestions from OMB staff to inform my responses.

120. Have you consulted with OMB or any other interested parties? If so, please indicate which entities.

I received input from OMB staff to inform my responses.

I, Derek Kan, hereby state that I have read the foregoing Pre-Hearing Questionnaire and Supplemental Questionnaire and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.



(Signature)

This 16 day of June, 2020

**Ranking Member Gary C. Peters
Post-Hearing Questions for the Record
Submitted to Derek Kan**

**Nomination of the Hon. Derek T. Kan to be Deputy Director, Office of Management and
Budget
June 30, 2020**

- 1. In recent weeks Coronavirus cases have surged in several areas across the country. Additionally, health experts, including Dr. Fauci, have recently stated that they expect the virus to continue to spread through the fall and winter.**

- a. As a member of the White House Coronavirus Taskforce, are you concerned by the recent rise in Coronavirus cases?**

A: Yes, and the Administration is working closely with those states that are experiencing recent surges in cases.

- b. What is OMB doing to ensure that adequate resources are available to respond to a resurgence of the Coronavirus and possible second wave?**

A: Since the beginning of the response, OMB has worked with Federal agencies on a whole-of-America response to the COVID-19 pandemic to protect the health and safety of the American people. We have focused on the best allocation of funding to support the immediate response while also planning for a longer term response. We are working closely with the key response agencies, including but not limited to HHS, on these resource allocation and planning processes.

- c. What lessons has the Administration learned in the early months of the pandemic that can be applied to ongoing surges?**

A: The Administration has remained focused on the immediate response, but also on flexible, strategic planning and continuing improvements. Since the beginning, we have reduced barriers and promoted innovative Federal actions while supporting states, the private sector, and other partners in the response. We must continue to be decisive while maintaining flexibility to meet the latest on the ground developments on the virus.

- 2. In your view, what are the biggest challenges currently preventing the federal government from obtaining comprehensive data on the disproportionate impact of the Coronavirus pandemic on minority communities?**

A: The most important challenges to all data collections with respect to the COVID-19 pandemic are the rapidly-evolving nature of the outbreak and the need to prioritize all available resources toward treatment and prevention of spread.

3. You testified that the Administration’s consideration of the proposal to increase the FEMA cost share to 100% for emergency assistance to is “still in a policy process.” You further stated that this decision involves “major tradeoffs.”

a. Please describe the “major tradeoffs” involved in considering the cost share increase.

A: Past disaster experience has shown a non-Federal cost share provides an important cost control mechanism by ensuring that applicants partially internalize the costs of actions for which they will seek Federal assistance and to maintain the supplemental nature of Federal disaster assistance. In the case of COVID-19, it is critical that States make smart, data-driven decisions about their needs and prioritize their resources accordingly. Given the broad scope of this disaster, we have to be mindful of unmatched Federal resources undermining the incentive to do just that. The CARES Act provided significant funding to states, including the Treasury’s Coronavirus Relief Fund, which the Administration has made clear can be used to meet the non-Federal share of FEMA assistance. The Administration is working to strike a balance of being responsive to state needs while maintaining adequate resources for other disasters, incentivizing program efficiency, and discouraging waste, fraud, and abuse. To that end, the Administration has taken steps to address states’ most urgent needs, including providing over a \$1 billion worth of PPE to states at 100 percent Federal cost. In addition, the President authorized FEMA to pay 100 percent of states’ National Guard costs (related to COVID-19 response) under Title 32 for about 6 months – which is unprecedented. In addition, FEMA is nearing the peak of the 2020 hurricane season, which is predicted to be an above-average year in terms of response efforts, while also helping the nation recover from over 600 active disasters.

b. Has OMB made a recommendation to the President on whether or not to make the proposed adjustment?

A: OMB continues to coordinate with FEMA and the EOP, and deliberations are ongoing and pre-decisional.

c. When do you expect a final decision on whether or not to increase the cost share?

A: See answer #3b

4. If confirmed, do you commit to ensuring that all federal agencies including SBA fully and promptly cooperate with all GAO requests?

A: Yes. OMB has and will continue to cooperate with GAO’s requests. To the extent OMB is aware of GAO requests to other agencies, OMB will lead by example.

5. If confirmed, what steps will you take to encourage SBA and other agencies to cooperate with GAO?

A: See answer #4.

6. What considerations can you commit that OMB will give to the disproportionate impacts of regulations identified through the implementation of EO 13924 on communities of color, low-income communities, and other vulnerable populations?

A: In implementation of EO 13924, as throughout the deregulatory initiative, OMB will take into account the disproportionate burden placed on particular communities by unneeded regulations, as well as any disproportionate impact that would be created by rescission or modification of particular regulations.

7. To the best of your knowledge, has OMB solicited information from external stakeholders in a non-public manner regarding the implementation of EO 13924 or the associated memo from Acting Director Vought? If so, can you please identify these instances?

A: No.

8. Congress has proposed legislation to extend OMB's authority in reviewing guidance and regulations to include independent agencies. Do you believe that congressional authority is needed in order for the president to extend regulatory review to independent agencies?

A: I understand that past administrations have claimed this authority. I do not have an independent opinion on this legal question.

9. If confirmed, what specific actions, if any, would you advocate for, to address the costs of climate change on taxpayers?

A: OMB's role in reviewing regulations, including any regulations that address climate change, is not generally to advocate for particular policy views, but to ensure that a robust interagency process results in transparent, net beneficial regulations supported by a reasoned assessment of costs and benefits, that best serve the American people.

10. Please describe the work of the U.S. Digital Service (USDS) on data collection related to the Coronavirus pandemic. When do you anticipate USDS will be able to share its findings and recommendations with Congress?

A: USDS assists the Coronavirus Task Force by sourcing and cleaning data to make it actionable for decision-makers and policy-makers. USDS has produced data and visualizations presented by the task force to the public. USDS has also deployed a team to explore how to improve the quality, accuracy, and timeliness of reporting COVID-19 data. USDS is still performing field work on this topic. We can provide you an update when they complete their work.

11. Are you aware of any agencies that have determined existing reporting requirements are not sufficient to meet the requirements in Sec. 15011 of the CARES Act? If so please

identify the agencies and the additional steps they have taken to collect and/or report the required information.

A: This Administration is committed to transparency for spending under this bill and takes our stewardship responsibility seriously.

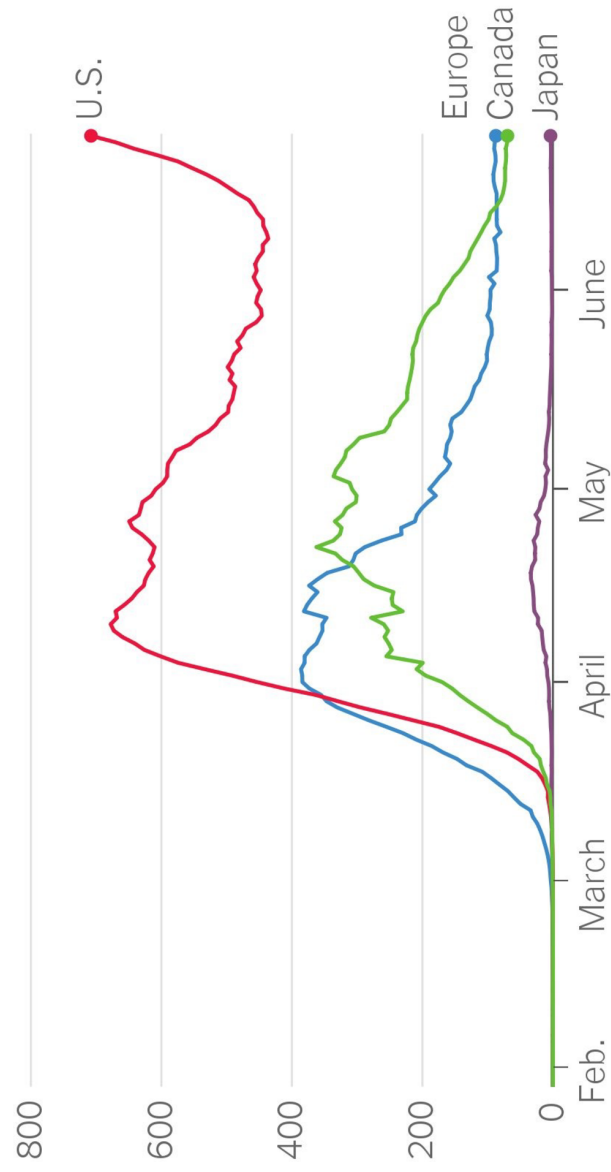
We are currently in the process of reviewing specific provisions together with the agencies expending the funds to determine what exceptions there may be to the requirements and what other measures are in place to assure accountability where there are exceptions.

I would be happy to follow-up with Members of this Committee if there are specific questions about any of the specific programs funded under the bill.

12. What are your views on the Federal Assets Sale Transfer Act process and the pace at which the board is proceeding?

A: The Federal Assets Sale Transfer Act (FASTA) was enacted in December 2016, however the Board did not reach quorum as outlined in the law to initiate their activities until May 2019. The OMB Acting Director concurred with the Public Buildings Reform Board's (PBRB) recommendations for the first round of the dispositions in January 2020. GSA and the Board are working diligently with the impacted agencies to take the necessary steps to dispose of the twelve assets. The PBRB is uniquely positioned to view the Federal portfolio government-wide and make recommendations in the next two rounds under FASTA, and OMB looks forward to working with the Board under the process outlined in the statute.

New confirmed cases per million residents, previous seven days



Source: Johns Hopkins University, *The New York Times*, June 29, 2020.